

1 ENGROSSED

2 **Senate Bill No. 613**

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

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported February 28, 2011.]
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10 A BILL to repeal §3-3-3a of the Code of West Virginia, 1931, as
11 amended; to amend and reenact §3-1-9, §3-1-21, §3-1-31, §3-1-
12 34, §3-1-35 and §3-1-50 of said code; to amend and reenact §3-
13 3-1, §3-3-2, §3-3-2b, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b
14 and §3-3-6 of said code; to amend and reenact §3-5-7, §3-5-13a,
15 §3-5-21, §3-5-23 and §3-5-24 of said code; to amend and
16 reenact §3-6-4a of said code; to amend and reenact §3-8-1a and
17 §3-8-5a of said code; to amend and reenact §3-9-6 of said
18 code; to amend and reenact §8-5-14 of said code; and to amend
19 and reenact §59-3-3 of said code, all relating to the state
20 election code; eliminating obsolete and outdated language;
21 reducing the days for early voting in person from twenty to
22 thirteen; allowing Saturday early voting in all elections;
23 clarifying that candidates must be a member of political party
24 for sixty days prior to filing; clarifying the authority for
25 persons to lawfully assist voters; bringing state law into

1 compliance with federal requirements; clarifying persons
2 eligible to receive absentee ballots; providing that
3 independent and unaffiliated voters may receive party ballots
4 if party allows participation in the primary; requiring all
5 health-related information provided in connection with
6 absentee voting is protected under the Health Insurance
7 Portability and Accountability Act of 1996; waiving certain
8 witness requirements if ballot provided electronically;
9 clarifying current municipal election polling hours of
10 operation; authorizing absentee ballot applications may be
11 completed by handwriting or typing; clarifying procedures for
12 federal postcard registration and absentee ballot requests;
13 providing for federal write-in absentee ballots; revising
14 ballot requirements relating to independent voters; providing
15 that county clerk will submit ballot information to the
16 Secretary of State after random drawing for ballot position;
17 providing that offices filled by voters of more than one
18 county must file certificate of announcement with the
19 Secretary of State; providing certificates of announcement of
20 every office to be submitted no later than the forty-ninth day
21 before the election; providing definitions; clarifying persons
22 who may be present during election; and clarifying penalties.

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

24 That §3-3-3a of the Code of West Virginia, 1931, as amended,
25 be repealed; that §3-1-9, §3-1-21, §3-1-31, §3-1-34, §3-1-35 and
26 §3-1-50 of said code be amended and reenacted; that §3-3-1, §3-3-2,

1 §3-3-2b, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b and §3-3-6 of
2 said code be amended and reenacted; that §3-5-7, §3-5-13a, §3-5-21,
3 §3-5-23 and §3-5-24 of said code be amended and reenacted; that §3-
4 6-4a of said code be amended and reenacted; that §3-8-1a and §3-8-
5 5a of said code be amended and reenacted; that §3-9-6 of said code
6 be amended and reenacted; that §8-5-14 of said code be amended and
7 reenacted; and that §59-3-3 of said code be amend and reenacted,
8 all to read as follows:

9 **CHAPTER 3. ELECTIONS.**

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

11 **§3-1-9. Political party committees; how composed; organization.**

12 (a) Every fourth year at the primary election, the voters of
13 each political party in each state senatorial district shall elect
14 four members consisting of two male members and two female members
15 of the state executive committee of the party. In state senatorial
16 districts containing two or more counties, not more than two
17 elected committee members shall be residents of the same county:
18 *Provided*, That at each election the votes shall be tallied from
19 highest to lowest without regard to gender or county of residence.
20 The two candidates with the highest votes shall be elected first
21 and the other candidates shall be qualified based on vote tallies,
22 gender and county of residence. Upon completion of the canvass,
23 the clerk of the county commission from each county shall send the
24 results of the election of members of each state executive
25 committee and certificates of announcement, if any, to the
26 Secretary of State. Upon certification of the election results,

1 the Secretary of State shall make known to each state executive
2 committee the members elected to such committee and the vacancies,
3 if any. The committee, when convened and organized as herein
4 provided, shall appoint three additional members of the committee
5 from the state at large which shall constitute the entire voting
6 membership of the state executive committee. ~~Provided, however,~~
7 ~~That if~~ If it chooses to do so, the committee may, by motion or
8 resolution and in accordance with party rules, ~~may~~ expand the
9 voting membership of the committee. When senatorial districts are
10 realigned following a decennial census, members of the state
11 executive committee previously elected or appointed ~~shall~~ continue
12 in office until the expiration of their terms. Appointments made
13 to fill vacancies on the committee until the next election of
14 executive committee members shall be selected from the previously
15 established districts. At the first election of executive
16 committee members following the realignment of senatorial
17 districts, members shall be elected from the newly established
18 districts.

19 (b) At the primary election, the voters of each political
20 party in each county shall elect one male and one female member of
21 the party's executive committee of the congressional district, of
22 the state senatorial district and of the delegate district in which
23 the county is situated if the county is situated in a multicounty
24 state senatorial or delegate district. Upon completion of the
25 canvass, the clerk of the county commission from each county shall
26 send the results of the election of members of each congressional

1 district, state senatorial district and delegate district executive
2 committee of each party to the Secretary of State. Upon
3 certification of the election results, the Secretary of State shall
4 make known to each state executive committee the members elected to
5 each congressional district, state senatorial district and delegate
6 district executive committee and the vacancies, if any. Upon
7 receipt, the state executive committee shall make known any
8 vacancies to the applicable county executive committee for the
9 purpose of filling said vacancies as provided in subsection (f) of
10 this section. When districts are realigned following a decennial
11 census, members of an executive committee previously elected in a
12 county to represent that county in a congressional or multicounty
13 senatorial or delegate district executive committee ~~shall~~ continue
14 to represent that county in the appropriate newly constituted
15 multicounty district until the expiration of their terms.
16 ~~Provided, That the~~ The county executive committee of the political
17 party shall determine which previously elected members will
18 represent the county if the number of multicounty state senatorial
19 or delegate districts in the county is decreased and shall appoint
20 members to complete the remainder of the term if the number of
21 districts is increased.

22 (c) At the same time the voters of the county in each
23 magisterial district or executive committee district, as the case
24 may be, shall elect one male and one female member of the party's
25 county executive committee except that in counties having three
26 executive committee districts, there shall be elected two male and

1 two female members of the party's executive committee from each
2 magisterial or executive committee district. Upon completion of
3 the canvass, the clerk of the county commission from each county
4 shall send the results of the election of members of the county
5 executive committee of each party along with the certificates of
6 announcement to the Secretary of State. Upon certification of the
7 election results, the Secretary of State shall make known to each
8 state executive committee the members elected to the county
9 committee and the vacancies, if any. Upon receipt, the state
10 executive committee shall make known any vacancies to the
11 applicable county executive committee for the purpose of filling
12 said vacancies as provided in subsection (f) of this section.

13 (d) For the purpose of complying with the provisions of this
14 section, the county commission shall create the executive committee
15 districts. The districts shall not be fewer than the number of
16 magisterial districts in the county nor shall they exceed in number
17 the following: Forty for counties having a population of one
18 hundred thousand persons or more; thirty for counties having a
19 population of fifty thousand to one hundred thousand; twenty for
20 counties having a population of twenty thousand to fifty thousand;
21 and the districts in counties having a population of less than
22 twenty thousand persons shall be coextensive with the magisterial
23 districts.

24 (e) The executive committee districts shall be as nearly equal
25 in population as practicable and shall each be composed of compact,
26 contiguous territory. The county commissions shall change the

1 territorial boundaries of the districts as required by the increase
2 or decrease in the population of the districts as determined by a
3 decennial census. The changes must be made within two years
4 following the census.

5 (f) All members of executive committees, selected for each
6 political division as herein provided, shall reside within the
7 county or district from which chosen. The term of office of all
8 members of executive committees elected at the primary election ~~in~~
9 ~~the year two thousand ten~~ will begin on the first day of July,
10 following the primary election and continue for four years
11 ~~thereafter~~, except as provided in subsection (g) of this section.
12 Vacancies in the state executive committee shall be filled by the
13 members of the committee for the unexpired term. Vacancies in the
14 party's executive committee of a congressional district, state
15 senatorial district, delegate district or county shall be filled by
16 the party's executive committee of the county in which the vacancy
17 exists for the unexpired term.

18 (g) As soon as possible after the certification of the
19 election of the new executive committees, as herein provided, the
20 newly elected executive committee shall convene an organizational
21 meeting within their respective political divisions, on the call of
22 the chair of the corresponding outgoing executive committee or by
23 any member of the new executive committee in the event there is no
24 corresponding outgoing executive committee. During the first
25 meeting the new executive committee shall select a chair, a
26 treasurer and a secretary and other officers as they may desire.

1 Each of the officers shall, for their respective committees,
2 perform the duties that usually appertain to his or her office.
3 The organizational meeting may be conducted prior to July 1, but
4 must occur after the certification of the election of the new
5 executive committees. If the organizational meeting is conducted
6 prior to July 1, the new committee shall serve out the remainder of
7 the outgoing committee's term and is authorized to conduct official
8 business. A current listing of all executive committees' members
9 shall be filed with the Secretary of State by of July 31 of each
10 year. Vacancies in any executive committee shall be filled by the
11 appropriate executive committee as provided in subsection (f) of
12 this section no later than sixty days after the vacancy occurs.
13 The chair of each executive committee shall submit an updated
14 committee list to the Secretary of State within ten days of a
15 change occurring. Executive committee membership lists shall
16 include at least the member's name, full address, employer,
17 telephone number and term information. An appointment to fill a
18 vacancy does not take effect if the executive committee does not
19 submit the updated list to the Secretary of State within the
20 allotted time period. If the executive committee fails to submit
21 the updated list within the allotted time period, it must make
22 another appointment pursuant to the provisions of this section and
23 resubmit the updated list in a timely manner. If a vacancy on an
24 executive committee is not filled within the sixty-day period
25 prescribed by this section, the chair of the appropriate executive
26 committee, as provided in subsection (f) of this section, shall

1 name someone to fill the vacancy. If the chair of a county
2 executive committee fails to fill a vacancy in a congressional
3 district, state senatorial district or delegate district executive
4 committee, and the failure to fill such vacancy prohibits said
5 committee from conducting official business, the chair of the
6 party's state executive committee shall fill such vacancy.

7 (h) Any meeting of any political party executive committee
8 shall be held only after public notice and notice to each member is
9 given according to party rules and shall be open to all members
10 affiliated with the party. Meetings shall be conducted according
11 to party rules, all official actions shall be made by voice vote
12 and minutes shall be maintained and shall be open to inspection by
13 members affiliated with the party.

14 **§3-1-21. Printing of official and sample ballots; number;**
15 **packaging and delivery; correction of ballots.**

16 (a) The board of ballot commissioners for each county shall
17 provide the ballots and sample ballots necessary for conducting
18 every election for public officers in which the voters of the
19 county participate.

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

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

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

26 (3) The board of education, for any special levy or bond

1 election ordered by the board of education; or

2 (4) The municipal board of ballot commissioners, for any
3 election conducted for or within a municipality except an election
4 in which the matter affecting the municipality is placed on the
5 county ballot at a county election. Ballots other than those
6 printed by the proper authorities as specified in this section may
7 not be cast, received or counted in any election.

8 (c) When paper ballots are used, the total number of regular
9 official ballots printed shall equal one and one-twentieth times
10 the number of registered voters eligible to vote that ballot. When
11 paper ballots are used in conjunction with or as part of an
12 electronic voting system, the total number of regular official
13 ballots printed shall equal at a minimum eighty percent of the
14 number of registered voters eligible to vote that ballot. The
15 clerk of the county commission shall determine the number of
16 absentee official ballots.

17 (d) The number of regular official ballots packaged for each
18 precinct shall equal at a minimum seventy-five percent of the
19 number of registered voters of the precinct. The remaining regular
20 official ballots shall be packaged and delivered to the clerk of
21 the county commission, who shall retain them unopened until they
22 are required for an emergency. Each package of ballots shall be
23 wrapped and sealed in a manner which will immediately make apparent
24 any attempt to open, alter or tamper with the ballots. Each
25 package of ballots for a precinct shall be clearly labeled, in a
26 manner which cannot be altered, with the county name, the precinct

1 number and the number of ballots contained in each package. If the
2 packaging material conceals the face of the ballot, a sample ballot
3 identical to the official ballots contained therein shall be
4 securely attached to the outside of the package or, in the case of
5 ballot cards, the type of ballot shall be included in the label.

6 (e) All absentee ballots necessary for conducting absentee
7 voting in all voting systems shall be delivered to the clerk of the
8 county commission of the appropriate county not later than the
9 ~~forty-second~~ forty-sixth day before the election. All official
10 ballots in paper ballot systems shall be delivered to the clerk of
11 the county commission of the appropriate county not later than
12 twenty-eight days before the election.

13 (f) Upon a finding of the Board of Ballot Commissioners that
14 an official ballot contains an error which, in the opinion of the
15 board, is of sufficient magnitude to confuse or mislead the voters,
16 the board shall cause the error to be corrected either by the
17 reprinting of the ballots or by the use of stickers printed with
18 the correction and of suitable size to be placed over the error
19 without covering any other portion of the ballot.

20 **§3-1-31. Days and hours of elections.**

21 (a) General elections shall be held in the several election
22 precincts of the state on the Tuesday next after the first Monday
23 in November of each even year. Primary and special elections shall
24 be held on the days provided by law therefor.

25 (b) Other than as provided for municipal elections in section
26 fourteen, article five, chapter eight of this code, at every

1 primary, general or special election the polls shall be opened in
2 each precinct on the day of such election at six-thirty o'clock in
3 the forenoon and be closed at seven-thirty o'clock in the evening.

4 **§3-1-34. Voting procedures generally; assistance to voters; voting**
5 **records; penalties.**

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

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

1 registration at least thirty days prior to the date of the election
2 may vote a provisional ballot at a handicap accessible polling
3 place in the county of his or her registration. If, during the
4 canvass, the county commission determines that the person had been
5 registered in a precinct that is not handicap accessible, the voted
6 ballot, if otherwise valid, shall be counted. The handicapped
7 person may vote in the precinct to which the registration was
8 transferred only as long as the disability exists or the precinct
9 from which the handicapped person was transferred remains
10 inaccessible to the handicapped. To ensure confidentiality of the
11 transferred ballot, the county clerk processing the ballot shall
12 provide the voter with an unmarked envelope and an outer envelope
13 designated "provisional ballot/handicapped voter". After
14 validation of the ballot at the canvass, the outer envelope shall
15 be destroyed and the handicapped voter's ballot shall be placed
16 with other approved provisional ballots prior to removal of the
17 ballot from the unmarked envelope.

18 (c) When the voter's signature is properly marked, the two
19 poll clerks shall sign their names in the places indicated on the
20 back of the official ballot and deliver the ballot to the voter to
21 be voted by him or her without leaving the election room. If he or
22 she returns the ballot spoiled to the clerks, they shall
23 immediately mark the ballot "spoiled" and it shall be preserved and
24 placed in a spoiled ballot envelope together with other spoiled
25 ballots to be delivered to the board of canvassers and deliver to
26 the voter another official ballot, signed by the clerks on the

1 reverse side. The voter shall thereupon retire alone to the booth
2 or compartment prepared within the election room for voting
3 purposes and there prepare his or her ballot. In voting for
4 candidates in general and special elections, the voter shall comply
5 with the rules and procedures prescribed in section five, article
6 six of this chapter.

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

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

23 (A) Declare his or her choice of candidates to an election
24 commissioner of each political party who, in the presence of the
25 voter and in the presence of each other, shall prepare the ballot
26 for voting in the manner hereinbefore provided and, on request,

1 shall read to the voter the names of the candidates selected on the
2 ballot;

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

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

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

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

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

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

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

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

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

18 (A) May not in any manner request or seek to persuade or
19 induce the voter to vote any particular ticket or for any
20 particular candidate or for or against any public question and must
21 not keep or make any memorandum or entry of anything occurring
22 within the voting booth or compartment and must not, directly or
23 indirectly, reveal to any person the name of any candidate voted
24 for by the voter or which ticket he or she had voted or how he or
25 she had voted on any public question or anything occurring within
26 the voting booth or compartment or voting machine booth except when

1 required pursuant to law to give testimony as to the matter in a
2 judicial proceeding; and

3 (B) Shall sign a written oath or affirmation before assisting
4 the voter on a form prescribed by the Secretary of State stating
5 that he or she will not override the actual preference of the voter
6 being assisted, attempt to influence the voter's choice or mislead
7 the voter into voting for someone other than the candidate of
8 voter's choice. The person assisting the voter shall also swear or
9 affirm that he or she believes that the voter is voting free of
10 intimidation or manipulation. ~~Provided, That no~~ No person
11 providing assistance to a voter is required to sign an oath or
12 affirmation where the reason for requesting assistance is the
13 voter's inability to vote without assistance because of blindness
14 as defined in section three, article fifteen, chapter five of this
15 code and the inability to vote without assistance because of
16 blindness is certified in writing by a physician of the voter's
17 choice and is on file in the office of the clerk of the county
18 commission.

19 (6) In accordance with instructions issued by the Secretary of
20 State, the clerk of the county commission shall provide a form
21 entitled "list of assisted voters", the form of which list shall
22 likewise be prescribed by the Secretary of State. The
23 commissioners shall enter the name of each voter receiving
24 assistance in voting the ballot together with the poll slip number
25 of that voter and the signature of the person or the commissioner
26 from each party who assisted the voter. If no voter has been

1 assisted in voting, the commissioners shall likewise make and
2 subscribe to an oath of that fact on the list.

3 (f) After preparing the ballot, the voter shall fold the
4 ballot so that the face is not exposed and so that the names of the
5 poll clerks thereon are seen. The voter shall announce his or her
6 name and present his or her ballot to one of the commissioners who
7 shall hand the same to another commissioner, of a different
8 political party, who shall deposit it in the ballot box if the
9 ballot is the official one and properly signed. The commissioner
10 of election may inspect every ballot before it is deposited in the
11 ballot box to ascertain whether it is single but without unfolding
12 or unrolling it so as to disclose its content. When the voter has
13 voted, he or she shall retire immediately from the election room
14 and beyond the ~~sixty-foot~~ three hundred-foot limit thereof and may
15 not return except by permission of the commissioners or to lawfully
16 assist another voter pursuant to the provisions of subsection (e)
17 of this section.

18 (g) Following the election, the oaths or affirmations required
19 by this section from those assisting voters, together with the
20 "list of assisted voters", shall be returned by the election
21 commissioners to the clerk of the county commission along with the
22 election supplies, records and returns. The clerk of the county
23 commission shall make the oaths, affirmations and list available
24 for public inspection and ~~shall~~ preserve them for a period of
25 twenty-two months or until disposition is authorized or directed by
26 the Secretary of State or court of record. ~~Provided, That the~~ The

1 clerk may use these records to update the voter registration
2 records in accordance with subsection (d), section eighteen,
3 article two of this chapter.

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

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

18 **§3-1-35. Ballots to be furnished voters.**

19 In general and special elections the ballots for all voters of
20 an election precinct shall be the same. In primary elections the
21 ballot of the voter's political party at that election in that
22 precinct shall be furnished to the voter together with separate
23 ballots, if any, on ~~any~~ nonpartisan candidates and ~~any~~ public
24 questions submitted to the voters generally at such primary
25 election. In the event the voter is lawfully registered as
26 "independent" or as an adherent of a political party not appearing

1 on any primary election ballot to be voted in his precinct, he
2 shall not, in a primary election, ~~be given or entitled to vote any~~
3 ~~a party ballot~~ be given a party ballot and is not entitled to vote
4 a party ballot unless the voter requests a ballot of a political
5 party that has permitted the voter to vote according to section
6 thirty-one, article two, of this chapter, and ~~but~~ shall be
7 furnished any separate ballots to be voted thereat on nonpartisan
8 candidates and public questions.

9 **§3-1-50. Establishment of state-based administrative complaint**
10 **procedures.**

11 The Secretary of State shall establish and maintain a state-
12 based administrative complaint procedure for complaints received
13 concerning election violations which shall meet the following
14 requirements:

15 (1) The procedures shall be uniform and nondiscriminatory.

16 (2) Under the procedures, any person who believes that there
17 is a violation of any provision of ~~this chapter or~~ Title III of the
18 Help America Vote Act of 2002, 42 United States Code §§15481 and
19 15485, including a violation which has occurred, is occurring or is
20 about to occur, may file a complaint.

21 (3) Any complaint filed under the procedures shall be in
22 writing, notarized and signed and sworn by the person filing the
23 complaint.

24 (4) The Secretary of State may consolidate complaints filed
25 under this section.

26 (5) At the request of the complainant, there shall be a

1 hearing on the record.

2 (6) Violations of any provision of this chapter shall be
3 punishable in accordance with the provisions of article nine of
4 this chapter.

5 (7) If, under the procedures, the Secretary of State
6 determines that there is no violation, the Secretary of State shall
7 dismiss the complaint and publish the results of the procedures.

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

13 (9) If the Secretary of State fails to meet the deadline
14 applicable under subdivision (8) of this section, the complaint
15 shall be resolved within sixty days under alternative dispute
16 resolution procedures established for purposes of this section.
17 The record and other materials from any proceedings conducted under
18 the complaint procedures established under this section shall be
19 made available for use under the alternative dispute resolution
20 procedures.

21 **ARTICLE 3. VOTING BY ABSENTEES.**

22 **§3-3-1. Persons eligible to vote absentee ballots.**

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

26 (b) Registered voters ~~and other qualified~~ voters in the county

1 are authorized to vote an absentee ballot by mail in the following
2 circumstances:

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

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

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

9 (C) Incarceration or home detention: *Provided*, That the
10 underlying conviction is not for a crime which is a felony or a
11 violation of section twelve, thirteen or sixteen, article nine of
12 this chapter involving bribery in an election;

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

15 (A) Personal or business travel;

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

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

20 (3) Any voter absent from the county ~~throughout the period and~~
21 ~~available hours for voting in person and~~ who is an absent uniformed
22 services voter or overseas voter, as defined by 42 U.S.C. §1973, *et*
23 *seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of
24 1986, including members of the uniformed services on active duty,
25 members of the merchant marine, spouses and dependents of those
26 members on active duty and persons who reside outside the United

1 States and are qualified to vote in the last place in which the
2 person was domiciled before leaving the United States is authorized
3 to vote an absentee ballot by mail;

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

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

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

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

15 (c) Registered voters ~~and other qualified voters~~ in the county
16 may, in the following circumstances, vote an emergency absentee
17 ballot, subject to the availability of the services as provided in
18 this article:

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

23 (2) Any voter who resides in a nursing home within the county
24 of residence and would be otherwise unable to vote in person,
25 providing the county commission has authorized the services if the
26 voter has resided in the nursing home for a period of less than

1 thirty days; and

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

6 **§3-3-2. Authority to conduct absentee voting; absentee voting**
7 **application; form.**

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

12 (1) For any election held throughout the county, within a
13 political subdivision or territory other than a municipality, or
14 within a municipality when the municipal election is conducted in
15 conjunction with a county election, the clerk of the county
16 commission; or

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

25 (b) A person authorized and desiring to vote a mail-in
26 absentee ballot in any primary, general or special election is to

1 make application in writing in the proper form to the proper
2 official as follows:

3 (1) The completed application is to be on a form prescribed by
4 the Secretary of State and is to contain the name, date of birth
5 ~~and political affiliation~~ of the voter, residence address within
6 the county, the address to which the ballot is to be mailed, the
7 authorized reason, if any, for which the absentee ballot is
8 requested and, if the reason is illness or hospitalization, the
9 name and telephone number of the attending physician, the signature
10 of the voter to a declaration made under the penalties for false
11 swearing as provided in section three, article nine of this chapter
12 that the statements and declarations contained in the application
13 are true, any additional information which the voter is required to
14 supply, any affidavit which may be required ~~and an indication as to~~
15 ~~whether it is an application for voting in person or by mail~~
16 :Provided, That if the application for an absentee ballot is in
17 conjunction with a partisan primary election, the voter must also
18 provide his or her political affiliation or, in the case of an
19 independent or unaffiliated voter, the name of the party in whose
20 primary the voter chooses to participate; or

21 (2) For any person authorized to vote an absentee ballot under
22 the provisions of 42 U.S.C. §1973, et seq., the Uniformed and
23 Overseas Citizens Absentee Voting Act of 1986, the completed
24 application may be on the federal postcard application for absentee
25 ballot form issued under authority of that act, submitted by mail
26 or electronically; or on the Federal Write-in Absentee Ballot; or

1 (3) For any person unable to obtain the official form for
2 absentee balloting at a reasonable time before the deadline for an
3 application for an absentee ballot by mail is to be received by the
4 proper official, the completed application may be in a form set out
5 by the voter, provided all information required to meet the
6 provisions of this article is set forth and the application is
7 signed by the voter requesting the ballot.

8 **§3-3-2b. Special absentee voting list.**

9 (a) Any person who is registered and otherwise qualified to
10 vote and who is permanently and totally physically disabled and who
11 is unable to vote in person at the polls in an election may apply
12 to the official designated to supervise and conduct absentee voting
13 for placement on the special absentee voting list.

14 (b) The application is to be on a form prescribed by the
15 Secretary of State which is to include the voter's name and
16 signature, residence address, a statement that the voter is
17 permanently and totally physically disabled and would be unable to
18 vote in person at the polls in any election, a description of the
19 nature of that disability, and a statement signed by a physician to
20 that effect.

21 (c) Upon receipt of a properly completed application, the
22 official designated to supervise and conduct absentee voting shall
23 enter the name on the special absentee voting list, which is to be
24 maintained in a secure and permanent record. The person's name
25 will remain active on the list until: (1) The person requests in
26 writing that his or her name be removed; (2) the person removes his

1 or her residence from the county, is purged from the voter
2 registration books or otherwise becomes ineligible to vote; (3) a
3 ballot mailed to the address provided on the application is
4 returned undeliverable by the United States postal service; or (4)
5 the death of the person.

6 (d) All health information released or provided in connection
7 with an application for absentee voting shall be used and stored in
8 a manner which protects the voter's privacy rights under the
9 requirements of the Health Insurance Portability and Accountability
10 Act of 1996 (HIPAA), Public Law 104-191.

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

15 **§3-3-3. Early voting in person.**

16 (a) The voting period for early in-person voting is to be
17 conducted during regular business hours beginning on the ~~twentieth~~
18 thirteenth day before the election and continuing through the third
19 day before the election. ~~For any election held on a Tuesday, the~~
20 The early voting period for in-person voting is to be available
21 from 9:00 a.m. to 5:00 p.m. on the two Saturdays prior to the
22 election.

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

1 voting. If that person is found to be duly registered as a voter
2 in the precinct of his or her residence, he or she ~~shall be~~ is
3 required to sign his or her name in the space marked "signature of
4 voter" on the pollbook, or the voter's mark is duly witnessed. If
5 the voter is unable to sign his or her name due to illiteracy or
6 physical disability, the person assisting the voter and witnessing
7 the mark of the voter shall sign his or her name in the space
8 provided. No ballot may be given to the person until he or she
9 signs his or her name on the pollbook.

10 (c) When the voter's signature or mark is properly on the
11 pollbook, two qualified representatives of the official designated
12 to supervise and conduct absentee voting shall sign their names in
13 the places indicated on the back of the official ballot: Provided,
14 That this requirement is waived if the ballot is provided
15 electronically.

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

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

25 (1) In counties using paper ballots, one of each type of
26 official absentee ballot the voter is eligible to vote, prepared

1 according to law;

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

5 ~~(3)~~ (2) In counties using optical scan systems, one of each
6 type of official absentee ballot the voter is eligible to vote,
7 prepared according to law, and a secrecy sleeve; or

8 ~~(4)~~ (3) For direct recording election systems, access to the
9 voting equipment in the voting booth.

10 (f) The voter shall enter the voting booth alone and there
11 mark the ballot: *Provided*, That the voter may have assistance in
12 voting according to the provisions of section four of this article.
13 After the voter has voted the ballot or ballots, the absentee voter
14 shall: Place the ballot or ballots in the ~~gray~~ secrecy envelope
15 and return the ballot or ballots to the official designated to
16 supervise and conduct the absentee voting: *Provided, however*, That
17 in direct recording election systems, once the voter has cast his
18 or her ballot, the voter shall exit the polling place.

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

22 (1) Remove the ballot stub;

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

26 (3) Place ballots for all voting systems into a ballot box

1 that is secured by two locks with a key to one lock kept by the
2 president of the county commission and a key to the other lock kept
3 by the county clerk.

4 ~~(4) Due to the reenactment of this section by the Legislature~~
5 ~~in the two thousand three regular session removing authorization~~
6 ~~for early in person voting on the Monday prior to a Tuesday~~
7 ~~election, to assure notice to all persons that voted on the Monday~~
8 ~~before the Tuesday election day of the two thousand two general~~
9 ~~election are made aware of this change, the clerk of each county~~
10 ~~shall, for the primary election of the year two thousand four,~~
11 ~~include along with the sample ballots published in local newspapers~~
12 ~~as required by this chapter a notice to voters that Monday in-~~
13 ~~person voting will no longer be available.~~

14 **§3-3-4. Assistance to voter in voting an early-in-person ballot;**
15 **penalties.**

16 (a) Any registered voter who requires assistance to vote by
17 reason of blindness, disability, advanced age or inability to read
18 and write may be given assistance by a person of the voter's
19 choice: *Provided,* That the assistance may not be given by the
20 voter's present or former employer or agent of that employer, by
21 the officer or agent of a labor union of which the voter is a past
22 or present member or by a candidate on the ballot.

23 ~~(b) Any voter who requests assistance in voting an absent~~
24 ~~voter's ballot but who is determined by the official designated to~~
25 ~~supervise and conduct absentee voting not to be qualified for~~
26 ~~assistance under the provisions of this section and section thirty-~~

1 ~~four, article one of this chapter may vote a challenged absent~~
2 ~~voter's ballot with the assistance of any person authorized to~~
3 ~~render assistance pursuant to this section. The official~~
4 ~~designated to supervise and conduct absentee voting shall in this~~
5 ~~case challenge the absent voter's ballot on the basis of If in his~~
6 ~~or her determination ~~that~~ the voter is not qualified for~~
7 ~~assistance, the official designated to supervise and conduct early-~~
8 ~~in-person voting shall challenge the voter's ballot.~~

9 (c) Any one or more of the election commissioners or poll
10 clerks in the precinct to which an absent voter's ballot has been
11 sent may challenge the ballot on the ground that the voter received
12 assistance in voting it when in his or their opinion: (1) The
13 person who received the assistance in voting the absent voter's
14 ballot did not require assistance; or (2) the person who provided
15 the assistance in voting did not make an affidavit as required by
16 this section. The election commissioner or poll clerk or
17 commissioners or poll clerks making a challenge shall enter the
18 challenge and reason for the challenge on the form and in the
19 manner prescribed or authorized by this article.

20 (d) Before entering the voting booth or compartment, the
21 person who intends to provide a voter assistance in voting shall
22 make an affidavit, the form of which is to be prescribed by the
23 Secretary of State, that he or she will not in any manner request
24 or seek to persuade or induce the voter to vote any particular
25 ticket or for any particular candidate or for or against any public
26 question and that he or she will not keep or make any memorandum,

1 image or recording or entry of anything occurring within the voting
2 booth or compartment and that he or she will not, directly or
3 indirectly, reveal to any person the name of any candidate voted
4 for by the voter or which ticket he or she had voted or how he or
5 she had voted on any public question or anything occurring within
6 the voting booth or compartment or voting machine booth, except
7 when required pursuant to law to give testimony as to the matter in
8 a judicial proceeding.

9 (e) In accordance with instructions issued by the Secretary of
10 State, the official designated to supervise and conduct ~~absentee~~
11 early-in-person voting shall provide a form entitled "List of
12 Assisted Voters"~~7~~ . The form of which is to be prescribed by the
13 Secretary of State~~7~~ . ~~which~~ The list is to be divided into two
14 parts~~7~~ : Part A is to be entitled "Unchallenged Assisted Voters"
15 and Part B is to be entitled "Challenged Assisted Voters". Under
16 Part A, the official designated to supervise and conduct early-in-
17 person voting shall enter the name of each voter receiving
18 unchallenged assistance in voting an absent voter's ballot, the
19 address of the voter assisted, the nature of the disability which
20 qualified the voter for assistance in voting an ~~absent~~ early-in-
21 person voter's ballot, the name of the person providing the voter
22 with assistance in voting an ~~absent~~ early-in-person voter's ballot,
23 the fact that the person rendering the assistance in voting made
24 and subscribed to the oath required by this section and the
25 signature of the official designated to supervise and conduct
26 ~~absent~~ early-in-person voting certifying to the fact that he or she

1 had determined that the voter who received assistance in voting an
2 ~~absent~~ early-in-person voter's ballot was qualified to receive the
3 assistance under the provisions of this section. Under Part B, the
4 official designated to supervise and conduct ~~absent~~ early-in-person
5 voting shall enter the name of each voter receiving challenged
6 assistance in voting, the address of the voter receiving challenged
7 assistance, the reason for the challenge and the name of the person
8 providing the challenged voter with assistance in voting. At the
9 close of the period provided for voting an ~~absent~~ early-in-person
10 voter's ballot ~~by personal appearance~~, the official designated to
11 supervise and conduct ~~absent~~ early-in-person voting shall make and
12 subscribe to an oath on the list that the list is correct in all
13 particulars; if no voter has been assisted in voting an ~~absent~~
14 early-in-person voter's ballot as provided in this section, the
15 official designated to supervise and conduct ~~absent~~ early-in-person
16 voting shall make and subscribe to an oath of that fact on the
17 list. The "List of Assisted Voters" is to be available for public
18 inspection in the office of the official designated to supervise
19 and conduct ~~absent~~ early-in-person voting during regular business
20 hours throughout the period provided for voting an ~~absent~~ early-in-
21 person voter's ballot ~~by personal appearance~~ and, unless otherwise
22 directed by the Secretary of State, the official shall transmit the
23 list, together with the affidavits, applications and ~~absent~~ early-
24 in-person voters' ballots, to the precincts on election day.

25 (f) Following the election, the affidavits required by this
26 section from persons providing assistance in voting, together with

1 the "List of Assisted Voters", are to be returned by the election
2 commissioners to the clerk of the county commission, along with the
3 election supplies, records and returns, ~~who~~ The clerk shall make
4 the oaths and list available for public inspection and ~~who~~ shall
5 preserve the oaths and list for twenty-two months or, if under
6 order of the court, until their destruction or other disposition is
7 authorized or directed by the court.

8 (g) All health information released or provided in connection
9 with early-in-person voting shall be used and stored in a manner
10 which protects the voter's privacy rights under the requirements of
11 the Health Insurance Portability and Accountability Act of 1996
12 (HIPAA), Public Law 104-191.

13 ~~(g)~~ (h) Any person making an affidavit required under the
14 provisions of this section who knowingly swears falsely in the
15 affidavit or ~~any person~~ who counsels or advises, aids or abets
16 another in the commission of false swearing under this section, or
17 who renders assistance in voting an early-in-person ballot when he
18 or she is not qualified or permitted to do so under this section is
19 guilty of a misdemeanor and, upon conviction thereof, shall be
20 fined not more than \$1,000 or confined in the county or regional
21 jail for a period of not more than one year, or both.

22 ~~(h) Any person who provides a voter assistance in voting an~~
23 ~~absent voter's ballot in the office of the official designated to~~
24 ~~supervise and conduct early-in-person voting who is not qualified~~
25 ~~or permitted by this section to provide assistance is guilty of a~~
26 ~~misdemeanor and, upon conviction thereof, shall be fined not more~~

1 ~~than \$1,000 or imprisoned in the county or regional jail for a~~
2 ~~period of not more than one year, or both.~~

3 (i) Any official designated to supervise and conduct early-in-
4 person voting, election commissioner or poll clerk who authorizes
5 or allows a voter to receive or to have received unchallenged
6 assistance in voting an absent voter's ballot when the voter is
7 known to the official designated to supervise and conduct early-in-
8 person voting or election commissioner or poll clerk not to be or
9 have been authorized by the provisions of this section to receive
10 or to have received assistance in voting is guilty of a misdemeanor
11 and, upon conviction thereof, shall be fined not more than \$1,000
12 or imprisoned in the county or regional jail for a period of not
13 more than one year, or both.

14 (j) ~~The term "physical disability" as used in this section~~
15 ~~means blindness or a degree of blindness as will prevent the voter~~
16 ~~from seeing the names on the ballot or amputation of both hands or~~
17 ~~a disability of both hands that neither can be used to make cross~~
18 ~~marks on the absent voter's ballot. "Physical Disability" or~~
19 ~~"Physically Disabled" means blindness or a degree of blindness that~~
20 ~~prevents a person from seeing any form, posting, document, ballot,~~
21 ~~or other writing set forth in this chapter, whether presented on~~
22 ~~paper or electronically; or any physical condition, whether chronic~~
23 ~~or temporary, which results in substantial impairment of the~~
24 ~~voter's ability to preform any act required by this chapter.~~

25 **§3-3-5. Voting an absentee ballot by mail or electronically;**
26 **penalties.**

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

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

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

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

26 (c) Upon acceptance of a completed application, the official

1 designated to supervise and conduct absentee voting shall determine
2 whether the following requirements have been met:

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

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

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

9 (4) The address to which the ballot is to be mailed is an
10 address outside the county if the voter is applying to vote by mail
11 under the provisions of paragraph (A) or (B), subdivision (2),
12 subsection (b), section one of this article; or subdivision (3) or
13 (4) of said subsection;

14 (5) The applicant is not making his or her first vote after
15 having registered by postcard registration or, if the applicant is
16 making his or her first vote after having registered by postcard
17 registration, the applicant is exempt from these requirements if
18 they are physically disabled, a uniformed or overseas voter, as
19 defined by U.S.C. §1973, et seq. or attended school out of state;
20 and

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

25 (d) If the official designated to supervise and conduct
26 absentee voting determines that the required conditions have been

1 met, two representatives that are registered to vote with different
2 political party affiliations shall sign their names in the places
3 indicated on the back of the official ballot. If the official
4 designated to supervise and conduct absentee voting determines the
5 required conditions have not been met, or has evidence that any of
6 the information contained in the application is not true, the
7 official shall give notice to the voter that the voter's absentee
8 ballot will be challenged as provided in this article and shall
9 enter that challenge.

10 (e) (1) Within one day after the official designated to
11 supervise and conduct absentee voting has both the completed
12 application and the ballot, the official shall ~~mail~~ provide to the
13 voter at the address given on the application, by mail or
14 electronically, as appropriate the following items as required and
15 as prescribed by the Secretary of State:

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

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

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

23 (D) Instructions for voting absentee by mail;

24 ~~(E) For electronic systems, a device for marking by~~
25 ~~electronically sensible pen or ink, as may be appropriate;~~

26 ~~(F)~~ (E) Notice that a list of write-in candidates is available

1 upon request; and

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

4 (2) If the voter is an absent uniformed services voter or
5 overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the
6 official designated to supervise and conduct absentee voting shall
7 transmit the ballot to the voter via mail, or electronically as
8 requested by the voter. If the voter does not designate a
9 preference for transmittal, the clerk may select either method of
10 transmittal for the ballot. If the ballot is transmitted
11 electronically pursuant to this subdivision, the official
12 designated to supervise and conduct absentee voting shall also
13 transmit electronically:

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

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

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

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

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

26 (1) After the voter has voted the ballot or ballots to be

1 returned by mail, the voter shall:

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

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

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

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

9 (2) If the ballot was transmitted electronically as provided
10 in subdivision (2), subsection (e) of this section, the voter shall
11 return the ballot in the same manner the ballot was received, or
12 the voter may return the ballot by United States mail, along with
13 a signed privacy waiver form.

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

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

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

25 (h) Absentee ballots received through the United States mail
26 from persons eligible to vote an absentee ballot under the

1 provisions of subdivision (3), subsection (b), section one of this
2 article, relating to uniform services and overseas voters, are to
3 be accepted if the ballot is received by the official designated to
4 supervise and conduct absentee voting no later than the hour at
5 which the board of canvassers convenes to begin the canvass.

6 (i) Voted ballots submitted electronically pursuant to
7 subdivision (2), subsection (f) of this section are to be accepted
8 if the ballot is received by the official designated to supervise
9 and conduct absentee voting no later than the close of polls on
10 election day: *Provided*, That the Secretary of State's office shall
11 enter into an agreement with the Federal Voting Assistance Program
12 of the United States Department of Defense to transmit the ballots
13 to the county clerks at a time when two individuals of opposite
14 political parties are available to process the received ballots.

15 (j) Ballots received after the proper time which cannot be
16 accepted are to be placed unopened in an envelope marked for the
17 purpose and kept secure for twenty-two months following the
18 election, after which time they are to be destroyed without being
19 opened.

20 (k) Absentee ballots which are hand delivered are to be
21 accepted if they are received by the official designated to
22 supervise and conduct absentee voting no later than the day
23 preceding the election: *Provided*, That no person may hand deliver
24 more than two absentee ballots in any election and any person hand
25 delivering an absentee ballot is required to certify that he or she
26 has not examined or altered the ballot. Any person who makes a

1 false certification violates the provisions of article nine of this
2 chapter and is subject to those provisions.

3 (1) Upon receipt of the sealed envelope, the official
4 designated to supervise and conduct absentee voting shall:

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

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

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

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

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

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

1 **§3-3-5a. Processing federal postcard applications.**

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

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

21 (2) The official designated to supervise and conduct absentee
22 voting shall determine if the applicant is registered to vote at
23 the residence address listed in the voting residence section of the
24 application. If the applicant is not registered, or not registered
25 at the address given, the official shall deliver the original FPCA
26 to the clerk of the county commission for processing, and the clerk

1 of the county commission shall process the application as an
2 application for registration and, ~~if the application is received~~
3 ~~after the close of voter registration for the next succeeding~~
4 ~~election, the official shall challenge the absentee ballot for that~~
5 ~~election.~~ up to and including the final day to accept an
6 application for an absentee ballot prior to any election.

7 (3) Except as provided in subdivision (2) of this section, the
8 federal application for an absentee ballot received from a person
9 qualified to use the application as provided in section two of this
10 article is to be processed as all other applications and the ballot
11 or ballots for each election for which ballots are requested by the
12 applicant is to be mailed to the voter on the first day on which
13 both the application and the ballot are available.

14 **§3-3-5b. Procedures for voting a federal write-in absentee ballot**
15 **by qualified persons.**

16 (a) Notwithstanding any other provisions of this chapter, a
17 person qualified to vote an absentee ballot in accordance with
18 subdivision (3), subsection ~~(d)~~ (b), section one of this article
19 may apply not earlier than January 1, of an election year for a
20 ~~special~~ federal write-in absentee ballot for a primary or general
21 election, ~~in conjunction with the application for a regular~~
22 ~~absentee ballot or ballots. If the application is received after~~
23 ~~the forty-ninth day preceding the election, the~~ The official
24 designated to supervise and conduct absentee voting shall honor
25 ~~only~~ the application for local, state and federal offices in
26 general, special and primary elections.

1 (b) The application for a ~~special~~ federal write-in absentee
2 ballot may be made on the federal ~~postcard application form~~ write-
3 in absentee ballot at the time the federal write-in absentee ballot
4 is submitted.

5 (c) In order to qualify for a ~~special~~ federal write-in
6 absentee ballot, the voter must state that he or she is unable to
7 vote by regular absentee ballot, or in person due to requirements
8 of military service or due to living in isolated areas or extremely
9 remote areas of the world, or due to other circumstances making
10 writ-in absentee voting impracticable or impossible. The federal
11 writ-in absentee ballot may be used as a failsafe voting mechanism
12 in the case of a qualified voter who has not timely received a
13 previously requested absentee ballot. This statement may be made
14 on the federal postcard application or on a form prepared approved
15 by the Secretary of State and supplied and returned submitted with
16 the ~~special~~ federal write-in absentee ballot.

17 (d) Upon ~~receipt of the application~~ request of a qualified
18 voter within the time required, the official designated to
19 supervise and conduct absentee voting shall ~~issue~~ provide the
20 ~~special~~ federal write-in absentee ballot which is to be the same
21 ballot issued under the provisions of 42 U.S.C. §1973, et seq., the
22 Uniformed and Overseas Citizens Absentee Voting Act of 1986. The
23 ballot is to permit the elector to vote in a primary election by
24 indicating his or her political party affiliation and the names of
25 the specific candidates for each office, and in a general election
26 by writing in a party preference for each office, the names of

1 specific candidates for each office, or the name of the person whom
2 the voter prefers for each office.

3 (e) When a ~~special~~ federal write-in absentee ballot is
4 received by the official designated to supervise and conduct
5 absentee voting from a voter: (1) Who mailed the write-in ballot
6 from any location within the ~~United States~~ county of residence; ~~(2)~~
7 ~~who did not apply for a regular absentee ballot~~; ~~(3) who did not~~
8 ~~apply for a regular absentee ballot by mail~~; or ~~(4) whose~~
9 ~~application for a regular absentee ballot by mail was received less~~
10 ~~than thirty days before the election~~, or (2) who is not a qualified
11 voter as defined in accordance with subdivision(3), subsection (b),
12 section one of this article, the write-in ballot may not be
13 counted.

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

18 **§3-3-6. Assistance to voter in voting an absent voter's ballot by**
19 **mail.**

20 (a) No voter shall receive any assistance in voting an absent
21 voter's ballot by mail unless he or she shall make a declaration at
22 the time he or she makes application for an absent voter's ballot
23 that because of blindness, disability, advanced age or inability to
24 read or write he or she requires assistance in voting an absent
25 voter's ballot.

26 (b) Upon receipt of an absent voter's ballot by mail, the

1 voter who requires assistance in voting such ballot and who has
2 indicated he or she requires such assistance and the reasons
3 therefor on the application may select any eligible person, as
4 defined in section three, article three of this chapter, to assist
5 him or her in voting.

6 (c) The person providing assistance in voting an absent
7 voter's ballot by mail shall make an affidavit on a form as may be
8 prescribed by the Secretary of State, that he will not in any
9 manner request, or seek to persuade, or induce the voter to vote
10 any particular ticket or for any particular candidate or for or
11 against any public question, and that he will not keep or make any
12 memorandum or entry of anything occurring within the voting booth
13 or compartment, and that he will not, directly or indirectly,
14 reveal to any person the name of any candidate voted for by the
15 voter, or which ticket he had voted, or how he had voted on any
16 public question, or anything occurring within the voting booth or
17 compartment or voting machine booth, except when required pursuant
18 to law to give testimony as to such matter in a judicial
19 proceeding.

20 (d) The term "assistance in voting" as used in this section
21 shall mean assistance in physically marking the official absent
22 voter's ballot for a voter, or reading or directing the voter's
23 attention to any part of the official absent voter's ballot.

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

25 **§3-5-7. Filing announcements of candidacies; requirements;**
26 **withdrawal of candidates when section applicable.**

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

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

7 (1) Candidates for the House of Delegates, ~~or~~ the State
8 Senate, circuit court judge, family court judge, state executive
9 committee and any other office or political position to be filled
10 by the voters of more than one county shall file a certificate of
11 announcement with the Secretary of State.

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

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

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

1 (d) The certificate of announcement shall be on a form
2 prescribed by the Secretary of State on which the candidate shall
3 make a sworn statement before a notary public or other officer
4 authorized to administer oaths, containing the following
5 information:

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

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

10 (3) The legal name of the candidate and the exact name the
11 candidate desires to appear on the ballot, subject to limitations
12 prescribed in section thirteen, article five of this chapter;

13 (4) The county of residence and a statement that the candidate
14 is a legally qualified voter of that county and the magisterial
15 district of residence for candidates elected from magisterial
16 districts or under magisterial district limitations;

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

20 (6) For partisan elections, the name of the candidate's
21 political party and a statement that the candidate: (A) Is a
22 member of and affiliated with that political party as evidenced by
23 the candidate's current registration as a voter affiliated with
24 that party; and (B) has not ~~been registered as a voter affiliated~~
25 ~~with any other political party~~ changed their voter's registration
26 affiliation for a period of sixty days before the date of filing

1 the announcement;

2 (7) For candidates for delegate to national convention, the
3 name of the presidential candidate to be listed on the ballot as
4 the preference of the candidate on the first convention ballot or
5 a statement that the candidate prefers to remain "uncommitted";

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

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

11 (e) The Secretary of State or the Board of Ballot
12 Commissioners, as the case may be, may refuse to certify the
13 candidacy or may remove the certification of the candidacy upon
14 receipt of a certified copy of the voter's registration record of
15 the candidate showing that the candidate was registered as a voter
16 in a party other than the one named in the certificate of
17 announcement during the sixty days immediately preceding the filing
18 of the certificate. ~~Provided, That unless~~ Unless a signed formal
19 complaint of violation of this section and the certified copy of
20 the voter's registration record of the candidate are filed with the
21 officer receiving that candidate's certificate of announcement no
22 later than ten days following the close of the filing period, the
23 candidate may not be refused certification for this reason:
24 Provided, That challenges to a candidate's eligibility are not
25 precluded if a formal complaint has not been received prior to the
26 close of the filing period.

1 (f) The certificate of announcement shall be subscribed and
2 sworn to by the candidate before some officer qualified to
3 administer oaths, who shall certify the same. Any person who
4 knowingly provides false information on the certificate is guilty
5 of false swearing and shall be punished in accordance with section
6 three, article nine of this chapter.

7 (g) Any candidate for delegate to a national convention may
8 change his or her statement of presidential preference by notifying
9 the Secretary of State by letter received by the Secretary of State
10 no later than the third Tuesday following the close of candidate
11 filing. When the rules of the political party allow each
12 presidential candidate to approve or reject candidates for delegate
13 to convention who may appear on the ballot as committed to that
14 presidential candidate, the presidential candidate or the
15 candidate's committee on his or her behalf may file a list of
16 approved or rejected candidates for delegate and the Secretary of
17 State shall list as "uncommitted" any candidate for delegate who is
18 disapproved by the presidential candidate.

19 (h) A person may not be a candidate for more than one office
20 or office division at any election ~~Provided, That~~ except that a
21 candidate for an office may also be a candidate for President of
22 the United States, for membership on political party executive
23 committees or for delegate to a political party national
24 convention.

25 (i) A candidate who files a certificate of announcement for
26 more than one office or division and does not withdraw, as provided

1 by section eleven, article five of this chapter, from all but one
2 office prior to the close of the filing period may not be certified
3 by the Secretary of State or placed on the ballot for any office by
4 the Board of Ballot Commissioners.

5 ~~(j) The provisions of this section enacted during the regular
6 session of the Legislature in the year 1991 shall apply to the
7 primary election held in the year 1992 and every primary election
8 held thereafter. The provisions of this section enacted during the
9 regular session of the Legislature in the year 2009 shall apply to
10 the primary election held in the year 2010 and every primary
11 election held thereafter.~~

12 **§3-5-13a. Order of offices and candidates on the ballot; uniform**
13 **drawing date.**

14 (a) The order of offices for state and county elections on all
15 ballots within the state shall be as prescribed herein. When the
16 office does not appear on the ballot in an election, ~~then~~ it shall
17 be omitted from the sequence. When an unexpired term for an office
18 appears on the ballot along with a full term, the unexpired term
19 shall appear immediately below the full term.

20 NATIONAL TICKET: President (and Vice President in the general
21 election), United States Senator, member of the United States House
22 of Representatives

23 STATE TICKET: Governor, Secretary of State, Auditor,
24 Treasurer, Commissioner of Agriculture, Attorney General, Justice
25 of the Supreme Court of Appeals, State Senator, member of the House
26 of Delegates, circuit court judge in multicounty districts, family

1 court judge in multicounty districts, any other multicounty office
2 and State Executive Committee.

3 COUNTY TICKET: circuit court judge in single-county districts,
4 family court judge in single-county districts, clerk of the circuit
5 court, county commissioner, clerk of the county commission,
6 prosecuting attorney, sheriff, assessor, magistrate, surveyor,
7 Congressional District Executive Committee, Senatorial District
8 Executive Committee in multicounty districts, Delegate District
9 Executive Committee in multicounty districts and Soil Conservation
10 District Director.

11 NATIONAL CONVENTION: Delegate to the National Convention --
12 at-large; Delegate to the National Convention -- congressional
13 district

14 DISTRICT TICKET: Board of Education; County Executive
15 Committee.

16 (b) Except for office divisions in which no more than one
17 person has filed a certificate of announcement, the arrangement of
18 names for all offices shall be determined by lot according to the
19 following provisions:

20 (1) On the fourth Tuesday following the close of the candidate
21 filing, beginning at nine o'clock a. m., a drawing by lot shall be
22 conducted in the office of the clerk of the county commission in
23 each county. Notice of the drawing shall be given on the form for
24 the certificate of announcement and no further notice ~~shall be~~ is
25 required. The clerk of the county commission shall superintend and
26 conduct the drawing. ~~and~~ The method of conducting the drawing shall

1 be prescribed by the Secretary of State.

2 (2) Except as provided herein, the position of each candidate
3 within each office division ~~shall be~~ is determined by the position
4 drawn for that candidate individually. ~~Provided, That if~~ If fewer
5 candidates file for an office division than the total number to be
6 nominated or elected, the vacant positions shall appear following
7 the names of all candidates for the office.

8 (3) Candidates for Delegate to National Convention who have
9 filed a commitment to a candidate for president shall be listed
10 alphabetically within the group of candidates committed to the same
11 candidate for president and uncommitted candidates shall be listed
12 alphabetically in an uncommitted category. The position of each
13 group of committed candidates and uncommitted candidates shall be
14 determined by lot by drawing the names of the presidential
15 candidates and for an uncommitted category.

16 (4) A candidate or the candidate's representative may attend
17 the drawings.

18 (c) By the close of business on the day of the random drawing
19 explained in this section, the clerk of the county commission shall
20 submit all relevant ballot information to the Secretary of State in
21 a manner prescribed by the Secretary of State.

22 **§3-5-21. Party conventions to nominate presidential electors;**
23 **candidates; organization; duties.**

24 Candidates for presidential electors shall be nominated by the
25 delegated representatives of the political party assembled in a
26 state convention to be held during the months of June, July or

1 August next preceding any general election at which presidential
2 electors are to be elected. The State Executive Committee of the
3 political party, by resolution, shall designate the place and fix
4 the date of the convention, shall prescribe the number of delegates
5 thereto and shall apportion the delegates among the several
6 counties of the state in proportion to the vote cast in the state
7 for the party's candidate for Governor at the last preceding
8 general election at which a Governor was elected. The State
9 Executive Committee shall also ascertain and designate all offices
10 for which candidates are to be nominated at the convention.

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

1 party in mass convention in the county, which meeting shall be held
2 at least thirty days prior to the date fixed for the state
3 convention and at which meeting the members of the political party
4 in each magisterial district shall elect the number of delegates to
5 which the district is entitled in the state convention.

6 The meeting place in the county shall be as central and
7 convenient as can reasonably be selected and all recognized members
8 of the political party ~~shall be~~ are entitled to participate in any
9 mass convention and in the selection of delegates. Notice of the
10 time and place of holding the county mass convention and of the
11 person who shall act as temporary chairman thereof shall be given
12 by publication as a Class II-O legal advertisement in compliance
13 with the provisions of article three, chapter fifty-nine of this
14 code and the publication area for the publication shall be the
15 county. The first publication shall be made not more than fifteen
16 days and the second publication shall be made not less than five
17 days prior to the date fixed for holding the convention. The
18 notice published shall specify the number of delegates which each
19 magisterial district in the county is entitled to elect to the
20 state convention.

21 Upon assembling, the mass convention of the county shall
22 choose a chairman and a secretary, who, within five days after the
23 holding of the convention, shall certify ~~to the chairman of the~~
24 ~~state executive committee of the political party and the chairman~~
25 ~~of the county committee of the political party,~~ the names and
26 addresses of the parties selected as delegates to the state

1 convention to the chairman of the state executive committee of the
2 political party and the chairman of the county committee of the
3 political party.

4 If, after the election, a vacancy exists for a delegate from
5 any magisterial district, the party's county executive committee,
6 within ten days after the mass convention, shall appoint a member
7 of the political party in the magisterial district to fill the
8 vacancy and shall certify the appointment to the chairman of the
9 state executive committee of the political party.

10 All contests over the selection of delegates to conventions
11 shall be heard and determined by the party executive committee of
12 the county from which the delegates are chosen and the county
13 executive committee shall, upon written petition of any contest,
14 meet for a hearing and make a determination within ten days after
15 the holding of a county mass convention. The circuit court of the
16 county and the Supreme Court of Appeals of the state shall have
17 concurrent original jurisdiction to review, by mandamus or other
18 proper proceeding, the decision of a county executive committee in
19 any contest.

20 The delegates chosen and certified by and from the several
21 magisterial districts in the state and, in the event of any
22 contest, those prevailing in the contest, shall make up the state
23 convention. The number present of those entitled to participate in
24 any convention shall cast the entire vote to which the county is
25 entitled in the convention and it shall require a majority vote to
26 nominate any candidate for office.

1 All nominations made at state conventions shall be certified
2 within fifteen days thereafter by the chairman and the secretary of
3 the convention to the Secretary of State who shall certify them to
4 the clerk of the ~~circuit court~~ county commission of each county
5 concerned. ~~and the~~ The names of the persons so nominated shall be
6 printed upon the regular ballot to be voted at the ensuing general
7 election, except that the names of the presidential elector
8 candidates shall not be printed thereon.

9 The delegates to any state convention may formulate and
10 promulgate the party platform or declaration of party principles as
11 to them shall seem advisable.

12 **§3-5-23. Certificate nominations; requirements and control;**
13 **penalties.**

14 (a) Groups of citizens having no party organization may
15 nominate candidates who ~~are~~ were not already candidates in the last
16 preceding primary election for public office as defined in section
17 two, article one of this chapter otherwise than by conventions or
18 primary elections. In that case, the candidate or candidates,
19 jointly or severally, shall file a nomination certificate in
20 accordance with the provisions of this section and the provisions
21 of section twenty-four of this article.

22 (b) The person or persons soliciting or canvassing signatures
23 of duly qualified voters on the certificate or certificates may
24 solicit or canvass duly registered voters residing within the
25 county, district or other political division represented by the
26 office sought but must first obtain from the clerk of the county

1 commission credentials which must be exhibited to each voter
2 canvassed or solicited. ~~which~~ The credentials may be in the
3 following form or effect:

4 State of West Virginia, County of, ss:

5 This certifies that the holder of this credential is hereby
6 authorized to solicit and canvass duly registered voters residing
7 in (here place the county, district or other
8 political division represented by the office sought) to sign a
9 certificate purporting to nominate
10 (here place name of candidate heading list on certificate) for the
11 office of and others, at the general
12 election to be held on, 20.....

13 Given under my hand and the seal of my office this
14 day of, 20.....
15

16 Clerk, county commission of County.

17 The clerk of each county commission, upon proper application
18 made as herein provided, shall issue such credentials and shall
19 keep a record thereof.

20 (c) The certificate shall be personally signed by duly
21 registered voters, in their own proper handwriting or by their
22 marks duly witnessed, who must be residents within the county,
23 district or other political division represented by the office
24 sought wherein the canvass or solicitation is made by the person or
25 persons duly authorized. The signatures need not all be on one
26 certificate. The number of signatures shall be equal to not less

1 than one percent of the entire vote cast at the last preceding
2 general election for the office in the state, district, county or
3 other political division for which the nomination is to be made.
4 In offices elected on a staggered term schedule, the number of
5 signatures shall be equal to not less than one percent of the
6 entire vote cast at the last preceding general election for the
7 office term expiring. In no event shall the number of signatures
8 be less than twenty-five. The number of signatures shall be equal
9 to not less than one percent of the entire vote cast at the last
10 preceding general election for any statewide, congressional or
11 presidential candidate but in no event shall the number be less
12 than twenty-five. Where two or more nominations may be made for
13 the same office, the total of the votes cast at the last preceding
14 general election for the candidates receiving the highest number of
15 votes on each ticket for the office ~~shall constitute~~ constitutes
16 the entire vote. A signature on a certificate may not be counted
17 unless it be that of a duly registered voter of the county,
18 district or other political division represented by the office
19 sought wherein the certificate was presented.

20 (d) The certificates shall state the name and residence of
21 each of the candidates; that he or she is legally qualified to hold
22 the office; that the subscribers are legally qualified and duly
23 registered as voters and desire to have the candidates placed on
24 the ballot; and may designate, by not more than five words, a brief
25 name of the party which the candidates represent and may adopt a
26 device or emblem to be printed on the official ballot. All

1 candidates nominated by the signing of the certificates shall have
2 their names placed on the official ballot as candidates as if
3 otherwise nominated under the provisions of this chapter.

4 The Secretary of State shall prescribe the form and content of
5 the nomination certificates to be used for soliciting signatures.

6 Offices to be filled by the voters of more than one county
7 shall use separate petition forms for the signatures of qualified
8 voters for each county.

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

13 (e) The Secretary of State, or the clerk of the county
14 commission, as the case may be, may investigate the validity of the
15 certificates and the signatures thereon. If, upon investigation,
16 there is doubt as to the legitimacy and the validity of
17 certificate, the Secretary of State may ask the Attorney General of
18 the state or the clerk of the county commission may ask the
19 prosecuting attorney of the county to institute a quo warranto
20 proceeding against the nominee by certificate to determine his or
21 her right to the nomination to public office. ~~and upon~~ Upon
22 request, ~~being made,~~ the Attorney General or prosecuting attorney
23 shall institute the quo warranto proceeding. The clerk of the
24 county commission shall, at the request of the Secretary of State
25 or the clerk of the circuit court, compare the information from any
26 certificate to the county voter registration records. ~~in order to~~

1 ~~assist in determining the validity of any certificates.~~

2 (f) In addition to penalties prescribed elsewhere for
3 violation of this chapter, ~~any~~ a person violating the provisions of
4 this section is guilty of a misdemeanor and, upon conviction, shall
5 be fined not more than \$1,000, or confined in jail not more than
6 one year, or both fined and imprisoned: *Provided*, That a criminal
7 penalty may not be imposed upon anyone who signs a nomination
8 certificate and votes in the primary election held after the date
9 the certificate was signed.

10 **§3-5-24. Filing of nomination certificates; time.**

11 (a) All certificates nominating candidates for the House of
12 Delegates, State Senate, State Executive Committee or circuit court
13 judge and any other office or political position to be filled by
14 the voters of more than one county shall file a certificate of
15 announcement with the Secretary of State ~~office under the preceding~~
16 ~~section shall be filed, in the case of a candidate to be voted for~~
17 ~~by the voters of the entire state or by any subdivision of the~~
18 ~~state other than a single county, with the Secretary of State, and~~
19 in the case of all candidates for county and magisterial district
20 offices, including all offices to be filled by the voters of a
21 single county, with the clerk of the county commission, not later
22 than August 1 preceding the general election.

23 (b) Each candidate shall pay the filing fee required by
24 section eight of this article at the time of the filing of the
25 nomination certificate. If any nomination certificate is not
26 timely filed or if the filing fee is not timely paid, the

1 certificate may not be received by the Secretary of State, or by
2 the clerk of the county commission, as the case may be.

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

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

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

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

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

20 (2) The legal name of the candidate and the first and last
21 name by which the candidate may be identified in seeking the
22 office;

23 (3) The specific address designating the location at which the
24 candidate resides at the time of filing, including number and
25 street or rural route and box number and city, state and zip code;

26 (4) A statement that the person filing the certificate of

1 announcement is a candidate for the office in good faith; and

2 (5) The words "subscribed and sworn to before me this _____
3 day of _____, ____" and a space for the signature of the
4 officer giving the oath.

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

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

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

15 (2) When a vacancy occurs in the nomination of candidates for
16 an office on the ballot resulting from the death of the nominee or
17 from the disqualification or removal of a nominee from the ballot
18 by a court of competent jurisdiction not earlier than the twenty-
19 first day nor later than the fifth day before the general election,
20 the certificate shall be received no later than the close of
21 business on the fifth day before the election or the close of
22 business on the day following the occurrence of the vacancy,
23 whichever is later;

24 (3) When a vacancy occurs in an elective office which would
25 not otherwise appear on the ballot in the election but which
26 creates an unexpired term of one or more years which, according to

1 the provisions of this chapter, is to be filled by election in the
2 next ensuing election and the vacancy occurs no earlier than the
3 twenty-first day and no later than the fifth day before the general
4 election, the certificate shall be received no later than the close
5 of business on the fifth day before the election or the close of
6 business on the day following the occurrence of the vacancy,
7 whichever is later.

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

12 (1) The Secretary of State shall, immediately following the
13 filing deadline, post the names of all official write-in candidates
14 for offices on the ballot in more than one county and certify the
15 name of each official write-in candidate to the clerks of the
16 county commissions of the appropriate counties.

17 (2) The clerk of the county commission shall, immediately
18 following the filing deadline, post the names of all official
19 write-in candidates for offices on the ballot in one county and
20 certify and deliver to the election officials of the appropriate
21 precincts the names of all official write-in candidates and the
22 office sought by each for statewide, district and county offices on
23 the ballot in the precinct for which valid write-in votes will be
24 counted. ~~and the~~ The names of the write-in candidates shall be
25 posted at the office where absentee voting is conducted and at the
26 precincts in accordance with section twenty, article one of this

1 chapter.

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

3 **§3-8-1a. Definitions.**

4 As used in this article, the following terms have the
5 following definitions:

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

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

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

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

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

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

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

23 (4) "Candidate's committee" means a political committee
24 established with the approval of or in cooperation with a candidate
25 or a prospective candidate to explore the possibilities of seeking
26 a particular office or to support or aid his or her nomination or

1 election to an office in an election cycle. If a candidate directs
2 or influences the activities of more than one active committee in
3 a current campaign, those committees shall be considered one
4 committee for the purpose of contribution limits.

5 (5) "Clearly identified" means that the name, nickname,
6 photograph, drawing or other depiction of the candidate appears or
7 the identity of the candidate is otherwise apparent through an
8 unambiguous reference, such as "the Governor," "your Senator" or
9 "the incumbent" or through an unambiguous reference to his or her
10 status as a candidate, such as "the Democratic candidate for
11 Governor" or "the Republican candidate for Supreme Court of
12 Appeals".

13 (6) "Charitable Organization" means a person who is or holds
14 itself out to be a benevolent, educational, philanthropic, humane,
15 patriotic, religious or eleemosynary organization, or any person
16 who solicits or obtains contributions solicited from the public for
17 charitable purposes, or any person who in any manner employs any
18 appeal for contributions which may be reasonably interpreted to
19 suggest that any part of such contributions will be used for
20 charitable purposes. A chapter, branch, area, office or similar
21 affiliates or any person soliciting contributions within the state
22 for a charitable organization which has its principal place of
23 business outside the state is a charitable organization for the
24 purposes of this article.

25 ~~(6)~~ (7) "Contribution" means a gift, subscription, loan,
26 assessment, payment for services, dues, advance, donation, pledge,

1 contract, agreement, forbearance or promise of money or other
2 tangible thing of value, whether conditional or legally
3 enforceable, or a transfer of money or other tangible thing of
4 value to a person, made for the purpose of influencing the
5 nomination, election or defeat of a candidate. An offer or tender
6 of a contribution is not a contribution if expressly and
7 unconditionally rejected or returned. A contribution does not
8 include volunteer personal services provided without compensation:
9 *Provided*, That a nonmonetary contribution is to be considered at
10 fair market value for reporting requirements and contribution
11 limitations.

12 ~~(7)~~(8) "Corporate political action committee" means a
13 political action committee that is a separate segregated fund of a
14 corporation that may only accept contributions from its restricted
15 group as outlined by the rules of the State Election Commission.

16 ~~(8)~~(9) "Direct costs of purchasing, producing or disseminating
17 electioneering communications" means:

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

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

26 ~~(9)~~(10) "Disclosure date" means either of the following:

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

6 (B) Any other date during that calendar year after any
7 previous disclosure date on which the person has made additional
8 expenditures totaling \$5,000 or more for the direct costs of
9 purchasing, producing or disseminating electioneering
10 communications.

11 ~~(10)~~(11) "Election" means any primary, general or special
12 election conducted under the provisions of this code or under the
13 charter of any municipality at which the voters nominate or elect
14 candidates for public office. For purposes of this article, each
15 primary, general, special or local election constitutes a separate
16 election. This definition is not intended to modify or abrogate
17 the definition of the term "nomination" as used in this article.

18 ~~(11)~~(12) (A) "Electioneering communication" means any paid
19 communication made by broadcast, cable or satellite signal, or
20 published in any newspaper, magazine or other periodical that:

21 (i) Refers to a clearly identified candidate for Governor,
22 Secretary of State, Attorney General, Treasurer, Auditor,
23 Commissioner of Agriculture, Supreme Court of Appeals or the
24 Legislature;

25 (ii) Is publicly disseminated within:

26 (I) Thirty days before a primary election at which the

1 nomination for office sought by the candidate is to be determined;
2 or

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

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

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

9 (i) A news story, commentary or editorial disseminated through
10 the facilities of any broadcast, cable or satellite television or
11 radio station, newspaper, magazine or other periodical publication
12 not owned or controlled by a political party, political committee
13 or candidate: *Provided*, That a news story disseminated through a
14 medium owned or controlled by a political party, political
15 committee or candidate is nevertheless exempt if the news is:

16 (I) A bona fide news account communicated in a publication of
17 general circulation or through a licensed broadcasting facility;
18 and

19 (II) Is part of a general pattern of campaign-related news
20 that gives reasonably equal coverage to all opposing candidates in
21 the circulation, viewing or listening area;

22 (ii) Activity by a candidate committee, party executive
23 committee or caucus committee, or a political action committee that
24 is required to be reported to the State Election Commission or the
25 Secretary of State as an expenditure pursuant to section five of
26 this article or the rules of the State Election Commission or the

1 Secretary of State promulgated pursuant to such provision:
2 *Provided*, That independent expenditures by a party executive
3 committee or caucus committee or a political action committee
4 required to be reported pursuant to subsection (b), section two of
5 this article are not exempt from the reporting requirements of this
6 section;

7 (iii) A candidate debate or forum conducted pursuant to rules
8 adopted by the State Election Commission or the Secretary of State
9 or a communication promoting that debate or forum made by or on
10 behalf of its sponsor;

11 (iv) A communication paid for by any organization operating
12 under Section 501(c)(3) of the Internal Revenue Code of 1986;

13 (v) A communication made while the Legislature is in session
14 which, incidental to promoting or opposing a specific piece of
15 legislation pending before the Legislature, urges the audience to
16 communicate with a member or members of the Legislature concerning
17 that piece of legislation;

18 (vi) A statement or depiction by a membership organization, in
19 existence prior to the date on which the individual named or
20 depicted became a candidate, made in a newsletter or other
21 communication distributed only to bona fide members of that
22 organization;

23 (vii) A communication made solely for the purpose of
24 attracting public attention to a product or service offered for
25 sale by a candidate or by a business owned or operated by a
26 candidate which does not mention an election, the office sought by

1 the candidate or his or her status as a candidate; or

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

7 ~~(12)~~(13) "Expressly advocating" means any communication that:

8 (A) Uses phrases such as "vote for the Governor," "re-elect
9 your Senator," "support the Democratic nominee for Supreme Court,"
10 "cast your ballot for the Republican challenger for House of
11 Delegates," "Smith for House," "Bob Smith in '04," "vote Pro-Life"
12 or "vote Pro-Choice" accompanied by a listing of clearly identified
13 candidates described as Pro-Life or Pro-Choice, "vote against Old
14 Hickory," "defeat" accompanied by a picture of one or more
15 candidates, "reject the incumbent";

16 (B) Communications of campaign slogans or individual words,
17 that can have no other reasonable meaning than to urge the election
18 or defeat of one or more clearly identified candidates, such as
19 posters, bumper stickers, advertisements, etc., which say "Smith's
20 the One," "Jones '06," "Baker", etc; or

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

23 ~~(13)~~(14) "Financial agent" means any individual acting for and
24 by himself or herself, or any two or more individuals acting
25 together or cooperating in a financial way to aid or take part in
26 the nomination or election of any candidate for public office, or

1 to aid or promote the success or defeat of any political party at
2 any election.

3 ~~(14)~~(15) "Fund-raising event" means an event such as a dinner,
4 reception, testimonial, cocktail party, auction or similar affair
5 through which contributions are solicited or received by such means
6 as the purchase of a ticket, payment of an attendance fee or by the
7 purchase of goods or services.

8 ~~(17)~~(16) "In-kind contribution" means the donation of goods,
9 services, property or other thing of value other than money. The
10 basis for arriving at the dollar value of an in-kind contribution
11 is as follows:

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

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

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

16 For goods or services provided or rendered for an expenditure
17 less than the dollar value as determined by this section, the
18 difference between the calculated dollar value and the actual cost
19 shall be deemed an in-kind contribution. The actual cost shall be
20 reported as an expenditure of the campaign committee as required
21 under article eight of this chapter. In-kind services do not
22 include campaign-related services voluntarily rendered for which no
23 compensation is asked or given.

24 ~~(15)~~(17) "Independent expenditure" means an expenditure by a
25 person:

26 (A) Expressly advocating the election or defeat of a clearly

1 identified candidate; and

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

6 Supporting or opposing the election of a clearly identified
7 candidate includes supporting or opposing the candidates of a
8 political party. An expenditure which does not meet the criteria
9 for an independent expenditure is considered a contribution.

10 ~~(16)~~(18) "Membership organization" means a group that grants
11 bona fide rights and privileges, such as the right to vote, to
12 elect officers or directors and the ability to hold office, to its
13 members and which uses a majority of its membership dues for
14 purposes other than political purposes. "Membership organization"
15 does not include organizations that grant membership upon receiving
16 a contribution.

17 ~~(17)~~(19) "Name" means the full first name, middle name or
18 initial, if any, and full legal last name of an individual and the
19 full name of any association, corporation, committee or other
20 organization of individuals, making the identity of any person who
21 makes a contribution apparent by unambiguous reference.

22 ~~(18)~~(20) "Person" means an individual, corporation,
23 partnership, committee, association and any other organization or
24 group of individuals.

25 ~~(19)~~(21) "Political action committee" means a committee
26 organized by one or more persons for the purpose of supporting or

1 opposing the nomination or election of one or more candidates. The
2 following are types of political action committees:

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

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

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

9 ~~(20)~~(22) "Political committee" means any candidate committee,
10 political action committee or political party committee.

11 ~~(21)~~(23) "Political party" means a political party as that
12 term is defined by section eight, article one of this chapter or
13 any committee established, financed, maintained or controlled by
14 the party, including any subsidiary, branch or local unit thereof
15 and including national or regional affiliates of the party.

16 ~~(22)~~(24) "Political party committee" means a committee
17 established by a political party or political party caucus for the
18 purposes of engaging in the influencing of the election, nomination
19 or defeat of a candidate in any election.

20 ~~(23)~~(25) "Political purposes" means supporting or opposing the
21 nomination, election or defeat of one or more candidates or the
22 passage or defeat of a ballot issue, supporting the retirement of
23 the debt of a candidate or political committee or the
24 administration or activities of an established political party or
25 an organization which has declared itself a political party and
26 determining the advisability of becoming a candidate under the

1 precandidacy financing provisions of this chapter.

2 ~~(24)~~ (26) "Targeted to the relevant electorate" means a
3 communication which refers to a clearly identified candidate for
4 statewide office or the Legislature and which can be received by
5 one hundred forty thousand or more individuals in the state in the
6 case of a candidacy for statewide office, eight thousand two
7 hundred twenty or more individuals in the district in the case of
8 a candidacy for the State Senate and two thousand four hundred ten
9 or more individuals in the district in the case of a candidacy for
10 the House of Delegates.

11 ~~(25)~~ (27) "Two-year election cycle" means the twenty-four month
12 period that begins the day after a general election and ends on the
13 day of the subsequent general election.

14 ~~(26)~~ (28) "Unaffiliated political action committee" means a
15 political action committee that is not affiliated with a
16 corporation or a membership organization.

17 **§3-8-5a. Information required in financial statement.**

18 (a) Each financial statement required by the provisions of
19 this article, other than a disclosure of electioneering
20 communications pursuant to section two-b of this article, shall
21 contain only the following information:

22 (1) The name, residence and mailing address and telephone
23 number of each candidate, financial agent, treasurer or person and
24 the name, address and telephone number of each association,
25 organization or committee filing a financial statement.

26 (2) The balance of cash and any other sum of money on hand at

1 the beginning and the end of the period covered by the financial
2 statement.

3 (3) The name of any person making a contribution and the
4 amount of the contribution. If the total contributions of any one
5 person in any one election cycle amount to more than \$250, the
6 residence and mailing address of the contributor and, if the
7 contributor is an individual, his or her major business affiliation
8 and occupation. ~~shall also be reported.~~ A contribution totaling
9 more than \$50 of currency of the United States or currency of any
10 foreign country by any one contributor is prohibited and a
11 violation of section five-d of this article. The statement on which
12 contributions are required to be reported by this subdivision may
13 not distinguish between contributions made by individuals and
14 contributions made by partnerships, firms, associations,
15 committees, organizations or groups.

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

18 (5) The name, residence and mailing address of any individual
19 or the name and mailing address of each lending institution making
20 a loan or of the spouse cosigning a loan, as appropriate, the
21 amount of any loan received, the date and terms of the loan,
22 including the interest and repayment schedule and a copy of the
23 loan agreement.

24 (6) The name, residence and mailing address of any individual
25 or the name and mailing address of each partnership, firm,
26 association, committee, organization or group having previously

1 made or cosigned a loan for which payment is made or a balance is
2 outstanding at the end of the period, together with the amount of
3 repayment on the loan made during the period and the balance at the
4 end of the period.

5 (7) The total outstanding balance of all loans at the end of
6 the period.

7 (8) The name, residence and mailing address of any person to
8 whom each expenditure was made or liability incurred, including
9 expenditures made on behalf of a candidate or political committee
10 that otherwise are not made directly by the candidate or political
11 committee, together with the amount and purpose of each expenditure
12 or liability incurred and the date of each transaction.

13 (9) The total expenditure for the nomination, election or
14 defeat of a candidate or any person supporting, aiding or opposing
15 the nomination, election or defeat of ~~any~~ a candidate in whose
16 behalf an expenditure was made or a contribution was given for the
17 primary or other election.

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

20 (b) Any unexpended balance at the time of making the financial
21 statements ~~herein provided for~~ shall be properly accounted for in
22 that financial statement and ~~shall~~ appear as a beginning balance in
23 the next financial statement.

24 (c) Each financial statement required by this section shall
25 contain a separate section setting forth the following information
26 for each fund-raising event held during the period covered by the

1 financial statement:

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

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

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

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

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

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

15 (e) Any contribution or expenditure made by or on behalf of a
16 candidate for public office to ~~any other~~ another candidate or
17 committee for a candidate for ~~any~~ a public office in the same
18 election shall be accounted for in accordance with the provisions
19 of this section.

20 (f) No person may make any contribution except from his, her
21 or its own funds unless such person discloses in writing to the
22 person required to report under this section the name, residence,
23 mailing address, major business affiliation and occupation of the
24 person ~~which~~ who furnished the funds to the contributor. All such
25 disclosures shall be included in the statement required by this
26 section.

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

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

10 (i) No person may accept ~~any~~ a contribution for the purpose of
11 influencing the nomination, election or defeat of a candidate or
12 for the passage or defeat of ~~any~~ a ballot issue unless the identity
13 of the donor and the amount of the contribution is known and
14 reported.

15 (j) When ~~any~~ a person receives an anonymous contribution which
16 cannot be returned because the donor cannot be identified, that
17 contribution shall be donated to the General Revenue Fund of the
18 state. ~~Any~~ An anonymous contribution shall be recorded as such on
19 the candidate's financial statement but may not be expended for
20 election expenses. At the time of filing, the financial statement
21 shall include a statement of distribution of anonymous
22 contributions which total amount shall equal the total of all
23 anonymous contributions received during the period.

24 (k) Any membership organization which raises funds for
25 political purposes by payroll deduction, assessing them as part of
26 its membership dues or as a separate assessment, may report the

1 amount raised as follows:

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

8 (2) If the total payroll deduction for political purposes of
9 each participating member equals \$25 or less over the course of a
10 calendar or fiscal year, as specified by the organization, the
11 organization shall report the total amount received for political
12 purposes through payroll deductions during the reporting period
13 and, to the maximum extent possible, the amount of each yearly
14 payroll deduction contribution level and the number of members
15 contributing at each such specified level. The membership
16 organization shall maintain records of the name and yearly payroll
17 deduction amounts of each participating member.

18 (3) If any member contributes to the membership organization
19 through individual voluntary contributions by means other than
20 payroll deduction, membership dues, or assessments as provided in
21 this subsection, the reporting requirements of subdivision (3),
22 subsection (a) of this section shall apply. Funds raised for
23 political purposes must be segregated from the funds for other
24 purposes and listed in its report.

25 (1) Notwithstanding the provisions of section five of this
26 article or of the provisions of this section to the contrary, an

1 alternative reporting procedure may be followed by a political
2 party committee in filing financial reports for fund-raising events
3 if the total profit does not exceed \$5,000 per year. A political
4 party committee may report gross receipts for the sale of food,
5 beverages, services, novelty items, raffle tickets or memorabilia
6 except that any receipt of more than \$50 from an individual or
7 organization shall be reported as a contribution. A political party
8 committee using this alternative method of reporting shall report:

9 ~~(i)~~(1) The name of the committee;

10 ~~(ii)~~(2) The type of fund-raising activity undertaken;

11 ~~(iii)~~(3) The location where the activity occurred;

12 ~~(iv)~~(4) The date of the fundraiser;

13 ~~(v)~~(5) The name of any individual who contributed more than
14 \$50 worth of items to be sold;

15 ~~(vi)~~(6) The name and amount received from any person or
16 organization purchasing more than \$50 worth of food, beverages,
17 services, novelty items, raffle tickets or memorabilia;

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

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

22 **ARTICLE 9. OFFENSES AND PENALTIES.**

23 **§3-9-6. Unauthorized presence in election room; three hundred foot**
24 **limit; penalties.**

25 If any person, not herein authorized so to do, enters or
26 attempts to enter the election room, except upon a lawful errand

1 and for a proper purpose, or remains within three hundred feet of
2 the outside entrance to the building housing the polling place,
3 contrary to the provisions of this chapter, ~~he~~ the person shall be
4 guilty of a misdemeanor and, on conviction thereof, shall be fined
5 not less than \$50 nor more than \$500, or confined in the county
6 jail for not more than thirty days.

7 Excepting those individuals provided for expressly in this or
8 other sections of the code, only ~~full-time~~ employees of the
9 Secretary of State's office or ~~full-time~~ employees of the
10 respective county offices of the county clerk or the county
11 prosecutor, or persons under contract with the Secretary of State
12 to provide technical assistance to election officials or
13 international observers who have registered as such and been
14 approved by the Secretary of State may enter ~~or otherwise disturb~~
15 the polling place.

16 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

17 **ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION**
18 **OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS**
19 **AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY;**
20 **CONFLICT OF INTEREST.**

21 **§8-5-14. Municipal executive committees; election expenses;**
22 **applicability of state primary and general election**
23 **laws; election days and hours; notice.**

24 (a) Except as otherwise provided by charter provision or
25 ordinance or this code, municipal executive committees shall
26 exercise similar functions and be governed by the same laws in

1 regard to municipal primary elections and regular municipal
2 elections as county executive committees in regard to county-state
3 primary and general elections, so far as the same may be
4 applicable.

5 (b) All expenses of conducting municipal primary elections and
6 regular municipal elections shall be paid by the municipality.

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

13 (d) No municipal primary election shall be held on the day of
14 the county-state primary election except as provided in section
15 five of this article nor less than twenty-five days immediately
16 preceding the regular municipal election unless a shorter period of
17 time is established by charter or ordinance.

18 (e) A municipality may, by charter provision or ordinance, set
19 times for the polls to be open on election day which differ from
20 the times provided in section thirty-one, article one, chapter
21 three of this code so long as the municipal election officials
22 provide written notice of the different hours through publication
23 in a qualified newspaper in the manner set out in section ten,
24 article five, chapter three of this code, not less than twenty-five
25 days prior to the election day.

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

1 **ADVERTISEMENTS.**

2 **ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.**

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

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

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

12 (2) ~~11 1/2 ¢~~ 14 1/2¢ per word if the qualified newspaper has
13 a bona fide circulation of one thousand to five thousand;

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

17 (4) ~~Ten cents~~ 13¢ per word if the qualified newspaper has a
18 bona fide circulation of more than ten thousand and less than
19 thirty thousand; or

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

1 ~~each classification, increase one cent per word over the prior~~
2 ~~year's rate.~~

3 (b) In computing the number of words in a legal advertisement,
4 not set solid, the basis is the size of type in which legal
5 advertising is set by the qualified newspaper making the
6 publication and ~~shall be~~ is computed at the legal rate as though
7 the matter were solid type, that is to say, on the basis of eighty-
8 four words to the single column inch in six point type and fifty-
9 four words to the single column inch in eight point type and any
10 other size type in proportion.

11 (c) In determining the cost of a legal advertisement which is
12 to appear more than once in the same qualified newspaper, the cost
13 for the first publication ~~shall be~~ is computed as specified in
14 subsections (a) and (b) of this section and the cost of the second
15 and each subsequent publication ~~shall be~~ is seventy-five percent of
16 the cost of the first publication computed as specified in
17 subsections (a) and (b) of this section.

18 (d) ~~The average bona fide circulation stated by each qualified~~
19 ~~newspaper in the statement filed by the newspaper with the United~~
20 ~~States post office department in October of each year shall control~~
21 ~~the rate of circulation classification of the qualified newspaper~~
22 ~~for the period commencing the first day of July of each year until~~
23 ~~the last day of June of the following year.~~ On or before November
24 March 1 of each year, the publisher or proprietor of each newspaper
25 desiring to publish any legal advertisement during the ensuing one
26 year time period commencing July 1, shall file with the Secretary

1 of State an affidavit stating the average bona fide circulation of
2 the newspaper as listed in the statement of Ownership, Management,
3 and Circulation filed by the newspaper with the United States
4 Postal Service in October of each year during the preceding twelve
5 month time period ending the thirtieth day of September of each
6 year and shall set forth sufficient facts in the affidavit to show
7 ~~whether~~ the newspaper is a qualified newspaper. The average bona
8 fide circulation stated in the affidavit ~~by each qualified~~
9 ~~newspaper shall control~~ controls the rate circulation
10 classification for the ensuing twelve-month period commencing July
11 1. Any qualified newspaper ~~for which the required affidavit is not~~
12 ~~filed on or before the day of March of any calendar year shall be~~
13 which does not file the required affidavit on or before March 1 of
14 any calendar year is conclusively presumed to have a bona fide
15 circulation of less than one thousand for the ensuing twelve-month
16 period commencing July 1. ~~of such year a bona fide circulation of~~
17 ~~less than one thousand. At the time a publisher or proprietor of~~
18 ~~a qualified newspaper files an affidavit with the Secretary of~~
19 ~~State, as required by this subsection, At the same time as filing~~
20 the affidavit with the Secretary of State, the publisher or
21 proprietor shall also notify the clerk of the county commission and
22 the board of education of the county in which the ~~qualified~~
23 newspaper is published of the circulation classification ~~of the~~
24 ~~qualified newspaper and of the~~ and applicable rate for publishing
25 legal advertisements ~~in the qualified newspaper~~ during the ensuing
26 twelve-month period commencing July 1. If the qualified newspaper

1 is published in a municipality, the publisher or proprietor shall
2 at the same time ~~also~~ furnish the same notification to the clerk or
3 recorder of the municipality.

4 (e) The rate charged for political advertising appearing in a
5 newspaper at any time or times during the time period commencing
6 thirty days prior to any primary or general election and ending the
7 day following the election may not exceed one hundred five percent
8 of the lowest commercial rate charged by the newspaper in which the
9 political advertising appears.

10 (f) Nothing contained in this section prohibits qualified
11 newspapers from charging less than the specified rates for any
12 legal advertisement or from charging usual and customary rates for
13 notarizing and producing additional copies of the affidavits and
14 statements required in section four of this article.