

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 489**

By Senators Woodrum and Oliverio

[Introduced February 14, 2025; referred  
to the Committee on the Judiciary]

1 A BILL to amend §3-1-50 of the Code of West Virginia, 1931, as amended, relating to prescribing  
2 administrative procedures and ultimate disposition of election law violation complaints and  
3 investigations thereof by the Secretary of State.

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

## ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

### **§3-1-50. ~~Establishment of state-based administrative complaint procedures~~ Election law complaints; procedures.**

1 (a) The Secretary of State shall establish and maintain a state-based administrative  
2 complaint procedure for complaints received concerning election violations which shall meet the  
3 following requirements:

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

5 (2) Under the procedures, the Secretary of State, members of the State Election  
6 Commission, or any person who believes that there is a violation of any provision of this chapter or  
7 Title III of the Help America Vote Act, Pub. L. 107-252, including a violation which has occurred, is  
8 occurring or is about to occur, may file a complaint.

9 (3) Any complaint filed under the procedures shall be in writing, notarized, and signed and  
10 sworn by the person filing the complaint-, and include all of the following:

11 (A) Clearly describe the alleged incident or election violation;

12 (B) Provide the name and valid contact information of any person who may have  
13 information or evidence supporting the allegations;

14 (C) State approximately when the alleged violation or incident occurred;

15 (D) State the location(s) where the alleged incident or violation occurred;

16 (E) Provide any supporting facts or documentation about the alleged incident or violation;

17 and

18 (F) Provide an affirmation that facts articulated in the complaint are true and correct to the  
19 best of the complainant's knowledge under penalty of perjury.

(4) If a complaint alleges a violation of law under the Secretary of State's jurisdiction but fails to satisfy the procedural requirements set forth in subsection (3), the Secretary of State shall notify the complainant in writing of the nature of the deficiency(ies), and inform the complainant that the complaint must be corrected within 10 days of the notice or the complaint will be dismissed without prejudice: *Provided*, That notice shall not be required if no contact information or mailing address is provided with the complaint.

(5) If the Secretary of State determines that a complaint is in the proper form and that the allegations, if true, establish a violation of any provision of this Chapter or Title III of the Help America Vote Act, Pub. L. 107-252, then the Secretary of State shall provide a confidential report to the State Election Commission by email that shall confirm jurisdiction, summarize the complaint including any additional information or evidence known to the Secretary at the time, analyze the legal issues raised by the complaint, and recommend to either initiate an investigation formally or informally or refer the complaint to the appropriate authority.

(6) The State Election Commission shall determine whether to adopt the Secretary of State's recommendation to initiate an investigation or refer the complaint to the appropriate authority as follows:

(A) Within 5 business days of receipt of the email, any member of the State Election Commission may request via email to the Secretary of State or office designee to further discuss a complaint during the next State Election Commission in an executive session. At the conclusion of the discussion, the State Election Commission shall enter into public session and publicly announce its recommendation without divulging the names of any parties or witnesses or particular details of the complaint; or

(B) If no member of the State Election Commission requests to further discuss a complaint within five business days, the Secretary of State may consider the recommendation adopted and proceed with the investigation or referral.

(7) The Secretary of State may consolidate complaints filed under this section, and may

modify an informal or formal investigation to an informal or formal investigation, as appropriate, upon discovery of sufficient facts or evidence that suggest modification would lead to an efficient resolution of the matter.

(8) Upon determination that a complaint should be investigated, whether formerly or informally, the Secretary of State shall notify the respondent as follows:

(A) Provide notice that an election law complaint has been filed and the Secretary of State's jurisdiction has been confirmed;

(B) Provide either a copy of the complaint with the complainant's and other witnesses' information redacted, or a summary of the complaint;

(C) Provide a summary of the facts applied to the alleged violation of law(s); and

(D) Provide instructions for responding to the complaint.

(9) In an informal investigation, the Secretary of State may take all necessary actions to confirm or disprove the allegations contained in a complaint by utilizing publicly available information and records including but not limited to the internet, mail pieces, photographs, communications, and requesting documents from the respondent, third parties, or other sources.

(10) In a formal investigation, the Secretary of State may submit written interrogatories to the respondent, conduct a formal interview with the respondent, or a combination of both written interrogatories and a formal interview with the respondent. The Secretary of State may also take additional investigative action utilizing subpoenas or testimony obtained under oath.

(A) Interrogatory questions may request the respondent or another person to provide written statements bearing the facts, circumstances, or information relevant to the investigation. The Secretary of State may also ask the respondent or another person to produce relevant evidence and documents. Written responses to interrogatory questions shall be answered under penalty of perjury.

(B) If the Secretary of State interviews any respondent, complainant, witness, or other third party, the testimony may be taken informally or by deposition. All oral statements taken during an

interview shall be provided under oath administered by the Secretary of State or his or her designee, or in the case of a deposition by a certified court reporter.

(C) The Secretary of State may subpoena any person, book, record, communication, or other documents relevant to the investigation. The Secretary shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond. By request of the Secretary, if any person fails to comply with a duly served subpoena, the Attorney General shall seek enforcement of subpoena in the appropriate circuit court and serve such person a copy of the petition for the enforcement of this section.

(11) Upon completing an investigation, the Secretary of State shall submit a findings and recommendations report to the State Election Commission. The Secretary may include a recommendation that the complaint be dismissed, that a letter of instruction be issued, that the complaint be forwarded to the proper authorities, or that the State Election Commission meet to consider issuing an offer of settlement.

(A) Within 5 business days of receipt of the report, any member of the State Election Commission may request via email to the Secretary of State or office designee to further discuss the report during the next State Election Commission in an executive session before making a final determination on the matter; or

(B) The State Election Commission shall make one of the following determinations:

(i) Direct the Secretary to further investigate the complaint;

(ii) Dismiss the complaint if the facts and evidence do not support a finding of probable cause;

(iii) Issue a letter of instruction;

(iv) Refer the complaint to the proper authorities;

(v) Take other appropriate action.

(12) If the State Election Commission finds that probable cause exists for a finding of a violation, it may issue a written offer of settlement to the respondent stating its findings and the

proposed sanctions. The respondent may accept the State Election Commission's offer of settlement in writing within 10 calendar days of the issuance of the offer. If the offer is not accepted within that timeframe, the State Election Commission shall either call for a public hearing or refer the complaint to the proper authorities.

(13) If the State Election Commission does not find probable cause, it shall dismiss the complaint and provide notice to all parties, and may include a letter of instruction when the facts and other evidence indicate that such a letter is necessary and proper.

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

~~(6) (14)~~ Violations of any provision of this chapter or Title III of the Help America Vote Act, Pub. L. 107-252 shall be punishable in accordance with the provisions of article nine of this chapter.

(15) The Attorney General shall, when requested, provide legal and investigative assistance to the Secretary of State and the State Election Commission.

(16) Upon reporting an alleged criminal violation of this article to the appropriate prosecuting authority have jurisdiction, the prosecuting authority shall, upon determining that a reason to believe that a violation has occurred, present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report. The prosecuting authority further shall notify the Secretary of State when the violation was presented to the grand jury and the results therefrom.

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

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

~~(9) If the Secretary of State fails to meet the deadline applicable under subdivision (8) of this section, the complaint shall be resolved within sixty days under alternative dispute resolution~~

~~procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.~~

~~(b) The administrative complaint procedure required by subsection (a) of this section is not applicable if, within thirty days of the filing of the complaint: (1) The Secretary of State initiates an investigation; (2) the Secretary of State determines that the allegations contained in the complaint may result in a finding of a criminal violation; and (3) the Secretary of State determines that the administrative complaint procedure required by this section would endanger or impede the associated criminal investigation: Provided, That within three business days thereafter the Secretary of State shall notify the complainant in writing that the allegations contained in the complaint may result in a finding of a criminal violation and, therefore, the administrative procedure contained in this section is inapplicable~~ The Secretary of State may promulgate in accordance with §29A-3-1 et seq. of this code emergency and legislative rules necessary to effectuate the purposes of this section.

NOTE: The purpose of this bill is to standardize and increase compliance with election law investigations by providing uniform procedures, deadlines, and specific outcomes in law.

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