

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 489

By Senators Woodrum and Oliverio

[Reported February 27, 2025, from 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; specifying who may file complaints; setting
4 forth requirements for complaints; requiring complaints to be sworn; requiring the
5 Secretary of State to notify complainants of deficiencies in complaint; requiring Secretary
6 of State to submit report of suspected election law violations to State Election Commission;
7 setting forth process for State Election Commission to handle complaints; requiring
8 Secretary of State to notify respondents to election law complaints of investigations and
9 setting forth contents thereof; setting forth procedure for Secretary of State to follow for
10 investigations; permitting Secretary of State to issue and require responses to sworn
11 interrogatories, subpoenas, and request production of documents; permitting Secretary of
12 State to interview and depose respondents; requiring Secretary of State to publish findings
13 of investigations to State Election Commission; permitting State Election Commission to
14 request Secretary of State to discuss the report and require him or her to take further action
15 following investigation of complaint; permitting State Election Commission to propose and
16 enter settlement agreements; requiring State Election Commission to dismiss complaints
17 upon a finding that no probable cause exists; requiring Attorney General to provide legal
18 and investigative support upon request by the Secretary of State or the State Election
19 Commission; requiring prosecuting authority to receive and process suspected criminal
20 violations; and permitting Secretary of State to promulgate rules.

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) A description of the alleged incident or election violation;

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

14 (C) An approximation of when the alleged violation or incident occurred;

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

16 (E) Any supporting facts or documentation about the alleged incident or violation; and

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

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

25 (5) If the Secretary of State determines that a complaint is in the proper form and that the
26 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 or other writing 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 five business days of receipt of the report, any member of the State Election Commission may request via email or other writing 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 formally or informally, the Secretary of State shall provide the respondent with:

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

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

54 (C) A summary of the facts applied to the alleged violation or violations of law; and

55 (D) Instructions for responding to the complaint.

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

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

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

70 (B) If the Secretary of State interviews any respondent, complainant, witness, or other third
71 party, the testimony may be taken informally or by deposition. All oral statements taken during an
72 interview shall be provided under oath administered by the Secretary of State or his or her
73 designee, or in the case of a deposition, by a certified court reporter.

74 (C) The Secretary of State may subpoena any person, book, record, communication, or
75 other documents relevant to the investigation. The secretary shall provide the subject of the
76 subpoena with reasonable notice of the subpoena and an opportunity to respond. By request of
77 the secretary, if any person fails to comply with a duly served subpoena, the Attorney General shall

78 seek enforcement of subpoena in the appropriate circuit court and serve such person a copy of the
79 petition for the enforcement of this section.

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

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

89 (B) The State Election Commission shall:

90 (i) Direct the secretary to further investigate the complaint;

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

93 (iii) Issue a letter of instruction;

94 (iv) Refer the complaint to the proper authorities; or

95 (v) Take other appropriate action.

96 (12) If the State Election Commission finds that probable cause exists for a finding of a
97 violation, it may issue a written offer of settlement to the respondent stating its findings and the
98 proposed sanctions. The respondent may accept the State Election Commission's offer of
99 settlement in writing within 10 calendar days of the issuance of the offer. If the offer is not accepted
100 within that time frame, the State Election Commission shall either call for a public hearing or refer
101 the complaint to the proper authorities.

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

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

106 ~~(6)(14)~~ Violations of any provision of this chapter or Title III of the Help America Vote Act,
107 Pub. L. 107-252 shall be are punishable in accordance with the provisions of article nine of this
108 chapter.

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

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

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

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

122 ~~(9) If the Secretary of State fails to meet the deadline applicable under subdivision (8) of~~
123 ~~this section, the complaint shall be resolved within sixty days under alternative dispute resolution~~
124 ~~procedures established for purposes of this section. The record and other materials from any~~
125 ~~proceedings conducted under the complaint procedures established under this section shall be~~
126 ~~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.