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**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2003

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**ENROLLED**

SENATE BILL NO. 648

(By Senator Oliverio, et al )

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PASSED March 7, 2003

In Effect 90 days from Passage

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## ENROLLED

### Senate Bill No. 648

(BY SENATORS OLIVERIO, JENKINS, HUNTER, WHITE, MCKENZIE,  
KESSLER, CALDWELL, FANNING, MINARD, ROWE AND DEEM)

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[Passed March 7, 2003; in effect ninety days from passage.]

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AN ACT to repeal section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty, article two of said chapter; to repeal section twenty-one, article four-a of said chapter; to repeal section twenty-one, article nine of said chapter; to amend and reenact sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter; to further amend said article by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; to amend and reenact sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter; to further amend said article by adding thereto a new section, designated section four-a; to amend and reenact sections one, two, two-a, three, five, five c, seven, eight, ten and eleven, article three of said chapter; to amend and reenact sections ten and twenty-three,

article four of said chapter; to amend and reenact sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter; to amend and reenact sections ten, thirteen, fifteen and nineteen, article five of said chapter; to amend and reenact sections three, four-a, five, six, seven and nine, article six of said chapter; to amend and reenact sections one and four, article seven of said chapter; to amend and reenact sections two, four, five and twelve, article eight of said chapter; to amend and reenact sections seven and eight, article ten of said chapter; and to amend and reenact section two, article six, chapter eight of said code, all relating to elections generally; requiring written notice to registered voters if precinct is changed; clarifying how members of the state executive committees are elected and providing for additional members; specifying the information to be on the general information cards; providing instruction on casting a provisional ballot; requiring posting of names of official write-in candidates; requiring all information available to voters on election day to be available during the early in-person voting period; requiring the circuit clerk to transfer absentee ballots to the clerk of the county commission where clerk of the county commission is responsible for absentee voting; authorizing poll clerks to pick up election supplies; authorizing reimbursement for county employees who deliver election supplies; prohibiting election officials from also being official write-in candidates; making expanded receiving boards optional; clarifying that alternate election officials be paid for attending training; changing challenged ballot to provisional ballot throughout; clarifying that the clerk of the county commission may use election records and returns to update voter registration records; eliminating the requirement for the immediate arrest of a person accused of voting illegally; establishing procedures for taking and securing affidavits regarding illegal voting; providing for the secured affidavits to be given to the prosecuting attorney; establishing procedures for challenging ballots and voting a provisional ballot; requiring that the secretary of state establish a system to allow provisional voters to learn whether or not their vote was

counted and why; requiring the circuit court to decide proceedings to compel performance of election duties within fifteen days; establishing a state election fund; setting new standards for voting systems; providing for state administrative complaint procedures for election law violations; authorizing the secretary of state to establish and maintain a statewide voter registration list; providing for stricter identification procedures for voter registration; clarifying when seventeen-year-olds may vote in municipal elections; providing that voter registration services will be provided whenever the office of the clerk of the county commission is open for business; clarifying that the secretary of state must periodically review and revise the rule relating to voter registration; clarifying that voter registration lists or data files may not be used or sold for commercial or charitable solicitations or advertising; changing regular absentee voting to early in-person voting; allowing voters who have resided in a nursing home for less than thirty days to vote by an emergency absentee ballot; clarifying that absentee ballots require a mail-in absentee ballot application; authorizing two representatives to assist with absentee voting and establishing qualifications; expanding the early in-person voting period to twenty days; eliminating voting on Monday before a Tuesday election and adding voting on the two Saturdays prior to the election; requiring notice to voters that Monday voting is no longer available; clarifying procedures for, and materials required for, early in-person voting; authorizing representatives to sign the back of mail-in ballots; requiring proper supplies be sent to mail-in absentee voters; establishing measures for securing mail-in absentee ballots; providing that the emergency absentee ballot commissioners must sign an oath; authorizing counties that use paper ballots to begin counting absentee ballots at nine o'clock the morning of election day; removing certain requirements for challenging absentee ballots; removing language that require ballot commissioner's signatures on absentee ballots; requiring that all electronic voting system materials be retained twenty-two months; providing that a person who assists voters casting their ballots cannot be a

candidate on the ballot or an official write-in candidate; removing the requirement that write-in votes be indicated by punching out write-in voting position on a punch card ballot in addition to entering the candidate's name; providing that the publication of sample ballots will be made not more than twenty-six nor less than twenty days prior to the primary and general elections; requiring numbers and perforated stubs on paper ballots; clarifying the requirements for an executive committee to call a meeting to fill vacancies on a ballot; allowing issues of candidate eligibility to be brought before the election commission; requiring the certificate of announcement for a write-in candidate be received by the close of business the eighteenth day prior to the election; requiring contests for state offices, legislative seats and judgeships to be filed within ten days of the certification of the election; removing the requirement that political committees advocating for or against an issue file financial statements; excluding federal political action committees from filing with the state; allowing a change of treasurer of a campaign committee by filing a written statement; requiring that candidates in a primary election file financial statements on the last Saturday in March or within six days thereafter; requiring that candidates in a general election file financial statement on the first Saturday in September or within six days thereafter; eliminating requirement that financial reports be notarized and requiring them to be sworn; allowing corporations to participate in nonpartisan registration and get-out-the-vote campaigns; prohibiting anonymous radio or television advertisements advocating the election or defeat of candidates; clarifying how a vacancy in the office of county commissioner or clerk of the county commission is to be filled; removing requirement to fill certain vacancies by election if the unexpired term is greater than one year; removing inconsistent time frames for holding annexation election; and clarifying that a majority of votes in the municipality and a majority of votes in the territory to be annexed determine the outcome of annexation elections.

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

That section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty, article two of said chapter be repealed; that section twenty-one, article four-a of said chapter be repealed; that section twenty-one, article nine of said chapter be repealed; that sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; that sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-a; that sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter be amended and reenacted; that sections ten and twenty-three, article four of said chapter be amended and reenacted; that sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter be amended and reenacted; that sections ten, thirteen, fifteen and nineteen, article five of said chapter be amended and reenacted; that sections three, four-a, five, six, seven and nine, article six of said chapter be amended and reenacted; that sections one and four, article seven of said chapter be amended and reenacted; that sections two, four, five and twelve, article eight of said chapter be amended and reenacted; that sections seven and eight, article ten of said chapter be amended and reenacted; and that section two, article six, chapter eight of said code be amended and reenacted, all to read as follows:

### **CHAPTER 3. ELECTIONS.**

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

##### **§3-1-7. Precinct changes; procedure; precinct record.**

- 1 (a) Subject to the provisions and limitations of section
- 2 five of this article, the county commission of any county
- 3 may change the boundaries of any precinct within the

4 county, or divide any precinct into two or more precincts,  
5 or consolidate two or more precincts into one, or change  
6 the location of any polling place whenever the public  
7 convenience may require it.

8 (b) No order effecting the change, division or consolida-  
9 tion shall be made by the county commission within ninety  
10 days prior to an election nor without giving notice at least  
11 one month before the change, division or consolidation by  
12 publication of the notice as a Class II-0 legal advertise-  
13 ment in compliance with the provisions of article three,  
14 chapter fifty-nine of this code. The publication area is the  
15 county in which the precinct or precincts are located. The  
16 county commission shall also, within fifteen days after the  
17 date of the order, publish the order in the manner required  
18 for publication of the notice.

19 (c) The county commission shall also, before the next  
20 succeeding election, cause the voters in the several pre-  
21 cincts affected by the order to be duly registered in the  
22 proper precinct or precincts and shall mail written notifi-  
23 cation to all registered voters affected by the change.

24 (d) The county commission shall keep in a well-bound  
25 book, marked "election precinct record", a complete  
26 record of all their proceedings hereunder and of every  
27 order made creating a precinct or precincts or establishing  
28 a place of voting therein. The "election precinct record"  
29 shall be kept by the county commission clerk in his or her  
30 office and shall, at all reasonable hours, when not actually  
31 in use by the county commission, be open to inspection by  
32 any citizen of the county.

33 (e) When the county commission establishes a polling  
34 place at a location other than the location used for holding  
35 the preceding primary, general or special election in that  
36 precinct, the commission shall cause a notice to be posted  
37 on election day on the door of the previous polling place  
38 describing the location of the newly established polling

39 place and shall mail written notification to all registered  
40 voters affected by the change.

41 (f) If for any reason the election cannot be held at the  
42 designated polling place in a precinct and no provision has  
43 been made by the county commission for holding the  
44 election at another place, the commissioners of election for  
45 that precinct may hold the election at the nearest place  
46 which they can secure for the purpose. They shall make  
47 known by proclamation to voters present at the time for  
48 opening the polls, and by posting a notice at or near the  
49 entrance of the first named polling place, the location at  
50 which the election will be held. The county commission  
51 shall establish another place of voting for that precinct as  
52 soon thereafter as practicable.

53 (g) Notwithstanding any provision herein to the con-  
54 trary, in the case of an emergency, the county commission  
55 may make the precinct change no later than sixty days  
56 prior to an election in accordance with the requirements  
57 herein with the approval of the secretary of state. A  
58 change, if made however, shall not cause any voter to be  
59 moved to a different district.

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

1 Every fourth year at the primary election, the voters of  
2 each political party in each senatorial district shall elect  
3 four members consisting of two male members and two  
4 female members of the state executive committee of the  
5 party. In 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  
8 each election the votes shall be tallied from highest to  
9 lowest without regard to gender or county of residence.  
10 The two candidates with the highest votes shall be elected  
11 first and the other candidates shall be qualified based on  
12 vote tallies, gender and county of residence. The commit-  
13 tee, when convened and organized as herein provided,  
14 shall appoint three additional members of the committee



15 from the state at large which shall constitute the entire  
16 voting membership of the state executive committee:  
17 *Provided*, however, That if it chooses to do so, the commit-  
18 tee may by motion or resolution, and in accordance with  
19 party rules, may expand the voting membership of the  
20 committee. When senatorial districts are realigned  
21 following a decennial census, members of the state execu-  
22 tive committee previously elected or appointed shall  
23 continue in office until the expiration of their terms.  
24 Appointments made to fill vacancies on the committee  
25 until the next election of executive committee members  
26 shall be selected from the previously established districts.  
27 At the first election of executive committee members  
28 following the realignment of senatorial districts, members  
29 shall be elected from the newly established districts.

30 (b) At the primary election, the voters of each political  
31 party in each county shall elect one male and one female  
32 member of the party's executive committee of the congress-  
33 sional district, of the senatorial district and of the delegate  
34 district in which the county is situated, if the county is  
35 situated in a multicounty senatorial or delegate district.  
36 When districts are realigned following a decennial census,  
37 members of an executive committee previously elected in  
38 a county to represent that county in a congressional or  
39 multicounty senatorial or delegate district executive  
40 committee shall continue to represent that county in the  
41 appropriate newly constituted multicounty district until  
42 the expiration of their terms: *Provided*, That the county  
43 executive committee of the political party shall determine  
44 which previously elected members will represent the  
45 county if the number of multicounty senatorial or delegate  
46 districts in the county is decreased; and shall appoint  
47 members to complete the remainder of the term if the  
48 number of districts is increased.

49 (c) At the same time the voters of the county in each  
50 magisterial district or executive committee district, as the  
51 case may be, shall elect one male and one female member

52 of the party's county executive committee except that in  
53 counties having three executive committee districts, there  
54 shall be elected two male and two female members of the  
55 party's executive committee from each magisterial or  
56 executive committee district.

57 (d) For the purpose of complying with the provisions of  
58 this section, the county commission shall create the  
59 executive committee districts. The districts shall not be  
60 fewer than the number of magisterial districts in the  
61 counties, nor shall they exceed in number the following:  
62 Forty for counties having a population of one hundred  
63 thousand persons or more; thirty for counties having a  
64 population of fifty thousand to one hundred thousand;  
65 twenty for counties having a population of twenty thou-  
66 sand to fifty thousand; and the districts in counties having  
67 a population of less than twenty thousand persons shall be  
68 coextensive with the magisterial districts.

69 (e) The executive committee districts shall be as nearly  
70 equal in population as practicable and shall each be  
71 composed of compact, contiguous territory. The county  
72 commissions shall change the territorial boundaries of the  
73 districts as required by the increase or decrease in the  
74 population of the districts as determined by a decennial  
75 census. The changes must be made within two years  
76 following the census.

77 (f) All members of executive committees, selected for  
78 each political division as herein provided, shall reside  
79 within the county or district from which chosen. The term  
80 of office of all members of executive committees elected at  
81 the primary election in the year one thousand nine hun-  
82 dred ninety-four will begin on the first day of July,  
83 following the primary and continue for four years thereaf-  
84 ter until their successors are elected and qualified.  
85 Vacancies in the state executive committee shall be filled  
86 by the members of the committee for the unexpired term.  
87 Vacancies in the party's executive committee of a congress-  
88 sional district, senatorial district, delegate district or

89 county shall be filled by the party's executive committee  
90 of the county in which the vacancy exists for the unex-  
91 pired term.

92 (g) As soon as possible after the certification of the  
93 election of the new executive committees, as herein  
94 provided, they shall convene an organizational meeting  
95 within their respective political divisions, on the call of the  
96 chairman of corresponding outgoing executive committees  
97 or by any member of the new executive committee in the  
98 event there is no corresponding outgoing executive com-  
99 mittee. During the first meeting the new executive  
100 committee must select a chairman, a treasurer and a  
101 secretary and other officers as they may desire. Each of  
102 the officers shall, for their respective committees, perform  
103 the duties that usually appertain to his or her office. The  
104 organizational meeting may be conducted prior to the  
105 beginning of the term, but no official action other than the  
106 election of officers and the appointment to fill vacancies  
107 on the committee may be made before the first day of July.  
108 A current listing of all executive committees' members  
109 shall be filed with the secretary of state by the end of July  
110 of each year. Vacancies in any executive committee shall  
111 be filled no later than four months after the vacancy  
112 occurs. The chairman of each executive committee shall  
113 submit an updated committee list as changes occur.  
114 Executive committee membership lists shall include at  
115 least the member's name, full address, employer, telephone  
116 number and term information. If a vacancy on an execu-  
117 tive committee is not filled within the four-month period  
118 prescribed by the provisions of this section, the chair of  
119 the executive committee shall name someone to fill the  
120 vacancy within ten days of the expiration of the four-  
121 month period.

122 (h) Any meeting of any political party executive commit-  
123 tee shall be held only after public notice and notice to each  
124 member is given according to party rules and shall be open  
125 to all members affiliated with the party. Meetings shall be

126 conducted according to party rules, all official actions  
127 shall be made by voice vote and minutes shall be main-  
128 tained and shall be open to inspection by members affili-  
129 ated with the party.

**§3-1-20. Cards of instructions to voters; sample ballots; posting.**

1 (a) The board of ballot commissioners of each county  
2 shall provide cards of general information which will  
3 provide the date of the election and the hours during  
4 which polling places will be open, instruction for mail-in  
5 registrants and first-time voters and voters' rights and  
6 prohibitions against fraud and misrepresentation and  
7 cards of instruction for voters in preparing their ballots  
8 and casting a provisional ballot as prescribed by the  
9 secretary of state. They shall furnish a sufficient number  
10 of cards to the commissioners of election at the same time  
11 they deliver the ballots for the precinct.

12 (b) The commissioners of election shall post one instruc-  
13 tion card in each voting booth giving instructions to the  
14 voters on how to prepare the ballots for deposit in the  
15 ballot boxes and how to obtain a new ballot in place of one  
16 accidentally spoiled.

17 (c) The commissioners of election shall post one or more  
18 other cards of general information at places inside and  
19 outside of the voting place where voters pass or wait to  
20 vote. The commissioners shall also post the official write-  
21 in candidates in the same locations inside and outside of  
22 the voting place.

23 (d) The ballot commissioners shall have printed, on a  
24 different color paper than the official ballot, ten or more  
25 copies of sample ballots for each voting place for each  
26 election. Sample ballots shall be furnished and posted  
27 with the cards of general information at each voting place.

28 (e) During the period of early in-person voting, the  
29 official designated to supervise and conduct absentee  
30 voting shall post the cards of general information, a list of

31 official write-in candidates and sample ballots within the  
32 area where absentee voting is conducted.

**§3-1-21. Printing of official and sample ballots; number; pack-  
aging and delivery, correction of ballots.**

1 (a) The board of ballot commissioners for each county  
2 shall provide the ballots and sample ballots necessary for  
3 conducting every election for public officers in which the  
4 voters of 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  
10 countywide special election ordered by the county com-  
11 mission;

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

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

21 (c) When paper ballots are used, the total number of  
22 regular official ballots printed shall equal one and  
23 one-twentieth times the number of registered voters  
24 eligible to vote that ballot. The

25 circuit clerk shall determine the number of absentee  
26 official ballots.

27 (d) The number of regular official ballots packaged for  
28 each precinct shall equal the number of registered voters

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

44 (e) All absentee ballots necessary for conducting absen-  
45 tee voting in all voting systems shall be delivered to the  
46 circuit clerk of the appropriate county not later than the  
47 forty-second day before the election. In counties where  
48 the clerk of the county commission is responsible for  
49 conducting absentee voting, the circuit clerk shall transfer  
50 the absentee ballots to the clerk of the county commission  
51 prior to the beginning of absentee voting. All official  
52 ballots in paper ballot systems shall be delivered to the  
53 circuit clerk of the appropriate county not later than  
54 twenty-eight days before the election.

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

**§3-1-24. Obtaining and delivering election supplies.**

1 (a) It shall be the duty of the clerk of the county commis-  
2 sion to appoint one or more of the commissioners of

3 election or poll clerks at each precinct of the county to  
4 attend at the offices of the clerks of the circuit court and  
5 county commission, as the case may be, at least one day  
6 before each election to receive the ballots, ballot boxes,  
7 poll books, registration records and forms and all other  
8 supplies and materials for conducting the election at the  
9 respective precincts. The clerks shall take a receipt for the  
10 respective materials delivered to the commissioners of  
11 election or poll clerks and shall file the receipt in their  
12 respective offices. It shall be the duty of the commission-  
13 ers or poll clerks to receive the supplies and materials from  
14 the respective clerks and to deliver them with the seal of  
15 all sealed packages unbroken at the election precinct in  
16 time to open the election.

17 (b) The commissioners or poll clerks, if they perform the  
18 messenger services, shall receive the per diem and mileage  
19 rate prescribed by law for this service.

20 (c) Ballots shall be delivered in sealed packages with  
21 seals unbroken. For general and special elections the  
22 delivered ballots shall not be in excess of one and one-  
23 twentieth times the number of registered voters in the  
24 precinct. For primary elections the ballots for each party  
25 shall be in a separately sealed package containing not  
26 more than one and one-twentieth times the number of  
27 registered voters of each party in the election precinct.

28 (d) For primary elections one copy of the poll books,  
29 including the written or printed forms for oaths of com-  
30 missioners of election and poll clerks, shall be supplied at  
31 each voting precinct for each political party appearing on  
32 the primary ballot.

33 (e) There shall be two ballot boxes for each election  
34 precinct for which a receiving and a counting board of  
35 election commissioners have been appointed.

**§3-1-25. Supplies by special messenger.**

1 In case any commissioner of election or poll clerk fails to  
2 appear at the offices of the clerks of the county commis-

3 sion and circuit courts by the close of the clerk's office on  
4 the day prior to any election, the board of ballot commis-  
5 sioners, the chairman or the circuit clerk shall forthwith  
6 dispatch a special messenger to the commissioners of  
7 election of each respective precinct with the ballots,  
8 registration records, ballot boxes, poll books and other  
9 supplies for the precinct. The messenger, if not a county  
10 employee, shall be allowed five dollars for this service.  
11 The messenger shall also receive mileage up to the rate of  
12 reimbursement authorized by the travel management rule  
13 of the department of administration for each mile neces-  
14 sarily traveled in the performance of his or her services.  
15 The messenger shall promptly report to the clerks of the  
16 circuit court and county commission, respectively, and file  
17 with the clerks the receipts of the person to whom he or  
18 she delivered the ballots and other supplies and his or her  
19 affidavit stating when and to whom he or she delivered  
20 them.

**§3-1-28. Election officials; eligibility, suspension of eligibility.**

- 1 (a) To be eligible to be appointed or serve as an election  
2 official in any state, county or municipal election held in  
3 West Virginia, a person:
- 4 (1) Must be a registered voter of the county for elections  
5 held throughout the county and a registered voter of the  
6 municipality for elections held within the municipality:  
7 *Provided*, That if the required number of persons eligible  
8 to serve as election officials for a municipal election are  
9 not available or are not willing to serve as election offi-  
10 cials for a municipal election, a registered voter of the  
11 county in which the municipality is located may serve as  
12 an election official for elections held within the municipal-  
13 ity.
- 14 (2) Must be able to read and write the English language;
- 15 (3) May not be a candidate on the ballot or an official  
16 write-in candidate in the election;



17 (4) May not be the parent, child, sibling or spouse of a  
18 candidate on the ballot or an official write-in candidate in  
19 the precinct where the official serves;

20 (5) May not be a person prohibited from serving as an  
21 election official pursuant to any other federal or state  
22 statute; and

23 (6) May not have been previously convicted of a violation  
24 of any election law.

25 (b) The county commission may, upon majority vote,  
26 suspend the eligibility to serve as an election official in  
27 any election for four years for the following reasons:

28 (1) Failure to appear at the polling place at the desig-  
29 nated time without proper notice and just cause;

30 (2) Failure to perform the duties of an election official as  
31 required by law;

32 (3) Improper interference with a voter casting a ballot or  
33 violating the secrecy of the voter's ballot;

34 (4) Being under the influence of alcohol or drugs while  
35 serving as an election official; or

36 (5) Having anything wagered or bet on an election.

37 (c) The county commission may, upon majority vote,  
38 suspend the eligibility to serve as an election official in  
39 any election for two years upon petition of twenty-five  
40 registered voters of the precinct where the official last  
41 served and upon presentation of evidence of any of the  
42 grounds set forth in subsection (b) of this section: *Pro-*  
43 *vided*, That the petition requesting the suspension of the  
44 election official is filed with the county commission at  
45 least ninety days prior to an election date. The names of  
46 those persons signing the petition must be kept confiden-  
47 tial.

**§3-1-29. Boards of election officials; definitions, composition of  
boards, determination of number and type.**

1 (a) For the purpose of this article:

2 (1) The term “standard receiving board” means those  
3 election officials charged with conducting the process of  
4 voting within a precinct and consists of five persons,  
5 including one team of poll clerks, one team of election  
6 commissioners for the ballot box and one additional  
7 election commissioner: *Provided*, That if a municipal  
8 election is held at a time when there is no county or state  
9 election, the standard receiving board is to consist of four  
10 persons, including one team of poll clerks and one team of  
11 election commissioners for the ballot box;

12 (2) The term “expanded receiving board” means a  
13 standard receiving board as defined in subdivision (1) of  
14 this subsection and one additional team of poll clerks;

15 (3) The term “counting board” means those election  
16 officials charged with counting the ballots at the precinct  
17 in counties using paper ballots and includes one team of  
18 poll clerks, one team of election commissioners and one  
19 additional commissioner;

20 (4) The term “team of poll clerks” or “team of election  
21 commissioners” means two persons appointed by opposite  
22 political parties to perform the specific functions of the  
23 office: *Provided*, That no team of poll clerks or team of  
24 election commissioners may consist of two persons with  
25 the same registered political party affiliation or two  
26 persons registered with no political party affiliation; and

27 (5) The term “election official trainee” means an individ-  
28 ual who is sixteen or seventeen years of age who meets the  
29 requirements of subdivisions (2), (3), (4), (5) and (6),  
30 subsection (a), section twenty-eight of this article who  
31 serves as a trainee to the standard receiving board on a  
32 volunteer basis by assisting the standard receiving board  
33 in performing its official duties and who receives credits  
34 for an official community service program as may be  
35 required to obtain a high school diploma.

36 (b) The composition of boards of election officials shall  
37 be as follows:

38 (1) In any primary, general or special election other than  
39 a presidential primary or presidential general election,  
40 each election precinct is to have one standard receiving  
41 board;

42 (2) In presidential primary and presidential general  
43 elections, each election precinct is to have one receiving  
44 board as follows:

45 (A) For precincts of less than five hundred registered  
46 voters, one standard receiving board; and

47 (B) For precincts of more than five hundred registered  
48 voters, one standard receiving board or, at the discretion  
49 of the county commission, one expanded receiving board.

50 (3) In any election conducted using paper ballots,  
51 counting boards may be allowed, disallowed or required as  
52 follows:

53 (A) For any state, county or municipal special election,  
54 no counting board may be allowed;

55 (B) In a statewide primary or general election, one  
56 counting board is required for any precinct of more than  
57 four hundred registered voters and one counting board  
58 may be allowed, at the discretion of the county commis-  
59 sion, for any precinct of at least two hundred but no more  
60 than four hundred registered voters; and

61 (C) In a municipal primary or general election, one  
62 counting board may be allowed, at the discretion of the  
63 municipal governing body, for any precinct of more than  
64 two hundred registered voters.

65 (c) For each primary and general election in the county,  
66 the county commission shall designate the number and  
67 type of election boards for the various precincts according  
68 to the provisions of this section. At least eighty-four days

69 before each primary and general election the county  
70 commission shall notify the county executive committees  
71 of the two major political parties in writing of the number  
72 of nominations which may be made for poll clerks and  
73 election commissioners.

74 (d) For each municipal election, the governing body of  
75 the municipality shall perform the duties of the county  
76 commission as provided in this section.

77 (e) For each primary, general or special election in the  
78 county, the county commission, and for each municipal  
79 election, the governing body of the municipality, may  
80 appoint one or two election official trainees for each  
81 precinct.

**§3-1-30. Nomination and appointment of election officials and  
alternates; notice of appointment; appointment to  
fill vacancies in election boards.**

1 (a) For any primary, general or special election held  
2 throughout a county, poll clerks and election commission-  
3 ers may be nominated as follows:

4 (1) The county executive committee for each of the two  
5 major political parties may, by a majority vote of the  
6 committee at a duly called meeting, nominate one quali-  
7 fied person for each team of poll clerks and one qualified  
8 person for each team of election commissioners to be  
9 appointed for the election;

10 (2) The appointing body shall select one qualified person  
11 as the additional election commissioner for each board of  
12 election officials;

13 (3) Each county executive committee shall also nominate  
14 qualified persons as alternates for at least ten percent of  
15 the poll clerks and election commissioners to be appointed  
16 in the county and is authorized to nominate as many  
17 qualified persons as alternates as there are precincts in the  
18 county to be called upon to serve in the event any of the

19 persons originally appointed fail to accept appointment or  
20 fail to appear for the required training or for the prepara-  
21 tion or execution of their duties;

22 (4) When an executive committee nominates qualified  
23 persons as poll clerks, election commissioners or alter-  
24 nates, the committee, or its chairman or secretary on its  
25 behalf, shall file in writing with the appointing body, no  
26 later than the fifty-sixth day before the election, a list of  
27 those persons nominated and the positions for which they  
28 are designated.

29 (b) For any municipal primary, general or special  
30 election, the poll clerks and election commissioners may be  
31 nominated as follows:

32 (1) In municipalities which have municipal executive  
33 committees for the two major political parties in the  
34 municipality, each committee may nominate election  
35 officials in the manner provided for the nomination of  
36 election officials by county executive committees in  
37 subsection (a) of this section;

38 (2) In municipalities which do not have executive  
39 committees, the governing body shall provide by ordinance  
40 for a method of nominating election officials or shall  
41 nominate as many eligible persons as are required, giving  
42 due consideration to any recommendations made by voters  
43 of the municipality or by candidates on the ballot.

44 (c) The governing body responsible for appointing  
45 election officials is:

46 (1) The county commission for any primary, general or  
47 special election ordered by the county commission and any  
48 joint county and municipal election;

49 (2) The board of education for any special election  
50 ordered by the board of education conducted apart from  
51 any other election;

52 (3) The municipal governing body for any primary,  
53 general or special municipal election ordered by the  
54 governing body.

55 (d) The qualifications for persons nominated to serve as  
56 election officials may be confirmed prior to appointment  
57 by the clerk of the county commission for any election  
58 ordered by the county commission or for any joint county  
59 and municipal election and by the official recorder of the  
60 municipality for a municipal election.

61 (e) The appropriate governing body shall appoint the  
62 election officials for each designated election board no  
63 later than the forty-ninth day before the election as  
64 follows:

65 (1) Those eligible persons whose nominations for poll  
66 clerk and election commissioner were timely filed by the  
67 executive committees and those additional persons  
68 selected to serve as an election commissioner are to be  
69 appointed;

70 (2) The governing body shall fill any positions for which  
71 no nominations were filed.

72 (f) At the same time as the appointment of election  
73 officials or at a subsequent meeting the governing body  
74 shall appoint persons as alternates: *Provided*, That no  
75 alternate may be eligible for compensation for election  
76 training unless the alternate is subsequently appointed as  
77 an election official or is instructed to attend and actually  
78 attends training as an alternate and is available to serve on  
79 election day. Alternates shall be appointed and serve as  
80 follows:

81 (1) Those alternates nominated by the executive commit-  
82 tees shall be appointed;

83 (2) The governing body may appoint additional alter-  
84 nates who may be called upon to fill vacancies after all  
85 alternates designated by the executive committees have

86 been assigned, have declined to serve or have failed to  
87 attend training; and

88 (3) The governing body may determine the number of  
89 persons who may be instructed to attend training as  
90 alternates.

91 (g) The clerk of the county commission shall appoint  
92 qualified persons to fill all vacancies existing after all  
93 previously appointed alternates have been assigned, have  
94 declined to serve or have failed to attend training.

95 (h) Within seven days following appointment, the clerk  
96 of the county commission shall notify, by first-class mail,  
97 allelection commissioners, poll clerks and alternates of the  
98 fact of their appointment and include with the notice a  
99 response notice form for the appointed person to return  
100 indicating whether or not he or she agrees to serve in the  
101 specified capacity in the election.

102 (i) The position of any person notified of appointment  
103 who fails to return the response notice or otherwise  
104 confirm to the clerk of the county commission his or her  
105 agreement to serve within fourteen days following the date  
106 of appointment is considered vacant and the clerk shall  
107 proceed to fill the vacancies according to the provisions of  
108 this section.

109 (j) If an appointed election official fails to appear at the  
110 polling place by forty-five minutes past five o'clock a.m.  
111 on election day, the election officials present shall contact  
112 the office of the clerk of the county commission for  
113 assistance in filling the vacancy. The clerk shall proceed  
114 as follows:

115 (1) The clerk may attempt to contact the person origi-  
116 nally appointed, may assign an alternate nominated by the  
117 same political party as the person absent if one is available  
118 or, if no alternate is available, may appoint another  
119 eligible person;

120 (2) If the election officials present are unable to contact  
121 the clerk within a reasonable time, they shall diligently  
122 attempt to fill the position with an eligible person of the  
123 same political party as the party that nominated the  
124 person absent until a qualified person has agreed to serve;

125 (3) If two teams of election officials, as defined in section  
126 twenty-nine of this article, are present at the polling place,  
127 the person appointed to fill a vacancy in the position of the  
128 additional commissioner may be of either political party.

129 (k) In a municipal election, the recorder or other official  
130 designated by charter or ordinance to perform election  
131 responsibilities shall perform the duties of the clerk of the  
132 county commission as provided in this section.

**§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  
3 and 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 be required to sign his or her name  
7 in the space marked "signature of voter" on the pollbook  
8 prescribed and provided for the precinct. If that person is  
9 physically or otherwise unable to sign his or her name, his  
10 or her mark shall be affixed by one of the poll clerks in the  
11 presence of the other and the name of the poll clerk  
12 affixing the voter's mark shall be indicated immediately  
13 under the affixation. No ballot may be given to the person  
14 until he or she so signs his or her name on the pollbook or  
15 his or her signature is so affixed thereon.

16 (b) The clerk of the county commission is authorized,  
17 upon verification that the precinct at which a handicapped  
18 person is registered to vote is not handicap accessible, to  
19 transfer that person's registration to the nearest polling  
20 place in the county which is handicap accessible. A



21 request by a handicapped person for a transfer of registra-  
22 tion must be received by the county clerk no later than  
23 thirty days prior to the date of the election. Any handi-  
24 capped person who has not made a request for a transfer  
25 of registration at least thirty days prior to the date of the  
26 election may vote a provisional ballot at a handicap  
27 accessible polling place in the county of his or her registra-  
28 tion. If during the canvass the county commission deter-  
29 mines that the person had been registered in a precinct  
30 that is not handicap accessible, the voted ballot, if other-  
31 wise valid, shall be counted. The handicapped person may  
32 vote in the precinct to which the registration was trans-  
33 ferred only as long as the disability exists or the precinct  
34 from which the handicapped person was transferred  
35 remains inaccessible to the handicapped. To ensure  
36 confidentiality of the transferred ballot, the county clerk  
37 processing the ballot shall provide the voter with an  
38 unmarked envelope and an outer envelope designated  
39 "provisional ballot/handicapped voter". After validation  
40 of the ballot at the canvass, the outer envelope shall be  
41 destroyed and the handicapped voter's ballot shall be  
42 placed with other approved provisional ballots prior to  
43 removal of the ballot from the unmarked envelope.

44 (c) When the voter's signature is properly on the  
45 pollbook, the two poll clerks shall sign their names in the  
46 places indicated on the back of the official ballot and  
47 deliver the ballot to the voter to be voted by him or her  
48 without leaving the election room. If he or she returns the  
49 ballot spoiled to the clerks, they shall immediately mark  
50 the ballot "spoiled" and it shall be preserved and placed in  
51 a spoiled ballot envelope together with other spoiled  
52 ballots to be delivered to the board of canvassers and  
53 deliver to the voter another official ballot, signed by the  
54 clerks on the reverse side required by this subsection. The  
55 voter shall thereupon retire alone to the booth or compart-  
56 ment prepared within the election room for voting pur-  
57 poses and there prepare his or her ballot using a ballpoint  
58 pen of not less than five inches in length or other indelible

59 marking device of not less than five inches in length. In  
60 voting for candidates in general and special elections, the  
61 voter shall comply with the rules and procedures pre-  
62 scribed in section five, article six of this chapter.

63 (d) It is the duty of a poll clerk, in the presence of the  
64 other poll clerk, to indicate by a check mark inserted in  
65 the appropriate place on the registration record of each  
66 voter the fact that the voter voted in the election. In  
67 primary elections the clerk shall also insert thereon a  
68 distinguishing initial or initials of the political party for  
69 whose candidates the voter voted. If a person is chal-  
70 lenged at the polls, the challenge shall be indicated by the  
71 poll clerks on the registration record, together with the  
72 name of the challenger. The subsequent removal of the  
73 challenge shall be recorded on the registration record by  
74 the clerk of the county commission.

75 (e)(1) No voter may receive any assistance in voting  
76 unless, by reason of blindness, disability, advanced age or  
77 inability to read and write, that voter is unable to vote  
78 without assistance. Any voter qualified to receive assis-  
79 tance in voting under the provisions of this section may:

80 (A) Declare his or her choice of candidates to an election  
81 commissioner of each political party who, in the presence  
82 of the voter and in the presence of each other, shall  
83 prepare the ballot for voting in the manner hereinbefore  
84 provided and, on request, shall read to the voter the names  
85 of the candidates selected on the ballot;

86 (B) Require the election commissioners to indicate to him  
87 or her the relative position of the names of the candidates  
88 on the ballot, whereupon the voter shall retire to one of the  
89 booths or compartments to prepare his or her ballot in the  
90 manner hereinbefore provided;

91 (C) Be assisted by any person of the voter's choice, other  
92 than the voter's present or former employer or agent of  
93 that employer, the officer or agent of a labor union of

94 which the voter is a past or present member or a candidate  
95 on the ballot or an official write-in candidate; or

96 (D) If he or she is handicapped, vote from an automobile  
97 outside the polling place or precinct in the presence of an  
98 election commissioner of each political party if all of the  
99 following conditions are met:

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

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

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

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

119 (4) An election commissioner or other person who assists  
120 a voter in voting:

121 (A) May not in any manner request or seek to persuade  
122 or induce the voter to vote any particular ticket or for any  
123 particular candidate or for or against any public question  
124 and must not keep or make any memorandum or entry of  
125 anything occurring within the voting booth or compart-  
126 ment and must not, directly or indirectly, reveal to any  
127 person the name of any candidate voted for by the voter or

128 which ticket he or she had voted or how he or she had  
129 voted on any public question or anything occurring within  
130 the voting booth or compartment or voting machine booth  
131 except when required pursuant to law to give testimony as  
132 to the matter in a judicial proceeding; and

133 (B) Shall sign a written oath or affirmation before  
134 assisting the voter on a form prescribed by the secretary of  
135 state stating that he or she will not override the actual  
136 preference of the voter being assisted, attempt to influence  
137 the voter's choice or mislead the voter into voting for  
138 someone other than the candidate of voter's choice. The  
139 person assisting the voter shall also swear or affirm that he  
140 or she believes that the voter is voting free of intimidation  
141 or manipulation: *Provided*, That no person providing  
142 assistance to a voter is required to sign an oath or affirma-  
143 tion where the reason for requesting assistance is the  
144 voter's inability to vote without assistance because of  
145 blindness as defined in section three, article fifteen,  
146 chapter five of this code and the inability to vote without  
147 assistance because of blindness is certified in writing by a  
148 physician of the voter's choice and is on file in the office of  
149 the clerk of the county commission.

150 (5) In accordance with instructions issued by the secre-  
151 tary of state, the clerk of the county commission shall  
152 provide a form entitled "list of assisted voters", the form  
153 of which list shall likewise be prescribed by the secretary  
154 of state. The commissioners shall enter the name of each  
155 voter receiving assistance in voting the ballot, together  
156 with the poll slip number of that voter and the signature  
157 of the person or the commissioner from each party who  
158 assisted the voter. If no voter has been assisted in voting,  
159 the commissioners shall likewise make and subscribe to an  
160 oath of that fact on the list.

161 (f) After preparing the ballot the voter shall fold the  
162 ballot so that the face is not exposed and so that the names  
163 of the poll clerks thereon are seen. The voter shall an-  
164 nounce his or her name and present his or her ballot to one

165 of the commissioners who shall hand the same to another  
166 commissioner, of a different political party, who shall  
167 deposit it in the ballot box if the ballot is the official one  
168 and properly signed. The commissioner of election may  
169 inspect every ballot before it is deposited in the ballot box  
170 to ascertain whether it is single, but without unfolding or  
171 unrolling it so as to disclose its content. When the voter  
172 has voted, he or she shall retire immediately from the  
173 election room and beyond the sixty-foot limit thereof and  
174 may not return except by permission of the commissioners.

175 (g) Following the election, the oaths or affirmations  
176 required by this section from those assisting voters,  
177 together with the "list of assisted voters", shall be re-  
178 turned by the election commissioners to the clerk of the  
179 county commission along with the election supplies,  
180 records and returns. The clerk of the county commission  
181 shall make the oaths, affirmations and list available for  
182 public inspection and shall preserve them for a period of  
183 twenty-two months or until disposition is authorized or  
184 directed by the secretary of state, or court of record:  
185 *Provided*, That the clerk may use these records to update  
186 the voter registration records in accordance with subsec-  
187 tion (d), section eighteen, article two of this chapter.

188 (h) Any person making an oath or affirmation required  
189 under the provisions of this section who knowingly swears  
190 falsely or any person who counsels, advises, aids or abets  
191 another in the commission of false swearing under this  
192 section is guilty of a misdemeanor and, upon conviction  
193 thereof, shall be fined not more than one thousand dollars  
194 or confined in the county or regional jail for a period of  
195 not more than one year, or both fined and confined.

196 (i) Any election commissioner or poll clerk who autho-  
197 rizes or provides unchallenged assistance to a voter when  
198 the voter is known to the election commissioner or poll  
199 clerk not to require assistance in voting is guilty of a  
200 felony and, upon conviction thereof, shall be fined not  
201 more than five thousand dollars or imprisoned in a state

202 correctional facility for a period of not less than one year  
203 nor more than five years, or both fined and imprisoned.

**§3-1-39. Illegal voting; affidavit; procedure.**

1 (a) If at any time during the election any qualified voter  
2 shall appear at the polls for the purpose of stating that any  
3 person who has voted is an illegal voter in the precinct,  
4 that person shall be admitted to the election room and  
5 shall appear before a commissioner of election to make an  
6 affidavit explaining why he or she believes the accused to  
7 be an illegal voter.

8 (b) All affidavits alleging illegal voting shall be placed in  
9 a strong and durable envelope by the commissioners of  
10 election. The envelope shall be securely sealed and each of  
11 the commissioners shall endorse his or her name on the  
12 back of the envelope. At the close of the count the enve-  
13 lope shall be delivered to the clerk of the circuit court in  
14 accordance with section sixteen, article five of this chapter  
15 and section eight, article six of this chapter. The clerk of  
16 the circuit court shall carefully preserve the envelope  
17 containing the affidavits and deliver it, with the seal  
18 unbroken, to the prosecuting attorney in the county. The  
19 prosecuting attorney shall proceed as if it had been made  
20 before him or her.

**§3-1-41. Challenged and provisional voter procedures; counting  
of provisional voters' ballots; ballots of election  
officials.**

1 (a) It shall be the duty of the members of the receiving  
2 board, jointly or severally, to challenge the right of any  
3 person requesting a ballot to vote in any election if the  
4 person's registration record is not available at the time of  
5 the election or if the signature written by the person in the  
6 poll book does not correspond with the signature pur-  
7 ported to be his or hers on the registration record, if the  
8 registration record of the person indicates any other legal  
9 disqualification or if any other valid challenge exists

10 against the voter pursuant to section ten, article three of  
11 this chapter.

12 (b) Any person challenged shall nevertheless be permit-  
13 ted to vote in the election. He or she shall be furnished an  
14 official ballot not endorsed by the poll clerks. In lieu of  
15 the endorsements, the poll clerks shall complete and sign  
16 an appropriate form indicating the challenge, the reason  
17 thereof and the name or names of the challengers. The  
18 form shall be securely attached to the voter's ballot and  
19 deposited together with the ballot in a separate box or  
20 envelope marked " provisional ballots".

21 (c) At the time that an individual casts a provisional  
22 ballot, the poll clerk shall give the individual written  
23 information stating that an individual who casts a provi-  
24 sional ballot will be able to ascertain under the free access  
25 system established in this section whether the vote was  
26 counted and, if the vote was not counted, the reason that  
27 the vote was not counted.

28 (d) Provisional ballot shall not be counted by the election  
29 officials. The county commission shall, on its own motion,  
30 at the time of canvassing of the election returns, sit in  
31 session to determine the validity of any challenges accord-  
32 ing to the provisions of this chapter. If the county com-  
33 mission determines that the challenges are unfounded,  
34 each provisional ballot of each challenged voter, if other-  
35 wise valid, shall be counted and tallied together with the  
36 regular ballots cast in the election. The county commis-  
37 sion shall disregard technical errors, omissions or over-  
38 sights if it can reasonably be ascertained that the chal-  
39 lenged voter was entitled to vote.

40 (e) Any person duly appointed as an election commis-  
41 sioner or clerk under the provisions of section twenty-  
42 eight of this article who serves in that capacity in a  
43 precinct other than the precinct in which the person is  
44 legally entitled to vote may cast a provisional ballot in the  
45 precinct in which the person is serving as a commissioner

46 or clerk. The ballot shall not be invalid for the sole reason  
47 of having been cast in a precinct other than the precinct in  
48 which the person is legally entitled to vote. The county  
49 commission shall record the provisional ballot on the  
50 voter's permanent registration record: *Provided*, That the  
51 county commission may only count the votes for the offices  
52 that the voter was legally authorized to vote for in his or  
53 her own precinct.

54 (f) The secretary of state shall establish a free access  
55 system such as a toll-free telephone number or an internet  
56 website that may be accessed by any individual who casts  
57 a provisional ballot to discover whether the vote of that  
58 individual was counted and, if not, the reason that the vote  
59 was not counted.

**§3-1-44. Compensation of election officials; expenses.**

1 (a) Each ballot commissioner is to be paid a sum, to be  
2 fixed by the county commission, not exceeding one hun-  
3 dred twenty-five dollars for each day he or she serves as  
4 ballot commissioner, but in no case may a ballot commis-  
5 sioner receive allowance for more than ten days' services  
6 for any one primary, general or special election.

7 (b) Each commissioner of election and poll clerk is to be  
8 paid a sum, to be fixed by the county commission, not  
9 exceeding one hundred twenty-five dollars for one day's  
10 services for attending the school of instruction for election  
11 officials if the commissioner or poll clerk provides at least  
12 one day's service during an election and a sum not exceed-  
13 ing one hundred seventy-five dollars for his or her services  
14 at any one election: *Provided*, That each commissioner of  
15 election and poll clerk is to be paid a sum not exceeding  
16 one hundred seventy-five dollars for his or her services at  
17 any of the three special elections described in subsection  
18 (f) of this section.

19 (c) Each alternate commissioner of election and poll  
20 clerk may be paid a sum, to be fixed by the county com-



21 mission, not exceeding fifty dollars for one day's services  
22 for attending the school of instruction for election offi-  
23 cials: *Provided*, That no alternate may be eligible for  
24 compensation for election training unless the alternate is  
25 subsequently appointed as an election official or is in-  
26 structed to attend and actually attends training as an  
27 alternate and is available to serve on election day.

28 (d) The commissioners of election or poll clerks obtaining  
29 and delivering the election supplies, as provided in section  
30 twenty-four of this article, and returning them, as pro-  
31 vided in articles five and six of this chapter, are to be paid  
32 an additional sum, fixed by the county commission, not  
33 exceeding one hundred twenty-five dollars for his or her  
34 services pursuant to this subsection at any one election. In  
35 addition, he or she is to be paid mileage up to the rate of  
36 reimbursement authorized by the travel management rule  
37 of the department of administration for each mile neces-  
38 sarily traveled in the performance of his or her services.

39 (e) The compensation of election officers, cost of printing  
40 ballots and all other expenses incurred in holding and  
41 making the return of elections, other than the three special  
42 elections described in subsection (f) of this section, are to  
43 be audited by the county commission and paid out of the  
44 county treasury.

45 (f) The compensation of election officers, cost of printing  
46 ballots and all other reasonable and necessary expenses in  
47 holding and making the return of a special election for the  
48 purpose of taking the sense of the voters on the question of  
49 calling a constitutional convention, of a special election to  
50 elect members of a constitutional convention and of a  
51 special election to ratify or reject the proposals, acts and  
52 ordinances of a constitutional convention are obligations  
53 of the state incurred by the ballot commissioners, clerks of  
54 the circuit courts, clerks of the county commissions and  
55 county commissions of the various counties as agents of  
56 the state. All expenses of these special elections are to be  
57 audited by the secretary of state. The secretary of state

58 shall prepare and transmit to the county commissions  
59 forms on which the county commissions shall certify all  
60 expenses of these special elections to the secretary of state.  
61 If satisfied that the expenses as certified by the county  
62 commissions are reasonable and were necessarily incurred,  
63 the secretary of state shall requisition the necessary  
64 warrants from the auditor of the state to be drawn on the  
65 state treasurer and shall mail the warrants directly to the  
66 vendors of the special election services, supplies and  
67 facilities.

**§3-1-45. Court proceedings to compel performance of duties, etc.**

1 Any officer or person upon whom any duty is imposed by  
2 this chapter may be compelled to perform his or her duty  
3 by writ of mandamus. The circuit courts, or the judges  
4 thereof in vacation, shall have jurisdiction by writ and  
5 shall, upon affidavit filed showing a proper case, issue a  
6 writ to be returned, heard and determined within fifteen  
7 days from the commencement of the proceedings. If a  
8 circuit court, or a judge thereof in vacation, shall proceed  
9 against any board of canvassers by mandamus, or other-  
10 wise, to control, in any manner, the action of the board in  
11 the performance of its duties, under the provisions of this  
12 article, in any case concerning the election of a member of  
13 the House of Delegates, or a state senator, and shall fail to  
14 enter a final order in the proceedings, settling all questions  
15 presented therein within fifteen days from the commence-  
16 ment of the proceedings, unless delayed by proceedings in  
17 the supreme court of appeals, or a judge thereof in vaca-  
18 tion, the writ shall be dismissed. The board shall convene  
19 within not less than five days thereafter and proceed  
20 forthwith to the performance of its duties under the  
21 provisions of this article. A mandamus shall lie from the  
22 supreme court of appeals, or any one of the judges thereof  
23 in vacation, returnable before court, to compel any officer  
24 herein to do and perform legally any duty required of him  
25 or her. In an election of a member of the House of Dele-  
26 gates and state senator, a writ of certiorari, mandamus or

27 prohibition shall lie from the supreme court of appeals, or  
28 a judge thereof in vacation, returnable before the court, to  
29 correct any error of law and review and correct the  
30 proceedings of any circuit court, or the judge thereof in  
31 vacation, or any board of canvassers. When any rule to  
32 show cause why a writ of mandamus, prohibition or  
33 certiorari is issued by the court, or a judge thereof in  
34 vacation, it shall be the duty of the court to convene in  
35 special session at the state capital, not later than ten days  
36 from the date of the writ, to hear and determine all  
37 matters arising upon the writ. The issues raised in the  
38 petition for a writ of mandamus, prohibition or certiorari  
39 shall have precedence over all other business pending  
40 before the court. The issues before the court shall be  
41 determined within five days from the assembling of the  
42 court and, in any case, in ample time for the case to be  
43 remanded and final action taken by the circuit court and  
44 the board of canvassers in order that the board may  
45 perform its duty and issue the certificate of election before  
46 the second Wednesday in January, then next following.  
47 Mandamus and prohibition proceedings under this section  
48 may be upon affidavit alone.

**§3-1-48. State election fund.**

1 There is hereby created in the state treasury a special  
2 revenue account to be known as the "State Election Fund"  
3 account. Expenditures from the account shall be used by  
4 the secretary of state for the administration of this chapter  
5 in accordance with the provisions of 42 U. S. C. §1530, *et*  
6 *seq.*, the Help America Vote Act of 2002, Public Law 107-  
7 252, in accordance with the provisions of article eleven,  
8 chapter four of this code.

**§3-1-49. Voting system standards.**

1 (a) In accordance with 42 U. S. C. §1530, *et seq.*, the Help  
2 America Vote Act of 2002, Public Law 107-252, each  
3 voting system used in an election for federal office shall:

4 (1) Permit the voter to verify, in a private and independ-  
5 ent manner, the votes selected by the voter on the ballot  
6 before the ballot is cast and counted;

7 (2) Provide the voter with the opportunity, in a private  
8 and independent manner, to change the ballot or correct  
9 any error before the ballot is cast and counted, including  
10 the opportunity to correct the error through the issuance  
11 of a replacement ballot if the voter was otherwise unable  
12 to change the ballot or correct any error; and

13 (3) If the voter selects votes for more than one candidate  
14 for a single office: (A) Notify the voter that the voter has  
15 selected more than one candidate for a single office on the  
16 ballot; (B) notify the voter before the ballot is cast and  
17 counted of the effect of casting multiple votes for the  
18 office; and (C) provide the voter with the opportunity to  
19 correct the ballot before the ballot is cast and counted:  
20 *Provided*, That a county that uses a paper ballot voting  
21 system, a punch card voting system or an optical scan  
22 voting system may meet the requirements of this para-  
23 graph by establishing a voter education program specific  
24 to that voting system that notifies each voter of the effect  
25 of casting multiple votes for an office; and providing the  
26 voter with instructions on how to correct the ballot before  
27 it is cast and counted, including instructions on how to  
28 correct the error through the issuance of a replacement  
29 ballot if the voter was otherwise unable to change the  
30 ballot or correct any error.

31 (4) Ensure that any notification required under this  
32 section preserves the privacy of the voter and the confi-  
33 dentiality of the ballot.

34 (b) Each voting system used in an election for federal  
35 office shall produce a record with an audit capacity for the  
36 system which shall meet the following requirements:

37 (1) Produce a permanent paper record with a manual  
38 audit capacity for the system; and

39 (2) Provide the voter with an opportunity to change the  
40 ballot or correct any error before the ballot is cast and  
41 counted and before the permanent paper record is pro-  
42 duced.

43 (c) Each voting system used in an election for federal  
44 office shall be accessible for individuals with disabilities,  
45 including nonvisual accessibility for the blind and visually  
46 impaired, in a manner that provides the same opportunity  
47 for access and participation, including privacy and  
48 independence, as for other voters: *Provided*, That the  
49 provisions of this subsection may be satisfied through the  
50 use of at least one direct recording electronic voting  
51 system or other voting system equipped for individuals  
52 with disabilities at each polling place.

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

1 The secretary of state shall establish and maintain a  
2 state-based administrative complaint procedure for  
3 complaints received concerning election violations which  
4 shall meet the 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,  
9 including a violation which has occurred, is occurring or  
10 is about to occur, may file a complaint.

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

14 (4) The secretary of state may consolidate complaints  
15 filed under this section.

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

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

21 (7) If, under the procedures, the secretary of state  
22 determines that there is no violation, the secretary of state  
23 shall dismiss the complaint and publish the results of the  
24 procedures.

25 (8) The secretary of state shall make a final determina-  
26 tion with respect to a complaint prior to the expiration of  
27 the ninety- day period which begins on the date the  
28 complaint is filed unless the complainant consents to a  
29 longer period for making a determination.

30 (9) If the secretary of state fails to meet the deadline  
31 applicable under subdivision (8) of this section, the  
32 complaint shall be resolved within sixty days under  
33 alternative dispute resolution procedures established for  
34 purposes of this section. The record and other materials  
35 from any proceedings conducted under the complaint  
36 procedures established under this section shall be made  
37 available for use under the alternative dispute resolution  
38 procedures.

## **ARTICLE 2. REGISTRATION OF VOTERS.**

### **§3-2-2. Eligibility to register to vote.**

1 (a) Any person who possesses the constitutional qualifi-  
2 cations for voting may register to vote. To be qualified, a  
3 person must be a citizen of the United States and a legal  
4 resident of West Virginia and of the county where he or  
5 she is applying to register, shall be at least eighteen years  
6 of age, except that a person who is at least seventeen years  
7 of age and who will be eighteen years of age by the time of  
8 the next ensuing general election may also be permitted to  
9 register, and shall not be otherwise legally disqualified:  
10 *Provided*, That a registered voter who has not reached  
11 eighteen years of age may vote both partisan and nonpar-  
12 tisan ballots in a state or county primary election, but may

13 only vote in a municipal primary election if he or she will  
14 be eighteen years of age by the time of the next municipal  
15 general election, but is not eligible to vote in a special  
16 election.

17 (b) Any person who has been convicted of a felony,  
18 treason or bribery in an election, under either state or  
19 federal law, is disqualified and is not eligible to register or  
20 to continue to be registered to vote while serving his or her  
21 sentence, including any period of incarceration, probation  
22 or parole related thereto. Any person who has been  
23 determined to be mentally incompetent by a court of  
24 competent jurisdiction is disqualified and shall not be  
25 eligible to register or to continue to be registered to vote  
26 for as long as that determination remains in effect.

**§3-2-3. State authority relating to voter registration; chief  
election official.**

1 (a) The secretary of state, as chief election official of the  
2 state as provided in section six, article one-a of this  
3 chapter, shall have general supervision of the voter  
4 registration procedures and practices and the maintenance  
5 of voter registration records in the state and shall have  
6 authority to require reports and investigate violations to  
7 ensure the proper conduct of voter registration throughout  
8 the state and all of its subdivisions.

9 (b) The secretary of state, as chief election official of the  
10 state, is responsible for implementing, in a uniform and  
11 nondiscriminatory manner, a single, uniform, official,  
12 centralized, interactive computerized statewide voter  
13 registration list defined, maintained and administered at  
14 the state level that contains the name and registration  
15 information of every legally registered voter in the state  
16 and assigns a unique identifier to each legally registered  
17 voter in the state.

18 (c) The secretary of state is hereby designated as the  
19 chief election official responsible for the coordination of

20 this state's responsibilities under 42 U. S. C. §1973gg, *et*  
21 *seq.*, the "National Voter Registration Act of 1993". The  
22 secretary of state shall have general supervision of voter  
23 registration procedures and practices at agencies and  
24 locations providing services as required by the provisions  
25 of this article and shall have the authority to propose  
26 procedural, interpretive and legislative rules for promul-  
27 gation in accordance with the provisions of article three,  
28 chapter twenty-nine-a of this code for application for  
29 registration, transmission of applications, reporting and  
30 maintenance of records required by the provisions of this  
31 article and for the development, implementation and  
32 application of other provisions of this article.

**§3-2-4a. Statewide voter registration list.**

1 (a) The secretary of state shall implement and maintain  
2 a single, official, statewide, centralized, interactive  
3 computerized voter registration list of every legally  
4 registered voter in the state and shall assign a unique voter  
5 registration identifier to each legally registered voter in  
6 the state, which shall include the following:

7 (1) The computerized list shall serve as the single system  
8 for storing and managing the official list of registered  
9 voters throughout the state.

10 (2) The computerized list shall contain the name and  
11 registration information of every legally registered voter  
12 in the state.

13 (3) Under the computerized list, a unique identifier shall  
14 be assigned to each legally registered voter in the state.

15 (4) The computerized list shall be coordinated with other  
16 agency databases within the state.

17 (5) The secretary of state and any clerk of the county  
18 commission may obtain immediate electronic access to the  
19 information contained in the computerized list.



20 (6) Voter registration information obtained by every  
21 clerk of the county commission in the state shall be  
22 electronically entered into the computerized list on an  
23 expedited basis at the time the information is provided to  
24 the clerk.

25 (7) The secretary of state shall provide necessary support  
26 to enable every clerk of the county commission in the state  
27 to enter information as described in subdivision (6) of this  
28 subsection.

29 (8) The computerized list shall serve as the official voter  
30 registration list for conducting all elections in the state.

31 (b) The secretary of state or any clerk of a county  
32 commission shall perform list maintenance with respect to  
33 the computerized list on a regular basis as follows:

34 (1) If an individual is to be removed from the computer-  
35 ized list, he or she shall be removed in accordance with the  
36 provisions of 42 U. S. C. §1973gg, *et seq.*, the National  
37 Voter Registration Act of 1993.

38 (2) The secretary of state shall coordinate the computer-  
39 ized list with state agency records and remove the names  
40 of individuals who are not qualified to vote because of  
41 felony status or death.

42 (c) The list maintenance performed under subsection (b)  
43 of this section shall be conducted in a manner that ensures  
44 that:

45 (1) The name of each registered voter appears in the  
46 computerized list;

47 (2) Only voters who are not registered or who are not  
48 eligible to vote are removed from the computerized list;  
49 and

50 (3) Duplicate names are eliminated from the computer-  
51 ized list.

52 (d) The secretary of state and the clerks of all county  
53 commissions shall provide adequate technological security  
54 measures to prevent the unauthorized access to the  
55 computerized list established under this section.

56 (e) The secretary of state shall ensure that voter registra-  
57 tion records in the state are accurate and updated regu-  
58 larly, including the following:

59 (1) A system of file maintenance that makes a reasonable  
60 effort to remove registrants who are ineligible to vote from  
61 the official list of eligible voters. Under the system,  
62 consistent with 42 U. S. C. §1973gg, *et seq.*, registrants  
63 who have not responded to a notice sent pursuant to  
64 section twenty-four, article three of this chapter and who  
65 have not voted in two consecutive general elections for  
66 federal office shall be removed from the official list of  
67 eligible voters except that no registrant may be removed  
68 solely by reason of a failure to vote.

69 (2) Safeguards to ensure that eligible voters are not  
70 removed in error from the official list of eligible voters.

71 (f) Applications for voter registration may only be  
72 accepted when the following information is provided:

73 (1) Except as provided in subdivision (2) of this subsec-  
74 tion, notwithstanding any other provision of law to the  
75 contrary, an application for voter registration may not be  
76 accepted or processed unless the application includes  
77 either: (A) In the case of an applicant who has been issued  
78 a current and valid driver's license, the applicant's driver's  
79 license number; or (B) in the case of any other applicant,  
80 the last four digits of the applicant's social security  
81 number.

82 (2) If an applicant for voter registration has not been  
83 issued a current and valid driver's license or a social  
84 security number, the secretary of state shall assign the  
85 applicant a number which will serve to identify the  
86 applicant for voter registration purposes. To the extent

87 that the state has a computerized list in effect under this  
88 section and the list assigns unique identifying numbers to  
89 registrants, the number assigned under this section shall  
90 be the unique identifying number assigned under the list.

91 (g) The secretary of state and the commissioner of the  
92 division of motor vehicles shall enter into an agreement to  
93 match information in the database of the statewide voter  
94 registration system with information in the database of the  
95 division of motor vehicles to the extent required to enable  
96 each official to verify the accuracy of the information  
97 provided on applications for voter registration.

98 (h) The commissioner of the division of motor vehicles  
99 shall enter into an agreement with the commissioner of  
100 social security under 42 U. S. C. §301, *et seq.*, the Social  
101 Security Act.

**§3-2-5. Forms for application for registration; information  
required and requested; types of application forms;  
notices.**

1 (a)(1) All state forms for application for voter registra-  
2 tion shall be prescribed by the secretary of state and shall  
3 conform with the requirements of 42 U. S. C. §1973gg, *et*  
4 *seq.*, the "National Voter Registration Act of 1993" and the  
5 requirements of the provisions of this article. Separate  
6 application forms may be prescribed for voter registration  
7 conducted by the clerk of the county commission, registra-  
8 tion by mail, registration in conjunction with an applica-  
9 tion for motor vehicle driver's license and registration at  
10 designated agencies. These forms may consist of one or  
11 more parts, may be combined with other forms for use in  
12 registration by designated agencies or in conjunction with  
13 driver licensing and may be revised and reissued as  
14 required by the secretary of state to provide for the  
15 efficient administration of voter registration.

16 (2) Notwithstanding any provisions of subdivision (1) of  
17 this subsection to the contrary, the federal postcard

18 application for voter registration issued pursuant to 42 U.  
19 S. C. §1973, *et seq.*, the “Uniformed and Overseas Citizens  
20 Absentee Voting Act of 1986”, and the mail voter registra-  
21 tion application form prescribed by the Federal Election  
22 Commission pursuant to 42 U. S. C. §1973gg, *et seq.*, the  
23 “National Voter Registration Act of 1993”, shall be  
24 accepted as a valid form of application for registration  
25 pursuant to the provisions of this article.

26 (b) Each application form for registration shall include:

27 (1) A statement specifying the eligibility requirements  
28 for registration and an attestation that the applicant meets  
29 each eligibility requirement;

30 (2) Any specific notice or notices required for a specific  
31 type or use of application by 42 U. S. C. §1973gg, *et seq.*,  
32 the “National Voter Registration Act of 1993”;

33 (3) A notice that a voter may be permitted to vote the  
34 partisan primary election ballot of a political party only if  
35 the voter has designated that political party on the appli-  
36 cation for registration unless the political party has  
37 determined otherwise;

38 (4) The last four digits of the applicant’s social security  
39 number or the applicant’s driver’s license number; and

40 (5) Any other instructions or information essential to  
41 complete the application process.

42 (c) Each application form shall require that the follow-  
43 ing be provided by the applicant, under oath, and any  
44 application which does not contain each of the following  
45 shall be considered incomplete:

46 (1) The applicant’s legal name, including the first name,  
47 middle or maiden name, if any, and last name;

48 (2) The month, day and year of the applicant’s birth;

49 (3) The applicant’s residence address, including the  
50 number and street or route and city and county of resi-  
51 dence except:

52 (A) In the case of a person eligible to register under the  
53 provisions of 42 U. S. C. §1973ff, *et seq.*, the "Uniformed  
54 and Overseas Citizens Absentee Voting Act", the address  
55 at which he or she last resided before leaving the United  
56 States or entering the uniformed services, or if a depend-  
57 ent child of such a person, the address at which his or her  
58 parent last resided; and

59 (B) In the case of a homeless person having no fixed  
60 residence address who nevertheless resides and remains  
61 regularly within the county, the address of a shelter,  
62 assistance center or family member with whom he or she  
63 has regular contact or other specific location approved by  
64 the clerk of the county commission for the purposes of  
65 establishing a voting residence; and

66 (4) The applicant's signature, under penalty of perjury,  
67 as provided in section thirty-six of this article to the  
68 attestation of eligibility to register to vote and to the truth  
69 of the information given.

70 (d) The applicant shall be requested to provide the  
71 following information, but no application shall be rejected  
72 for lack of this information:

73 (1) An indication whether the application is for a new  
74 registration, change of address, change of name or change  
75 of party affiliation;

76 (2) The applicant's choice of political party affiliation, if  
77 any, or an indication of no affiliation: *Provided*, That any  
78 applicant who does not enter any choice of political party  
79 affiliation shall be listed as having no party affiliation on  
80 the voting record;

81 (3) The applicant's residence mailing address if different  
82 than the residence street address;

83 (4) The last four digits of the applicant's social security  
84 number;

85 (5) The applicant's telephone number;

86 (6) The address at which the applicant was last regis-  
87 tered to vote, if any, for the purpose of canceling or  
88 transferring the previous registration; and

89 (7) The applicant's gender.

90 (e) The secretary of state shall prescribe the printing  
91 specifications of each type of voter registration application  
92 and the voter registration application portion of any form  
93 which is part of a combined agency form.

94 (f) Application forms prescribed in this section may refer  
95 to various public officials by title or official position, but  
96 in no case may the actual name of any officeholder be  
97 printed on the voter registration application or on any  
98 portion of a combined application form.

99 (g) No later than the first day of July of each odd-  
100 numbered year the secretary of state shall submit the  
101 specifications of the voter registration application by mail  
102 for statewide bidding for a contract period beginning the  
103 first day of September of each odd-numbered year and  
104 continuing for two calendar years. The successful bidder  
105 shall produce and supply the required mail voter registra-  
106 tion forms at the contract price to all purchasers of the  
107 form for the period of the contract.

**§3-2-7. Hours and days of registration in the office of the clerk  
of the county commission; in-person application for  
voter registration; identification required.**

1 (a) The clerk of the county commission shall provide  
2 voter registration services at all times when the office of  
3 the clerk is open for regular business.

4 (b) Any eligible voter who desires to apply for voter  
5 registration in person at the office of the clerk of the  
6 county commission shall complete a voter registration  
7 application on the prescribed form and shall sign the oath  
8 required on that application in the presence of the clerk of  
9 the county commission or his or her deputy. The applicant

10 shall present valid identification and proof of age, except  
11 that the clerk may waive the proof of age requirement if  
12 the applicant is clearly over the age of eighteen.

13 (c) The clerk shall attempt to establish whether the  
14 residence address given is within the boundaries of an  
15 incorporated municipality and, if so, make the proper  
16 entry required for municipal residents to be properly  
17 identified for municipal voter registration purposes.

18 (d) Upon receipt of the completed registration applica-  
19 tion, the clerk shall either:

20 (1) Provide a notice of procedure for verification and  
21 notice of disposition of the application and immediately  
22 begin the verification process prescribed by the provisions  
23 of section sixteen of this article; or

24 (2) Upon presentation of a current driver's license or  
25 state-issued identification card containing the residence  
26 address as it appears on the voter registration application,  
27 issue the receipt of registration.

**§3-2-10. Application for registration by mail.**

1 (a) Any qualified person may apply to register, change,  
2 transfer or correct his or her voter registration by mail.  
3 Application shall be made on a prescribed form as pro-  
4 vided by section five of this article.

5 (b) To the extent possible, with funds allocated annually  
6 for such purpose, the secretary of state shall make state  
7 mail registration forms available for distribution through  
8 governmental and private entities and organized voter  
9 registration programs. The secretary of state shall make  
10 a record of all requests by entities or organizations for ten  
11 or more forms with a description of the dates and locations  
12 in which the proposed registration drive is to be con-  
13 ducted. The secretary of state may limit the distribution  
14 to a reasonable amount per group.

15 (c) The clerk of the county commission shall provide up  
16 to four mail registration forms to any resident of the  
17 county upon request. To the extent possible with funds  
18 allocated annually for the purpose, the clerk of the county  
19 commission shall make state mail registration forms  
20 available for distribution through organized voter regis-  
21 tration programs within the county. The clerk of the  
22 county commission shall make a record of all requests by  
23 entities or organizations for ten or more forms with a  
24 description of the dates and locations in which the pro-  
25 posed registration drive is to be conducted. The clerk may  
26 limit the distribution to a reasonable amount per group.

27 (d) The applicant shall provide all required information  
28 and, only after completing the information, sign the  
29 prescribed applicant's oath under penalty of perjury as  
30 provided in section thirty-six of this article. No person  
31 may alter or add any entry or make any mark which would  
32 alter any material information on the voter registration  
33 application after the applicant has signed the oath:  
34 *Provided*, That the clerk of the county commission may  
35 correct any entry upon the request of the applicant  
36 provided the request is properly documented and the  
37 correction is dated and initialed by the clerk.

38 (e) Completed applications shall be mailed or delivered  
39 to the clerk of the county commission of the county in  
40 which the voter resides. If a clerk receives a completed  
41 mail application form from a voter whose residence  
42 address is located in another county, the clerk shall  
43 forward that application within three days to the clerk of  
44 the county commission of the county of the applicant's  
45 residence.

46 (f) Upon receipt of the application for registration by the  
47 appropriate clerk of the county commission, the clerk  
48 shall:

49 (1) Attempt to establish whether the residence address  
50 given is within the boundaries of an incorporated municipi-



51 pality and, if so, make the proper entry required for  
52 municipal residents to be properly identified for municipal  
53 voter registration purposes; and

54 (2) Immediately begin the verification process required  
55 by the provisions of section sixteen of this article.

56 (g) Any person who registers by mail pursuant to this  
57 section and who has not previously voted in an election in  
58 the state or if the statewide voter registration has not yet  
59 been implemented, the voter has not previously voted in  
60 the county shall be required to present the following forms  
61 of identification to the secretary of state or clerk of the  
62 county commission:

63 (1) In the case of an individual who votes in person, a  
64 current and valid photo identification; or a copy of a  
65 current utility bill, bank statement, government check,  
66 paycheck or other government document that shows the  
67 name and address of the voter;

68 (2) In the case of an individual who votes by mail,  
69 submits with the ballot a copy of a current and valid photo  
70 identification or a copy of a current utility bill, bank  
71 statement, government check, paycheck or other govern-  
72 ment document that shows the name and address of the  
73 voter.

74 (h) An individual who desires to vote in person or by  
75 mail, but who does not meet the requirements of subsec-  
76 tion (g), may cast a provisional ballot.

77 (i) Subsection (g) shall not apply in the case of a person:

78 (1) Who registers to vote by mail under 42 U. S. C.  
79 §1973gg-4, *et seq.*, and submits as part of his or her  
80 registration either a copy of a current and valid photo  
81 identification or a copy of a current utility bill, bank  
82 statement, government check, paycheck or government  
83 document that shows the name and address of the voter;

84 (2)(A) Who registers to vote by mail under 42 U. S. C.  
85 §1973gg-4, *et seq.*, and submits with his or her registration  
86 either a driver's license number or at least the last four  
87 digits of the individual's social security number; and (B)  
88 with respect to whom the secretary of state or clerk of the  
89 county commission matches the information submitted  
90 under paragraph (A) with an existing state identification  
91 record bearing the same number, name and date of birth  
92 as provided in the registration; or

93 (3) Who is: (A) Entitled to vote by absentee ballot under  
94 42 U. S. C. §1973ff-1, *et seq.*, the Uniformed and Overseas  
95 Citizens Absentee Voting Act; (B) provided the right to  
96 vote otherwise than in person under 42 24 U. S. C.  
97 §1973ee-1(b) (2) (B) (ii); or 25 (iii), section 3(b)(2)(B)(ii) of  
98 the Voting Accessibility for the Elderly and Handicapped  
99 Act; (C) entitled to vote otherwise than in person under  
100 any other federal law: *Provided*, That any person who has  
101 applied for an absentee ballot pursuant to the provisions  
102 of subdivision (1), subsection (b), section one, article three  
103 of this chapter; paragraph (B), subdivision (2) of said  
104 subsection; subdivision (3) of said subsection; or subsection  
105 (c) of said section shall not have his or her ballot in that  
106 election challenged for failure to appear in person or for  
107 failure to present identification.

108 (j) Any person who submits a state mail voter registra-  
109 tion application to the clerk of the county commission in  
110 the county in which he or she is currently registered for the  
111 purpose of entering a change of address within the county,  
112 making a change of party affiliation or recording a change  
113 of legal name shall not be required to make his or her first  
114 vote in person or to present identification or proof of age.

**§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.**

1 (a) For the purposes of this article, "agency" means a  
2 department, division or office of state or local government,

3 or a program supported by state funds, which is desig-  
4 nated under this section to provide voter registration  
5 services, but does not include departments, divisions or  
6 offices required by other sections of this article to provide  
7 voter registration services.

8 (b) Beginning on the first day of January, one thousand  
9 nine hundred ninety-five, the following agencies shall  
10 provide voter registration services pursuant to the provi-  
11 sions of this article:

12 (1) Those state agencies which administer or provide  
13 services under the food stamp program, the "Aid to  
14 Families with Dependent Children" (AFDC) program, the  
15 "Women, Infants and Children" (WIC) program and the  
16 medicaid program;

17 (2) Those state-funded agencies primarily engaged in  
18 providing services to persons with disabilities;

19 (3) County marriage license offices; and

20 (4) Armed services recruitment offices, as required by  
21 federal law.

22 (c) No later than the first day of October, one thousand  
23 nine hundred ninety-four, the secretary of state shall, in  
24 conjunction with a designated representative of each of the  
25 appropriate state agencies, review those programs and  
26 offices established and operating with state funds which  
27 administer or provide public assistance or services to  
28 persons with disabilities and shall promulgate an emer-  
29 gency rule pursuant to the provisions of chapter twenty-  
30 nine-a of this code designating the specific programs and  
31 offices required to provide voter registration services in  
32 order to comply with the requirements of this section and  
33 the requirements of the "National Voter Registration Act  
34 of 1993" (42 U. S. C. §1973gg, *et seq.*). The offices and  
35 programs so designated shall begin providing voter  
36 registration services on the first day of January, one  
37 thousand nine hundred ninety-five.

38 (d) No later than the first day of July, one thousand nine  
39 hundred ninety-six, and each even-numbered year thereaf-  
40 ter, the secretary of state shall, in conjunction with the  
41 designated representatives of the appropriate state  
42 agencies, perform the review as required by the provisions  
43 of subsection (c) of this section. The secretary of state  
44 shall periodically review and revise, if necessary, the  
45 legislative rule designating the specific agencies required  
46 to provide voter registration services.

47 (e) Each state agency required to provide services  
48 pursuant to the provisions of this article shall designate a  
49 current employee of that agency to serve as a state super-  
50 visor to administer voter registration services required in  
51 all programs under the agency's jurisdiction. Each state  
52 supervisor shall be responsible for coordination with the  
53 secretary of state, overall operation of the program in  
54 conjunction with services within the agency, designation  
55 and supervision of local coordinators and for the review of  
56 any complaints filed against employees relating to voter  
57 registration as provided in this chapter.

58 (f) The state supervisor shall designate a current em-  
59 ployee as a local coordinator for voter registration services  
60 for each office or program delivery center who shall be  
61 responsible for the proper conduct of voter registration  
62 services, timely return of completed voter registration  
63 applications, proper handling of declinations and report-  
64 ing requirements. Notice of the designation of these  
65 persons shall be made upon request of the secretary of  
66 state and within five days following any change of desig-  
67 nation.

68 (g) The registration application forms used for agency  
69 registration shall be issued pursuant to the provisions of  
70 section five of this article.

71 (h) The secretary of state, in conjunction with those  
72 agencies designated to provide voter registration services  
73 pursuant to the provisions of this section, shall prescribe

74 the form or portion of the appropriate agency form  
75 required by the provisions of 42 U. S. C. §1973gg, *et seq.*,  
76 section 7(a)(6)(B) of the "National Voter Registration Act  
77 of 1993", containing the required notices and providing  
78 boxes for the applicant to check to indicate whether the  
79 applicant would like to register or decline to register to  
80 vote. The form or portion of the form is designated the  
81 "declination form".

82 (i) A person who provides voter registration services  
83 shall not:

84 (1) Seek to influence an applicant's political preference  
85 or party registration;

86 (2) Display to any applicant any political preference or  
87 party allegiance;

88 (3) Make any statement to an applicant or take any  
89 action the purpose or effect of which is to discourage the  
90 applicant from registering to vote; or

91 (4) Make any statement to an applicant or take any  
92 action the purpose or effect of which is to lead the appli-  
93 cant to believe that a decision to register or not to register  
94 has any bearing on the availability of services or benefits.

95 (j) No information relating to the identity of a voter  
96 registration agency through which any particular voter is  
97 registered or to a declination to register to vote in connec-  
98 tion with an application made at any designated agency  
99 may be used for any purpose other than voter registration.

**§3-2-19. Maintenance of active and inactive registration files in  
precinct record books and county alphabetical  
registration file.**

1 (a) Each county shall continue to maintain a record of  
2 each active and inactive voter registration in precinct  
3 registration books until the statewide voter registration  
4 system is adopted pursuant to the provisions of section  
5 four-a of this article, fully implemented and given final

6 approval by the secretary of state. The precinct registra-  
7 tion books shall be maintained as follows:

8 (1) Each active voter registration shall be entered in the  
9 precinct book or books for the county precinct in which  
10 the voter's residence is located and shall be filed alphabet-  
11 ically by name, alphabetically within categories, or by  
12 numerical street address, as determined by the clerk of the  
13 county commission for the effective administration of  
14 registration and elections. No active voter registration  
15 record shall be removed from the precinct registration  
16 books unless the registration is lawfully transferred or  
17 canceled pursuant to the provisions of this article.

18 (2) Each voter registration which is designated "inac-  
19 tive" pursuant to the procedures prescribed in section  
20 twenty-seven of this article shall be retained in the  
21 precinct book for the county precinct in which the voter's  
22 last recorded residence address is located until the time  
23 period expires for which a record must remain on the  
24 inactive files. Every inactive registration shall be clearly  
25 identified by a prominent tag or notation or arranged in a  
26 separate section in the precinct book clearly denoting the  
27 registration status. No inactive voter registration record  
28 shall be removed from the precinct registration books  
29 unless the registration is lawfully transferred or canceled  
30 pursuant to the provisions of this article.

31 (b) For municipal elections, the registration records of  
32 active and inactive voters shall be maintained as follows:

33 (1) County precinct books shall be used in municipal  
34 elections when the county precinct boundaries and the  
35 municipal precinct boundaries are the same and all  
36 registrants of the precinct are entitled to vote in state,  
37 county and municipal elections within the precinct or  
38 when the registration records of municipal voters within  
39 a county precinct are separated and maintained in a  
40 separate municipal section or book for that county pre-  
41 cinct and can be used either alone or in combination with

42 other precinct books to make up a complete set of registra-  
43 tion records for the municipal election precinct.

44 (2) Upon request of the municipality, and if the clerk of  
45 the county commission does not object, separate municipal  
46 precinct books shall be maintained in cases where municip-  
47 al or ward boundaries divide county precincts and it is  
48 impractical to use county precinct books or separate  
49 municipal sections of those precinct books. If the clerk of  
50 the county commission objects to the request of a municip-  
51 ality for separate municipal precinct books, the state  
52 election commission must determine whether the separate  
53 municipal precinct books should be maintained.

54 (3) No registration record may be removed from a  
55 municipal registration record unless the registration is  
56 lawfully transferred or canceled pursuant to the provisions  
57 of this article in both the county and the municipal  
58 registration records.

59 (c) Within thirty days following the entry of any annex-  
60 ation order or change in street names or numbers, the  
61 governing body of an incorporated municipality shall file  
62 with the clerk of the county commission a certified current  
63 official municipal boundary map and a list of streets and  
64 ranges of street numbers within the municipality to assist  
65 the clerk in determining whether a voter's address is  
66 within the boundaries of the municipality.

67 (d) Each county, so long as precinct registration books  
68 are maintained, shall maintain a duplicate record of every  
69 active and inactive voter registration in a county alphabet-  
70 ical file. The alphabetical file may be maintained on  
71 individual paper forms or, upon approval of the secretary  
72 of state of a qualified data storage program, may be  
73 maintained in digitized format. A qualified data storage  
74 program shall be required to contain the same information  
75 for each voter registration as the precinct books, shall be  
76 subject to proper security from unauthorized alteration  
77 and shall be regularly duplicated to backup data storage

78 to prevent accidental destruction of the information on  
79 file.

**§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.**

1 (a) The active, inactive, rejected and canceled voter  
2 registration records shall be made available for public  
3 inspection during office hours of the clerk of the county  
4 commission in accordance with the provisions of chapter  
5 twenty-nine-b of this code as follows:

6 (1) When the active and inactive files are maintained on  
7 precinct registration books, any person shall be allowed to  
8 examine these files under the supervision of the clerk and  
9 obtain copies of records except when a precinct book is in  
10 temporary use for updating and preparing lists or during  
11 the time the books are sealed for use in an election. Other  
12 original voter registration records, including canceled  
13 voter records, pending applications, rejected applications,  
14 records of change requests, reinstatements and other  
15 documents, shall be available for inspection upon specific  
16 request;

17 (2) When the active, inactive, rejected and canceled voter  
18 files are maintained in data format, any person shall be  
19 allowed to examine voter record information in printed  
20 form or in a read-only data format on a computer terminal  
21 set aside for public use, if available. The data files avail-  
22 able shall include all registration and voting information  
23 maintained in the file, except that the telephone number  
24 and social security number of any voter shall not be  
25 available for inspection or copying in any format.

26 (b) Printed lists of registered voters may be purchased  
27 for noncommercial use from the clerk of the county  
28 commission at a cost of one cent per name.



29 (1) In counties maintaining active and inactive files on  
30 precinct registration books only, a separate list for each of  
31 the two major political parties and for voters registered  
32 independent or other affiliation shall be prepared for each  
33 precinct. The lists shall be arranged in alphabetical order  
34 or street order, as the books are maintained, and shall  
35 include the name, residence address and party affiliation  
36 of the voter, along with a designation of inactive status  
37 where applicable. The lists shall be prepared prior to the  
38 primary election and the clerk shall not be required to  
39 supplement or revise those lists as registrations are added  
40 or canceled.

41 (2) In counties maintaining active and inactive files in  
42 digitized data format, the clerk of the county commission  
43 shall, upon request, prepare printed copies of the lists of  
44 voters for each precinct. No list prepared under this  
45 section may include the telephone number or social  
46 security number of the registrant. The clerk shall establish  
47 a written policy, which shall be posted within public view,  
48 listing the options which may be requested for selection  
49 and sorting criteria and available data elements, which  
50 shall include at least the name, residence address, political  
51 party affiliation and status and the format of the lists and  
52 the times at which lists will be prepared. A copy of the  
53 policy shall be filed with the secretary of state no later  
54 than the first day of January, one thousand nine hundred  
55 ninety-five, and within thirty days after any change in  
56 policy.

57 (c) In counties which maintain voter files in a digitized  
58 data format, lists of registered voters may be obtained for  
59 noncommercial purposes in data format on disk provided  
60 and prepared by the clerk of the county commission at a  
61 cost of one cent per name plus ten dollars for each disk  
62 required. No data file prepared under this subsection may  
63 include the telephone number or social security number of  
64 the registrant.

65 (d) The fees received by the clerk of the county commis-  
66 sion shall be kept in a separate fund under the supervision  
67 of the clerk for the purpose of defraying the cost of the  
68 preparation of the voter lists. Any unexpended balance in  
69 the fund shall be transferred to the general fund of the  
70 county commission.

71 (e) After the implementation of the state uniform voter  
72 data system, the secretary of state may make voter lists  
73 available for sale subject to the limitations as provided in  
74 this section for counties, except that the cost shall be one  
75 and one-half cents per name plus ten dollars for each disk  
76 required. One cent per name for each voter from a partic-  
77 ular county on each list sold shall be reimbursed to the  
78 appropriate county and one-half cent per name shall be  
79 deposited to a special account for purpose of defraying the  
80 cost of the preparation of the lists.

81 (f) No voter registration lists or data files containing the  
82 names, addresses or other information relating to voters  
83 derived from voter data files obtained pursuant to the  
84 provisions of this article may be used for commercial or  
85 charitable solicitations or advertising, sold or reproduced  
86 for resale.

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

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

20 (A) Personal or business travel;

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

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

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

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

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

42 (B) Serving in any other documented employment  
43 assignment of specific duration of four years or less; and

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

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

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

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

61 (3) Any voter who is working as a replacement poll  
62 worker and is assigned to a precinct out of his or her  
63 voting district, if the assignment was made after the period  
64 for voting an 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 commis-  
4 sioners appointed from each political party, as follows:

5 (1) For any election held throughout the county, within  
6 a political subdivision or territory other than a municipal-  
7 ity, or within a municipality when the municipal election  
8 is conducted in conjunction with a county election, the  
9 clerk of the county commission: *Provided*, That if the clerk  
10 of the county commission and the clerk of the circuit court  
11 jointly petition the county commission setting forth their

12 agreement that the clerk of the circuit court should  
13 continue to supervise and conduct the absentee voting, the  
14 county commission shall designate the clerk of the circuit  
15 court to supervise and conduct the absentee voting; or

16 (2) The municipal recorder or other officer authorized by  
17 charter or ordinance provisions to conduct absentee  
18 voting, for any election held entirely within the municipal-  
19 ity, or in the case of annexation elections, within the area  
20 affected. The terms "clerk" or "circuit clerk" or "official  
21 designated to supervise and conduct absentee voting" used  
22 elsewhere in this article means municipal recorder or other  
23 officer in the case of municipal elections.

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

28 (1) The completed application is to be on a form pre-  
29 scribed by the secretary of state and is to contain the  
30 name, date of birth and political affiliation of the voter,  
31 residence address within the county, the address to which  
32 the ballot is to be mailed, the authorized reason, if any, for  
33 which the absentee ballot is requested and, if the reason is  
34 illness or hospitalization, the name and telephone number  
35 of the attending physician, the signature of the voter to a  
36 declaration made under the penalties for false swearing as  
37 provided in section three, article nine of this chapter that  
38 the statements and declarations contained in the applica-  
39 tion are true, any additional information which the voter  
40 is required to supply, any affidavit which may be required  
41 and an indication as to whether it is an application for  
42 voting in person or by mail; or

43 (2) For any person authorized to vote an absentee ballot  
44 under the provisions of 42 U. S. C. §1973, *et seq.*, the  
45 Uniformed and Overseas Citizens Absentee Voting Act of  
46 1986, the completed application may be on the federal

47 postcard application for absentee ballot form issued under  
48 authority of that act; or

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

**§3-3-2a. Voting booths within public view to be provided;  
prohibition against display of campaign material.**

1 Throughout the period of early in-person voting, the  
2 official designated to supervise and conduct absentee  
3 voting shall make the following provisions for voting:

4 (1) The official shall provide a sufficient number of  
5 voting booths or devices appropriate to the voting system  
6 at which voters may prepare their ballots. The booths or  
7 devices are to be in an area separate from but within clear  
8 view of the public entrance area of the official's office or  
9 other area designated by the county commission for  
10 absentee voting and are to be arranged to ensure the voter  
11 complete privacy in casting the ballot.

12 (2) The official shall make the voting area secure from  
13 interference with the voter and shall ensure that voted and  
14 unvoted ballots are at all times secure from tampering. No  
15 person, other than a person lawfully assisting the voter  
16 according to the provisions of this chapter, may be permit-  
17 ted to come within five feet of the voting booth while the  
18 voter is voting. No person, other than the officials or  
19 employees of the official designated to supervise and  
20 conduct absentee voting or members of the board of ballot  
21 commissioners assigned to conduct absentee voting, may  
22 enter the area or room set aside for voting.

23 (3) The official designated to supervise and conduct  
24 absentee voting shall request the county commission  
25 designate another area within the county courthouse or  
26 any annex of the courthouse as a portion of the official's  
27 office for the purpose of absentee voting in the following  
28 circumstances:

29 (A) If the voting area is not accessible to voters with  
30 physical disabilities;

31 (B) If the voting area is not within clear view of the  
32 public entrance of the office of the official designated to  
33 supervise and conduct absentee voting; or

34 (C) If there is no suitable area for absentee voting within  
35 the office.

36 Any designated area is subject to the same requirements  
37 as the regular absentee voting area.

38 (4) The official designated to supervise and conduct  
39 absentee voting shall have at least two representatives to  
40 assist with absentee voting: *Provided*, That the two  
41 representatives shall not be registered with the same  
42 political party affiliation or two persons registered with no  
43 political party affiliation. The representatives may be  
44 full-time employees, temporary employees hired for the  
45 period of absentee voting in person or volunteers.

46 (5) No person may do any electioneering nor may any  
47 person display or distribute in any manner, or authorize  
48 the display or distribution of, any literature, posters or  
49 material of any kind which tends to influence the voting  
50 for or against any candidate or any public question on the  
51 property of the county courthouse or any annex facilities  
52 during the entire period of regular in-person absentee  
53 voting. The official designated to supervise and conduct  
54 absentee voting is hereby authorized to remove the  
55 material and to direct the sheriff of the county to enforce  
56 the prohibition.

**§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  
4 the third day before the election. For any election held on  
5 a Tuesday, the early voting period for in-person voting is  
6 to be available from 9:00 a.m. to 5:00 p.m. on the two  
7 Saturdays 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  
11 or representative designated to supervise and conduct  
12 absentee voting. If that person is found to be duly regis-  
13 tered as a voter in the precinct of his or her residence, he  
14 or she shall be required to sign his or her name in the space  
15 marked "signature of voter" on the pollbook. If the voter  
16 is unable to sign his or her name due to illiteracy or  
17 physical disability, the person assisting the voter and  
18 witnessing the mark of the voter shall sign his or her name  
19 in the space provided. No ballot may be given to the  
20 person until he or she signs his or her name on the  
21 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.

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

32 (e) The official designated to supervise and conduct  
33 absentee voting shall provide each person voting an



34 absentee ballot in person the following items to be printed  
35 as prescribed by the secretary of state:

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

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

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

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

47 (f) The voter shall enter the voting booth alone and there  
48 mark the ballot: *Provided*, That the voter may have  
49 assistance in voting according to the provisions of section  
50 four of this article. After the voter has voted the ballot or  
51 ballots, the absentee voter shall: Place the ballot or ballots  
52 in the gray secrecy envelope and return the ballot or  
53 ballots to the official designated to supervise and conduct  
54 the absentee voting: *Provided, however*, That in direct  
55 recording election systems, once the voter has cast his or  
56 her ballot, the voter shall exit the polling place.

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

60 (1) Remove the ballot stub;

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

64 (3) Place ballots for all voting systems into a ballot box  
65 that is secured by two locks with a key to one lock kept by

66 the president of the county commission and a key to the  
67 other lock kept by the county clerk.

68 (4) Due to the reenactment of this section by the Legisla-  
69 ture in the two thousand three regular session removing  
70 authorization for early in-person voting on the Monday  
71 prior to a Tuesday election, to assure notice to all persons  
72 that voted on the Monday before the Tuesday election day  
73 of the two thousand two general election are made aware  
74 of this change, the clerk of each county shall, for the  
75 primary election of the year two thousand four, include  
76 along with the sample ballots published in local newspa-  
77 pers as required by this chapter a notice to voters that  
78 Monday in-person voting will no longer be available.

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

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

12 (b) Completed applications for voting an absentee ballot  
13 by mail is to be accepted when received by the official  
14 designated to supervise and conduct absentee voting in  
15 person, by mail or by facsimile, if the official has access to  
16 facsimile equipment, within the following times:

17 (1) For persons eligible to vote an absentee ballot under  
18 the provisions of subdivision (3), subsection (b), section  
19 one of this article, relating to absent uniformed services  
20 and overseas voters, not earlier than the first day of  
21 January of an election year, or eighty-four days preceding

22 the election, whichever is earlier, and not later than the  
23 sixth day preceding the election, which application is to,  
24 upon the voter's request, be accepted as an application for  
25 the ballots for all elections in the calendar year; and

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

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

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

36 (2) The applicant is duly registered to vote in the pre-  
37 cinct of his or her residence and, in a primary election, is  
38 qualified to vote the ballot of the political party requested;

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

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

46 (5) The applicant is not making his or her first vote after  
47 having registered by postcard registration or, if the  
48 applicant is making his or her first vote after having  
49 registered by postcard registration, the applicant is  
50 exempt from these requirements; and

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

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

68 (e) Within one day after the official designated to  
69 supervise and conduct absentee voting has both the  
70 completed application and the ballot, the official shall  
71 mail to the voter at the address given on the application  
72 the following items as prescribed by the secretary of state:

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

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

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

80 (4) Instructions for voting absentee by mail;

81 (5) For electronic systems, one punching tool for perfo-  
82 rating or a device for marking by electronically sensible  
83 pen or ink, as may be appropriate;

84 (6) If a punching tool is to be utilized, one disposable  
85 styrofoam block to be placed behind the ballot card for  
86 voting purposes and to be discarded after use by the voter;  
87 and

88 (7) Any other supplies required for voting in the particu-  
89 lar voting system.

90 (f) The voter shall mark the ballot alone: *Provided*, That  
91 the voter may have assistance in voting according to the  
92 provisions of section six of this article. After the voter has  
93 voted the ballot or ballots, the voter shall: (1) Place the  
94 ballot or ballots in envelope no. 1 and seal that envelope;  
95 (2) place the sealed envelope no. 1 in envelope no. 2 and  
96 seal that envelope; (3) complete and sign the forms on  
97 envelope no. 2; and (4) return that envelope to the official  
98 designated to supervise and conduct absentee voting.

99 (g) Except as provided in subsection (h) of this section,  
100 absentee ballots returned by United States mail or other  
101 express shipping service are to be accepted if: (1) The  
102 ballot is received by the official designated to supervise  
103 and conduct absentee voting no later than the day after the  
104 election; or (2) the ballot bears a postmark of the United  
105 States postal service dated no later than election day and  
106 the ballot is received by the official designated to super-  
107 vise and conduct absentee voting no later than the hour at  
108 which the board of canvassers convenes to begin the  
109 canvass.

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

118 (i) Ballots received after the proper time which cannot be  
119 accepted are to be placed unopened in an envelope marked  
120 for the purpose and kept secure for twenty-two months  
121 following the election, after which time they are to be  
122 destroyed without being opened.

123 (j) Absentee ballots which are hand delivered are to be  
124 accepted if they are received by the official designated to  
125 supervise and conduct absentee voting no later than the

126 day preceding the election: *Provided*, That no person may  
127 hand deliver more than two absentee ballots in any  
128 election, and any person hand delivering an absentee  
129 ballot is required to certify that he or she has not exam-  
130 ined or altered the ballot. Any person who makes a false  
131 certification violates the provisions of article nine of this  
132 chapter and is subject to those provisions.

133 (k) Upon receipt of the sealed envelope, the official  
134 designated to supervise and conduct absentee voting shall:

135 (1) Enter onto the envelope any other required informa-  
136 tion; (2) Enter the challenge, if any, to the ballot;

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

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

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

1 (a) Notwithstanding any other provision of this chapter,  
2 a person qualified to vote an emergency absentee ballot, as  
3 provided in subsection (c), section one of this article may  
4 vote an emergency absentee ballot under the procedures  
5 established in this section. The county commission may  
6 adopt a policy extending the emergency absentee voting  
7 procedures to: (1) Hospitals or other duly licensed health  
8 care facilities within an adjacent county or within thirty-  
9 five miles of the county seat; or (2) nursing homes within  
10 the county: *Provided*, That the policy is to be adopted by  
11 the county commission at least ninety days prior to the  
12 election that will be affected and a copy of the policy is to  
13 be filed with the secretary of state.

14 (b) On or before the fifty-sixth day preceding the date on  
15 which any election is to be held the official designated to  
16 supervise and conduct absentee voting shall notify the  
17 county commission of the number of sets of emergency  
18 absentee ballot commissioners which he or she determines  
19 necessary to perform the duties and functions pursuant to  
20 this section.

21 (c) A set of emergency absentee ballot commissioners at-  
22 large shall consist of two persons with different political  
23 party affiliations appointed by the county commission in  
24 accordance with the procedure prescribed for the appoint-  
25 ment of election commissioners under the provisions of  
26 article one of this chapter. Emergency absentee ballot  
27 commissioners have the same qualifications and rights and  
28 take the same oath required under the provisions of this  
29 chapter for commissioners of elections. Emergency  
30 absentee ballot commissioners are to be compensated for  
31 services and expenses in the same manner as commission-  
32 ers of election or poll clerks obtaining and delivering  
33 election supplies under the provisions of section forty-  
34 four, article one of this chapter.

35 (d) Upon request of the voter or a member of the voter's  
36 immediate family or, when the county commission has  
37 adopted a policy to provide emergency absentee voting  
38 services to nursing home residents within the county, upon  
39 request of a staff member of the nursing home, the official  
40 designated to supervise and conduct absentee voting, upon  
41 receiving a proper request for voting an emergency  
42 absentee ballot no earlier than the seventh day next  
43 preceding the election and no later than noon of election  
44 day shall supply to the emergency absentee ballot commis-  
45 sioners the application for voting an emergency absentee  
46 ballot and the balloting materials. The emergency absen-  
47 tee ballot application is to be prescribed by the secretary  
48 of state and is to include the name, residence address and  
49 political party affiliation of the voter, the date, location

50 and reason for confinement in the case of an emergency,  
51 and the name of the attending physician.

52 (e) The application for an emergency absentee ballot is  
53 to be signed by the person applying. If the person apply-  
54 ing for an emergency absentee ballot is unable to sign his  
55 or her application because of illiteracy or physical disabil-  
56 ity, he or she is to make his or her mark on the signature  
57 line provided for an illiterate or disabled applicant, the  
58 mark is to be witnessed. The person assisting the voter  
59 and witnessing the mark of the voter shall sign his or her  
60 name in the space provided.

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

66 (g) At least one of the emergency absentee ballot com-  
67 missioners receiving the balloting materials shall sign a  
68 receipt which is to be attached to the application form.  
69 Each of the emergency absentee ballot commissioners shall  
70 deliver the materials to the absent voter, await his or her  
71 completion of the application and ballot and return the  
72 application and the ballot to the official designated to  
73 supervise and conduct absentee voting. Upon delivering  
74 the application and the voted ballot to the official, the  
75 emergency absentee ballot commissioners shall sign an  
76 oath that no person other than the absent voter voted the  
77 ballot. The application and the voted ballot are to be  
78 returned to the official designated to supervise and  
79 conduct absentee voting prior to the close of the polls on  
80 election day. Any ballots received by the official after the  
81 time that delivery may reasonably be made but before the  
82 closing of the polls are to be delivered to the canvassing  
83 board along with the absentee ballots challenged in  
84 accordance with the provisions of section ten of this  
85 article.



86 (h) Upon receiving the application and emergency  
87 absentee ballot, the official designated to supervise and  
88 conduct absentee voting shall ascertain whether the  
89 application is complete, whether the voter appears to be  
90 eligible to vote an emergency absentee ballot, and whether  
91 the voter is properly registered to vote with the office of  
92 the clerk of the county commission. If the voter is found  
93 to be properly registered in the precinct shown on the  
94 application, the ballot is to be delivered to the precinct  
95 election commissioner pursuant to section seven of this  
96 article. If the voter is found not to be registered or is  
97 otherwise ineligible to vote an emergency ballot, the ballot  
98 is to be challenged for the appropriate reason provided for  
99 in section ten of this article.

100 (i) If either or both of the emergency absentee ballot  
101 commissioners refuse to sign any application for voting an  
102 emergency absentee ballot, the voter may vote as an  
103 emergency absentee and the ballot will be challenged in  
104 accordance with the provisions of section ten of this  
105 article, in addition to those absentee ballots subject to  
106 challenge as provided in that section.

107 (j) Any voter who receives assistance in voting an  
108 emergency absentee ballot shall comply with the provi-  
109 sions of section six of this article. Any other provisions of  
110 this chapter relating to absentee ballots not altered by the  
111 provisions of this section are to govern the treatment of  
112 emergency absentee ballots.

**§3-3-7. Delivery of absentee ballots to polling places.**

1 (a) Except as otherwise provided in this article, in  
2 counties using paper ballots systems or voting machines,  
3 the absentee ballots of each precinct, together with the  
4 applications for the absentee ballots, the affidavits made  
5 in connection with assistance in voting and any forms, lists  
6 and records as may be designated by the secretary of state,  
7 are to be delivered in a sealed carrier envelope to the  
8 election commissioner of the precinct at the time he or she

9 picks up the official ballots and other election supplies as  
10 provided in section twenty-four, article one of this chap-  
11 ter.

12 (b) Absentee ballots received after the election commis-  
13 sioner has picked up the official ballots and other election  
14 supplies for the precinct are to be delivered to the election  
15 commissioner of the precinct who has been designated  
16 pursuant to section twenty-four, article one of this chap-  
17 ter, by the official designated to supervise and conduct  
18 absentee voting in person or by messenger before the  
19 closing of the polls, provided the ballots are received by  
20 the official in time to make the delivery. Any ballots  
21 received by the official after the time that delivery may  
22 reasonably be made but within the time required as  
23 provided in subsection (g), section five of this article are to  
24 be delivered to the board of canvassers along with the  
25 provisional ballots.

**§3-3-8. Disposition and counting of absent voters' ballots.**

1 (a) In counties using paper ballots, all absentee ballots  
2 shall be processed as follows:

3 (1) The ballot boxes containing the absentee ballots shall  
4 be opened in the presence of the clerk of the county  
5 commission and two representatives of opposite political  
6 parties;

7 (2) The ballots shall be separated by precincts as stated  
8 on the sealed envelopes containing the ballots; and

9 (3) Absentee ballots shall be delivered to the polls to be  
10 opened and counted in accordance with section thirty-  
11 three, article one of this chapter, section fifteen, article  
12 five of this chapter; and section six, article six of this  
13 chapter. Disclosure of any results before the voting has  
14 been closed and the precinct returns posted on the door of  
15 the polling place shall be a per se violation of the oath  
16 taken by the counting board. In all other counties, count-  
17 ing is to begin immediately after closing of the polls.

18 (b) In the counties using punch card systems, the absen-  
19 tee ballots shall be processed as follows:

20 (1) On election day, the ballot boxes containing the  
21 absentee ballots shall be delivered to the central counting  
22 center and opened in the presence of the clerk of the  
23 county commission and two representatives of opposite  
24 political parties;

25 (2) The ballots shall be separated by precincts as stated  
26 on the sealed envelopes containing the ballots; and

27 (3) The absentee ballots shall be counted in accordance  
28 with section twenty-seven, article four-a of this chapter.

29 (c) In counties using optical scan systems, the absentee  
30 ballots shall be processed as follows:

31 (1) On election day, the ballot boxes containing the  
32 absentee ballots shall be delivered to the central counting  
33 center and opened in the presence of the clerk of the  
34 county commission and two representatives of opposite  
35 political parties; and

36 (2) The absentee ballots shall be counted in accordance  
37 with section twenty-seven, article four-a of this chapter.

38 (d) In counties using direct recording elections systems,  
39 the absentee ballots shall be counted in accordance with  
40 section twenty-seven, article four-a of this chapter.

41 (e) The provisional ballots shall be deposited in a provi-  
42 sional ballot envelope and delivered to the board of  
43 canvassers.

44 (f) Any election official who determines a person has  
45 voted an absent voter's ballot and has also voted at the  
46 polls on election day must report the fact to the prosecut-  
47 ing attorney of the county in which the votes were cast.

**§3-3-10. Challenging of absent voters' ballots.**

- 1 (a) The official designated to supervise and conduct  
2 absentee voting may challenge an absent voter's ballot on  
3 any of the following grounds:
- 4 (1) That the application for an absent voter's ballot has  
5 not been completed as required by law;
- 6 (2) That any statement or declaration contained in the  
7 application for an absent voter's ballot is not true;
- 8 (3) That the applicant for an absent voter's ballot is not  
9 registered to vote in the precinct of his or her residence as  
10 provided by law;
- 11 (4) That the person voting an absent voter's ballot by  
12 personal appearance in his or her office had assistance in  
13 voting the ballot when the person was not qualified for  
14 voting assistance because: (A) The affidavit of the person  
15 who received assistance does not indicate a legally suffi-  
16 cient reason for assistance; or (B) the person who received  
17 assistance did not make an affidavit as required by this  
18 article; or (C) the person who received assistance is not so  
19 illiterate as to have been unable to read the names on the  
20 ballot or that he or she is not so physically disabled as to  
21 have been unable to see or mark the absent voter's ballot;
- 22 (5) That the person who voted an absent voter's ballot by  
23 mail and received assistance in voting the ballot was not  
24 qualified under the provisions of this article for assistance;  
25 and
- 26 (6) That the person has voted absentee by mail as a result  
27 of being out of the county more than four consecutive  
28 times: *Provided*, That the determination as to whether the  
29 person has voted more than four consecutive times does  
30 not apply if the person is a citizen residing out of the  
31 United States; or a member, spouse or dependent of a  
32 member serving in the uniformed services; or a college  
33 student living outside of his or her home county.

34 (b) Any one or more of the election commissioners or poll  
35 clerks in a precinct may challenge an absent voter's ballot  
36 on any of the following grounds:

37 (1) That the application for an absent voter's ballot was  
38 not completed as required by law;

39 (2) That any statement or declaration contained in the  
40 application for an absent voter's ballot is not true;

41 (3) That the person voting an absent voter's ballot is not  
42 registered to vote in the precinct of his or her residence as  
43 provided by law;

44 (4) That the signatures of the person voting an absent  
45 voter's ballot as they appear on his or her registration  
46 record, his or her application for an absent voter's ballot  
47 and the absent voter's ballot envelope are not in the same  
48 handwriting;

49 (5) That the person voting an absent voter's ballot by  
50 personal appearance had assistance in voting the ballot  
51 when the person was not qualified for assistance because:  
52 (A) The affidavit of the person who received assistance  
53 does not indicate a legally sufficient reason for assistance;  
54 or (B) the person who received assistance did not make an  
55 affidavit as required by this article; or (C) the person who  
56 received assistance is not so illiterate as to have been  
57 unable to read the names on the ballot or that he or she  
58 was not so physically disabled as to have been unable to  
59 see or mark the absent voter's ballot;

60 (6) That the person voted an absent voter's ballot by mail  
61 and received assistance in voting the ballot when not  
62 qualified under the provisions of this article for assistance;

63 (7) That the person who voted the absent voter's ballot  
64 voted in person at the polls on election day;

65 (8) That the person voted an absent voter's ballot under  
66 authority of subdivision (3), subsection (b), section one of  
67 this article and is or was present in the county in which he

68 or she is registered to vote between the opening and  
69 closing of the polls on election day; and

70 (9) On any other ground or for any reason on which or  
71 for which the ballot of a voter voting in person at the polls  
72 on election day may be challenged.

73 No challenge may be made to any absent voter ballot if  
74 the voter was registered and qualified to vote pursuant to  
75 the provisions of subsection (a), section one of this article.

76 (c) Forms for, and the manner of, challenging an absent  
77 voter's ballot under the provisions of this article are to be  
78 prescribed by the secretary of state.

79 (d) Absent voters' ballots challenged by the official  
80 designated to supervise and conduct absentee voting under  
81 the provisions of this article are to be transmitted by the  
82 official directly to the county commission sitting as a  
83 board of canvassers. The absent voters' ballots challenged  
84 by the election commissioners and poll clerks under the  
85 provisions of this article may not be counted by the  
86 election officials but are to be transmitted by them to the  
87 county commission sitting as a board of canvassers.  
88 Action by the board of canvassers on challenged absent  
89 voters' ballots is to be governed by the provisions of  
90 section forty-one, article one of this chapter.

**§3-3-11. Preparation, number and handling of absent voters'  
ballots.**

1 (a) Absent voters' ballots are to be in all respects like  
2 other ballots. Not less than seventy days before the date  
3 on which any primary, general or special election is to be  
4 held, unless a lesser number of days is provided for in any  
5 specific election law in which case the lesser number of  
6 days applies, the clerks of the circuit courts of the several  
7 counties shall estimate and determine the number of  
8 absent voters' ballots of all kinds which will be required in  
9 their respective counties for that election. The ballots for  
10 the election of all officers, or the ratification, acceptance

11 or rejection of any measure, proposition or other public  
12 question to be voted on by the voters, are to be prepared  
13 and printed under the direction of the board of ballot  
14 commissioners constituted as provided in article one of  
15 this chapter. The several county boards of ballot commis-  
16 sioners shall prepare and have printed, in the number they  
17 may determine, absent voters' ballots that are to be  
18 printed under their directions as provided in this chapter  
19 and those ballots are to be delivered to the clerk of the  
20 circuit court of the county not less than forty-two days  
21 before the day of the election at which they are to be used.  
22 In counties where the clerk of the county commission is  
23 responsible for conducting absentee voting, the circuit  
24 clerk shall transfer the absentee ballots to the clerk of the  
25 county commission prior to the beginning of absentee  
26 voting.

27 (b) The official designated to supervise and conduct  
28 absentee voting shall be primarily responsible for the  
29 mailing, receiving, delivering and otherwise handling of all  
30 absent voters' ballots. He or she shall keep a record, as  
31 may be prescribed by the secretary of state, of all ballots  
32 so delivered for the purpose of absentee voting, as well as  
33 all ballots, if any, marked before him or her and shall  
34 deliver to the commissioner of election a certificate stating  
35 the number of ballots delivered or mailed to absent voters  
36 and those marked before him or her, if any, and the names  
37 of the voters to whom those ballots have been delivered or  
38 mailed or by whom they have been marked, if marked  
39 before him or her.

#### ARTICLE 4. VOTING MACHINES.

##### §3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 (a) The ballot commissioners of any county in which  
2 voting machines are to be used in any election shall cause  
3 to be printed for use in the election the ballot labels for the  
4 voting machines and paper ballots for absentee voting,

5 voting by persons unable to use the voting machine and  
6 provisional ballots or if an electronic voting system or  
7 direct recording election equipment is to be used in an  
8 election, the ballot commissioners shall comply with  
9 requirements of section eleven, article four-a of this  
10 chapter. The labels shall be clearly printed in black ink on  
11 clear white material in a size that will fit the ballot  
12 frames. The paper ballots shall be printed in compliance  
13 with the provisions of this chapter governing paper  
14 ballots.

15 (b) The heading, the names and arrangement of offices  
16 and the printing and arrangement of names of the candi-  
17 dates for each office indicated must be placed on the ballot  
18 for the primary election as nearly as possible according to  
19 the provisions of sections thirteen and thirteen-a, article  
20 five of this chapter and for the general election according  
21 to the provisions of section two, article six of this chapter:  
22 *Provided*, That the staggering of the names of candidates  
23 in multicandidate races and the instructions to straight  
24 ticket voters prescribed by section two, article six of this  
25 chapter shall appear on paper ballots but shall not appear  
26 on ballot labels for voting machines which mechanically  
27 control crossover voting.

28 (c) Each question to be voted on must be placed at the  
29 end of the ballot and must be printed according to the  
30 provisions of the laws and regulations governing the  
31 question.

32 (d) The ballot labels printed must total in number one  
33 and one-half times the total number of corresponding  
34 voting machines to be used in the several precincts of the  
35 county in the election. All the labels must be delivered to  
36 the clerk of the circuit court at least twenty-eight days  
37 prior to the day of the election. The clerk of the circuit  
38 court shall determine the number of paper ballots needed  
39 for absentee voting and to supply the precincts for provi-  
40 sional ballots and ballots to be cast by persons unable to  
41 use the voting machine. All required paper ballots shall be



42 delivered to the clerk of the circuit court at least forty-two  
43 days prior to the day of the election.

44 (e) When the ballot labels and absentee ballots are  
45 delivered, the clerk of the circuit court shall examine them  
46 for accuracy, assure that the appropriate ballots and ballot  
47 labels are designated for each voting precinct and deliver  
48 the ballot labels to the clerk of the county commission who  
49 shall insert one set in each machine prior to the inspection  
50 of the machines as prescribed in section twelve of this  
51 article. The remainder of the ballot labels for each ma-  
52 chine shall be retained by the clerk of the county commis-  
53 sion for use in an emergency.

54 (f) In addition to all other equipment and supplies  
55 required by the provisions of this article, the ballot  
56 commissioners shall cause to be printed a supply of  
57 instruction cards, sample ballots and facsimile diagrams  
58 of the voting machine ballot adequate for the orderly  
59 conduct of the election in each precinct in their county. In  
60 addition, they shall provide appropriate facilities for the  
61 reception and safekeeping of the ballots of absent voters  
62 and of challenged voters and of the "independent" voters  
63 who shall, in primary elections, cast their votes on nonpar-  
64 tisan candidates and public questions submitted to the  
65 voters.

### §3-4-23. Voting by challenged voters.

1 If the right of any person to vote is challenged in accor-  
2 dance with provisions of article one of this chapter relat-  
3 ing to the challenging of voters, the person shall not be  
4 permitted to cast his or her vote by use of the voting  
5 machine but he or she shall be supplied by the election  
6 officer at the polling place with an official printed ballot  
7 of the election. The provisional ballot shall not be en-  
8 dorsed on the back by the poll clerks but, when voted by  
9 the challenged voter, shall have affixed thereto by the poll  
10 clerks their statement of information as to the challenge  
11 on the form prescribed therefor. The provisional ballots

12 shall be secured, handled and disposed of as provisional  
13 ballots in other elections, as provided in article one of this  
14 chapter.

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

**§3-4A-9. Minimum requirements of electronic voting systems.**

1 An electronic voting system of particular make and  
2 design may not be approved by the state election commis-  
3 sion or be purchased, leased or used by any county com-  
4 mission unless it meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the  
6 act of voting or, at the voter's election, provides for open  
7 voting;

8 (2) It is constructed to ensure that no person, except in  
9 instances of open voting as provided for in this section, can  
10 see or know for whom any voter has voted or is voting;

11 (3) It permits each voter to vote at any election for all  
12 persons and offices for whom and which he or she is  
13 lawfully entitled to vote, whether or not the name of any  
14 person appears on a ballot or ballot label as a candidate;  
15 and it permits each voter to vote for as many persons for  
16 an office as he or she is lawfully entitled to vote for; and to  
17 vote for or against any question upon which he or she is  
18 lawfully entitled to vote. The automatic tabulating  
19 equipment used in electronic voting systems is to reject  
20 choices recorded on any ballot if the number of choices  
21 exceeds the number to which a voter is entitled;

22 (4) It permits each voter to deposit, write in, affix upon  
23 a ballot, card, envelope or other medium to be provided for  
24 that purpose, ballots containing the names of persons for  
25 whom he or she desires to vote whose names do not appear  
26 upon the ballots or ballot labels;

27 (5) It permits each voter to change his or her vote for any  
28 candidate and upon any question appearing upon the  
29 ballots or ballot labels up to the time when his or her

30 ballot is deposited in the ballot box or his or her ballot is  
31 cast by electronic means;

32 (6) It contains a program deck consisting of cards that  
33 are sequentially numbered or consisting of a computer  
34 program disk, diskette, tape or other programming media  
35 containing sequentially numbered program instructions  
36 and coded or otherwise protected from tampering or  
37 substitution of the media or program instructions by  
38 unauthorized persons and capable of tabulating all votes  
39 cast in each election;

40 (7) It contains two standard validation test decks  
41 approved as to form and testing capabilities by the state  
42 election commission;

43 (8) It correctly records and counts accurately all votes  
44 cast for each candidate and for and against each question  
45 appearing upon the ballots or ballot labels;

46 (9) It permits each voter at any election other than  
47 primary elections by one mark or punch to vote a straight  
48 party ticket, as provided in section five, article six of this  
49 chapter.

50 (10) It permits each voter in primary elections to vote  
51 only for the candidates of the party for which he or she is  
52 legally permitted to vote and precludes him or her from  
53 voting for any candidate seeking nomination by any other  
54 political party, permits him or her to vote for the candi-  
55 dates, if any, for nonpartisan nomination or election and  
56 permits him or her to vote on public questions;

57 (11) It, where applicable, is provided with means for  
58 sealing or electronically securing the vote recording device  
59 to prevent its use and to prevent tampering with ballot  
60 labels, both before the polls are open or before the opera-  
61 tion of the vote recording device for an election is begun  
62 and immediately after the polls are closed or after the  
63 operation of the vote recording device for an election is  
64 completed;

65 (12) It has the capacity to contain the names of candi-  
66 dates constituting the tickets of at least nine political  
67 parties and accommodates the wording of at least fifteen  
68 questions;

69 (13) Where vote recording devices are used, they:

70 (A) Are durably constructed of material of good quality  
71 and in a workmanlike manner and in a form which makes  
72 it safely transportable;

73 (B) Are so constructed with frames for the placing of  
74 ballot labels that the labels upon which are printed the  
75 names of candidates and their respective parties, titles of  
76 offices and wording of questions are reasonably protected  
77 from mutilation, disfigurement or disarrangement or are  
78 constructed to ensure that the screens upon which appear  
79 the names of the candidates and their respective parties,  
80 titles of offices and wording of questions are reasonably  
81 protected from any modification;

82 (C) Bear a number that will identify it or distinguish it  
83 from any other machine;

84 (D) Are constructed to ensure that a voter may easily  
85 learn the method of operating it and may expeditiously  
86 cast his or her vote for all candidates of his or her choice  
87 and upon any public question;

88 (E) Are accompanied by a mechanically or electronically  
89 operated instruction model which shows the arrangement  
90 of ballot labels, party columns or rows, and questions;

91 (F) For electronic voting systems that utilize a screen  
92 upon which votes may be recorded by means of a stylus or  
93 by means of touch, are constructed to provide for the  
94 direct electronic recording and tabulating of votes cast in  
95 a system specifically designed and engineered for the  
96 election application;

97 (G) For electronic voting systems that utilize a screen  
98 upon which votes may be recorded by means of a stylus or

99 by means of touch, are constructed to prevent any voter  
100 from voting for more than the allowable number of  
101 candidates for any office, to include an audible or visual  
102 signal, or both, warning any voter who attempts to vote for  
103 more than the allowable number of candidates for any  
104 office or who attempts to cast his or her ballot prior to its  
105 completion and are constructed to include a visual or  
106 audible confirmation, or both, to the voter upon comple-  
107 tion and casting of the ballot;

108 (H) For electronic voting systems that utilize a screen  
109 upon which votes may be recorded by means of a stylus or  
110 by means of touch, are constructed to present the entire  
111 ballot to the voter, in a series of sequential pages, and to  
112 ensure that the voter sees all of the ballot options on all  
113 pages before completing his or her vote and to allow the  
114 voter to review and change all ballot choices prior to  
115 completing and casting his or her ballot;

116 (I) For electronic voting systems that utilize a screen  
117 upon which votes may be recorded by means of a stylus or  
118 by means of touch, are constructed to allow election  
119 commissioners to spoil a ballot where a voter fails to  
120 properly cast his or her ballot, has departed the polling  
121 place and cannot be recalled by a poll clerk to complete his  
122 or her ballot;

123 (J) For electronic voting systems that utilize a screen  
124 upon which votes may be recorded by means of a stylus or  
125 by means of touch, are constructed to allow election  
126 commissioners, poll clerks, or both, to designate, mark or  
127 otherwise record provisional ballots;

128 (K) For electronic voting systems that utilize a screen  
129 upon which votes may be recorded by means of a stylus or  
130 by means of touch, consist of devices which are independ-  
131 ent, nonnetworked voting systems in which each vote is  
132 recorded and retained within each device's internal  
133 nonvolatile electronic memory and contain an internal

134 security, the absence of which prevents substitution of any  
135 other device;

136 (L) For electronic voting systems that utilize a screen  
137 upon which votes may be recorded by means of a stylus or  
138 by means of touch, store each vote in no fewer than three  
139 separate, independent, nonvolatile electronic memory  
140 components and that each device contains comprehensive  
141 diagnostics to ensure that failures do not go undetected;

142 (M) For electronic voting systems that utilize a screen  
143 upon which votes may be recorded by means of a stylus or  
144 by means of touch, contain a unique, embedded internal  
145 serial number for auditing purposes for each device used  
146 to activate, retain and record votes;

147 (N) For electronic voting systems that utilize a screen  
148 upon which votes may be recorded by means of a stylus or  
149 by means of touch, are constructed to record all  
150 preelection, election and post election activities, including  
151 all ballot images and system anomalies, in each device's  
152 internal electronic memory and are to be accessible in  
153 electronic or printed form;

154 (O) For electronic voting systems that utilize a screen  
155 upon which votes may be recorded by means of a stylus or  
156 by means of touch, are constructed with a battery backup  
157 system in each device to, at a minimum, prevent the loss of  
158 any votes, as well as all preelection, election and post-  
159 election activities, including all ballot images and system  
160 anomalies, stored in the device's internal electronic  
161 memory and to allow voting to continue for two hours of  
162 uninterrupted operation in case of an electrical power  
163 failure; and

164 (P) For electronic voting systems that utilize a screen  
165 upon which votes may be recorded by means of a stylus or  
166 by means of touch, are constructed to prevent the loss of  
167 any votes, as well as all preelection, election and post-  
168 election activities, including all ballot images and system

169 anomalies, stored in each device's internal electronic  
170 memory even in case of an electrical and battery power  
171 failure.

**§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.**

1 (a) The election officers shall constantly and diligently  
2 maintain a watch in order to see that no person votes more  
3 than once and to prevent any voter from occupying the  
4 voting booth for more than five minutes.

5 (b) In primary elections, before a voter is permitted to  
6 occupy the voting booth, the election commissioner  
7 representing the party to which the voter belongs shall  
8 direct the voter to the vote recording device or supply the  
9 voter with a ballot, as may be appropriate, which will  
10 allow the voter to vote only for the candidates who are  
11 seeking nomination on the ticket of the party with which  
12 the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

14 (c) The poll clerk shall issue to each voter when he or she  
15 signs the pollbook a card or ticket numbered to correspond  
16 to the number on the pollbook of the voter and in the case  
17 of a primary election, indicating the party affiliation of the  
18 voter, which numbered card or ticket is to be presented to  
19 the election commissioner in charge of the voting booth.

20 (d) One hour before the opening of the polls the precinct  
21 election commissioners shall arrive at the polling place  
22 and set up the voting booths in clear view of the election  
23 commissioners. Where applicable, they shall open the vote  
24 recording devices, place them in the voting booths, examine  
25 them to see that they have the correct ballots or ballot  
26 labels, where applicable by comparing them with the  
27 sample ballots, and determine whether they are in proper  
28 working order. They shall open and check the ballots,  
29 supplies, records and forms and post the sample ballots or  
30 ballot labels and instructions to voters. Upon ascertaining

31 that all ballots, supplies, records and forms arrived intact,  
32 the election commissioners shall certify their findings in  
33 writing upon forms provided and collected by the clerk of  
34 the county commission over their signatures to the clerk of  
35 the county commission. Any discrepancies are to be noted  
36 and reported immediately to the clerk of the county  
37 commission. The election commissioners shall then  
38 number in sequential order the ballot stub of each ballot  
39 in their possession and report in writing to the clerk of the  
40 county commission the number of ballots received. They  
41 shall issue the ballots in sequential order to each voter.

42 (e) Where applicable, each voter shall be instructed how  
43 to operate the vote recording device before he or she enters  
44 the voting booth.

45 (f) Where applicable, any voter who spoils, defaces or  
46 mutilates the ballot delivered to him or her, on returning  
47 the ballot to the poll clerks, shall receive another in its  
48 place. Every person who does not vote any ballot deliv-  
49 ered to him or her shall, before leaving the election room,  
50 return the ballot to the poll clerks. When a spoiled or  
51 defaced ballot is returned, the poll clerks shall make a  
52 minute of the fact on the pollbooks, at the time, write the  
53 word "spoiled" across the face of the ballot and place it in  
54 an envelope for spoiled ballots.

55 Immediately on closing the polls, the election commis-  
56 sioners shall ascertain the number of spoiled ballots  
57 during the election and the number of ballots remaining  
58 not voted. The election commissioners shall also ascertain  
59 from the pollbooks the number of persons who voted and  
60 shall report, in writing signed by them to the clerk of the  
61 county commission, any irregularities in the ballot boxes,  
62 the number of ballots cast, the number of ballots spoiled  
63 during the election and the number of ballots unused. All  
64 unused ballots are to be returned at the same time to the  
65 clerk of the county commission who shall count them and  
66 record the number. All unused ballots shall be stored with  
67 the other election materials and destroyed at the expira-



67 the other election materials and destroyed at the expira-  
68 tion of twenty-two months.

69 (g) Each commissioner who is a member of an election  
70 board which fails to account for every ballot delivered to  
71 it is guilty of a misdemeanor and, upon conviction thereof,  
72 shall be fined not more than one thousand dollars or  
73 confined in the county or regional jail for not more than  
74 one year, or both.

75 (h) The board of ballot commissioners of each county, or  
76 the chair of the board, shall preserve the ballots that are  
77 left over in their hands, after supplying the precincts as  
78 provided, until the close of the polls on the day of election  
79 and shall deliver them to the clerk of the county commis-  
80 sion who shall store them with the other election materials  
81 and destroy them at the expiration of twenty-two months.

82 (i) Where ballots are used, the voter, after he or she has  
83 marked his or her ballot, shall, before leaving the voting  
84 booth, place the ballot inside the envelope provided for  
85 this purpose, with the stub extending outside the envelope,  
86 and return it to an election commissioner who shall  
87 remove the stub and deposit the envelope with the ballot  
88 inside in the ballot box. No ballot from which the stub has  
89 been detached may be accepted by the officer in charge of  
90 the ballot box, but the ballot shall be marked "spoiled"  
91 and placed with the spoiled ballots. If an electronic voting  
92 system is used that utilizes a screen on which votes may be  
93 recorded by means of a stylus or by means of touch and the  
94 signal warning that a voter has attempted to cast his or her  
95 ballot has failed to do so properly has been activated and  
96 the voter has departed the polling place and cannot be  
97 recalled by a poll clerk to complete his or her ballot while  
98 the voter remains physically present in the polling place,  
99 then two election commissioners of different registered  
100 party affiliations, two poll clerks of different registered  
101 party affiliations or an election commissioner and a poll  
102 clerk of different registered party affiliations shall spoil  
103 the ballot.

104 (j) The precinct election commissioners shall prepare a  
105 report in quadruplicate of the number of voters who have  
106 voted and, where electronic voting systems are used that  
107 utilize a screen on which votes may be recorded by means  
108 of a stylus or by means of touch, the number of ballots that  
109 were spoiled, as indicated by the pollbooks, and shall place  
110 two copies of this report in the ballot box or where elec-  
111 tronic voting systems are used that utilize a screen upon  
112 which votes may be recorded by means of a stylus or by  
113 means of touch, shall place two copies of this report and  
114 the electronic ballot devices in a container provided by the  
115 clerk of the county commission, which thereupon is to be  
116 sealed with a paper seal signed by the election commis-  
117 sioners to ensure that no additional ballots may be depos-  
118 ited or removed from the ballot box. Two election com-  
119 missioners of different registered party affiliations shall  
120 forthwith deliver the ballot box or container to the clerk  
121 of the county commission at the central counting center  
122 and receive a signed numbered receipt therefor. The  
123 receipt must carefully set forth in detail any and all  
124 irregularities pertaining to the ballot boxes or containers  
125 and noted by the precinct election officers.

126 The receipt is to be prepared in duplicate, a copy of  
127 which remains with the clerk of the county commission  
128 who shall have any and all irregularities noted. The time  
129 of their departure from the polling place is to be noted on  
130 the two remaining copies of the report, which are to be  
131 immediately mailed to the clerk of the county commission.

132 (k) The pollbooks, register of voters, unused ballots,  
133 spoiled ballots and other records and supplies are to be  
134 delivered to the clerk of the county commission, all in  
135 conformity with the provisions of this section.

**§3-4A-22. Assistance to illiterate and disabled voters.**

1 (a) Any duly registered voter who requires assistance to  
2 vote by reason of blindness, disability, advanced age or  
3 inability to read and write may be given assistance by one  
4 of the following means:

5 (1) By a person of the voter's choice: *Provided*, That the  
6 assistance may not be given by the voter's present or  
7 former employer or agent of that employer or by an officer  
8 or agent of a labor union of which the voter is a past or  
9 present member or a candidate on the ballot or official  
10 write-in candidate; or

11 (2) If no person of the voter's choice be present at the  
12 polling place, the voter may request assistance from the  
13 poll clerks or ballot commissioners present at the polling  
14 place, whereupon assistance may be given by any two of  
15 the election officers of opposite political party affiliation  
16 to whom the voter shall thereupon declare his or her  
17 choice of candidates and his or her position on public  
18 questions appearing on the ballot. The election officers, in  
19 the presence of the voter and in the presence of each other,  
20 shall thereupon cause the voter's declared choices to be  
21 recorded on the ballot or a vote recording device, as may  
22 be appropriate, as votes.

23 (b) A person other than an election officer who assists a  
24 voter in voting under the provisions of this section shall  
25 sign a written oath or affirmation before assisting the  
26 voter, stating that he or she will not override the actual  
27 preference of the voter being assisted or mislead the voter  
28 into voting for someone other than the candidate of the  
29 voter's choice. The person assisting the voter shall also  
30 swear or affirm that he or she believes that the voter is  
31 voting free of intimidation or manipulation.

**§3-4A-24a. Voting by challenged voter where touch-screen  
electronic voting systems are used.**

1 If the right of any person to vote is challenged in accor-  
2 dance with the provisions of article one of this chapter,  
3 relating to the challenging of voters, and a vote recording  
4 device or ballot is used that tabulates the vote as an  
5 individual vote, the person is to be permitted to cast his or  
6 her vote by use of the vote recording device or ballot, as  
7 may be appropriate. An election commissioner shall enter

8 into the voting device a voter-specific electronic code for  
9 any person voting a provisional ballot. The devices are to  
10 retain provisional ballots in electronic memory and are not  
11 to be tabulated in accordance with the provisions of this  
12 code, but are to be reviewed in accordance with the  
13 provisions of this code.

14 After the county commission, as prescribed in article one  
15 of this chapter, has determined that the challenges are  
16 unfounded, the commissioners shall ensure that the ballots  
17 are included in the tabulation.

**§3-4A-27. Proceedings at the central counting center.**

1 (a) All proceedings at the central counting center are to  
2 be under the supervision of the clerk of the county com-  
3 mission and are to be conducted under circumstances  
4 which allow observation from a designated area by all  
5 persons entitled to be present. The proceedings shall take  
6 place in a room of sufficient size and satisfactory arrange-  
7 ment to permit observation. Those persons entitled to be  
8 present include all candidates whose names appear on the  
9 ballots being counted or if a candidate is absent, a repre-  
10 sentative of the candidate who presents a written authori-  
11 zation signed by the candidate for the purpose and two  
12 representatives of each political party on the ballot who  
13 are chosen by the county executive committee chairperson.  
14 A reasonable number of the general public is also freely  
15 admitted to the room. In the event all members of the  
16 general public desiring admission to the room cannot be  
17 admitted at one time, the county commission shall provide  
18 for a periodic and convenient rotation of admission to the  
19 room for observation, to the end that each member of the  
20 general public desiring admission, during the proceedings  
21 at the central counting center, is to be granted admission  
22 for reasonable periods of time for observation: *Provided,*  
23 That no person except those authorized for the purpose  
24 may touch any ballot or ballot card or other official  
25 records and papers utilized in the election during observa-  
26 tion.

27 (b) All persons who are engaged in processing and  
28 counting the ballots are to work in teams consisting of two  
29 persons of opposite political parties, and are to be depu-  
30 tized in writing and take an oath that they will faithfully  
31 perform their assigned duties. These deputies are to be  
32 issued an official badge or identification card which is  
33 assigned an identity control number and the deputies are  
34 to prominently wear on his or her outer garments the  
35 issued badge or identification card. Upon completion of  
36 the deputies' duties, the badges or identification cards are  
37 to be returned to the county clerk.

38 (c) Ballots are to be handled and tabulated and the  
39 write-in votes tallied according to procedures established  
40 by the secretary of state, subject to the following require-  
41 ments:

42 (1) In systems using punch card ballots, the ballot cards  
43 and secrecy envelopes for a precinct are to be removed  
44 from the box and examined for write-in votes before being  
45 separated and stacked for delivery to the tabulator.  
46 Immediately after valid write-in votes are tallied, the  
47 ballot cards are to be delivered to the tabulator. No write-  
48 in vote may be counted for an office unless the voter has  
49 entered the name of that office and the name of an official  
50 write-in candidate for that office on the inside of the  
51 secrecy envelope, either by writing, affixing a sticker or  
52 label or placing an ink-stamped impression thereon;

53 (2) In systems using ballots marked with electronically  
54 sensible ink, ballots are to be removed from the boxes and  
55 stacked for the tabulator which separates ballots contain-  
56 ing marks for a write-in position. Immediately after  
57 tabulation, the valid write-in votes are to be tallied. No  
58 write-in vote may be counted for an office unless the voter  
59 has entered the name of an official write-in candidate for  
60 that office on the line provided, either by writing, affixing  
61 a sticker or placing an ink-stamped impression thereon;

62 (3) In systems using ballots in which votes are recorded  
63 upon screens with a stylus or by means of touch, the  
64 personalized electronic ballots are to be removed from the  
65 containers and stacked for the tabulator. Systems using  
66 ballots in which votes are recorded upon screens with a  
67 stylus or by means of touch are to tally write-in ballots  
68 simultaneously with the other ballots;

69 (4) When more than one person is to be elected to an  
70 office and the voter desires to cast write-in votes for more  
71 than one official write-in candidate for that office, a single  
72 punch or mark, as appropriate for the votingsystem, in the  
73 write-in location for that office is sufficient for all write-  
74 in choices. When there are multiple write-in votes for the  
75 same office and the combination of choices for candidates  
76 on the ballot and write-in choices for the same office  
77 exceed the number of candidates to be elected, the ballot  
78 is to be duplicated or hand counted, with all votes for that  
79 office rejected;

80 (5) Write-in votes for nomination for any office and  
81 write-in votes for any person other than an official write-  
82 in candidate are to be disregarded;

83 (6) When a voter casts a straight ticket vote and also  
84 punches or marks the location for a write-in vote for an  
85 office, the straight ticket vote for that office is to be  
86 rejected, whether or not a vote can be counted for a write-  
87 in candidate; and

88 (7) Official write-in candidates are those who have filed  
89 a write-in candidate's certificate of announcement and  
90 have been certified according to the provisions of section  
91 four-a, article six of this chapter.

92 (d) If any ballot card is damaged or defective so that it  
93 cannot properly be counted by the automatic tabulating  
94 equipment, a true duplicate copy is to be made of the  
95 damaged ballot card in the presence of representatives of  
96 each political party on the ballot and substituted for the

97 damaged ballot card. All duplicate ballot cards are to be  
98 clearly labeled "duplicate" and are to bear a serial number  
99 which is recorded on the damaged or defective ballot card  
100 and on the replacement ballot card.

101 (e) The returns printed by the automatic tabulating  
102 equipment at the central counting center, to which have  
103 been added write-in and other valid votes, are, when  
104 certified by the clerk of the county commission, to consti-  
105 tute the official preliminary returns of each precinct or  
106 election district. Further, all the returns are to be printed  
107 on a precinct basis. Periodically throughout and upon  
108 completion of the count, the returns are to be open to the  
109 public by posting the returns as have been tabulated  
110 precinct by precinct at the central counting center. Upon  
111 completion of the canvass, the returns are to be posted in  
112 the same manner.

113 (f) If for any reason it becomes impracticable to count all  
114 or a part of the ballots with tabulating equipment, the  
115 county commission may direct that they be counted  
116 manually, following as far as practicable the provisions  
117 governing the counting of paper ballots.

118 (g) As soon as possible after the completion of the count,  
119 the clerk of the county commission shall have the vote  
120 recording devices properly boxed or securely covered and  
121 removed to a proper and secure place of storage.

#### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

##### **§3-5-10. Publication of sample ballots and lists of candidates.**

1 (a) The ballot commissioners of each county shall  
2 prepare a sample official primary ballot for each party  
3 and, as the case may be, for the nonpartisan candidates to  
4 be voted for at the primary election, according to the  
5 provisions of this article and articles four and four-a of  
6 this chapter, as appropriate to the voting system. If any  
7 ballot issue is to be voted on in the primary election, the  
8 ballot commissioners shall likewise prepare a sample

9 official ballot for that issue according to the provisions of  
10 law authorizing the election.

11 (b) The facsimile sample ballot for each political party  
12 and for nonpartisan candidates or ballot issues shall be  
13 published as follows:

14 (1) For counties in which two or more qualified newspa-  
15 pers publish a daily newspaper, not more than twenty-six  
16 nor less than twenty days preceding the primary election,  
17 the ballot commissioners shall publish each sample official  
18 primary election ballot as a Class I-0 legal advertisement  
19 in the two qualified daily newspapers of different political  
20 parties within the county having the largest circulation in  
21 compliance with the provisions of article three, chapter  
22 fifty-nine of this code;

23 (2) For counties having no more than one daily newspa-  
24 per, or having only one or more qualified newspapers  
25 which publish weekly, not more than twenty-six nor less  
26 than twenty days preceding the primary election, the  
27 ballot commissioners shall publish the sample official  
28 primary election ballot as a Class I legal advertisement in  
29 the qualified newspaper within the county having the  
30 largest circulation in compliance with the provisions of  
31 article three, chapter fifty-nine of this code; and

32 (3) Each facsimile sample ballot shall be a photographic  
33 reproduction of the official sample ballot or ballot pages  
34 and shall be printed in a size no less than eighty percent of  
35 the actual size of the ballot, at the discretion of the ballot  
36 commissioners: *Provided*, That when the ballots for the  
37 precincts within the county contain different senatorial,  
38 delegate, magisterial or executive committee districts or  
39 when the ballots for precincts within a city contain  
40 different municipal wards, the facsimile shall be altered to  
41 include each of the various districts in the appropriate  
42 order. If, in order to accommodate the size of each ballot,  
43 the ballot or ballot pages must be divided onto more than  
44 one page, the arrangement and order shall be made to



45 conform as nearly as possible to the arrangement of the  
46 ballot. The publisher of the newspaper shall submit a  
47 proof of the ballot and the arrangement to the ballot  
48 commissioners for approval prior to publication.

49 (c) The ballot commissioners of each county shall  
50 prepare, in the form and manner prescribed by the secre-  
51 tary of state, an official list of offices and candidates for  
52 each office which will appear on the primary election  
53 ballot for each party and, as the case may be, for the  
54 nonpartisan candidates to be voted for at the primary  
55 election. All information which appears on the ballot,  
56 including instructions as to the number of candidates for  
57 whom votes may be cast for the office, any additional  
58 language which will appear on the ballot below the name  
59 of the office, any identifying information relating to the  
60 candidates, such as residence, magisterial district or  
61 presidential preference, and the ballot numbers of the  
62 candidates for punch card systems shall be included in the  
63 list in the same order in which it appears on the ballot.  
64 Following the names of all candidates, the list shall  
65 include the full title, text and voting positions of any issue  
66 to appear on the ballot.

67 (d) The official list of candidates and issues as provided  
68 in subsection (c) of this section shall be published as  
69 follows:

70 (1) For counties in which two or more qualified newspa-  
71 pers publish a daily newspaper, on the last day on which  
72 a newspaper is published immediately preceding the  
73 primary election, the ballot commissioners shall publish  
74 the official list of candidates and issues as a Class I-0 legal  
75 advertisement in the two qualified daily newspapers of  
76 different political parties within the county having the  
77 largest circulation in compliance with the provisions of  
78 article three, chapter fifty-nine of this code;

79 (2) For counties having no more than one daily newspa-  
80 per, or having only one or more qualified newspapers

81 which publish weekly, on the last day on which a newspa-  
82 per is published immediately preceding the primary  
83 election, the ballot commissioners shall publish the sample  
84 official list of nominees and issues as a Class I legal  
85 advertisement in the qualified newspaper within the  
86 county having the largest circulation in compliance with  
87 the provisions of article three, chapter fifty-nine of this  
88 code;

89 (3) The publication of the official list of candidates for  
90 each party and for nonpartisan candidates shall be in  
91 single or double columns, as required to accommodate the  
92 type size requirements as follows: (A) The words "official  
93 list of candidates", the name of the county, the words  
94 "primary election", the date of the election, the name of  
95 the political party or the designation of nonpartisan  
96 candidates shall be printed in all capital letters and in  
97 bold type no smaller than fourteen point. The designation  
98 of the national, state, district or other tickets shall be  
99 printed in all capital letters in type no smaller than  
100 fourteenpoint; (B) the title of the office shall be printed in  
101 bold type no smaller than twelve point and any voting  
102 instructions or other language printed below the title shall  
103 be printed in bold type no smaller than ten point; and (C)  
104 the names of the candidates shall be printed in all capital  
105 letters in bold type no smaller than ten point and the  
106 residence information shall be printed in type no smaller  
107 than ten point; and

108 (4) When any ballot issue is to appear on the ballot, the  
109 title of that ballot shall be printed in all capital letters in  
110 bold type no smaller than fourteen point. The text of the  
111 ballot issue shall appear in no smaller than ten point type.  
112 The ballot commissioners may require the publication of  
113 the ballot issue under this subsection in the facsimile  
114 sample ballot format in lieu of the alternate format.

115 (e) Notwithstanding the provisions of subsections (c) and  
116 (d) of this section, beginning with the primary election to  
117 be held in the year two thousand, the ballot commissioners

118 of any county may choose to publish a facsimile sample  
119 ballot for each political party and for nonpartisan candi-  
120 dates or ballot issues instead of the official list of offices  
121 and candidates for each office for purposes of the last  
122 publication required before any primary election.

**§3-5-13. Form and contents of ballots and ballot labels.**

1 The face of every primary election ballot shall conform  
2 as nearly as practicable to that used at the general elec-  
3 tion.

4 (a) The heading of every ballot is to be printed in display  
5 type. The heading is to contain a ballot title, the name of  
6 the county, the state, the words "Primary Election" and  
7 the month, day and year of the election. The ballot title of  
8 the political party ballots is to contain the words "Official  
9 Ballot of the (Name) Party" and the official symbol of the  
10 political party may be included in the heading. The ballot  
11 title of any separate paper ballot or portion of any elec-  
12 tronic or voting machine ballot for the board of education  
13 is to contain the words "Nonpartisan Ballot of Election of  
14 Members of the \_\_\_\_\_ County Board of Educa-  
15 tion". The districts for which less than two candidates  
16 may be elected and the number of available seats are to be  
17 specified and the names of the candidates are to be printed  
18 without reference to political party affiliation and without  
19 designation as to a particular term of office. Any other  
20 ballot or portion of a ballot on a question is to have a  
21 heading which clearly states the purpose of the election  
22 according to the statutory requirements for that question.

23 (b) (1) For paper ballots, the heading of the ballot is to be  
24 separated from the rest of the ballot by heavy lines and the  
25 offices shall be arranged in columns with the following  
26 headings, from left to right across the ballot: "National  
27 Ticket", "State Ticket", "County Ticket" and, in a presi-  
28 dential election year, "National Convention" or, in a  
29 nonpresidential election year, "District Ticket". The  
30 columns are to be separated by heavy lines. Within the

31 columns, the offices are to be arranged in the order  
32 prescribed in section thirteen-a of this article.

33 (2) For voting machines, electronic voting devices and  
34 any ballot tabulated by electronic means, the offices are to  
35 appear in the same sequence as prescribed in section  
36 thirteen-a of this article and under the same headings as  
37 prescribed in subsection (a) of this section. The number of  
38 pages, columns or rows, where applicable, may be modi-  
39 fied to meet the limitations of ballot size and composition  
40 requirements subject to approval by the secretary of state.

41 (3) The title of each office is to be separated from  
42 preceding offices or candidates by a line and is to be  
43 printed in bold type no smaller than eight point. Below  
44 the office is to be printed the number of the district, if any,  
45 the number of the division, if any, and the words "Vote for  
46 \_\_\_\_\_" with the number to be nominated or elected or  
47 "Vote For Not More Than \_\_\_\_\_" in multicandidate  
48 elections. For offices in which there are limitations  
49 relating to the number of candidates which may be  
50 nominated, elected or appointed to or hold office at one  
51 time from a political subdivision within the district or  
52 county in which they are elected, there is to be a clear  
53 explanation of the limitation, as prescribed by the secre-  
54 tary of state, printed in bold type immediately preceding  
55 the names of the candidates for those offices on the ballot  
56 in every voting system. For counties in which the number  
57 of county commissioners exceeds three and the total  
58 number of members of the county commission is equal to  
59 the number of magisterial districts within the county, the  
60 office of county commission is to be listed separately for  
61 each district to be filled with the name of the magisterial  
62 district and the words "Vote for One" printed below the  
63 name of the office.

64 (c) The location for indicating the voter's choices on the  
65 ballot is to be clearly shown. For paper ballots, other than  
66 those tabulated electronically, the official primary ballot  
67 is to contain a square formed in dark lines at the left of

68 each name on the ballot, arranged in a perpendicular  
69 column of squares before each column of names.

70 (d) (1) The name of every candidate certified by the  
71 secretary of state or the board of ballot commissioners is  
72 to be printed in capital letters in no smaller than eight-  
73 point type on the ballot for the appropriate precincts.  
74 Subject to the rules promulgated by the secretary of state,  
75 the name of each candidate is to appear in the form set out  
76 by the candidate on the certificate of announcement, but  
77 in no case may the name misrepresent the identity of the  
78 candidate nor may the name include any title, position,  
79 rank, degree or nickname implying or inferring any status  
80 as a member of a class or group or affiliation with any  
81 system of belief.

82 (2) The city of residence of every candidate, the state of  
83 residence of every candidate residing outside the state, the  
84 county of residence of every candidate for an office on the  
85 ballot in more than one county and the magisterial district  
86 of residence of every candidate for an office subject to  
87 magisterial district limitations are to be printed in lower  
88 case letters beneath the names of the candidates.

89 (3) The arrangement of names within each office must be  
90 determined as prescribed in section thirteen-a of this  
91 article.

92 (4) If the number of candidates for an office exceeds the  
93 space available on a column or ballot label page and  
94 requires that candidates for a single office be separated, to  
95 the extent possible, the number of candidates for the office  
96 on separate columns or pages are to be nearly equal and  
97 clear instructions given the voter that the candidates for  
98 the office are continued on the following column or page.

99 (e) When an insufficient number of candidates has filed  
100 for a party to make the number of nominations allowed for  
101 the office or for the voters to elect sufficient members to  
102 the board of education or to executive committees, the

103 vacant positions on the ballot shall be filled with the  
104 words "No Candidate Filed": *Provided*, That in paper  
105 ballot systems which allow for write-ins to be made  
106 directly on the ballot, a blank line shall be placed in any  
107 vacant position in the office of board of education or for  
108 election to any party executive committee. A line shall  
109 separate each candidate from every other candidate for the  
110 same office. Notwithstanding any other provision of this  
111 code, if there are multiple vacant positions on a ballot for  
112 one office, the multiple vacant positions which would  
113 otherwise be filled with the words "No Candidate Filed"  
114 may be replaced with a brief detailed description, ap-  
115 proved by the secretary of state, indicating that there are  
116 no candidates listed for the vacant positions.

117 (f) In presidential election years, the words "For election  
118 in accordance with the plan adopted by the party and filed  
119 with the secretary of state" is to be printed following the  
120 names of all candidates for delegate to national conven-  
121 tion.

122 (g) All paper ballots are to be printed in black ink on  
123 paper sufficiently thick so that the printing or marking  
124 cannot be discernible from the back. Ballot cards and  
125 paper for printing ballots using electronically sensible ink  
126 are to meet minimum requirements of the tabulating  
127 systems.

128 (h) Ballots and ballot cards are to contain perforated  
129 tabs at the top of the ballots and are to be printed with  
130 unique sequential numbers from one to the highest number  
131 representing the total number of ballots or ballot cards  
132 printed. On paper ballots, the ballot is to be bordered by  
133 a solid line at least one sixteenth of an inch wide and the  
134 ballot is to be trimmed to within one-half inch of that  
135 border.

136 (i) On the back of every official ballot or ballot card the  
137 words "Official Ballot" with the name of the county and  
138 the date of the election are to be printed. Beneath the date

139 of the election there are to be two blank lines followed by  
140 the words "Poll Clerks".

141 (j) Absent voters' ballots are to be in all respects like  
142 other official ballots except that three blank lines are to be  
143 printed on the back of the ballot or ballot card in the lower  
144 left corner with the words "Ballot Commissioners" printed  
145 underneath.

146 (k) The face of sample paper ballots and sample ballot  
147 labels are to be like other official ballots or ballot labels  
148 except that the word "sample" is to be prominently  
149 printed across the front of the ballot in a manner that  
150 ensures the names of candidates are not obscured and the  
151 word "sample" may be printed in red ink. No printing  
152 may be placed on the back of the sample.

**§3-5-15. Ascertaining and certifying primary election results.**

1 When the polls are closed in an election precinct where  
2 only a single election board has served, the receiving board  
3 shall perform all of the duties prescribed in this section.  
4 When the polls are closed in an election precinct where  
5 two election boards have served, both the receiving and  
6 counting boards shall together conclude the counting of  
7 the votes cast, the tabulating and summarizing of the  
8 number of the votes cast, unite in certifying and attesting  
9 to the returns of the election and join in making out the  
10 certificates of the result of the election provided for in this  
11 article. They shall not adjourn until the work is com-  
12 pleted.

13 In all election precincts, as soon as the polls are closed  
14 and the last voter has voted, the receiving board shall first  
15 process the absentee ballots according to the provisions of  
16 section eight, article three of this chapter. After the  
17 absentee ballots to be counted have been deposited in the  
18 ballot box, the election officers shall proceed to ascertain  
19 the result of the election in the following manner:

20 (a) The receiving board shall ascertain from the poll  
21 books and record separately on the proper form the total  
22 number of voters of each party and nonpartisan voters  
23 who have voted.

24 (1) The number of provisional ballots of each party shall  
25 be counted and subtracted from the number of voters of  
26 the same party, which result should equal the number of  
27 ballots of that party deposited in the ballot box.

28 (2) The total of all voters, including both partisan and  
29 nonpartisan voters, minus the total of all provisional  
30 ballots, should equal the number of nonpartisan ballots  
31 deposited in the ballot box.

32 (3) The commissioners and clerks shall also report, over  
33 their signatures, the number of each type of ballots spoiled  
34 and the number of each type of ballots not voted.

35 (b) The procedure for counting ballots, whether per-  
36 formed throughout the day by the counting board, as  
37 provided in section thirty-three, article one of this chapter,  
38 or after the close of the polls by the receiving board or by  
39 the two boards together, shall be as follows:

40 (1) The ballot box shall be opened and all votes shall be  
41 tallied in the presence of the entire election board;

42 (2) One of the commissioners shall take one ballot from  
43 the box at a time and shall determine if the ballot is  
44 properly signed by the two poll clerks of the receiving  
45 board. If not properly signed, the ballot shall be placed in  
46 an envelope for the purpose without unfolding it. If  
47 properly signed, the commissioner shall announce which  
48 type of ballot it is, and hand the ballot to a team of  
49 commissioners of opposite politics, who shall together read  
50 the votes marked on the ballot for each office. Write-in  
51 votes for nomination for any office and write-in votes for  
52 election for any person other than an official write-in  
53 candidate shall be disregarded;



54 (3) The commissioner responsible for removing the  
55 ballots from the box shall keep a tally of the number of  
56 ballots of each party and any nonpartisan ballot as they  
57 are removed, and whenever the number of ballots of a  
58 particular party shall equal the number of voters entered  
59 on the poll book for that party minus the number of  
60 provisional ballots of that party, as determined according  
61 to subsection (a) of this section, any other ballot found in  
62 the ballot box shall be placed in the same envelope with  
63 unsigned ballots not counted, without unfolding the same,  
64 or allowing anyone to examine or know the contents  
65 thereof, and the number of excess ballots of each party  
66 shall be recorded on the envelope;

67 (4) Each poll clerk shall keep an accurate tally of the  
68 votes cast by marking in ink on tally sheets, which shall be  
69 provided for the purpose so as to show the number of votes  
70 received by each candidate for each office;

71 (5) When the votes have been read from a ballot, the  
72 ballot shall be immediately strung on a thread, with  
73 separate threads for each party's ballots and for nonparti-  
74 san ballots.

75 (c) As soon as the results at the precinct are ascertained,  
76 the commissioners and clerks shall make out and sign four  
77 certificates of result, for each party represented, of the  
78 vote for all candidates of each party represented, on a form  
79 prescribed by the secretary of state, giving the complete  
80 returns of the election at the polling place, which form  
81 shall include the following oath:

82 "We, the undersigned commissioners and poll clerks of  
83 the primary election held at precinct No. .... of  
84 ..... district of ..... County, W.Va., on the .....  
85 day of ....., 20...., do hereby certify that having been  
86 first duly sworn, we have carefully and impartially  
87 ascertained the result of said election at said precinct for  
88 the candidates on the official ballot of the .....  
89 party, and the same is as follows:

90 The election officers shall enter the name of each office  
91 and the full name of each candidate on the ballot, and the  
92 number of votes, in words and numbers, received by each.  
93 The election officers shall also enter the full name of every  
94 official write-in candidate for election to offices to be  
95 filled in the primary, except delegate to national conven-  
96 tion, and the number of votes for each. Three of the  
97 certificates of result of election, for each party, shall be  
98 sealed in separately addressed envelopes, furnished for the  
99 purpose, and shall be disposed of by the precinct commis-  
100 sioners as follows: One of the sealed envelopes containing  
101 the returns of each party shall be delivered to the clerk of  
102 the circuit court and two shall be delivered to the clerk of  
103 the county commission who shall, within forty-eight hours,  
104 mail one of the sealed returns for each precinct by certified  
105 mail to the secretary of state. The one not sealed up shall  
106 be posted on the outside of the front door of the polling  
107 place.

108 (d) All ballots voted for candidates of each party shall be  
109 sealed up in separate envelopes and the commissioners and  
110 clerks shall each sign across the seal.

**§3-5-19. Vacancies in nominations; how filled; fees.**

1 (a) If any vacancy shall occur in the party nomination of  
2 candidates for office nominated at the primary election or  
3 by appointment under the provisions of section eleven of  
4 this article, the vacancies may be filled, subject to the  
5 following requirements and limitations:

6 (1) Each appointment made under this section shall be  
7 made by the executive committee of the political party for  
8 the political division in which the vacancy occurs: *Pro-*  
9 *vided*, That if the executive committee holds a duly called  
10 meeting in accordance with section nine, article one of this  
11 chapter but fails to make an appointment or fails to certify  
12 the appointment of the candidate to the proper filing  
13 officer within the time required, the chairperson of the  
14 executive committee may make the appointment not later

15 than two days following the deadline for the executive  
16 committee.

17 (2) Each appointment made under this section is com-  
18 plete only upon the receipt by the proper filing officer of  
19 the certificate of appointment by the executive committee,  
20 or its chairperson, as the case may be, the certificate of  
21 announcement of the candidate as prescribed in section  
22 seven of this article and, except for appointments made  
23 under subdivision (4), (5), (6) or (7) of this subsection, the  
24 filing fee or waiver of fee as prescribed in section eight or  
25 eight-a of this article. The proper filing officer is the  
26 officer with whom the original certificate of nomination is  
27 regularly filed for that office.

28 (3) If a vacancy in nomination is caused by the failure of  
29 a candidate to file for an office, or by withdrawal of a  
30 candidate no later than the third Tuesday following the  
31 close of candidate filing pursuant to the provisions of  
32 section eleven of this article, a nominee may be appointed  
33 by the executive committee and certified to the proper  
34 filing officer no later than the Thursday preceding the  
35 primary election.

36 (4) If a vacancy in nomination is caused by the disquali-  
37 fication of a candidate and the vacancy occurs not later  
38 than eighty-four days before the general election, a  
39 nominee may be appointed by the executive committee  
40 and certified to the proper filing officer not later than  
41 seventy-eight days before the general election. A candi-  
42 date may be determined ineligible if a written request is  
43 made by an individual with information to show a candi-  
44 date's ineligibility to the state election commission no later  
45 than ninety-five days before the general election explain-  
46 ing grounds why a candidate is not eligible to be placed on  
47 the general election ballot or not eligible to hold the office,  
48 if elected. The state election commission shall review the  
49 reasons for the request. If the commission finds the  
50 circumstances warrant the disqualification of the candi-  
51 date, the commission may authorize appointment by the

52 executive committee to fill the vacancy. Upon receipt of  
53 the authorization a nominee may be appointed by the  
54 executive committee and certified to the proper filing  
55 officer no later than seventy-eight days before the general  
56 election.

57 (5) If a vacancy in nomination is caused by the incapac-  
58 ity of the candidate and if the vacancy occurs not later  
59 than eighty-four days before the general election, a  
60 nominee may be appointed by the executive committee  
61 and certified to the proper filing officer no later than  
62 seventy-eight days before the general election.

63 (6) If a vacancy in nomination is caused by the with-  
64 drawal of the candidate no later than ninety-eight days  
65 before the general election due to extenuating personal  
66 circumstances which will prevent the candidate from  
67 serving in the office if elected and if the candidate or the  
68 chairperson of the executive committee for the political  
69 division applies in writing to the state election commission  
70 no later than ninety-five days before the general election  
71 for permission to remove the candidate's name from the  
72 general election ballot, the state election commission shall  
73 review the reasons for the request. If the commission finds  
74 the circumstances warrant the withdrawal of the candi-  
75 date, the commission shall authorize appointment by the  
76 executive committee to fill the vacancy. Upon receipt of  
77 the authorization, a nominee may be appointed by the  
78 executive committee and certified to the proper filing  
79 officer no later than seventy-eight days before the general  
80 election.

81 (7) If a vacancy in nomination is caused by the death of  
82 the candidate occurring no later than twenty-five days  
83 before the general election, a nominee may be appointed  
84 by the executive committee and certified to the proper  
85 filing officer no later than twenty-one days following the  
86 date of death or no later than twenty-two days before the  
87 general election, whichever date occurs first.

88 (b) Except as otherwise provided in article ten of this  
89 chapter, if any vacancy occurs in a partisan office or  
90 position other than political party executive committee,  
91 which creates an unexpired term for a position which  
92 would not otherwise appear on the ballot in the general  
93 election, and the vacancy occurs after the close of candi-  
94 date filing for the primary election but not later than  
95 eighty-four days before the general election, a nominee of  
96 each political party may be appointed by the executive  
97 committee and certified to the proper filing officer no later  
98 than seventy-eight days before the general election.  
99 Appointments shall be filed in the same manner as pro-  
100 vided in subsection (a) of this section, except that the filing  
101 fee shall be paid before the appointment is complete.

102 (c) When a vacancy occurs in the board of education  
103 after the close of candidate filing for the primary election  
104 but not later than eighty-four days before the general  
105 election, a special candidate filing period shall be estab-  
106 lished. Candidates seeking election to any unexpired term  
107 for board of education shall file a certificate of announce-  
108 ment and pay the filing fee to the clerk of the circuit court  
109 no earlier than the first Monday in August and no later  
110 than seventy-seven days before the general election.

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

##### **§3-6-3. Publication of sample ballots and lists of candidates.**

1 (a) The ballot commissioners of each county shall  
2 prepare a sample official general election ballot for all  
3 political party or independent nominees, nonpartisan  
4 candidates for election, if any, and all ballot issues to be  
5 voted for at the general election, according to the provi-  
6 sions of this article and articles four and four-a of this  
7 chapter, as appropriate to the voting system, and for any  
8 ballot issue, according to the provisions of law authorizing  
9 the election.

10 (b) The facsimile sample general election ballot shall be  
11 published as follows:

12 (1) For counties in which two or more qualified newspa-  
13 pers publish a daily newspaper, not more than twenty-six  
14 nor less than twenty days preceding the general election,  
15 the ballot commissioners shall publish the sample official  
16 general election ballot as a Class I-0 legal advertisement  
17 in the two qualified daily newspapers of different political  
18 parties within the county having the largest circulation in  
19 compliance with the provisions of article three, chapter  
20 fifty-nine of this code;

21 (2) For counties having no more than one daily newspa-  
22 per, or having only one or more qualified newspapers  
23 which publish weekly, not more than twenty-six nor less  
24 than twenty days preceding the primary election, the  
25 ballot commissioners shall publish the sample official  
26 general election ballot as a Class I legal advertisement in  
27 the qualified newspaper within the county having the  
28 largest circulation in compliance with the provisions of  
29 article three, chapter fifty-nine of this code; and

30 (3) Each facsimile sample ballot shall be a photographic  
31 reproduction of the official sample ballot or ballot pages  
32 and shall be printed in a size no less than eighty percent of  
33 the actual size of the ballot, at the discretion of the ballot  
34 commissioners: *Provided*, That when the ballots for the  
35 precincts within the county contain different senatorial,  
36 delegate, magisterial or executive committee districts or  
37 when the ballots for precincts within a city contain  
38 different municipal wards, the facsimile shall be altered to  
39 include each of the various districts in the appropriate  
40 order. If, in order to accommodate the size of each ballot,  
41 the ballot or ballot pages must be divided onto more than  
42 one page, the arrangement and order shall be made to  
43 conform as nearly as possible to the arrangement of the  
44 ballot. The publisher of the newspaper shall submit a  
45 proof of the ballot and the arrangement to the ballot  
46 commissioners for approval prior to publication.

47 (c) The ballot commissioners of each county shall  
48 prepare, in the form and manner prescribed by the secre-

49 tary of state, an official list of offices and nominees for  
50 each office which will appear on the general election ballot  
51 for each political party or as independent nominees and, as  
52 the case may be, for the nonpartisan candidates to be  
53 voted for at the general election:

54 (1) All information which appears on the ballot, includ-  
55 ing the names of parties for which a straight ticket may be  
56 cast, instructions relating to straight ticket voting, instruc-  
57 tions as to the number of candidates for whom votes may  
58 be cast for the office, any additional language which will  
59 appear on the ballot below the name of the office, any  
60 identifying information relating to the candidates, such as  
61 residence, magisterial district or presidential preference,  
62 and the ballot numbers of the candidates for punch card  
63 systems shall be included in the list in the order specified  
64 in subdivision (2) of this subsection. Following the names  
65 of all candidates, the list shall include the full title, text  
66 and voting positions of any issue to appear on the ballot.

67 (2) The order of the straight ticket positions, offices and  
68 candidates for each office and the manner of designating  
69 the parties shall be as follows: (A) The straight ticket  
70 positions shall be designated "straight (party name)  
71 ticket", with the parties listed in the order in which they  
72 appear on the ballot, from left to right or from top to  
73 bottom, as the case may be; (B) the offices shall be listed in  
74 the same order in which they appear on the ballot; (C) the  
75 candidates within each office for which one is to be elected  
76 shall be listed in the order they appear on the ballot, from  
77 left to right or from top to bottom, as the case may be, and  
78 the candidate's political party affiliation or independent  
79 status shall be indicated by the one or two letter initial  
80 specifying the affiliation, placed in parenthesis to the right  
81 of the candidate's name; and (D) the candidates within  
82 each office for which more than one is to be elected shall  
83 be arranged by political party groups in the order they  
84 appear on the ballot and the candidate's affiliation shall  
85 be indicated as provided in part (C) of this subdivision.

86 (d) The official list of candidates and issues as provided  
87 in subsection (c) of this section shall be published as  
88 follows:

89 (1) For counties in which two or more qualified newspa-  
90 pers publish a daily newspaper, on the last day on which  
91 a newspaper is published immediately preceding the  
92 general election, the ballot commissioners shall publish the  
93 official list of nominees and issues as a Class I-0 legal  
94 advertisement in the two qualified daily newspapers of  
95 different political parties within the county having the  
96 largest circulation in compliance with the provisions of  
97 article three, chapter fifty-nine of this code;

98 (2) For counties having no more than one daily paper, or  
99 having only one or more qualified newspapers which  
100 publish weekly, on the last day on which a newspaper is  
101 published immediately preceding the general election, the  
102 ballot commissioners shall publish the sample official list  
103 of nominees and issues as a Class I legal advertisement in  
104 the qualified newspaper within the county having the  
105 largest circulation in compliance with the provisions of  
106 article three, chapter fifty-nine of this code;

107 (3) The publication of the official list of nominees for  
108 each party and for nonpartisan candidates shall be in  
109 single or double columns, as required to accommodate the  
110 type size requirements as follows: (A) The words "official  
111 list of nominees and issues", the name of the county, the  
112 words "General Election" and the date of the election shall  
113 be printed in all capital letters and in bold type no smaller  
114 than fourteen point; (B) the designation of the straight  
115 ticket party positions shall be printed in all capital letters  
116 in bold type no smaller than twelve point and the title of  
117 the office shall be printed in bold type no smaller than  
118 twelve point and any voting instructions or other language  
119 printed below the title shall be printed in bold type no  
120 smaller than ten point; and (C) the names of the candidates  
121 and the initial within parenthesis designating the candi-  
122 date's affiliation shall be printed in all capital letters in



123 bold type no smaller than ten point and the residence  
124 information shall be printed in type no smaller than ten  
125 point; and

126 (4) When any ballot issue is to appear on the ballot, the  
127 title of that ballot shall be printed in all capital letters in  
128 bold type no smaller than twelve point. The text of the  
129 ballot issue shall appear in no smaller than ten point type.  
130 The ballot commissioners may require the publication of  
131 the ballot issue under this subsection in the facsimile  
132 sample ballot format in lieu of the alternate format.

133 (e) Notwithstanding the provisions of subsections (c) and  
134 (d) of this section, beginning with the general election to  
135 be held in the year two thousand, the ballot commissioners  
136 of any county may choose to publish a facsimile sample  
137 general election ballot, instead of the official list of  
138 candidates and issues, for purposes of the last publication  
139 required before any general election.

**§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  
4 election held under the provisions of this chapter shall file  
5 a write-in candidate's certificate of announcement as  
6 provided in this section. No certificate of announcement  
7 may be accepted and no person may be certified as a  
8 write-in candidate for a political party nomination for any  
9 office or for election as 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  
13 a 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  
22 number and street or rural route and box number and city,  
23 state and zip code;

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

27 (5) The words "subscribed and sworn to before me this  
28 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_" and a space for the  
29 signature of the officer giving the oath.

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

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

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

40 (2) When a vacancy occurs in the nomination of candi-  
41 dates for an office on the ballot resulting from the death of  
42 the nominee or from the disqualification or removal of a  
43 nominee from the ballot by a court of competent jurisdic-  
44 tion not earlier than the twenty-first day nor later than the  
45 fifth day before the general election, the certificate shall  
46 be received no later than the close of business on the fifth  
47 day before the election or the close of business on the day  
48 following the occurrence of the vacancy, whichever is  
49 later;

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

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

65 (1) The secretary of state shall, immediately following  
66 the filing deadline, post the names of all official write-in  
67 candidates for offices on the ballot in more than one  
68 county and certify the name of each official write-in  
69 candidate to the clerks of the circuit court of the appropriate  
70 counties.

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

### **§3-6-5. Rules and procedures in election other than primaries**

1 The provisions of article one of this chapter relating to  
2 elections generally shall govern and control arrangements

3 and election officials for the conduct of elections under  
4 this article. The following rules and procedures shall  
5 govern the voting for candidates in general and special  
6 elections:

7 (a) If the voter desires to vote a straight ticket, or in  
8 other words, for each and every candidate for one party for  
9 whatever office nominated, the voter shall either:

10 (1) Mark the position designated for a straight ticket in  
11 the manner appropriate to the voting system; or

12 (2) Mark the voting position for each and every candi-  
13 date of the chosen party in the manner appropriate to the  
14 voting system.

15 (b) If the voter desires to vote a mixed ticket, or in other  
16 words, for candidates of different parties, the voter shall  
17 either:

18 (1) Omit marking any straight ticket voting position and  
19 mark, in the manner appropriate to the voting system, the  
20 name of each candidate for whom he or she desires to vote  
21 on whatever ticket the name may be; or

22 (2) Mark the position designated for a straight ticket for  
23 the party for some of whose candidates he or she desires to  
24 vote and then mark the name of any candidate of any  
25 other party for whom he or she may desire to vote, in  
26 which case the cross mark in the circular space above the  
27 name of the party straight ticket mark will cast his or her  
28 vote for every candidate on the ticket of the party except  
29 for offices for which candidates are marked on other party  
30 tickets and the marks for the candidates will cast a vote  
31 for them; or

32 (3) Write with ink or other means or affix a sticker or  
33 label or place an ink-stamped impression of the name of  
34 an official write-in candidate for an office for whom he or  
35 she desires to vote in the space designated for write-in  
36 votes for the particular voting system or for paper ballot

37 systems, write or place the name and office designation in  
38 any position on the face of the ballot which makes the  
39 intention of the voter clear as to both the office and the  
40 candidate chosen.

41 (c) If in marking either a straight or mixed ticket as  
42 above defined, a straight ticket voting position is marked,  
43 and also one or more marks are made for candidates on the  
44 same ticket for offices for which candidates on other party  
45 tickets are not individually marked, the marks before the  
46 name of candidate on the ticket so marked shall be treated  
47 as surplusage and ignored.

48 (d) When a voter casts a straight ticket vote and also  
49 writes in any name for an office, the straight ticket vote  
50 for that office shall be rejected, whether or not a vote can  
51 be counted for a write-in candidate.

52 (e) The secretary of state may proscribe devices for  
53 casting write-in votes which would cause mechanical  
54 difficulty with voting machines or electronic devices or  
55 which would obliterate or deface a paper ballot or any  
56 portion thereof, but the secretary of state shall preserve  
57 the right to vote by a write-in vote for those candidates  
58 who have filed and have been certified as official write-in  
59 candidates under the provisions of section four-a of this  
60 article.

61 (f) If the voter marks more names than there are persons  
62 to be elected to an office or if, for any reason, it is impossi-  
63 ble to determine the voter's choice for an office to be filled,  
64 the ballot shall not be counted for the office. The intention  
65 of the voter shall be deemed to be clear if the write-in vote  
66 cast for an office contains both the first and last name of  
67 an official write-in candidate for that office; and if no two  
68 official write-in candidates for that office share a first or  
69 last name, either the first name or last name alone shall be  
70 deemed to express the clear intention of the voter.

71 (g) Except as otherwise specifically provided in this  
72 chapter, no ballot shall be rejected for any technical error

73 which does not make it impossible to determine the voter's  
74 choice.

**§3-6-6. Ballot counting procedures in paper ballot systems.**

1 When the polls are closed in an election precinct where  
2 only a single election board has served, the receiving board  
3 shall perform all of the duties prescribed in this section.  
4 When the polls are closed in an election precinct where  
5 two election boards have served, both the receiving and  
6 counting boards shall together conclude the counting of  
7 the votes cast, the tabulating and summarizing of the  
8 number of the votes cast, unite in certifying and attesting  
9 to the returns of the election and join in making out the  
10 certificates of the result of the election provided for in this  
11 article. They shall not adjourn until the work is com-  
12 pleted.

13 In all election precincts, as soon as the polls are closed  
14 and the last voter has voted, the receiving board shall  
15 proceed to ascertain the result of the election in the  
16 following manner:

17 (a) In counties in which the clerk of the county commis-  
18 sion has determined that the absentee ballots should be  
19 counted at the precincts in which the absent voters are  
20 registered, the receiving board must first process the  
21 absentee ballots and deposit the ballots to be counted in  
22 the ballot box. The receiving board shall then proceed as  
23 provided in subsections (b) and (c) of this section. In  
24 counties in which the absentee ballots are counted at the  
25 central counting center, the receiving board shall proceed  
26 as provided in subsections (b) and (c) of this section.

27 (b) The receiving board shall ascertain from the  
28 pollbooks and record on the proper form the total number  
29 of voters who have voted. The number of ballots chal-  
30 lenged shall be counted and subtracted from the total, the  
31 result should equal the number of ballots deposited in the  
32 ballot box. The commissioners and clerks shall also

33 report, over their signatures, the number of ballots spoiled  
34 and the number of ballots not voted.

35 (c) The procedure for counting ballots, whether per-  
36 formed throughout the day by the counting board as  
37 provided in section thirty-three, article one of this chapter  
38 or after the close of the polls by the receiving board or by  
39 the two boards together, shall be as follows:

40 (1) The ballot box shall be opened and all votes shall be  
41 tallied in the presence of the entire election board;

42 (2) One of the commissioners shall take one ballot from  
43 the box at a time and shall determine if the ballot is  
44 properly signed by the two poll clerks of the receiving  
45 board. If not properly signed, the ballot shall be placed in  
46 an envelope for the purpose, without unfolding it. Any  
47 ballot which does not contain the proper signatures shall  
48 be challenged. If an accurate accounting is made for all  
49 ballots in the precinct in which the ballot was voted and  
50 no other challenge exists against the voter, the ballot shall  
51 be counted at the canvas. If properly signed, the commis-  
52 sioner shall hand the ballot to a team of commissioners of  
53 opposite politics, who shall together read the votes marked  
54 on the ballot for each office. Write-in votes for election  
55 for any person other than an official write-in candidate  
56 shall be disregarded. When a voter casts a straight ticket  
57 vote and also casts a write-in vote for an office, the  
58 straight ticket vote for that office shall be rejected  
59 whether or not a vote can be counted for a write-in  
60 candidate;

61 (3) The commissioner responsible for removing the  
62 ballots from the box shall keep a tally of the number of  
63 ballots as they are removed and whenever the number  
64 shall equal the number of voters entered on the pollbook  
65 minus the number of provisional ballots, as determined  
66 according to subsection (a) of this section, any other ballot  
67 found in the ballot box shall be placed in the same enve-  
68 lope with unsigned ballots not counted, without unfolding

69 the same or allowing anyone to examine or know the  
70 contents thereof, and the number of excess ballots shall be  
71 recorded on the envelope;

72 (4) Each poll clerk shall keep an accurate tally of the  
73 votes cast by marking in ink on tally sheets, which shall be  
74 provided for the purpose, so as to show the number of  
75 votes received by each candidate for each office and for  
76 and against each issue on the ballot; and

77 (5) When the reading of the votes is completed, the ballot  
78 shall be immediately strung on a thread.

**§3-6-7. Ballot irregularities; procedures.**

1 If two or more ballots are found folded or rolled together  
2 and the names voted for thereon be the same, one of them  
3 only shall be counted; but if the names voted for thereon  
4 be different, in any particular, neither of them shall be  
5 counted except as hereinbefore provided; and in either  
6 case, the commissioners of election shall, in writing in ink,  
7 place a common number on the ballots and state thereon  
8 that they were folded or rolled together when voted. If any  
9 ballot be found to contain more than the proper number of  
10 names for any office, the ballot shall not be counted as to  
11 the office. In any election for state senator, if a person is  
12 voted for on any ballot who is not a resident of the proper  
13 county, as required by section four, article VI of the  
14 constitution, the ballot shall not be counted for the office.  
15 Any ballot or part of a ballot from which it is impossible  
16 to determine the elector's choice of candidates shall not be  
17 counted as to the candidates affected thereby.

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

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



6 ties. They shall convene as the canvassing board at the  
7 courthouse on the fifth day (Sundays excepted) after every  
8 election held in their county, or in any district thereof, and  
9 the officers in whose custody the ballots, pollbooks,  
10 registration records, tally sheets and certificates have been  
11 placed shall lay them before the board for examination.  
12 They may, if considered necessary, require the attendance  
13 of any of the commissioners, poll clerks or other persons  
14 present at the election to appear and testify respecting the  
15 election and make other orders as shall seem proper to  
16 procure correct returns and ascertain the true results of  
17 the election in their county; but in this case all the ques-  
18 tions to the witnesses and all the answers thereto and  
19 evidence shall be taken down in writing and filed and  
20 preserved. All orders made shall be entered upon the  
21 record. They may adjourn, from time to time, but no  
22 longer than absolutely necessary. When a majority of the  
23 commissioners are not present, the meeting shall stand  
24 adjourned until the next day and so from day to day, until  
25 a quorum is present. All meetings of the commissioners  
26 sitting as a board of canvassers shall be open to the public.  
27 The board shall proceed to open each sealed package of  
28 ballots laid before them and, without unfolding them,  
29 count the number in each package and enter the number  
30 upon their record. The ballots shall then be again sealed  
31 up carefully in a new envelope and each member of the  
32 board shall write his or her name across the place where  
33 the envelope is sealed. After canvassing the returns of the  
34 election, the board shall publicly declare the results of the  
35 election; however, they shall not enter an order certifying  
36 the election results for a period of forty-eight hours after  
37 the declaration.

38 (b) Within the 48-hour period a candidate voted for at  
39 the election may demand the board to open and examine  
40 any of the sealed packages of ballots and recount them;  
41 but they shall seal the ballots again, along with the  
42 envelope above named, and the clerk of the county com-  
43 mission and each member of the board shall write his or

44 her name across the places where it is sealed and endorse  
45 in ink, on the outside: "Ballots of the election held at  
46 precinct No.\_\_\_\_, in the district of \_\_\_\_\_, and  
47 county of \_\_\_\_\_, on the \_\_\_\_\_ day of  
48 \_\_\_\_\_." In computing the 48-hour period as used  
49 in this section, Saturdays, Sundays and legal holidays  
50 shall be excluded: *Provided*, That at the end of the 48-hour  
51 period, an order shall be entered certifying all election  
52 results except for those offices in which a recount has been  
53 demanded.

54 (c) If a recount has been demanded, the board shall have  
55 an additional twenty-four hours after the end of the 48-  
56 hour period in which to send notice to all candidates who  
57 filed for the office in which a recount has been demanded  
58 of the date, time and place where the board will convene  
59 to commence the recount. The notice shall be served under  
60 the provisions of subdivision (d) of this section. The  
61 recount shall be set for no sooner than three days after the  
62 serving of the notice: *Provided*, That after the notice is  
63 served, candidates so served shall have an additional  
64 twenty-four hours in which to notify the board, in writing,  
65 of their intention to preserve their right to demand a  
66 recount of precincts not requested to be recounted by the  
67 candidate originally requesting a recount of ballots cast:  
68 *Provided, however*, That there shall be only one recount of  
69 each precinct, regardless of the number of requests for a  
70 recount of any precinct. A demand for the recount of  
71 ballots cast at any precinct may be made during the  
72 recount proceedings only by the candidate originally  
73 requesting the recount and those candidates who notify  
74 the board, pursuant to this subdivision, of their intention  
75 to preserve their right to demand a recount of additional  
76 precincts.

77 (d) Any sheriff of the county in which the recount is to  
78 occur shall deliver a copy thereof in writing to the candi-  
79 date in person; or if the candidate is not found, by deliver-  
80 ing the copy at the usual place of abode of the candidate

81 and giving information of its purport, to the spouse of the  
82 candidate or any other person found there who is a  
83 member of his or her family and above the age of sixteen  
84 years; or if neither the spouse of the candidate nor any  
85 other person be found there and the candidate is not  
86 found, by leaving the copy posted at the front door of the  
87 place of abode. Any sheriff, thereto required, shall serve  
88 a notice within his or her county and make return of the  
89 manner and time of service; for a failure so to do, he or she  
90 shall forfeit twenty dollars. The return shall be evidence  
91 of the manner and time of service.

92 (e) Every candidate who demands a recount shall be  
93 required to furnish bond in a reasonable amount with good  
94 sufficient surety to guarantee payment of the costs and the  
95 expenses of the recount in the event the result of the  
96 election is not changed by the recount; but the amount of  
97 the bond shall in no case exceed three hundred dollars.

98 (f) After the board of canvassers has made their certifi-  
99 cates and declared the results as hereinafter provided, they  
100 shall deposit the sealed packages of ballots, absent voter  
101 ballots, registration records, pollbooks, tally sheets and  
102 precinct certificates with the clerks of the county commis-  
103 sions and circuit courts from whom they were received,  
104 who shall carefully preserve them for twenty-two months:  
105 *Provided*, That the clerk may use these records to update  
106 the voter registration records in accordance with subsec-  
107 tion (d), section eighteen, article two of this chapter. If  
108 there is no contest pending as to any election and their  
109 further preservation is not required by any order of a  
110 court, the ballots, pollbooks, tally sheets and certificates  
111 shall be destroyed by fire or otherwise, without opening  
112 the sealed packages of ballots. If there is a contest pend-  
113 ing, they shall be destroyed as soon as the contest is ended.

114 (g) If the result of the election is not changed by the  
115 recount, the costs and expenses thereof shall be paid by the  
116 party at whose instance the recount was made.

**ARTICLE 7. CONTESTED ELECTIONS.****§3-7-1. Contests for state offices and judgeships; procedure.**

1 If the election of governor, secretary of state, treasurer,  
2 auditor, attorney general, commissioner of agriculture, a  
3 judge of the supreme court of appeals or a judge of a  
4 circuit court, is contested, the contestant shall give notice,  
5 with specifications and affidavit, to the person whose  
6 election is contested within ten days after the election is  
7 certified and within ten days thereafter the return notice  
8 shall be given to the contestant. The parties shall finish  
9 taking depositions within forty days after the notice is  
10 delivered. The depositions shall be transmitted to the  
11 clerk of the House of Delegates, to be delivered by him or  
12 her to the joint committee or special court hereinafter  
13 provided for. In other respects the regulations contained  
14 in this article respecting contests for a seat in the Legisla-  
15 ture shall be observed, so far as they are applicable.

**§3-7-4. Contests of seats in Legislature; notices and procedure.**

1 Any person intending to contest the election of another  
2 as senator or delegate shall, within ten days after the  
3 election is certified, give him or her notice thereof in  
4 writing and a list of the votes he or she will dispute, with  
5 the objections to each, and of the votes rejected for which  
6 he or she will contend. If the contestant objects to the  
7 legality of the election or the qualification of the person  
8 returned, the notice shall set forth the facts on which the  
9 objection is founded. The person whose election is con-  
10 tested shall, within ten days after receiving the notice,  
11 deliver to the contestant a like list of the votes he or she  
12 will dispute and of the objection to each, and of the  
13 rejected votes he or she will claim; and, if he or she has any  
14 objection to the qualification of the contestant, shall  
15 specify in the notice the facts on which the objection is  
16 founded. Each party shall append to the notice an affida-  
17 vit that the matters therein set forth, so far as they are  
18 stated of his or her knowledge, are true and that, so far as

19 they are stated on the information of others, he or she  
20 believes them to be true. If new facts are discovered by  
21 either party after he or she has given notice, he or she may  
22 give an additional notice or notices to his or her adversary,  
23 with specifications and affidavit as above prescribed.

24 The notice of contest shall be presented to the proper  
25 branch of the Legislature, within ten days after its meet-  
26 ing.

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

**§3-8-2. Accounts for receipts and expenditures in elections;  
requirements for reporting independent expendi-  
tures.**

1 (a) Except candidates for party committeemen and  
2 committeewomen, in primary and other elections and  
3 federal committees required to file under the provisions 2  
4 U. S. C. §434, all candidates for nomination or election and  
5 all persons or organizations of any kind advocating or  
6 opposing a nomination, election or defeat of any candidate  
7 shall keep records of receipts and expenditures which are  
8 made for political purposes. All of the receipts and  
9 expenditures are subject to regulation by the provisions of  
10 this article. Verified financial statements of the records  
11 and expenditures shall be made and filed as public records  
12 by all candidates and by their financial agents, representa-  
13 tives or any person acting for and on behalf of any candi-  
14 date and by the treasurers of all political party commit-  
15 tees.

16 (b) In addition to any other reporting required by the  
17 provisions of this chapter, any independent expenditure in  
18 the amount of one thousand dollars or more for any  
19 statewide, legislative or multicounty judicial candidate or  
20 in the amount of five hundred dollars or more for any  
21 county office, single-county judicial candidate, committee  
22 supporting or opposing a candidate on the ballot in more  
23 than one county, any municipal candidate on a municipal  
24 election ballot, which is made after the eleventh day but

25 more than twelve hours before the day of any election shall  
26 be reported, on a form prescribed by the secretary of state,  
27 within twenty-four hours after the expenditure is made or  
28 debt is incurred for a communication, to the secretary of  
29 state by hand-delivery, facsimile or other means to assure  
30 receipt by the secretary of state within the 24-hour period.

31 (c) For purposes of this section, "independent expendi-  
32 ture" means an expenditure made by a person other than  
33 a candidate or committee for a communication which  
34 expressly advocates the election or defeat of a clearly  
35 identified candidate but which is made independently of  
36 a candidate's campaign and which has not been made with  
37 the cooperation or consent of, or in consultation with, or  
38 at the request or suggestion of, any candidate or any of his  
39 or her agents or authorized committees. An expenditure  
40 which does not meet the criteria for independence estab-  
41 lished in this subsection is considered a contribution.

42 (d) Any independent expenditure must include a clear  
43 and conspicuous public notice which identifies the name  
44 of the person who paid for the expenditure and states that  
45 the communication is not authorized by the candidate or  
46 his or her committee.

**§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.**

1 (a) No person shall act as the treasurer of any political  
2 committee, or as financial agent for any candidate for  
3 nomination or election to any office to be filled by the  
4 voters of the entire state, or candidates for nomination or  
5 election for any office, encompassing an election district  
6 larger than a county, or candidates for nomination for  
7 legislative office, or any person or organization advocating  
8 or opposing the nomination, election or defeat of any  
9 candidate, encompassing an election district larger than a  
10 county, unless a written statement designating him or her  
11 as the treasurer or financial agent is filed with the secre-

12 tary of state at least twenty-eight days before the election  
13 at which he or she is to act and must be received before  
14 midnight, eastern standard time, of that day or if mailed,  
15 shall be postmarked before that hour: *Provided*, That a  
16 change of treasurer may be made at any time by filing a  
17 written statement with the secretary of state.

18 (b) No person shall act as treasurer of any committee or  
19 as financial agent for any candidate to be nominated or  
20 elected by the voters of a county or a district therein,  
21 except legislative candidates, or as the treasurer or  
22 financial agent for a candidate for the nomination or  
23 election to any other office, unless a written statement  
24 designating him or her as the treasurer or financial agent  
25 is filed with the clerk of the county commission at least  
26 twenty-eight days before the election at which he or she is  
27 to act and must be received before midnight, eastern  
28 standard time, of that day or if mailed, shall be post-  
29 marked before that hour: *Provided*, That a change of  
30 treasurer may be made at any time by filing a written  
31 statement with the clerk of the county commission.

32 (c) Notwithstanding the provisions of subsections (a) and  
33 (b) of this section, a filing designating a treasurer or  
34 financial agent for a state or county political executive  
35 committee may be made anytime before the committee  
36 either accepts or spends funds on behalf of the committee.  
37 Once a designation is made by a state or county political  
38 executive committee, no additional designations are  
39 required under this section until a successor treasurer or  
40 financial agent is designated. A state or county political  
41 executive committee may terminate a designation made  
42 pursuant to this section by making a written request to  
43 terminate the designation and by stating in the request  
44 that the committee has no funds remaining in the commit-  
45 tee's account. This written request shall be made with  
46 either the secretary of state or the clerk of the county  
47 commission as provided by subsections (a) and (b) of this  
48 section.

49 (d) As used in this article:

50 The term "person" means an individual, partnership,  
51 committee, association, corporation, and any other organi-  
52 zation or group of persons; and

53 The term "financial agent" means any person acting for  
54 and by himself or herself, or any two or more natural  
55 persons acting together or cooperating in a financial way  
56 to aid or take part in the nomination or election of any  
57 candidate for public office, or to aid or promote the  
58 success or defeat of any political party or principle at any  
59 election, or any proposition submitted to a vote at a public  
60 election.

**§3-8-5. Detailed accounts and verified financial statements  
required.**

1 (a) Every candidate, financial agent, person and associa-  
2 tion of persons, organization of any kind, including every  
3 corporation, directly or indirectly, supporting a political  
4 committee established pursuant to paragraph (C), subdivi-  
5 sion (1), subsection (b), section eight of this article or  
6 engaging in other activities permitted by this section and  
7 also including the treasurer or equivalent officer of the  
8 association or organization, advocating or opposing the  
9 nomination, election or defeat of any candidate, and the  
10 treasurer of every political party committee shall keep  
11 detailed accounts of every sum of money or other thing of  
12 value received by him or her, including all loans of money  
13 or things of value, and of all expenditures and disburse-  
14 ments made, liabilities incurred, by the candidate, finan-  
15 cial agent, person, association or organization or commit-  
16 tee, for political purposes, or by any of the officers or  
17 members of the committee, or any person acting under its  
18 authority or on its behalf.

19 (b) Every person or association of persons required to  
20 keep detailed accounts under this section shall file with  
21 the officers hereinafter prescribed a detailed itemized



22 sworn statement, according to the following provisions  
23 and times:

24 (1) On the last Saturday in March or within six days  
25 thereafter, and annually whenever the total of all financial  
26 transactions relating to an election exceed five hundred  
27 dollars a statement which shall include all financial  
28 transactions which have taken place by the date of that  
29 statement, subsequent to any previous statement filed  
30 within the previous five years under this section;

31 (2) Not less than ten nor more than seventeen days  
32 preceding each primary or other election, a statement  
33 which shall include all financial transactions which have  
34 taken place by the date of the statement, subsequent to the  
35 previous statement, if any;

36 (3) Not less than twenty-five nor more than thirty-one  
37 days after each primary or other election, a statement  
38 which shall include all financial transactions which have  
39 taken place by the date of the statement, subsequent to the  
40 previous statement; and

41 (4) On the first Saturday in September or within six days  
42 thereafter, preceding the general election day whenever  
43 the total of all financial transactions relating to an elec-  
44 tion exceed five hundred dollars or whenever any loans are  
45 outstanding, a statement which shall include all financial  
46 transactions which have taken place by the date of the  
47 statement, subsequent to the previous statement.

48 (c) Every person who shall announce as a write-in  
49 candidate for any elective office and his or her financial  
50 agent or election organization of any kind shall comply  
51 with all of the requirements of this section after public  
52 announcement of the person's candidacy has been made.

53 (d) For purposes of this section, the term "financial  
54 transactions" includes all contributions or loans received  
55 and all repayments of loans or expenditures made to  
56 promote the candidacy of any person by any candidate or

57 any organization advocating or opposing the nomination,  
58 election or defeat of any candidate to be voted on.

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.**

1 (a) No person may publish, issue or circulate, or cause to  
2 be published, issued or circulated, any anonymous letter,  
3 circular, placard, radio or television advertisement or  
4 other publication expressly advocating the election or  
5 defeat of a clearly identified candidate.

6 (b) No owner, publisher, editor or employee of a newspa-  
7 per or other periodical may insert, either in its advertising  
8 or reading columns, any matter, paid for or to be paid for,  
9 which tends to influence the voting at any election, unless  
10 directly designating it as a paid advertisement and stating  
11 the name of the person authorizing its publication and the  
12 candidate in whose behalf it is published.

13 (c) No person may, in any room or building occupied for  
14 the discharge of official duties by any officer or employee  
15 of the state or a political subdivision of the state, solicit  
16 orally or by written communication delivered within the  
17 room or building, or in any other manner, any contribution  
18 of money or other thing of value for any party or political  
19 purpose, from any postmaster or any other officer or  
20 employee of the federal government, or officer or employee  
21 of the state, or a political subdivision of the state. No  
22 officer, agent, clerk or employee of the federal govern-  
23 ment, or of this state, or any political subdivision of the  
24 state, who may have charge or control of any building,  
25 office or room, occupied for any official purpose, may  
26 knowingly permit any person to enter any building, office  
27 or room, occupied for any official purpose for the purpose  
28 of soliciting or receiving any political assessments from, or

29 delivering or giving written solicitations for, or any notice  
30 of, any political assessments to, any officer or employee of  
31 the state, or a political subdivision of the state.

32 (d) Except as provided in section eight of this article, no  
33 person entering into any contract with the state or its  
34 subdivisions, or any department or agency of the state,  
35 either for rendition of personal services or furnishing any  
36 material, supplies or equipment or selling any land or  
37 building to the state, or its subdivisions, or any depart-  
38 ment or agency of the state, if payment for the perfor-  
39 mance of the contract or payment for the material, sup-  
40 plies, equipment, land or building is to be made, in whole  
41 or in part, from public funds may, during the period of  
42 negotiation for or performance under the contract or  
43 furnishing of materials, supplies, equipment, land or  
44 buildings, directly or indirectly, make any contribution to  
45 any political party, committee or candidate for public  
46 office or to any person for political purposes or use; nor  
47 may any person or firm solicit any contributions for any  
48 purpose during any period.

49 (e) No person may, directly or indirectly, promise any  
50 employment, position, work, compensation or other benefit  
51 provided for, or made possible, in whole or in part, by act  
52 of the Legislature, to any person as consideration, favor or  
53 reward for any political activity for the support of or  
54 opposition to any candidate, or any political party in any  
55 election.

56 (f) No person may, directly or indirectly, make any  
57 contribution in excess of the value of one thousand dollars  
58 in connection with any campaign for nomination or  
59 election to or on behalf of any statewide or national  
60 elective office, or in excess of the value of one thousand  
61 dollars, in connection with any other campaign for nomi-  
62 nation or election to or on behalf of any other elective  
63 office in the state or any of its subdivisions, or in connec-  
64 tion with or on behalf of any committee or other organiza-  
65 tion or person engaged in furthering, advancing or advo-

66 cating the nomination or election of any candidate for any  
67 of the offices.

68 (g) (1) Notwithstanding the provisions of subsection (f)  
69 of this section to the contrary, the aggregate contributions  
70 made to a state party executive committee or state party  
71 legislative caucus committee are to be permitted only  
72 pursuant to the limitations imposed by the provisions of  
73 this subsection.

74 (2) No person may, directly or indirectly, make contribu-  
75 tions to a state party executive committee or state party  
76 legislative caucus committee which, in the aggregate,  
77 exceed the value of one thousand dollars in any calendar  
78 year.

79 (h) The limitations on contributions contained in this  
80 section do not apply to transfers between and among a  
81 state party executive committee or a state party's legisla-  
82 tive caucus political committee from national committees  
83 of the same political party: *Provided*, That transfers  
84 permitted by this subsection may not exceed fifty thou-  
85 sand dollars in the aggregate in any calendar year to any  
86 state party executive committee or state party legislative  
87 caucus political committee: *Provided, however*, That the  
88 moneys transferred may only be used for voter registration  
89 and get-out-the-vote activities of the state committees.

90 (i) No person may solicit any contribution from any  
91 nonelective salaried employee of the state government or  
92 of any of its subdivisions or coerce or intimidate any  
93 nonelective salaried employee into making a contribution.  
94 No person may coerce or intimidate any nonsalaried  
95 employee of the state government or any of its subdivi-  
96 sions into engaging in any form of political activity. The  
97 provisions of this subsection may not be construed to  
98 prevent any employee from making a contribution or from  
99 engaging in political activity voluntarily, without coer-  
100 cion, intimidation or solicitation.

101 (j) No person may solicit a contribution from any other  
102 person without informing the other person at the time of  
103 the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any  
104 other person will receive or expect to receive as a direct  
105 result of the contribution being successfully collected.  
106 Nothing in this subsection may be construed to apply to  
107 solicitations of contributions made by any person serving  
108 as an unpaid volunteer.  
109

110 (k) No person may place any letter, circular, flyer,  
111 advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence  
112 voting at any election in a roadside receptacle unless it is:  
113 (1) Approved for placement into a roadside receptacle by  
114 the business or entity owning the receptacle; and (2)  
115 contains a written acknowledgment of the approval. This  
116 subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed  
117 by the owner of the receptacle. The term "roadside  
118 receptacle" means any container placed by a newspaper or  
119 periodical business or entity to facilitate home or personal  
120 delivery of a designated newspaper or periodical to its  
121 customers.  
122  
123

124 (l) Any person violating any provision of this section is  
125 guilty of a misdemeanor and, upon conviction thereof,  
126 shall be fined not more than one thousand dollars, or  
127 confined in a regional or county jail for not more than one  
128 year, or, in the discretion of the court, be subject to both  
129 fine and confinement.

#### **ARTICLE 10. FILLING VACANCIES.**

##### **§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.**

1 Any vacancy in the office of county commissioner or  
2 clerk of county commission shall be filled by the county  
3 commission of the county, unless the number of vacancies  
4 in a county commission deprive that body of a quorum, in

5 which case the governor of the state shall fill any vacancy  
6 in the county commission necessary to create a quorum  
7 thereof. Persons appointed shall be of the same political  
8 party as the officeholder vacating the office and shall  
9 continue in office until the next general election is certi-  
10 fied, or until the completion of the term if the term ends on  
11 the thirty-first day of December following the next general  
12 election: *Provided*, That in the event a quorum of the  
13 county commission cannot agree upon a person to fill a  
14 vacancy in the office of county commissioner it shall be  
15 the mandatory, nondiscretionary duty of each county  
16 commissioner, within sixty days from the date the vacancy  
17 occurs, to submit in person to the chief judge of the circuit  
18 court of the county, the name of one person who is a  
19 member of the same political party as was the person  
20 whose vacancy is being filled and was such member for at  
21 least one year next preceding the filling of the vacancy and  
22 who is legally qualified and willing to fill the vacancy.  
23 The judge shall thereupon, in the presence of the quorum  
24 of the county commission, cause each name to be written  
25 on a separate piece of paper, shall fold or roll up the pieces  
26 of paper so as to resemble each other and so that the name  
27 written thereon shall not be visible on the outside, and  
28 shall deposit the pieces of paper in a box from which one  
29 of the county commissioners, selected by lot under the  
30 supervision of the judge, shall, in the presence of each  
31 other and the judge, draw one of the names. The person  
32 whose name is so drawn shall be the county commission's  
33 choice to fill the vacancy. The circuit court shall have  
34 jurisdiction to compel compliance with the provisions of  
35 this proviso.

36 Notice of the election shall be given by order of the  
37 county commission and published as prescribed in section  
38 six of this article. Nomination of candidates to fill the  
39 office for an unexpired term in the office of county  
40 commissioner or clerk of the county commission shall be  
41 made in the manner prescribed for making nominations to  
42 fill a vacancy in the office of the clerk of the circuit court.

43 In the event that the election for an unexpired term is  
44 held at the same time as the election for a full term for  
45 county commissioner, the full term shall be counted first  
46 and the unexpired term shall be counted second. If the  
47 candidate with the highest number of votes for the unex-  
48 pired term resides in the same magisterial district as the  
49 candidate with the highest number of votes for the full  
50 term, the candidate for the full term shall be seated. The  
51 candidate with the next highest number of votes for the  
52 unexpired term residing in a different magisterial district  
53 shall be seated for the unexpired term.

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,  
assessor and surveyor.**

1 Any vacancy occurring in the office of prosecuting  
2 attorney, sheriff, assessor or county surveyor shall be filled  
3 by the county commission by appointment of a person of  
4 the same political party as the officeholder vacating the  
5 office. The appointed person shall hold the office until the  
6 next general election is certified, or until the completion of  
7 the term if the term ends on the thirty-first day of Decem-  
8 ber following the next general election. Notice of an  
9 election to fill a vacancy in any of the offices named in this  
10 section shall be given by the county commission, or by the  
11 president thereof in vacation, and published or posted in  
12 the manner prescribed in section six of this article.  
13 Nomination of candidates to fill any vacancy shall be  
14 made in the manner prescribed in section six of this article  
15 for nominating candidates to fill a vacancy in the office of  
16 the clerk of the circuit court.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 6. ANNEXATION.**

**PART II. ANNEXATION BY ELECTION.**

**§8-6-2. Petition for annexation.**

1 (a) Five percent or more of the freeholders of a munici-  
2 pality desiring to have territory annexed thereto may file

3 a petition in writing with the governing body thereof  
4 setting forth the change proposed in the metes and bounds  
5 of the municipality and asking that a vote be taken upon  
6 the proposed change. The petition shall be verified and  
7 shall be accompanied by an accurate survey map showing  
8 the territory to be annexed to the corporate limits by the  
9 proposed change.

10 (b) The petitioners shall obtain a surety bond in an  
11 amount set by the governing body sufficient to cover the  
12 cost of the election. The bond shall be forfeited if a  
13 majority of the votes cast are against the proposed annex-  
14 ation.

15 (c) The governing body shall, upon receipt of the bond,  
16 order a vote of the qualified voters of the municipality to  
17 be taken upon the proposed annexation on a date and at a  
18 time and place to be named in the order.

19 (d) The governing body shall, at the same time, order a  
20 vote of all of the qualified voters of the additional territory  
21 and of all of the freeholders of the additional territory  
22 whether they reside or have a place of business therein or  
23 not, to be taken upon the question on the same day at some  
24 convenient place in or near the additional territory.

25 (e) The governing body shall cause the order for the  
26 election to be published, at the cost of the municipality, as  
27 a Class II-0 legal advertisement in compliance with the  
28 provisions of article three, chapter fifty-nine of this code.  
29 The publication area is the municipality and the additional  
30 territory. The first publication must be at least fourteen  
31 days prior to the date upon which the vote is to be taken.  
32 The order for the election shall contain an accurate  
33 description by metes and bounds of the additional terri-  
34 tory proposed to be annexed to the corporate limits by the  
35 proposed change, a summary of the municipality's plan for  
36 providing services to the additional territory and, if  
37 practicable, shall also contain a popular description of the  
38 additional territory.



39 (f) The election shall be held, superintended and con-  
40 ducted and the results thereof ascertained, certified,  
41 returned and canvassed in the same manner by the same  
42 individuals as elections for municipal officers. The  
43 election is reviewable by the circuit court of the county in  
44 which the municipality or the major portion thereof,  
45 including the area proposed to be annexed, is located. The  
46 order may be reviewed by the circuit court as an order of  
47 a county commission ordering an election may be reviewed  
48 under section sixteen, article five of this chapter.

49 (g) The ballots, or ballot labels where voting machines  
50 are used, shall have written or printed on them the words:

51  For Annexation

52  Against Annexation

53 (h) Any freeholder which is a firm or corporation may  
54 vote by its manager, president or executive officer duly  
55 designated in writing by the firm or corporation.

56 (i) An individual who is a qualified voter and freeholder  
57 of the municipality or the additional territory shall be  
58 entitled to vote only once.

59 (j) For purposes of this section, the term "qualified voter  
60 of the additional territory" includes a firm or corporation  
61 in the additional territory regardless of whether the firm  
62 or corporation is a freeholder. A firm or corporation may  
63 vote by its manager, president, or executive officer duly  
64 designated in writing by the firm or corporation. In any  
65 instance where a freeholder leases or rents real property to  
66 a firm or corporation the freeholder and the firm or  
67 corporation shall determine which entity will be entitled  
68 to vote in the annexation election.

69 (k) When an election is held in any municipality in  
70 accordance with the provisions of this section, another  
71 election relating to the same proposed change or any part  
72 thereof shall not be held for a period of one year.

73 (1) If a majority of all of the legal votes cast in the  
74 municipality and a majority of all the legal votes cast in  
75 the territory are in favor of the proposed annexation, then  
76 the governing body shall proceed as specified in the  
77 immediately succeeding section of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Carly Wine*  
.....  
Chairman Senate Committee

*Shawn Spencer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell E. G. He*  
.....  
Clerk of the Senate

*Bryon D. Soy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert Skiss*  
.....  
Speaker House of Delegates

The within *is approved* this the *15<sup>th</sup>*  
Day of *April*, 2003.

*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10 am