# WEST VIRGINIA CODE: §3-4A-19

**§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.**

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote-recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the poll book a printed card or ticket numbered to correspond to the number on the poll book of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote-recording devices, place them in the voting booths, examine them to see that they have the correct ballots by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, the electronic poll books, if applicable, supplies, records and forms and post the sample ballots and instructions to voters. Upon ascertaining that all ballots, supplies, electronic poll books, if applicable, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.

(e) Upon entering a precinct which is using an electronic poll book, each voter shall be verified by use of the electronic poll book to be a registered voter. If the voter is not registered according to the electronic poll book within that precinct, the poll clerk is to inform the voter of the proper precinct in which the voter is registered.

(f) Where applicable, each voter shall be instructed how to operate the vote-recording device before he or she enters the voting booth.

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(g) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the 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 poll books, at the time, write the word "spoiled" across the face of the ballot and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the poll books the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. All unused ballots shall be stored with the other election materials and destroyed at the expiration of twenty-two months.

(h) 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 jail for not more than one year, or both.

(i) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(j) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope or sleeve provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope, if applicable, with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked "spoiled" and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(k) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the

number of ballots that were spoiled, as indicated by the poll books, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(l) The poll books, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

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