WEST VIRGINIA CODE: §3-1-36

§3-1-36. Report on and disposition of ballots spoiled or not used.

Any voter who shall spoil, deface or mutilate the ballot delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot delivered to him shall, before leaving the election room, return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll, clerks shall make a minute of the fact on the pollbooks, at the time, and the word "spoiled" shall be written across the face of the ballot and such ballot shall be placed in an envelope for spoiled ballots.

Immediately on closing the polls, the commissioners of election shall ascertain the number of ballots spoiled during the election and the number of ballots remaining not voted. The commissioners of election shall also ascertain from the pollbooks the number of persons who voted and shall report, over their signatures, to the clerk of the county commission, the number of votes case, the number of ballots spoiled during the election and the number of ballots not voted. All unused ballots shall at the same time be returned to the clerk of the county commission, who shall separately package the unused ballots from each precinct, mark the name and number of the precinct on the package and retain them securely along with other election materials.

Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or both fined and imprisoned.

The board of ballot commissioners of each county, or the chairman thereof, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until twenty-two months after the election.

WV Legislature