

SB 449

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 449

(By Senator Kessler, et al)

PASSED February 23, 2004

In Effect from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 449

(BY SENATORS KESSLER, CALDWELL, FANNING, HUNTER,
JENKINS, MINARD, OLIVERIO, ROSS, ROWE, SNYDER, WHITE,
DEEM, HARRISON, MCKENZIE, SMITH AND WEEKS)

[Passed February 23, 2004; in effect from passage.]

AN ACT to amend and reenact §3-2-10 of the code of West Virginia, 1931, as amended; to amend and reenact §3-4-3 of said code; to amend and reenact §3-4A-3 of said code; to amend and reenact §3-5-8, §3-5-13 and §3-5-13a of said code; and to amend and reenact §3-8-7 of said code, all relating to elections generally; correcting United States code reference; authorizing county commissions to discontinue use of voting machines and replace them with other systems meeting certain federal requirements under certain circumstances; reducing the filing fee for presidential and vice presidential candidates; clarifying that the filing fee for certain county offices is based only on the annual salary of the position; adding family court judge to list of offices on county ballot; and removing the requirement that ballots be printed with space for ballot commissioners' signatures.

Be it enacted by the Legislature of West Virginia:

That §3-2-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-3 of said code be amended and reenacted; that §3-4A-3 of said code be amended and reenacted; that §3-5-8, §3-5-13 and §3-5-13a of said code be amended and reenacted; and that §3-8-7 of said code be amended and reenacted, all to read as follows:

§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
61 forms of identification to the secretary of state or clerk of
62 the 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) of this section, may cast a provisional ballot.

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

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

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

94 (3) Who is: (A) Entitled to vote by absentee ballot under
95 42 U. S. C. §1973ff-1, *et seq.*, the Uniformed and Overseas
96 Citizens Absentee Voting Act; (B) provided the right to
97 vote otherwise than in person under 42 U. S. C.

98 §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the
99 Voting Accessibility for the Elderly and Handicapped Act;
100 (C) entitled to vote otherwise than in person under any
101 other federal law: *Provided*, That any person who has
102 applied for an absentee ballot pursuant to the provisions
103 of subdivision (1), subsection (b), section one, article three
104 of this chapter; paragraph (B), subdivision (2) of said
105 subsection; subdivision (3) of said subsection; or subsection
106 (c) of said section shall not have his or her ballot in that
107 election challenged for failure to appear in person or for
108 failure to present identification.

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

§3-4-3. Procedures for terminating use of voting machines.

1 The county commission may discontinue the use of
2 voting machines and replace them with a different voting
3 system meeting the requirements of "The Help America
4 Vote Act of 2002", 42 U. S. C. 15302, *et seq.*, six months
5 prior to a primary or general election by majority vote of
6 the commission.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system that has been approved in
2 accordance with section eight of this article may be
3 adopted for use in general, primary and special elections
4 in any county by the following procedure and not other-
5 wise:

6 By a majority of the members of the county commission
7 voting to adopt the same at a public meeting called for
8 that purpose, with notice thereof published as a Class II-0
9 legal advertisement in compliance with the provisions of

10 article three, chapter fifty-nine of this code. The publica-
11 tion area for such publication shall be the county involved.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination
2 for or election to office in any primary election shall, at
3 the time of filing the certificate of announcement as
4 required in this article, pay a filing fee as follows:

5 (a) A candidate for president of the United States, for
6 vice president of the United States, for United States
7 senator, for member of the United States House of Repre-
8 sentatives, for governor and for all other state elective
9 offices shall pay a fee equivalent to one percent of the
10 annual salary of the office for which the candidate an-
11 nounces: *Provided*, That the filing fee for any candidate
12 for president or vice president of the United States shall
13 not exceed two thousand five hundred dollars commencing
14 with the two thousand four filing period;

15 (b) A candidate for the office of judge of a circuit court
16 and judge of a family court shall pay a fee equivalent to
17 one percent of the total annual salary of the office for
18 which the candidate announces;

19 (c) A candidate for member of the House of Delegates
20 shall pay a fee of one-half percent of the total annual
21 salary of the office and a candidate for state senator shall
22 pay a fee of one percent of the total annual salary of the
23 office;

24 (d) A candidate for sheriff, prosecuting attorney, circuit
25 clerk, county clerk, assessor, member of the county
26 commission and magistrate shall pay a fee equivalent to
27 one percent of the annual salary, excluding any additional
28 compensation or commission of the office for which the
29 candidate announces. A candidate for county board of
30 education shall pay a fee of twenty-five dollars. A candi-
31 date for any other county office shall pay a fee of ten
32 dollars;

33 (e) Delegates to the national convention of any political
34 party shall pay the following filing fees:

35 A candidate for delegate-at-large shall pay a fee of
36 twenty dollars; and a candidate for delegate from a
37 congressional district shall pay a fee of ten dollars;

38 (f) Candidates for members of political executive com-
39 mittees and other political committees shall pay the
40 following filing fees:

41 A candidate for member of a state executive committee
42 of any political party shall pay a fee of twenty dollars; a
43 candidate for member of a county executive committee of
44 any political party shall pay a fee of ten dollars; and a
45 candidate for member of a congressional, senatorial or
46 delegate district committee of any political party shall pay
47 a fee of five dollars.

48 Candidates filing for an office to be filled by the voters
49 of one county shall pay the filing fee to the clerk of the
50 circuit court and candidates filing for an office to be filled
51 by the voters of more than one county shall pay the filing
52 fee to the secretary of state at the time of filing their
53 certificates of announcement and no certificate of an-
54 nouncement shall be received until the filing fee is paid.

55 All moneys received by such clerk from such fees shall be
56 credited to the general county fund. Moneys received by
57 the secretary of state from fees paid by candidates for
58 offices to be filled by all the voters of the state shall be
59 deposited in a special fund for that purpose and shall be
60 apportioned and paid by him to the several counties on the
61 basis of population and that received from candidates
62 from a district or judicial circuit of more than one county
63 shall be apportioned to the counties comprising the district
64 or judicial circuit in like manner. When such moneys are
65 received by sheriffs, it shall be credited to the general
66 county fund.

§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
73 eight-point type on the ballot for the appropriate pre-
74 cincts. Subject to the rules promulgated by the secretary

75 of state, the name of each candidate is to appear in the
76 form set out by the candidate on the certificate of an-
77 nouncement, but in no case may the name misrepresent the
78 identity of the candidate nor may the name include any
79 title, position, rank, degree or nickname implying or
80 inferring any status as a member of a class or group or
81 affiliation with any 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) The face of sample paper ballots and sample ballot
142 labels are to be like other official ballots or ballot labels
143 except that the word "sample" is to be prominently
144 printed across the front of the ballot in a manner that
145 ensures the names of candidates are not obscured and the

146 word "sample" may be printed in red ink. No printing
147 may be placed on the back of the sample.

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

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

8 NATIONAL TICKET: President (and vice president in the
9 general election), United States senator, member of the
10 United States house of representatives

11 STATE TICKET: Governor, secretary of state, auditor,
12 treasurer, commissioner of agriculture, attorney general,
13 justice of the supreme court of appeals, state senator,
14 member of the house of delegates, circuit judge in
15 multicounty districts, family court judge in multicounty
16 districts, any other multicounty office, state executive
17 committee

18 COUNTY TICKET: Circuit judge in single-county districts,
19 family court judge in single-county districts, clerk of the
20 circuit court, county commissioner, clerk of the county
21 commission, prosecuting attorney, sheriff, assessor,
22 magistrate, surveyor, congressional district executive
23 committee, senatorial district executive committee in
24 multicounty districts, delegate district executive commit-
25 tee in multicounty districts

26 NATIONAL CONVENTION: Delegate to the national
27 convention – at-large, delegate to the national convention
28 – congressional district

29 DISTRICT TICKET: County executive committee.

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

34 (1) On the fourth Tuesday following the close of the
35 candidate filing, beginning at nine o'clock a. m., a drawing
36 by lot shall be conducted in the office of the clerk of the
37 circuit court in each county. Notice of the drawing shall
38 be given on the form for the certificate of announcement
39 and no further notice shall be required. The clerk of the
40 circuit court shall superintend and conduct the drawing
41 and the method of conducting the drawing shall be
42 prescribed by the secretary of state.

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

50 (3) Candidates for delegate to national convention who
51 have filed a commitment to a candidate for president shall
52 be listed alphabetically within the group of candidates
53 committed to the same candidate for president and
54 uncommitted candidates shall be listed alphabetically in
55 an uncommitted category. The position of each group of
56 committed candidates and uncommitted candidates shall
57 be determined by lot by drawing the names of the presi-
58 dential candidates and for an uncommitted category.

59 (4) A candidate or the candidate's representative may
60 attend the drawings.

**§3-8-7. Failure to file statement; delinquent or incomplete
filing; criminal and civil penalties.**

1 (a) Any candidate, financial agent or treasurer of a
2 political party committee who fails to file a sworn, item-

3 ized statement within the time limitations specified in this
4 article or who willfully files a grossly incomplete or
5 grossly inaccurate statement shall be guilty of a misde-
6 meanor and, upon conviction thereof, shall be fined not
7 less than five hundred dollars or imprisoned in the county
8 jail for not more than one year, or both, in the discretion
9 of the court. Forty days after any such primary or other
10 election, the secretary of state, or county clerk, or municipi-
11 pal recorder, as the case may be, shall give notice of any
12 failure to file such sworn statement or the filing of any
13 grossly incomplete or grossly inaccurate statement by any
14 candidate, financial agent or treasurer of a political party
15 committee and forward copies of any grossly incomplete
16 or grossly inaccurate statement to the prosecuting attorney
17 of the county where such candidate, agent or treasurer
18 resides.

19 (b) (1) Any candidate, financial agent or treasurer of a
20 political party committee who fails to file a sworn, item-
21 ized statement as provided in this article or who files a
22 grossly incomplete or grossly inaccurate statement may be
23 assessed a civil penalty by the secretary of state of
24 twenty-five dollars a day for each day after the due date
25 the statement is delinquent, grossly incomplete or grossly
26 inaccurate. Forty days after any such primary or other
27 election the county clerk shall give notice to the secretary
28 of state of any failure to file such sworn statement or the
29 filing of any grossly incomplete or grossly inaccurate
30 statement by any candidate, financial agent or treasurer of
31 a political party committee and forward copies of such
32 delinquent, incomplete or inaccurate statements to the
33 secretary of state.

34 (2) A civil penalty assessed pursuant to the provisions of
35 this section shall be payable to the state of West Virginia
36 and is collectable in any manner authorized by law for the
37 collection of debts.

38 (3) The secretary of state may negotiate and enter into
39 settlement agreements for the payment of civil penalties

40 assessed as a result of the filing of a delinquent, grossly
41 incomplete or inaccurate statement.

42 (4) The secretary of state and county clerk may review
43 and audit any sworn statement required to be filed pursu-
44 ant to the provisions of this article. The state election
45 commission shall propose legislative rule for promulga-
46 tion, in accordance with the provisions of chapter
47 twenty-nine-a of this code, to establish procedures for the
48 assessment of civil penalties as provided in this section.

49 (c) No candidate nominated at a primary election who
50 has failed to file a sworn statement, as required by the
51 provisions of this article, shall have his name placed on the
52 official ballot for the ensuing election, unless there has
53 been filed by or on behalf of such candidate, or by his
54 financial agent, if any, the financial statement relating to
55 nominations required by this article. It is unlawful to
56 issue a commission or certificate of election, or to adminis-
57 ter the oath of office, to any person elected to any public
58 office who has failed to file a sworn statement as required
59 by the provisions of this article and no such person may
60 enter upon the duties of his office until he has filed such
61 statement, nor may he receive any salary or emolument for
62 any period prior to the filing of such statement.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *2nd*
Day of *March*, 2004.

[Signature]
.....
Governor

PRESENTED TO
GOVERNOR

Date 2/26/04

Time 2:45 PM