

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4468

FISCAL
NOTE

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[Introduced January 31, 2022; Referred
to the Committee on the Judiciary]

1 A BILL to repeal §3-3-3a of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §3-1-34 and §3-1-41 of said code; to amend and reenact §3-1A-5 of said code; to amend
3 and reenact §3-3-1, §3-3-1a, §3-3-2, §3-3-2a, §3-3-5, §3-3-9, §3-3-10, and §3-3-12 of said
4 code; to amend and reenact §3-6-6, §3-6-7, and §3-6-9 of said code; to amend said code
5 by adding thereto a new section, designated §3-9-14; and to amend and reenact §3-9-19
6 of said code, all relating to modernization of procedures for voting in public elections;
7 modifying voter identification procedure at the polls; removing authority of election
8 commissioners and poll clerks to dispute voter claims of disability; authorizing all
9 registered voters to vote absentee ballot by mail; simplifying the requirements for an
10 emergency absentee ballot; providing for secure receipt of hand-delivered absentee
11 ballots; providing for stand-alone drop-off locations for deposit of completed absentee
12 ballots; revising terms and procedures for casting an absentee ballot by mail; reforming
13 the procedures and grounds for challenging an absentee ballot; specifying the form and
14 printed text of envelopes for absentee ballots; establishing a pre-canvass procedure for
15 ballots received in advance of Election Day; authorizing voter cure for potentially deficient
16 absentee ballots; establishing a criminal offense of coercion and intimidation of a voter;
17 defining a criminal offense of unauthorized marking of another person's absentee ballot;
18 providing criminal penalties for violations; and correcting citations and grammar
19 throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

1 (a) A person desiring to vote in an election shall, upon entering the election room, clearly
2 state his or her name and residence to one of the poll clerks who shall thereupon announce the
3 same in a clear and distinct tone of voice. For elections occurring on or after January 1, 2018, the

4 person desiring to vote shall present to one of the poll clerks a valid identifying document meeting
5 the requirements of subdivisions (1) or (2) of this subsection, and the poll clerk shall inspect and
6 confirm that the name on the valid identifying document conforms to the name in the individual's
7 voter registration record and that, if the valid identifying document contains a photograph, the
8 image displayed is truly an image of the person presenting the document. If that person is found
9 to be duly registered as a voter at that precinct, he or she shall sign his or her name in the
10 designated location provided at the precinct. If that person is physically or otherwise unable to
11 sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of
12 the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately
13 under the affixation. No ballot may be given to the person until he or she signs his or her name
14 on the designated location or his or her signature is affixed thereon.

15 (1) A document shall be deemed to be a valid identifying document if it:

16 (A) Has been issued either by the State of West Virginia, or one of its subsidiaries, or by
17 the United States Government; and

18 (B) Contains the name of the person desiring to vote.

19 (2) Notwithstanding the provisions of subdivision (1) of this subsection, the following
20 documents, if they contain the voter's name, shall be considered valid identifying documents, and
21 a person desiring to vote may produce any of the following:

22 (A) A valid West Virginia driver's license or valid West Virginia identification card issued
23 by the West Virginia Division of Motor Vehicles;

24 (B) A valid driver's license issued by a state other than the State of West Virginia;

25 (C) A valid United States passport or passport card;

26 (D) A valid employee identification card with a photograph of the eligible voter issued by
27 any branch, department, agency, or entity of the United States Government or of the State of
28 West Virginia, or by any county, municipality, board, authority, or other political subdivision of
29 West Virginia;

30 (E) A valid student identification card with a photograph of the eligible voter issued by an
31 institution of higher education in West Virginia, or a valid high school identification card issued by
32 a West Virginia high school;

33 (F) A valid military identification card issued by the United States with a photograph of the
34 person desiring to vote;

35 (G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with
36 a photograph of the person desiring to vote;

37 (H) A valid Medicare card or Social Security card;

38 (I) A valid birth certificate;

39 (J) A valid voter registration card issued by a county clerk in the State of West Virginia;

40 (K) A valid hunting or fishing license issued by the State of West Virginia;

41 (L) A valid identification card issued to the voter by the West Virginia Supplemental
42 Nutrition Assistance (SNAP) program;

43 (M) A valid identification card issued to the voter by the West Virginia Temporary
44 Assistance for Needy Families (TANF) program;

45 (N) A valid identification card issued to the voter by West Virginia Medicaid;

46 (O) A valid bank card or valid debit card;

47 (P) A valid utility bill issued within six months of the date of the election;

48 (Q) A valid bank statement issued within six months of the date of the election; or

49 (R) A valid health insurance card issued to the voter.

50 (3) In lieu of providing a valid identifying document, as required by this section, a registered
51 voter may be accompanied at the polling place by an adult known to the registered voter for at
52 least six months. That adult may sign an affidavit on a form provided to clerks and poll workers
53 by the Secretary of State, which states under oath or affirmation that the adult has known the
54 registered voter for at least six months, and that in fact the registered voter is the same person
55 who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall

56 present a valid identifying document with his or her name, address, and photograph.

57 (4) A poll worker may allow a voter, whom the poll worker has known for at least six
58 months, to vote without presenting a valid identifying document.

59 (5) If the person desiring to vote is unable to furnish a valid identifying document, or if the
60 poll clerk determines that the proof of identification presented by the voter does not qualify as a
61 valid identifying document, the person desiring to vote shall be permitted to cast a provisional
62 ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this
63 subdivision.

64 (A) The provisional ballot is entitled to be counted once the election authority ~~verifies the~~
65 ~~identity of the individual by comparing that individual's signature to the current signature on file~~
66 ~~with the election authority and~~ determines that the individual was otherwise eligible to cast a ballot
67 at the polling place where the ballot was cast.

68 (B) The affidavit to be used for voting shall be substantially in the following form:

69 "State of West Virginia
70 County of.....

71 I do solemnly swear (or affirm) that my name is; that I
72 reside at.....; and that I am the person listed in the precinct register under this name
73 and at this address.

74 I understand that knowingly providing false information is a violation of law and subjects
75 me to possible criminal prosecution.

76

77 Signature of voter

78 Subscribed and affirmed before me this..... day of, 20....

79

80 Name of Election Official

81

82 Signature of Election Official”.

83 (6) A voter who votes in person at a precinct polling place that is located in a building
84 which is part of a state licensed care facility where the voter is a resident is not required to provide
85 proof of identification as a condition before voting in an election.

86 (7) The person entering voter information into the centralized voter registration database
87 shall cause the records to indicate when a voter has not presented a valid identifying document
88 and has executed a voter identity affidavit.

89 (8) If a voter participating in the Address Confidentiality Program established by §48-28A-
90 103 of this code, executes a voter identity affidavit, the program participant's residential or mailing
91 address is subject to the confidentiality provisions of §48-28A-108 of this code and shall be used
92 only for those statutory and administrative purposes authorized by this section.

93 (9) Prior to the primary and general elections to be held in calendar year 2018, the
94 Secretary of State shall educate voters about the requirement to present a valid identifying
95 document and develop a program to help ensure that all eligible voters are able to obtain a valid
96 identifying document.

97 (b) The clerk of the county commission is authorized, upon verification that the precinct at
98 which a handicapped person is registered to vote is not handicap accessible, to transfer that
99 person's registration to the nearest polling place in the county which is handicap accessible. A
100 request by a handicapped person for a transfer of registration must be received by the county
101 clerk no later than 30 days prior to the date of the election. A handicapped person who has not
102 made a request for a transfer of registration at least 30 days prior to the date of the election may
103 vote a provisional ballot at a handicap accessible polling place in the county of his or her
104 registration. If during the canvass the county commission determines that the person had been
105 registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall
106 be counted. The handicapped person may vote in the precinct to which the registration was
107 transferred only as long as the disability exists or the precinct from which the handicapped person

108 was transferred remains inaccessible to the handicapped. To ensure confidentiality of the
109 transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked
110 envelope and an outer envelope designated "provisional ballot/handicapped voter". After
111 validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped
112 voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot
113 from the unmarked envelope.

114 (c) When the voter's signature is properly marked and the voter has presented a valid
115 identifying document, the two poll clerks shall sign their names in the places indicated on the back
116 of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the
117 election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the
118 ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with
119 other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another
120 official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to
121 the booth or compartment prepared within the election room for voting purposes and there
122 prepare his or her ballot. In voting for candidates in general and special elections, the voter shall
123 comply with the rules and procedures prescribed in §3-6-5 of this code.

124 (d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check
125 mark, or by other means, inserted in the appropriate place on the registration record of each voter
126 the fact that the voter voted in the election. In primary elections the clerk shall also insert on the
127 registration record of each voter a distinguishing initial or initials of the political party for whose
128 candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated
129 by the poll clerks on the registration record, together with the name of the challenger. The
130 subsequent removal of the challenge shall be recorded on the registration record by the clerk of
131 the county commission.

132 (e)(1) No voter may receive any assistance in voting unless, by reason of blindness,
133 disability, advanced age or inability to read and write, that voter is unable to vote without

134 assistance. Any voter so qualified to receive assistance in voting may:

135 (A) Declare his or her choice of candidates to an Election Commissioner of each political
136 party who, in the presence of the voter and in the presence of each other, shall prepare the ballot
137 for voting in the manner provided in this section and, on request, shall read to the voter the names
138 of the candidates selected on the ballot;

139 (B) Require the Election Commissioners to indicate to him or her the relative position of
140 the names of the candidates on the ballot, the voter shall then retire to one of the booths or
141 compartments to prepare his or her ballot in the manner provided in this section;

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

145 (D) If he or she is handicapped, vote from an automobile outside the polling place or
146 precinct by the absentee balloting method provided in §3-3-5(e) of this code in the presence of
147 an Election Commissioner of each political party if all of the following conditions are met:

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

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

150 (2) The voted ballot shall then be returned to the precinct officials and secured in a sealed
151 envelope to be returned to the clerk of the county commission with all other election materials.
152 The ballot shall then be tabulated using the appropriate method provided in ~~section eight of this~~
153 ~~chapter~~ §3-6-1 et seq. of this code as it relates to the specific voting system in use.

154 ~~(3) A voter who requests assistance in voting but who is believed not to be qualified for~~
155 ~~assistance under the provisions of this section shall nevertheless be permitted to vote a~~
156 ~~provisional ballot with the assistance of any person herein authorized to render assistance.~~

157 ~~(4) One or more of the Election Commissioners or poll clerks in the precinct may challenge~~
158 ~~the ballot on the ground that the voter received assistance in voting it when in his, her or their~~
159 ~~opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such~~

160 advanced age as to have been unable to vote without assistance. The Election Commissioner or
161 poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the
162 reason for such challenge on the form and in the manner prescribed or authorized by ~~§3-3-1~~ of
163 seq. of this code

164 ~~(5)~~ (3) An Election Commissioner or other person who assists a voter in voting:

165 (A) May not in any manner request or seek to persuade or induce the voter to vote a
166 particular ticket or for a particular candidate or for or against any public question and must not
167 keep or make any memorandum or entry of anything occurring within the voting booth or
168 compartment and must not, directly or indirectly, reveal to any person the name of a candidate
169 voted for by the voter, which ticket he or she had voted or how he or she had voted on any public
170 question or anything occurring within the voting booth, compartment, or voting machine booth
171 except when required by law to give testimony as to the matter in a judicial proceeding; and

172 (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed
173 by the Secretary of State stating that he or she will not override the actual preference of the voter
174 being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone
175 other than the candidate of voter's choice. The person assisting the voter shall also swear or
176 affirm that he or she believes that the voter is voting free of intimidation or manipulation. No person
177 providing assistance to a voter is required to sign an oath or affirmation where the reason for
178 requesting assistance is the voter's inability to vote without assistance because of blindness as
179 defined in §5-15-3 of this code and the inability to vote without assistance because of blindness
180 is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of
181 the county commission.

182 ~~(6)~~ (4) In accordance with instructions issued by the Secretary of State, the clerk of the
183 county commission shall provide a form entitled "list of assisted voters", on a form as prescribed
184 by the Secretary of State. The commissioners shall enter the name of each voter receiving
185 assistance in voting the ballot, together with the poll slip number of that voter and the signature

186 of the person or the commissioner from each party who assisted the voter. If no voter has been
187 assisted in voting, the commissioners shall make and subscribe to an oath of that fact on the list.

188 (f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed
189 and the names of the poll clerks on it are seen. The voter shall announce his or her name and
190 present his or her ballot to one of the commissioners who shall hand the same to another
191 commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the
192 official one and properly signed. The commissioner of election may inspect every ballot before it
193 is deposited in the ballot box to ascertain whether it is single; but without unfolding or unrolling it
194 so as to disclose its content. When the voter has voted, he or she shall retire immediately from
195 the election room and beyond the 60-foot limit and not return except by permission of the
196 commissioners.

197 (g) Following the election, the oaths or affirmations required by this section from those
198 assisting voters, together with the "list of assisted voters", shall be returned by the Election
199 Commissioners to the clerk of the county commission along with the election supplies, records
200 and returns. The clerk of the county commission shall make the oaths, affirmations and list
201 available for public inspection and preserve them for a period of 22 months or until disposition is
202 authorized or directed by the Secretary of State or court of record. The clerk may use these
203 records to update the voter registration records in accordance with §3-2-18(d) of this code.

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

209 (i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged
210 assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to
211 require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not

212 more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one
 213 year nor more than five years, or both fined and imprisoned.

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

1 (a) It is the duty of the members of the receiving board, jointly or severally, to challenge
 2 the right of any person requesting a ballot to vote in any election:

3 (1) If the person's registration record is not available at the time of the election;

4 ~~(2) If the signature written by the person in the poll book does not correspond with the~~
 5 ~~signature purported to be his or hers on the registration record~~

6 ~~(3)~~ (2) If the registration record of the person indicates any other legal disqualification;

7 ~~(4)~~ (3) If the person fails to present a valid identifying document pursuant to §3-1-34 of this
 8 code; or

9 ~~(5)~~ (4) If any other valid challenge exists against the voter pursuant to §3-3-10 of this code.

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

16 (c) At the time that an individual casts a provisional ballot, the poll clerk shall give the
 17 individual written information stating that an individual who casts a provisional ballot will be able
 18 to ascertain under the free access system established in this section whether the vote was
 19 counted and, if the vote was not counted, the reason that the vote was not counted.

20 (d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual
 21 written instructions, supplied by the board of ballot commissioners, stating that if the voter is
 22 casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election:

23 *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt
24 to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter
25 the information if ascertainable.

26 (e) Provisional ballots may not be counted by the election officials. The county commission
27 shall, on its own motion, at the time of canvassing of the election returns, sit in session to
28 determine the validity of any challenges according to the provisions of this chapter. If the county
29 commission determines that the challenges are unfounded, each provisional ballot of each
30 challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots
31 cast in the election. The county commission, as the board of canvassers, shall protect the privacy
32 of each provisional ballot cast. The county commission shall disregard technical errors, omissions
33 or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

34 (f) Any person duly appointed as an Election Commissioner or clerk under the provisions
35 of §3-1-28 of this code who serves in that capacity in a precinct other than the precinct in which
36 the person is legally entitled to vote may cast a provisional ballot in the precinct in which the
37 person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having
38 been cast in a precinct other than the precinct in which the person is legally entitled to vote. The
39 county commission shall record the provisional ballot on the voter's permanent registration record:
40 *Provided*, That the county commission may count only the votes for the offices that the voter was
41 legally authorized to vote for in his or her own precinct.

42 (g) The Secretary of State shall establish a free access system, which may include a toll-
43 free telephone number or an Internet website, that may be accessed by any individual who casts
44 a provisional ballot to discover whether his or her vote was counted and, if not, the reason that
45 the vote was not counted.

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

§3-1A-5. Powers and duties of commission; legislative rules.

1 (a) The commission has the power and duty to approve or disapprove applications for

2 approval of any voting machine as provided in §3-4-7 of this code.

3 (b) The commission also shall serve as a body advisory to the Secretary of State, and, as
4 such, shall have the following powers and duties:

5 (1) To recommend policies and practices pertaining to the registration of voters and the
6 conduct of elections generally;

7 (2) To review the work of the office of Secretary of State pertaining to the duties of that
8 office with respect to elections, and for this purpose to have access at reasonable times to
9 pertinent records, books, papers and documents;

10 (3) To consider and study the election practices of other jurisdictions, with a view to
11 determining the techniques used in eliminating fraud in elections and in simplifying election
12 procedures;

13 (4) To advise or make recommendations to the Governor relative to election practices and
14 policy in the state;

15 (5) To advise the Secretary of State on carrying out the duties to which he or she is
16 assigned pursuant to the West Virginia Supreme Court of Appeals Public Campaign Financing
17 Program, established in §3-12-1 *et seq.* of this code;

18 (6) To carry out the duties assigned to the commission by the West Virginia Supreme
19 Court of Appeals Public Campaign Financing Program, established in §3-12-1 *et seq.* of this code;
20 and

21 (7) To keep minutes of the transactions of each meeting of the commission, which shall
22 be public records and filed with the Secretary of State.

23 (c) It is the commission's further duty to prepare and distribute in its name at least annually,
24 within available appropriations and upon the recommendation of the Secretary of State,
25 nonpartisan educational material to inform voters of the importance of voting, to encourage voters
26 to vote, to inform voters of election laws and procedures, and to inform voters of the effect of any
27 public question, Constitutional amendment or bond issue that is to be voted upon by all the voters

28 of the state and that has been authorized to be placed upon the ballot by the Legislature, and
 29 manuals to assist county commissions, ballot commissioners, circuit and county clerks and other
 30 election officials in the proper performance of their duties in the conduct of elections.

31 (d) The commission shall propose for promulgation emergency and legislative rules, in
 32 accordance with §29A-3-1 *et seq.* of this code, as may be necessary to standardize and make
 33 effective the administration of the provisions of §3-8-1 of this code, and may propose for
 34 promulgation other rules, in accordance with §29A-3-1 *et seq.* of this code, relating to the conduct
 35 and administration of elections as the commission determines to be advisable.

36 (e) Meetings of the commission conducted for the purpose of confirming the eligibility of
 37 individual candidates to receive public campaign financing under the West Virginia Supreme
 38 Court of Appeals Public Campaign Financing Fund are expressly exempted from the public notice
 39 and public meeting requirements of §6-9A-1 *et seq.* of this code.

ARTICLE 3. VOTING BY ABSENTEES.

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

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

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

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

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

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

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

12 ~~(2) Any voter who is absent from the county throughout the period and available hours for~~

13 ~~voting in person because of:~~

14 ~~(A) Personal or business travel;~~

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

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

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

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

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

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

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

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

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

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

38 (2) The voter is absent from the county throughout the period and available hours for

39 voting in person and is an absent uniformed services voter or overseas voter, as defined by 42
40 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,
41 including members of the uniformed services on active duty, members of the merchant marine,
42 spouses and dependents of those members on active duty, and persons who reside outside the
43 United States and are qualified to vote in the last place in which the person was domiciled before
44 leaving the United States.

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

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

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

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

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

§3-3-1a. Definitions.

1 For the purposes of this article, the following terms have the following definitions:

2 “Disability” means a physical or mental impairment that substantially limits one or more
3 major life activities;

4 “Drop-off location” or “drop box” means a location established for the secure receipt of
5 hand delivered absentee ballots. A drop-off location is a substitute for the United States mail for
6 return of absentee ballots;

7 “Physical disability” means a physical impairment that substantially limits one or more
8 major life activities and renders a person unable to vote in person, at the polls, without assistance;
9 and;

10 “Stand-alone drop-off location” means a drop-off location separate and apart from the
11 office of the official designated to conduct and supervise absentee voting in order to maximize
12 voter access.

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

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

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

7 (2) The municipal recorder or other officer authorized by charter or ordinance provisions
8 to conduct absentee voting, for any election held entirely within the municipality, or in the case of
9 annexation elections, within the area affected. The terms “clerk” or “clerk of the county
10 commission” or “official designated to supervise and conduct absentee voting” used elsewhere in
11 this article means municipal recorder or other officer in the case of municipal elections.

12 (b) A person authorized and desiring to vote a mail-in absentee ballot or an electronic
13 absentee ballot in any primary, general, or special election is to make application in the proper
14 form to the proper official as follows:

15 (1) The completed application is to be on a form prescribed by the Secretary of State and
16 is to contain the name, date of birth, and political affiliation of the voter, residence address within
17 the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which
18 the absentee ballot is requested, ~~and, if the reason is illness or hospitalization, the name and~~
19 ~~telephone number of the attending physician~~ the signature of the voter to a declaration made
20 under the penalties for false swearing as provided in §3-3-9 of this code that the statements and
21 declarations contained in the application are true, any additional information which the voter is
22 required to supply, ~~any affidavit which may be required~~, and an indication as to whether it is an
23 application for absentee voting ~~in person~~ by ~~mail~~, paper ballot or electronically;

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

28 (3) For any voter with a physical disability, the completed application may be submitted by
29 mail or electronically, in a form prescribed by the Secretary of State;

30 (4) For any person unable to obtain the official form for absentee balloting at a reasonable
31 time before the deadline by which an application for an absentee ballot is to be received by the
32 proper official, the completed application may be in a form set out by the voter, containing all
33 information that would otherwise be required on the appropriate application and the signature of
34 the voter requesting the ballot; ~~or~~

35 (5) For any person authorized to vote an absentee ballot who is participating in the
36 Address Confidentiality Program as established by §48-28A-103 of this code, application may be
37 made to the program manager within the office of the Secretary of State to vote a mail-in absentee
38 ballot. The program manager will notify the designated county contact to coordinate the
39 application and the provision of an absentee ballot to the program participant; or

40 (6) For any person authorized to vote an absentee ballot, such authorization shall remain

41 in effect until the earlier of such time as:

42 (A) The individual is no longer registered to vote in the state; or

43 (B) The individual provides an affirmative written notice to revoke such authorization.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

1 (a) The county commission shall designate the courthouse or annex to the courthouse as
2 the primary location for early in-person voting and, in addition, the commission may designate
3 other locations as provided in subsection (b) of this section.

4 (b) The county commission may, with the approval of the county clerk or other official
5 charged with the administration of elections, designate community voting locations for early
6 in-person voting, other than the county courthouse or courthouse annex, by a majority of the
7 members of the county commission voting to adopt the same at a public meeting called for that
8 purpose.

9 (1) The county commission shall publish a notice of its intent to designate a community
10 voting location at least 30 days prior to the designation. Notice shall be by publication as a Class
11 II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq.* of this code. The
12 publication area is the county in which the community voting location or locations are designated;

13 (2) Community voting locations shall comply with requirements of this article for early
14 in-person voting, criteria prescribed by the Secretary of State, and the following criteria:

15 (A) The location can be scheduled for use during the early voting period;

16 (B) The location has the physical facilities necessary to accommodate early voting
17 requirements;

18 (C) The location has adequate space for voting equipment, poll workers, and voters; and

19 (D) The location has adequate security, public accessibility, and parking.

20 (3) The county executive committees of the two major political parties may nominate sites
21 to be used as community voting locations during the early voting period;

22 (4) Upon the designation of a community voting location, the county clerk shall, not less

23 than 30 days prior to an election, give notice of the community voting location address and the
24 dates and times when the location will be open for early voting by publication as a Class II-0 legal
25 advertisement in compliance with provisions of §59-3-1 *et seq.* of this code;

26 (5) Voting shall be conducted at each designated community voting location for a period
27 of not less than five consecutive days during the early in-person voting period authorized by
28 §3-3-3 of this code, but need not be conducted at each location for the entire period of early
29 in-person voting;

30 (6) The county commission, with the approval of the county clerk, may authorize
31 community voting locations on a rotating basis, wherein a community voting location may be used
32 for less than the full period of early in-person voting.

33 (7) If more than one community voting location is designated, each location shall be used
34 for an equal number of voting days and permit voting for the same number of hours per day; and

35 (8) Once a community voting location is designated it may continue to be used in
36 subsequent elections without complying with the public notice requirements of subdivision (1) of
37 this subsection if the county commission finds, and the county clerk agrees, at least 50 days, but
38 not more than 80 days prior to the election, that the location continues to qualify under this section.

39 (c) The county commission shall, with the approval of the county clerk or other official
40 charged with the administration of elections, establish secure stand-alone drop-off locations for
41 the deposit of completed absentee ballots. These drop-off locations shall comply with
42 requirements of this article, criteria prescribed by the Secretary of State, and the following criteria:

43 (1) During the period of early in-person voting, a secure drop-off location for deposit of
44 completed absentee ballots shall be available at each early in-person voting location.

45 (2) From the date that mailing of absentee ballots to voters commences to the close of the
46 polls on election day, secure drop-off locations shall be available for hand delivery of completed
47 absentee ballots.

48 (3) Counties shall provide at least one drop-off location for every 10,000 active registered

49 voters in the county, but must provide a minimum of one stand-alone drop-off location.

50 (4) The placement and security of each drop-off location shall be determined by each
51 county in accordance with the Secretary of State's security rules.

52 (5) All stand-alone drop-off locations must be designated by a sign conspicuously posted
53 during the time that drop-off locations are available to accept completed absentee ballots.

54 (6) Counties are encouraged to designate community-based locations as stand-alone
55 drop-off locations.

56 (7) Locations of drop-off locations shall be widely publicized and a list of such locations
57 shall be included with the instructions that accompany each absentee ballot mailed to voters.

58 (d) The Secretary of State shall propose legislative and emergency rules in accordance
59 with the provisions of §29A-3-1 *et seq.* of this code as may be necessary to implement the
60 provisions of this section. The rules shall include establishment of criteria to assure neutrality and
61 security in the selection of community voting locations.

62 ~~(d)~~ (e) Throughout the period of early in-person voting, the official designated to supervise
63 and conduct early in-person voting shall make the following provisions for voting:

64 (1) The official shall provide a sufficient number of voting booths or devices appropriate to
65 the voting system at which voters may prepare their ballots. The booths or devices are to be in
66 an area separate from, but within clear view of, the public entrance area of the official's office or
67 other area designated by the county commission for early in-person voting and are to be arranged
68 to ensure the voter complete privacy in casting the ballot.

69 (2) The official shall make the voting area secure from interference with the voter and shall
70 ensure that voted and unvoted ballots are at all times secure from tampering. No person, other
71 than a person lawfully assisting the voter according to the provisions of this chapter, may be
72 permitted to come within five feet of the voting booth while the voter is voting. No person, other
73 than the officials or employees of the official designated to supervise and conduct early in-person
74 voting or members of the board of ballot commissioners assigned to conduct early in-person

75 voting, may enter the area or room set aside for voting.

76 (3) (A) The official designated to supervise and conduct early in-person voting shall
77 request the county commission designate another area within the county courthouse, any annex
78 of the courthouse or any other designated as early in-person community voting locations within
79 the county, as a portion of the official's office, for the purpose of early in-person voting in the
80 following circumstances:

81 (i) If the voting area is not accessible to voters with physical disabilities;

82 (ii) If the voting area is not within clear view of the public entrance of the office of the official
83 designated to supervise and conduct early in-person voting; or

84 (iii) If there is no suitable area for early in-person voting within the office.

85 (B) Any designated area is subject to the same requirements as the primary location for
86 early in-person voting.

87 (4) The official designated to supervise and conduct early in-person voting shall have at
88 least two representatives to assist with early in-person voting: *Provided*, That the two
89 representatives may not be registered with the same political party affiliation or be two persons
90 registered with no political party affiliation. The representatives may be full-time employees,
91 temporary employees hired for the period of early in-person voting in person, or volunteers.

92 (5) No person may do any electioneering nor may any person display or distribute in any
93 manner, or authorize the display or distribution of, any literature, posters, or material of any kind
94 which tends to influence the voting for or against any candidate or any public question on the
95 property of the county courthouse, any annex facilities, or within 100 feet of the outside entrance
96 of any other designated early voting locations within the county during the entire period of regular
97 early in-person voting. The official designated to supervise and conduct early in-person voting is
98 authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

§3-3-3a. Voting absent voter's ballot by personal appearance in Saturday elections for religious reasons.

1 [Repealed.]

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

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

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

8 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability,
9 may complete and verify the application by available electronic means prescribed by the
10 Secretary of State.

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

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

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

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

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

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

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

29 (4) The address to which a ballot is to be mailed is an address outside the county if the
30 voter is applying to vote by mail under the provisions of §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-
31 1(b)(3), or §3-3-1(b)(4) of this code;

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

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

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

46 (2) If the official designated to supervise and conduct electronic voting determines that a
47 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services
48 voter or overseas voter or a person with a physical disability, the official designated to supervise
49 absentee voting shall cause the absentee ballot to be transmitted electronically in the manner
50 required for the electronic ballot marking tool or other electronic means.

51 (e)(1) Beginning on the 46th day prior to election day, within one day after the official
52 designated to supervise and conduct absentee voting has both the completed application and the
53 ballot, the official shall provide to the voter at the address given on the application, or by the
54 appropriate electronic delivery method, the following items as required and as prescribed by the
55 Secretary of State:

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

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

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

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

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

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

68 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42
69 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the
70 official designated to supervise and conduct absentee voting shall transmit the ballot to the voter
71 via mail, or electronically, as requested by the voter. If the voter does not designate a preference
72 for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is
73 transmitted electronically pursuant to this subdivision, the official designated to supervise and
74 conduct absentee voting shall also transmit electronically:

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

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

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

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

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

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

83 (A) Place the ballot or ballots in the secrecy envelope ~~no. 4~~ and seal that envelope;

84 (B) Place the sealed ballot secrecy envelope ~~no. 4~~ in the ballot return envelope ~~no. 2~~ and
85 seal that envelope;

86 (C) Complete and sign the forms on the exterior of the ballot return envelope ~~no. 2~~; and

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

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

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

95 (1) The ballot is received by the official designated to supervise and conduct absentee
96 voting no later than the day after the ~~election~~ the close of the polls on election day; or

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

101 (h) Absentee ballots received through the United States mail from persons eligible to vote
102 an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to uniform services

103 and overseas voters, are to be accepted if the ballot is received by the official designated to
104 supervise and conduct absentee voting no later than the hour at which the board of canvassers
105 convenes to begin the canvass.

106 (i) Voted ballots submitted electronically are to be accepted if the ballot is received by the
107 official designated to supervise and conduct absentee voting no later than the close of polls on
108 election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's
109 office shall enter into an agreement with the Federal Voting Assistance Program of the United
110 States Department of Defense to transmit the ballots to the county clerks at a time when two
111 individuals of opposite political parties are available to process the received ballots. For persons
112 casting absentee ballots electronically due to physical disability, the county clerk shall designate
113 two individuals of opposite political parties to process the received ballots in the manner required
114 by the particular electronic ballot marking tool or other electronic means of returning the electronic
115 absentee ballot.

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

119 (k) Absentee ballots which are hand delivered are to be accepted if they are deposited at
120 an authorized drop-off location no later than the close of the polls on election day or received by
121 the official designated to supervise and conduct absentee voting no later than the day preceding
122 the election: *Provided*, That no person may hand deliver more than ~~two~~ 10 absentee ballots in
123 any election. ~~and any person hand delivering an absentee ballot is required to certify that he or~~
124 ~~she has not examined or altered the ballot.~~ Any person who makes a false certification violates
125 the provisions of §3-9-1 *et seq.* of this code and is subject to those provisions.

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

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

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

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

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

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

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

**§3-3-9. Voting in person after having received and after having voted an absent voter's
ballot.**

1 (a) Any person who has applied for and received an absent voter's ballot but has not voted
2 and returned the same to the official designated to supervise and conduct absentee voting or to
3 an authorized drop-off location may vote in person at the polls on election day provided he or she
4 returns the absent voter's ballot to the election commissioners at the polling place. Upon return
5 of the absent voter's ballot the election commissioners shall destroy the ballot in the presence of
6 the voter, and one of the poll clerks shall make a notation of this fact as directed by instructions
7 issued by the Secretary of State. In the event the person does not return the absent voter's ballot,
8 he or she will have his or her vote challenged by one or more of the election commissioners or
9 poll clerks.

10 (b) No person who has voted an absent voter's ballot may vote in person on the day of the
11 election.

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

1 (a) The official designated to supervise and conduct absentee voting may challenge an
2 absent voter's ballot on any of the following grounds:

3 (1) That the application for an absent voter's ballot has not been completed as required
4 by law;

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

7 (3) That the applicant for an absent voter's ballot is not registered to vote in the precinct
8 of his or her residence as provided by law; or

9 (4) That the person voting an absent voter's ballot by personal appearance in his or her
10 office had assistance in voting the ballot when the person was not qualified for voting assistance
11 because: (A) The affidavit of the person who received assistance does not indicate a legally
12 sufficient reason for assistance; or (B) the person who received assistance did not make an
13 affidavit as required by this article. ~~or (C) the person who received assistance is not so illiterate~~
14 ~~as to have been unable to read the names on the ballot or that he or she is not so physically~~
15 ~~disabled as to have been unable to see or mark the absent voter's ballot;~~

16 ~~(5) That the person who voted an absent voter's ballot by mail and received assistance in~~
17 ~~voting the ballot was not qualified under the provisions of this article for assistance; and~~

18 ~~(6) That the person has voted absentee by mail as a result of being out of the county more~~
19 ~~than four consecutive times: *Provided*, That the determination as to whether the person has voted~~
20 ~~more than four consecutive times does not apply if the person is a citizen residing out of the United~~
21 ~~States; or a member, spouse or dependent of a member serving in the uniformed services; or a~~
22 ~~college student living outside of his or her home county.~~

23 (b) Any one or more of the election commissioners or poll clerks in a precinct may

24 challenge an absent voter's ballot on any of the following grounds:

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

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

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

30 ~~(4) That the signatures of the person voting an absent voter's ballot as they appear on his
31 or her registration record, his or her application for an absent voter's ballot and the absent voter's
32 ballot envelope are not in the same handwriting;~~

33 ~~(5)~~ (4) That the person voting an absent voter's ballot by personal appearance had
34 assistance in voting the ballot when the person was not qualified for assistance because: (A) The
35 affidavit of the person who received assistance does not indicate a legally sufficient reason for
36 assistance; or (B) the person who received assistance did not make an affidavit as required by
37 this article; or ~~(C) the person who received assistance is not so illiterate as to have been unable
38 to read the names on the ballot or that he or she was not so physically disabled as to have been
39 unable to see or mark the absent voter's ballot;~~

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

42 ~~(7)~~ (5) That the person who voted the absent voter's ballot voted in person at the polls on
43 election day;

44 ~~(8)~~ (6) That the person who voted an absent voter's absentee ballot under authority of
45 subdivision (3), subsection (b), section one of this article and is or was present in the county in
46 which he or she is registered to vote between the opening and closing of the polls on election day
47 failed to complete the required declaration on the ballot return envelope; and

48 ~~(9)~~ (7) On any other ground or for any reason on which or for which the ballot of a voter
49 voting in person at the polls on election day may be challenged, with the following exceptions:

50 (A) No challenge may be made to any absent voter ballot if the voter was registered and
 51 qualified to vote pursuant to the provisions of §3-3-1(a) of this code.

52 (B) Pursuant to §3-1-4 of this code, an absent voter ballot may not be challenged or
 53 rejected solely because it lacks a secrecy envelope or that the secrecy envelope was returned
 54 unsealed; and

55 (C) An absent voter ballot may not be challenged or rejected solely on the basis of a
 56 perceived signature mismatch.

57 (c) Forms for, and the manner of, challenging an absent voter's ballot under the provisions
 58 of this article are to be prescribed by the Secretary of State.

59 (d) Absent voters' ballots challenged by the official designated to supervise and conduct
 60 absentee voting under the provisions of this article are to be transmitted by the official directly to
 61 the county commission sitting as a board of canvassers. The absent voters' ballots challenged by
 62 the election commissioners and poll clerks under the provisions of this article may not be counted
 63 by the election officials but are to be transmitted by them to the county commission sitting as a
 64 board of canvassers. Action by the board of canvassers on challenged absent voters' ballots is to
 65 be governed by the provisions of §3-1-41 of this code.

**§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to
 absentee voting.**

1 (a) The Secretary of State shall make, amend and rescind rules, regulations, orders, and
 2 instructions, and prescribe forms, lists, and records, and consolidation of forms, lists, and records
 3 as may be necessary to carry out the policy of the Legislature as contained in this article and as
 4 may be necessary to provide for an effective, efficient, and orderly administration of the absentee
 5 voter law of this state. In the case of West Virginia voters residing outside the continental United
 6 States, the Secretary of State shall promulgate rules ~~and regulations~~ necessary to implement
 7 procedures relating to absentee voters contained in 42 U.S.C. §1973, *et seq.*, the Uniformed and
 8 Overseas Citizens Absentee Voting Act of 1986, and shall forward a copy of the act to all officials

9 designated to supervise and conduct absentee voting before January 1, of each even-numbered
10 year.

11 (b) The Secretary of State may establish special procedures to allow absentee voting for
12 those categories of registered voters who, because of special circumstances, would otherwise be
13 unable to vote in the election.

14 (c) It is the duty of all officials designated to supervise and conduct absentee voting, other
15 county officers, and all election commissioners and poll clerks to abide by the rules, regulations,
16 orders, and instructions and to use the forms, lists, and records which may include or relate to:

17 (1) The consolidation of the two application forms provided for in this article into one form;

18 (2) The size and form of absent voter's ballot ~~envelope nos. 1 and 2~~ secrecy, ballot return,
19 and carrier envelopes, which shall be standardized across the counties and municipalities and
20 shall conform to accepted best practices;

21 (3) The information which is to be placed on absent voter's ballot ~~secrecy~~ envelope ~~no. 1~~
22 and the forms and information which are to be placed on absent voter's ballot return envelope:
23 ~~no. 2~~ Provided, That the ballot return envelope shall include a preprinted list of the legal
24 requirements for voting in plain language with space for the voter to acknowledge and declare
25 adherence to those requirements by signing and printing his or her name;

26 (4) The forms and manner of making the challenges to absentee ballots authorized by this
27 article;

28 (5) The forms of, information to be contained in, and consolidation of, lists and records
29 pertaining to applications for, and voting of, absentee ballots and assistance to persons voting
30 absentee ballots;

31 (6) The supplying of application forms, envelopes, challenge forms, lists, records, and
32 other forms; and

33 (7) The keeping and security of voted absentee ballots in the office of the official
34 designated to supervise and conduct absentee voting.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**§3-6-6. Ballot counting procedures in paper ballot systems.**

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

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

10 (a) In counties in which the clerk of the county commission has determined that the
11 absentee ballots should be counted at the precincts in which the absent voters are registered, the
12 receiving board must first process the absentee ballots and deposit the ballots to be counted in
13 the ballot box. The receiving board shall then proceed as provided in subsections (b) and (c) of
14 this section. In counties in which the absentee ballots are counted at the central counting center,
15 the receiving board shall proceed as provided in subsections (b) and (c) of this section.

16 (b) The receiving board shall ascertain from the pollbooks and record on the proper form
17 the total number of voters who have voted. The number of ballots challenged shall be counted
18 and subtracted from the total and the result should equal the number of ballots deposited in the
19 ballot box. The commissioners and clerks shall also report, over their signatures, the number of
20 ballots spoiled and the number of ballots not voted.

21 (c) The procedure for counting ballots, whether performed throughout the day by the
22 counting board as provided in §3-1-33 of this code or after the close of the polls by the receiving
23 board or by the two boards together, shall be as follows:

24 (1) The ballot box shall be opened and all votes shall be tallied in the presence of the

25 entire election board;

26 (2) One of the commissioners shall take one ballot from the box at a time and shall
27 determine if the ballot is properly signed by the two poll clerks of the receiving board. If not
28 properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it.
29 Any ballot which does not contain the proper signatures shall be challenged. If an accurate
30 accounting is made for all ballots in the precinct in which the ballot was voted and no other
31 challenge exists against the voter, the ballot shall be counted at the canvas. If properly signed,
32 the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall
33 together read the votes marked on the ballot for each office. Write-in votes for election for any
34 person other than an official write-in candidate shall be disregarded;

35 (3) The commissioner responsible for removing the ballots from the box shall keep a tally
36 of the number of ballots as they are removed and whenever the number shall equal the number
37 of voters entered on the pollbook minus the number of provisional ballots, as determined
38 according to subsection (a) of this section, any other ballot found in the ballot box shall be placed
39 in the same envelope with unsigned ballots not counted, without unfolding the same or allowing
40 anyone to examine or know the contents thereof, and the number of excess ballots shall be
41 recorded on the envelope;

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

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

47 (d) For absentee ballots delivered by mail or otherwise received by the county clerk, not
48 sooner than the seventh day before the date of an election, the county clerk may begin the
49 process of pre-canvass, in accordance with a security plan approved by the Secretary of State.

50 (1) For purposes of this section, "pre-canvass" means inspection of the voter declaration

51 on the ballot return envelope, opening of all envelopes containing completed absentee ballots,
52 removal of such ballots from the envelopes, preparation of the ballots for counting. Pre-canvass
53 may include counting, computing, and tallying of the votes reflected on the ballots.

54 (2) The county clerk may take any other actions that are necessary to count ballots
55 delivered by mail or deposited at authorized drop-off locations. Such other actions may include
56 notifications of voters to cure ballot deficiencies, pursuant to §3-6-7(b) of this code.

57 (3) Pre-canvass shall not include the recording or publishing of the votes reflected on the
58 ballots.

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

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

12 (b) The days between Election Day and the start of canvass may be used to cure absentee
13 ballots returned with deficiencies that might otherwise cause them to be rejected:

14 (1) When a ballot is challenged during processing prior to the canvass, the county clerk
15 shall mail to the voter a notice that describes the nature of the deficiency. The clerk may also use
16 other means to contact the voter regarding the deficiency. The Secretary of State shall design a
17 standard form to be used in all notifications sent by county clerks under this subsection.

18 (2) In order for the ballot to be counted, the voter must provide evidence sufficient to
19 correct the deficiency not later than the beginning of canvass. The Secretary of State shall design
20 a standard form to be used for certified statements made under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

31 (B) For a candidate on the ballot in more than one county, the board may not enter an
32 order certifying the election results for a period of 48 hours after the final county's board has
33 publicly declared the results of the election. In such case, each relevant board shall notify the
34 Secretary of State immediately following each relevant board's public declaration of results. For
35 offices on the ballot in more than one county, the Secretary of State shall notify the board of each
36 relevant county when the final county has made a public declaration of the results of the election.
37 At the end of the 48-hour period in this section, an order shall be entered by each relevant county
38 certifying all election results except for those offices in which a recount has been demanded.

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

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

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

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

53 (f) If a recount has been demanded, the board shall have 48 hours in which to send notice
54 to all candidates who filed for the office in which a recount has been demanded of the date, time
55 and place where the board will convene to commence the recount. The notice shall be served
56 under the provisions of subsection (g) of this section. The recount shall be set for no sooner than
57 three days after the serving of the notice: *Provided*, That after the notice is served, candidates so
58 served shall have an additional 24 hours in which to notify the board, in writing, of their intention
59 to preserve their right to demand a recount of precincts not requested to be recounted by the
60 candidate originally requesting a recount of ballots cast: *Provided, however*, That there shall be
61 only one recount of each precinct, regardless of the number of requests for a recount of any
62 precinct. A demand for the recount of ballots cast at any precinct may be made during the recount
63 proceedings only by the candidate originally requesting the recount and those candidates who
64 notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a
65 recount of additional precincts.

66 (g) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in
67 writing to the candidate in person; or if the candidate is not found, by delivering the copy at the
68 usual place of abode of the candidate and giving information of its purport, to the spouse of the
69 candidate or any other person found there who is a member of his or her family and above the
70 age of 16 years; or if neither the spouse of the candidate nor any other person be found there and
71 the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any
72 sheriff, thereto required, shall serve a notice within his or her county and make return of the
73 manner and time of service; for a failure so to do, he or she shall forfeit \$20. The return shall be
74 evidence of the manner and time of service.

75 (h) Every candidate who demands a recount shall be required to furnish bond in a
76 reasonable amount with good sufficient surety to guarantee payment of the costs and the
77 expenses of the recount in the event the result of the election is not changed by the recount; but
78 the amount of the bond shall in no case exceed \$300: Provided, That, in the general election only,
79 there shall be a recount at state expense for any race decided by less than 0.5 percentage points
80 after canvass.

81 (i) After the board of canvassers has made their certificates and declared the results as
82 hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots,
83 registration records, pollbooks, tally sheets and precinct certificates with the clerk of the county
84 commission from whom they were received, who shall carefully preserve them for 22 months:
85 *Provided, That* the clerk may use these records to update the voter registration records in
86 accordance with §3-2-18(d) of this code. If there is no contest pending as to any election and their
87 further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and
88 certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots.
89 If there is a contest pending, they shall be destroyed as soon as the contest is ended.

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

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-14. Coercion, intimidation, and improper influence of voter; penalties.

1 (a) It is unlawful for any person, by use of force, coercion, or other means, to cause or
2 attempt to cause a voter to vote in any manner that is contrary to the voter's choice or intent; to
3 cause or attempt to cause a voter, against the voter's intent, to refrain from voting in a public
4 election; or to impede, prevent, or interfere with a voter's choice when marking a ballot;

5 (b) Any person who violates the provisions of subsection (a) of this section is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in
7 jail for not more than one year, or both, in the discretion of the court.

§3-9-19. Violations concerning absent voters' ballots; penalties.

1 (a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an
2 absent voter's ballot, intimidates an absent voter, or completes or alters an absent voter's ballot,
3 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more
4 than \$20,000, imprisoned in a state correctional facility for not less than one nor more than five
5 years, or both fined and imprisoned.

6 (b) Notwithstanding subsection (a) of this section, any person who, having procured an
7 absent voter's official ballot or ballots, shall willfully neglect or refuse to return the same as
8 provided in §3-3-1 *et seq.* of this code, or who shall otherwise willfully violate any of the provisions
9 of ~~said~~ §3-3-1 *et seq.* of this code, is guilty of a misdemeanor and, on conviction thereof, shall be
10 fined not more than \$250, or confined in jail for not more than three months. If the clerk of the
11 county commission of any county, or any member of the board of ballot commissioners, or any
12 member of the board of canvassers refuses or neglects to perform any of the duties required of
13 him or her by any of the provisions of §3-3-1 *et seq.*, §3-5-1 *et seq.*, and §3-6-1 *et seq.* of this
14 code relating to voting by absentees or discloses to any other person or persons how any absent
15 voter voted, he or she shall, in each instance, be guilty of a misdemeanor and, upon conviction
16 thereof, shall be fined not more than \$500, or confined in jail for not more than six months.

17 (c) Except when a voter with a disability requires assistance in voting as provided in §3-1-
18 34 and §3-3-5 of this code, any person who willfully marks or enters selections on another
19 person's ballot without the consent or knowledge of the voter of the ballot is guilty of a
20 misdemeanor and, upon conviction thereof, shall be fined not more than \$250, or confined in jail
21 for not more than three months.

NOTE: The purpose of this bill is to modernize procedures for access to, and security for, voting in public elections.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.