WEST VIRGINIA CODE CHAPTER 3

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§3-1-1. Short title; purpose.

This chapter shall constitute and may be cited as the "West Virginia Election Code" and contemplates and comprehends a code of laws for the establishment, administration and regulation of elections and election procedures in the State of West Virginia.

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§3-1-2. Scope of chapter; definitions.

Unless restricted by the context, the provisions of this chapter shall apply to every general, primary and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be operative in municipal elections only in those instances in which they are made expressly so applicable.

Unless the context clearly requires a different meaning, as herein used:

"Voter" shall mean any person who possesses the statutory and Constitutional qualifications for voting;

"Election" shall mean the procedure whereby the voters of this state or any subdivision thereof elect persons to fill public offices, or elect members of a Constitutional convention, or vote on public questions;

"Any election" or "all elections" shall include every general, primary, or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town or village officers of any subdivision now existing or hereafter created, or for the purpose of electing members of a Constitutional convention, or for voting upon any public question submitted to the people of the state or any of the aforesaid subdivisions;

"Office" shall be construed to mean "public office" which shall include (1) any elective office provided for by the Constitution or laws of the United States or of this state to which a salary or other compensation attaches, and (2) membership in a Constitutional convention;

"Candidate" shall mean any person to be voted for at an election;

"Public question" shall mean any issue or proposition, now or hereafter required by the governing body of this state or any of its subdivisions to be submitted to the voters of the state or subdivision for decision at elections;

The term "minor" as used in article four, section one of the state Constitution and as used in this chapter shall mean a person who has not become eighteen years of age.

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§3-1-2a. Municipal elections.

(a) Notwithstanding other provisions of this code or of any special legislative or home rule city charter, the provisions of: (1) Articles eight and nine of this chapter; (2) any rules promulgated under authority granted in articles eight and nine of this chapter; and (3) any provisions of this chapter making a practice or conduct unlawful shall apply to every municipal election held for any purpose.

(b) For purposes of:

(1) This section;

(2) The application of articles eight and nine of this chapter;

(3) The application of the rules mentioned in this section; and

(4) The application of provisions of this chapter making a practice or conduct unlawful, the provisions of law which impose any duty upon or define any offense or prohibition with respect to the duty or authority of a county officer or county election officer or body of county election officers shall be construed to and shall apply with equal force and effect to the person or persons in a municipal election upon whom this code or the city charter or ordinance imposes such duty or vests the same or similar authority.

(c) Every municipality shall by charter or ordinance designate the persons in the municipality who perform the same duties as any officer in a county election. The designated persons shall attend a biannual election training held and conducted by the office of the Secretary of State.

(d) This section shall not be construed to abrogate the applicability of other provisions of this chapter to municipal elections.

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§3-1-3. Persons entitled to vote.

(a) Citizens of the state may vote at all elections held within the precincts of the counties and municipalities in which they respectively reside, but a person may not vote in a federal, state, county, municipal, or special election unless the person:

(1) Is registered to vote as required by law;

(2) Is 18 years of age, except that a person may vote in a primary election if he or she will reach the age of 18 years on or before the date of the next general election held after the primary election;

(3) Has not been determined by a final judgment of a circuit court exercising jurisdiction pursuant to §44A-1-2(c) of this code to be totally mentally incompetent;

(4) Has not been convicted of treason, a felony, or bribery in an election or, if convicted, has:

(A) Had his or her sentence fully discharged, including any term of incarceration, parole, supervision, or period of probation ordered by any court; or

(B) Been pardoned or otherwise formally released from the resulting disability to vote;

(5) Is a United States citizen; and

(6) Is a bona fide resident of the state, county, or municipality in which he or she offers to vote.

(b) For purposes of §3-1-3 (a)(3), a person is requalified to vote upon certification in writing by the clerk of the circuit court of an order or other official determination filed with his or her office that the person is no longer totally mentally incompetent: *Provided*, That a copy of the order or other official determination shall not be provided without further order by a court of competent jurisdiction or written permission signed by the person to whom the order or official determination pertains.

(c) For purposes of §3-1-3 (a)(4):

(1) A person convicted of a disqualifying crime may not vote from the date of adjudication of that crime, notwithstanding any pending sentencing order, post-trial motions, direct appeals, or other post-conviction requests for relief; and

(2) A person is not considered to have been convicted of a disqualifying crime where the criminal proceedings are deferred and there is no adjudication of guilt as to the disqualifying crime.

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§3-1-3a. Persons entitled to vote under federal Voting Rights Act Amendments of 1970; authority of Secretary of State.

(1) Any citizen of the United States who is a resident of the state and who applies, not later than thirty days immediately prior to any presidential election for registration or qualification to vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, and who is otherwise qualified to vote, may register to vote, and vote, for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.

(2) Any citizen of the United States who has moved his residence from this state within thirty days next preceding any election for president and vice-president, and who was otherwise qualified to vote in this state as of the date of his change of residence and who has not satisfied the registration requirements of the state to which he has moved, may vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.

(3) Any citizen of the United States who has attained the age of eighteen years but who has not attained the age of twenty-one years by the time of the next ensuing primary or election in which he may vote under section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and who is otherwise qualified to vote, may vote in any primary or election for those candidates for whom he is entitled to vote under said section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court.

(4) The Secretary of State shall have authority to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records, as may be necessary in order for this state to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and it shall be the duty of all public officers, election officers, boards and commissioners having any authority or responsibility in connection with any election, to comply with all such rules, regulations, orders and instructions, and use, make, follow or comply with all such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records as have been prescribed by the Secretary of State under the foregoing authority vested in that office.

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§3-1-4. Manner of voting.

In all elections the mode of voting shall be by ballot, but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect. Voting by ballot may be accomplished as provided in articles three, four, five and six of this chapter.

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§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

(a) The precinct is the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine, and establish the boundaries thereof and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than 300, nor more than 1,500 registered voters. Each precinct in a rural or less thickly settled area shall contain not less than 200, nor more than 700 registered voters. A county commission may permit the establishment or retention of a precinct less than the minimum numbers allowed in this subsection upon making a written finding that to do otherwise would cause undue hardship to the voters. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits: *Provided*, That any precincts with polling places that are within a one-mile radius of each other on or after July 1, 2014, may be consolidated, at the discretion of the county clerk and county commission into one or more new precincts that contain not more than 3,000 registered voters in any urban center, nor more than 1,500 registered voters in a rural or less thickly settled area: *Provided, however*, That no precincts may be consolidated pursuant to this section if the consolidation would create a geographical barrier or path of travel between voters in a precinct and their proposed new polling place that would create an undue hardship to voters of any current precinct.

If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: *Provided*, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than 700 registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who are eligible to vote in each precinct so created. Each precinct shall be reported independently.

(b) In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality, except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries shall be

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comprised of intersecting geographic physical features or municipal boundaries recognized by the U. S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks, and mountain ridge lines. The county commission of every county shall modify precinct boundaries to follow geographic physical features or municipal boundaries recognized by the U.S. Census Bureau and submit changes to the Secretary of State in accordance with this section.

(d) To facilitate the state's receipt of decennial census data from the U.S. Census Bureau which will include tabulation geography that supports the needs of the Legislature during the federal congressional and state legislative redistricting process, and the needs of county commissions during the magisterial district and precinct redistricting process:

(1) The Secretary of State shall serve as the Legislature's agent to the U.S. Census Bureau, the county commissions, and the clerks of the county commissions for purposes of Block Boundary Suggestion Project (Phase I), Voting District Project (Phase II), and Collection of Census Redistricting Plans (Phase IV), or their equivalents, of the U.S. Census Bureau's Redistricting Data Program for the federal decennial census. The Secretary of State may designate and utilize staff within his or her office to perform the technical responsibilities of this role.

(2) Each county commission shall submit on an ongoing basis to the Secretary of State its updated precincts and such other information as is sufficient to participate in the Block Boundary Suggestion Project (Phase I) and Voting District Project (Phase II), or their equivalents, of the Redistricting Data Program, including any verification phases. The Secretary of State shall coordinate with all counties for the submission and verification of such information. The Secretary of State shall compile the information submitted by the counties and shall submit and verify such information to the U.S. Census Bureau in compliance with the deadlines established by the U.S. Census Bureau for the Redistricting Data Program. The Secretary of State shall provide copies of such submission to the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Delegates, and the Minority Leader of the House of Delegates.

(3) Upon the conclusion of any federal congressional or state legislative redistricting process, the Legislature shall provide updated maps and accompanying technical files to the Secretary of State. The Secretary of State shall submit such maps and accompanying technical files to the U.S. Census Bureau during its Collection of Census Redistricting Plans (Phase IV) of the Redistricting Data Program. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the Legislature. The Secretary of State shall maintain previous maps and technical files submitted by the Legislature in its records.

(e) Each county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts and magisterial districts. Each

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county commission shall submit current maps and accompanying technical files to the Secretary of State upon updating its precincts and magisterial districts. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the counties. The Secretary of State shall maintain previous maps and accompanying technical files submitted by the counties in its records.

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§3-1-6. Municipal voting precincts.

The governing bodies of all municipalities shall, for the purpose of municipal elections, provide by ordinance for making the voting precincts in the respective municipalities coincide, as nearly as possible, to the boundaries of the voting precincts fixed by the county court for all state and county elections.

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§3-1-7. Precinct changes; procedure; precinct record.

(a) Subject to the provisions and limitations of section five of this article, the county commission of any county may change the boundaries of any precinct within the county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it.

(b) No order effecting the change, division or consolidation shall be made by the county commission within ninety days prior to an election nor without giving notice at least one month before the change, division or consolidation by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, publish the order in the manner required for publication of the notice.

(c) The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts and shall mail written notification to all registered voters affected by the change.

(d) The county commission shall keep in a well-bound book, marked "election precinct record", a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. The "election precinct record" shall be kept by the county commission clerk in his or her office and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.

(e) When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place and shall mail written notification to all registered voters affected by the change.

(f) If for any reason the election cannot be held at the designated polling place in a precinct and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

(g) Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the Secretary of

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State. A change, if made however, shall not cause any voter to be moved to a different district.

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§3-1-8. Political party defined; parties or groups that may participate in municipal primary elections.

Any affiliation of voters representing any principle or organization which, at the last preceding general election, polled for its candidate for Governor at least one per cent of the total number of votes cast for all candidates for that office in the state, shall be a political party, within the meaning and for the purpose of this chapter: Provided, That notwithstanding the foregoing provisions of this section, the governing body of any municipality may, by ordinance adopted by the affirmative vote of at least three fourths of the members of such governing body by recorded vote, provide that municipal political parties or groups within such municipality that do not meet the requirements of this section for classification as a political party may participate in the primary elections of any such municipality. Any such ordinance shall contain provisions implementing the foregoing proviso, which implementing provisions shall conform as nearly as practicable to any general provisions of law relating to municipal primary elections.

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§3-1-9. Political party committees; how composed; organization.

(a) Every fourth year at the primary election, the voters of each political party in each state senatorial district shall elect four members consisting of two male members and two female members of the state executive committee of the party. In state senatorial districts containing two or more counties, not more than two elected committee members shall be residents of the same county: *Provided*, That at each election the votes shall be tallied from highest to lowest without regard to gender or county of residence. The two candidates with the highest votes shall be elected first and the other candidates shall be qualified based on vote tallies, gender, and county of residence. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each state executive committee and certificates of announcement, if any, to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to such committee and the vacancies, if any. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large which shall constitute the entire voting membership of the state executive committee: *Provided, however*, That if it chooses to do so, the committee may, by motion or resolution and in accordance with party rules, expand the voting membership of the committee. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms. Appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

(b) At the primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the state senatorial district and of the delegate district in which the county is situated, if the county is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each congressional district, state senatorial district and delegate district executive committee of each party to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to each congressional district, state senatorial district and delegate district executive committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: *Provided*, That the county executive committee of the political party shall determine which previously elected members will represent the county if

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the number of multicounty state senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of districts is increased.

(c) At the same time the voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party's county executive committee except that in counties having three executive committee districts, there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of the county executive committee of each party along with the certificates of announcement to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to the county committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section.

(d) For the purpose of complying with the provisions of this section, the county commission shall create the executive committee districts. The districts shall not be fewer than the number of magisterial districts in the county, nor shall they exceed in number the following: Forty for counties having a population of 100,000 persons or more; 30 for counties having a population of 50,000 to 100,000; 20 for counties having a population of 20,000 to 50,000; and the districts in counties having a population of less than 20,000 persons shall be coextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly equal in population as practicable and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of the districts as required by the increase or decrease in the population of the districts as determined by a decennial census. The changes must be made within two years following the census.

(f) All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year 2010 will begin on July 1, following the primary election and continue for four years thereafter, except as provided in subsection (g) of this section. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, state senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which the vacancy exists for the unexpired term.

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, the newly elected executive committee shall convene an organizational meeting within their respective political divisions, on the call of the chair of

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the corresponding outgoing executive committee or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee shall select a chair, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to July 1, but must occur after the certification of the election of the new executive committees. If the organizational meeting is conducted prior to July 1, the new committee shall serve out the remainder of the outgoing committee' s term and is authorized to conduct official business. A current listing of all executive committees' members shall be filed with the Secretary of State by the end of July of each year. Vacancies in any executive committee shall be filled by the appropriate executive committee as provided in subsection (f) of this section no later than 60 days after the vacancy occurs. The chair of each executive committee shall submit an updated committee list to the Secretary of State within 10 days of a change occurring. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period. If the executive committee fails to submit the updated list within the allotted time period, it must make another appointment pursuant to the provisions of this section and resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled within the 60-day period prescribed by this section, the chair of the appropriate executive committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy. If the chair of a county executive committee fails to fill a vacancy in a congressional district, state senatorial district or delegate district executive committee, and the failure to fill such vacancy prohibits said committee from conducting official business, the chair of the party's state executive committee shall fill such vacancy.

(h) Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with the party. Meetings shall be conducted according to party rule and minutes shall be maintained and shall be open to inspection by members affiliated with the party.

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§3-1-10. Party committees in office.

The members of all state, congressional, senatorial, and county executive committees for political parties in office at the time this section becomes effective, and the various officers of such committees, shall hold their several offices and discharge the duties thereof until their successors are chosen and installed in accordance with the provisions of section nine of this article effective simultaneously herewith and other applicable provisions of this article, the prior provisions of section nine having become effective after the election of such members and officers for terms ending in the year 1982. The Legislature finds and declares that the prior provisions of section nine of this article should not operate to limit the terms of such members and officers before the expiration thereof as contemplated by law effective at the time of the primary election held May, 1978.

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§3-1-11. Powers of state executive committee; central or subcommittees; party emblems.

The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts.

Any party executive committee may create and appoint subcommittees, campaign, or central committees, and delegate to them such powers and authority in the executive and administrative work of the committee as they shall deem advisable; but no power or authority shall be delegated to such subcommittee, campaign committee, or central committee, in contravention of any law of the state.

The state executive committee shall adopt a party emblem or device for the party to distinguish and identify the party ticket, and shall certify the same to the ballot commissioners, and it shall be printed on the party ticket. The device or emblem of no two parties shall be similar or of such a nature as to mislead or confuse the voter. If two or more parties seek the same device, or similar devices, preference shall be given to the party polling the largest number of votes for the candidate for Governor at the last election for such office.

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§3-1-12. Members of national party committee.

The members of the national party executive committee of any political party, to which the state is entitled under the national organization and the rules and regulations of the national committee of the party, shall be elected by the state executive committee of such party, unless the rules of the national party otherwise provide, in which latter event they shall be selected in all respects as provided for the selection thereof by the rules and regulations of the national organization of the political party and the resolutions of the delegated representatives of the political party passed and adopted by any national convention of such political party. A vacancy in the membership of a national party executive committee shall be filled by the state committee of the party unless the rules of the national party otherwise provide.

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§3-1-13. Other party or group committees.

The members of any political party which, at the last preceding general election, polled, for its candidate for Governor, fewer than ten per cent of the total number of votes cast for all candidates for that office in the state, and groups of citizens, not constituting a political party, which nominate candidates for offices to be voted for at any election, may select members of committees and officers thereof, for such political parties and such groups of citizens, in such manner as they may devise and adopt.

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§3-1-14. Presidential electors; how chosen; duties; vacancies; compensation.

Electors of president and vice president of the United States shall be nominated as provided in section twenty-one of article five of this chapter but their names shall be omitted from the general election ballot, as provided in section two of article six of this chapter, to be voted on the Tuesday next after the first Monday in November 1964, and every fourth year thereafter.

The presidential electors shall meet in the office of the Governor at the capital of this state, on the day now appointed, or which shall hereafter be appointed, by the Congress of the United States and vote for the president and for the vice president of the United States in the manner prescribed by the Constitution and the laws of the United States. If any of the electors so chosen fail to attend at the time appointed, the electors present shall appoint an elector in place of each one so failing to attend, and every elector so appointed shall be entitled to vote in the same manner as if he had been originally chosen by the people.

Each presidential elector shall receive as compensation the sum of $10 a day for attending such meeting, including the time spent in traveling to and from the place of meeting and in addition thereto the sum of 10¢ for every mile necessarily traveled in going to and returning from the place of meeting, by the most direct route.

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§3-1-15. Election of United States senators and congressmen.

At the general election in the year nineteen hundred and sixty-four and at each general election in every sixth year thereafter, and at the general election in the year nineteen hundred and sixty-six, and in each sixth year thereafter, there shall be elected a member of the United States Senate, and at the general election in the year nineteen hundred and sixty-four, and in every second year thereafter, there shall be elected a member of the House of Representatives in the Congress of the United States for each congressional district of the state, each for the next ensuing term.

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§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every 12th year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(c) At the time of the primary election to be held in the year 2024, and every tenth year thereafter, there shall be elected one judge to a seat of the Intermediate Court of Appeals; at the time of the primary election to be held in 2026, and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals; and at the time of the primary election to be held in 2028, and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals. Effective with the primary election held in the year 2024, the election of Judges of the Intermediate Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in §3-5-1 *et seq*. of this code.

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§3-1-17. Election of circuit judges; county and district officers; magistrates.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county; and at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates in each county will be elected on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(d) Beginning with the judicial election in 2024, and in every judicial election thereafter, if no candidate in a division for judge of a circuit court receives more than 30 percent of the votes cast in the election, there shall be a runoff election at the subsequent general election between the two candidates who received the highest and next-highest number of votes cast in that division.

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§3-1-18. Election to fill other offices.

If the Legislature shall hereafter create any elective office, or make any office now filled by appointment an elective office, in the state or in any subdivision thereof, the person to fill the same shall be elected at the general election last preceding the beginning of the term of such office.

The provisions of this section shall not apply to the office of member or to the election of members of a Constitutional convention.

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§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

(a) In each county in the state, the Board of Ballot Commissioners shall be comprised of:

(1) The clerk of the county commission while holding office; and

(2) Two other persons as follows:

(A) One person appointed by the county executive committee of the political party that cast the largest number of votes in the state at the last preceding general election; and

(B) One person appointed by the county executive committee of the political party that cast the second largest number of votes in the state at the last preceding general election.

(b) If the county executive committees do not make the appointments in a timely manner, then the county clerk shall make the appointments.

(c) The county clerk shall serve as chairman.

(d) The county clerk shall notify the chairman of the respective county executive committees of the two parties, at least five days before the time of the making of the appointments.

(e) If at any time after notice is given, and before or on the day so fixed for making appointments, the chairman of each of the committees shall designate, in writing, a member of his or her party as ballot commissioner. Each designee shall be appointed if he or she meets the qualifications of a voter: Provided, That a ballot commissioner cannot be a candidate for any office in any election held during the time he or she is serving as ballot commissioner, other than state, county, or district executive committee or delegate to the national convention of a political party.

(f) Ballot commissioners shall be appointed between January 15 and January 30, in each year in which a general election is to be held, for a term of two years beginning on February 1 next ensuing.

(g) The ballot commissioners shall perform their duties at all general, special, and primary elections held in the county or any magisterial district thereof during their term of office.

(h) A vacancy shall be filled in the same manner as an original appointment, but immediate notice of a vacancy shall, where necessary, be deemed in compliance with the five-day notice provision.

WV Legislature

§3-1-20. Cards of instructions to voters; sample ballots; posting.

(a) The board of ballot commissioners of each county shall provide cards of general information which will include:

(1) The date of the election and the hours during which polling places will be open;

(2) Instruction for mail-in registrants and first-time voters;

(3) Voters' rights; and

(4) Prohibitions against fraud and misrepresentation.

The board of ballot commissioners shall also provide cards of instruction for voters in preparing their ballots and casting a provisional ballot as prescribed by the Secretary of State. The provisional ballot notice shall include a notification to voters of their rights as a provisional voter to inquire as to the correct precinct to cast a ballot and notification that if a ballot is cast in the incorrect precinct the ballot may not be counted at the canvass for that election. The board of ballot commissioners shall furnish a sufficient number of cards to the commissioners of election at the same time they deliver the ballots for the precinct. The instructions regarding a provisional ballot shall be posted in the precinct in a highly visible location for voters to review.

(b) The commissioners of election shall post one instruction card in each voting booth giving instructions to the voters on how to prepare the ballots for deposit in the ballot boxes and how to obtain a new ballot in place of one accidentally spoiled.

(c) The commissioners of election shall post one or more other cards of general information at places inside and outside of the voting place where voters pass or wait to vote. The commissioners shall also post the official write-in candidates in the same locations inside and outside of the voting place.

(d) The ballot commissioners shall have printed, on a different color paper than the official ballot, two or more copies of sample ballots for each voting place for each election. Sample ballots shall be furnished and posted with the cards of general information at each voting place.

(e) During the period of early in-person voting, the clerk of the county commission shall post the cards of general information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.

WV Legislature

§3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.

(a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for conducting every election for public officers in which the voters of the county participate.

(b) The persons required to provide the ballots necessary for conducting all other elections are:

(1) The Secretary of State, for any statewide special election ordered by the Legislature;

(2) The board of ballot commissioners, for any countywide special election ordered by the county commission;

(3) The Board of Education, for any special levy or bond election ordered by the board of Education; or

(4) The municipal board of ballot commissioners, for any election conducted for or within a municipality except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those printed by the proper authorities as specified in this section may not be cast, received or counted in any election.

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. When paper ballots are used in conjunction with or as part of an electronic voting system, the total number of regular official ballots printed shall equal at a minimum eighty percent of the number of registered voters eligible to vote that ballot. The clerk of the county commission shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal at a minimum seventy-five percent of the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the clerk of the county commission, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots. Each package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number and the number of ballots contained in each package. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the clerk of the county commission of the appropriate county not later than the forty-second day before the election. All official ballots in paper ballot systems shall be

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delivered to the clerk of the county commission of the appropriate county not later than twenty-eight days before the election.

(f) Upon a finding of the board of ballot commissioners that an official ballot contains an error which, in the opinion of the board, is of sufficient magnitude to confuse or mislead the voters, the board shall cause the error to be corrected either by the reprinting of the ballots or by the use of stickers printed with the correction and of suitable size to be placed over the error without covering any other portion of the ballot.

WV Legislature

§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.

(a) The printing of ballots for any election to be held pursuant to the provisions of this chapter shall be contracted for with a vendor authorized in accordance with the provisions of this section.

(b) Any vendor authorized to do business in West Virginia and in good standing may apply for a certificate of authorization to print ballots for elections in this state: Provided, That any individual, partnership, association or corporation who does not qualify as a resident vendor pursuant to the provisions of section thirty-seven-a, article three, chapter five-a of this code or who prints the ballots in a state which prohibits that state or any of its political subdivisions from contracting with West Virginia resident vendors for the printing of ballots or which prohibits the printing of ballots outside of such state, is not eligible to obtain a certificate of authorization.

(c) (1) Every vendor desiring to print ballots for elections held pursuant to the provisions of this chapter shall, prior to the execution of any contract for the printing of ballots with any state, county, or municipal government, obtain a certificate of authorization to print ballots.

(2) A certificate of authorization may be obtained by application to the Secretary of State, upon a form prescribed by the Secretary of State. The form shall include a statement that all printing, packaging and delivery specifications for ballots set forth in this chapter will be substantially met, and that the vendor applying for certification is eligible in accordance with the provisions of this section.

(3) Upon receipt of the completed application, the Secretary of State shall issue a certificate of authorization to print ballots, which shall remain in effect for two years from the date of issuance and may be renewed upon application therefor: Provided, That the Secretary of State may deny the application to issue or renew the certificate of authorization, or may suspend or revoke the certificate of authorization upon a determination that the vendor has not substantially complied with the printing, packaging and delivery specifications in the printing of ballots for any state, county or municipal election, or that the vendor is not eligible or is no longer eligible to print ballots pursuant to the provisions of this section. The Secretary of State shall give written notice of any such determination by certified mail, return receipt requested, to the vendor setting forth the reason for the suspension, revocation or the denial of the application or the denial of the renewal thereof. The applicant may, within sixty days of the receipt of such denial, file a written appeal with the state Election Commission. The State Election Commission shall promulgate rules establishing a hearing process for such appeals.

(d) On or before the second Monday of January of each year, the Secretary of State shall provide a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each county commission of this state.

WV Legislature

§3-1-22. County court clerks to provide election supplies; requirements for poll books and ballot boxes.

The clerk of the county court of each county shall provide poll books, a list of all precincts within the county, tally sheets, ballot boxes, voting booths, registration records and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns thereof. The poll books shall bear upon each page the following heading: "Names of persons voting at precinct No. ..... in the District of ..... in the county of ..... on this (the) ..... day of ..... in the year ....." Such poll books shall have columns headed respectively: "Number of Voters," "Signature of Voter" and "Challenge of Voter", and shall have under the heading "Number of Voters" numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with different keys so that the key for one lock will not open the other and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box sufficient only for the passage of a single ballot.

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§3-1-23. County commission to arrange polling places and equipment; requirements.

The county commission in each county, before each election, shall secure, for each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with heat, drinking water and light and a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two. Such room or building shall be located in such precinct: Provided, That upon a determination of the county commission that a suitable room or building in which to hold the election is not reasonably available in such precinct then the county commission may secure a suitable room or building in which to hold the election for such precinct in an adjacent precinct in said county, in a location as near as may be to the territory of the precinct for which such room or building is provided. At any polling place for which parking spaces are available nearby, at least one parking space shall be reserved for handicapped voters and clearly designated as such.

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§3-1-24. Obtaining and delivering election supplies.

(a) It shall be the duty of the clerk of the county commission to appoint one or more of the commissioners of election or poll clerks at each precinct of the county to attend at the office of the clerk of the county commission at least one day before each election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerk shall take a receipt for the respective materials delivered to the commissioners of election or poll clerks and shall file the receipt in his or her office. It shall be the duty of the commissioners or poll clerks to receive the supplies and materials from the clerk and to deliver them with the seal of all sealed packages unbroken at the election precinct in time to open the election.

(b) The commissioners or poll clerks, if they perform the messenger services, shall receive the per diem and mileage rate prescribed by law for this service.

(c) Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the delivered ballots shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of each party in the election precinct.

(d) For primary elections one copy of the poll books, including the written or printed forms for oaths of commissioners of election and poll clerks, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

(e) There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

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§3-1-25. Supplies by special messenger.

In case any commissioner of election or poll clerk fails to appear at the offices of the clerk of the county commission by the close of the clerk's office on the day prior to any election, the board of ballot commissioners, the chairman or the clerk of the county commission shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, poll books and other supplies for the precinct. The messenger, if not a county employee, shall be allowed $5 for this service. The messenger shall also receive mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services. The messenger shall promptly report to the clerk of county commission and file with the clerk the receipts of the person to whom he or she delivered the ballots and other supplies and his or her affidavit stating when and to whom he or she delivered them.

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§3-1-26. Election supplies in emergencies.

If, by any accident or casualty, the ballots or ballot box or boxes delivered to a commissioner of election, or to any messenger, shall be lost or destroyed, it shall be the duty of such commissioner or messenger to report the loss forthwith to the board of ballot commissioners and clerk of the county court from whom the same were, or was, obtained, and make affidavit of the circumstances of the loss; whereupon such board and clerk shall at once send a new supply by special messenger, as provided in other cases. If, for any reason, there should be found no ballots, or ballot box, or other necessary means or contrivances for voting, at the opening of the polls, it shall be the duty of the commissioners of election to secure the same as speedily as possible and, if necessary, the ballot commissioners may have ballots printed or written, and the election commissioners may have a ballot box or boxes made.

WV Legislature

§3-1-27. Municipal precinct registration records.

At least one day prior to every municipal election, it shall be the duty of the appropriate officer designated by the municipality to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.

Such records shall, within ten days after the date of the municipal election, be returned to the office of the clerk of the county commission by the appropriate officer or officers designated by the municipality.

In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the officer or tribunal empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.

The clerk of the county commission shall acknowledge the release and return of the registration records under this section by the issuance of appropriate receipts.

In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of the municipality to pay for such replacement.

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§3-1-28. Election officials; eligibility; suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county, or municipal election held in West Virginia, a person:

(1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: *Provided*, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official write-in candidate in the election for any office, other than for district, county, or state political party executive committee;

(4) May not be the parent, child, sibling, or spouse of a candidate on the ballot for any office, other than for district, county, or state political party executive committee, or an official write-in candidate for any office, other than for district, county, or state political party executive committee, in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The governing body responsible for appointing election officials may establish a program to permit a student who is a junior or senior student attending a secondary educational institution or being home schooled and who is an election official trainee to be appointed as an election official.

(1) To be eligible to be appointed as an election official under this subsection, a person:

(A) Must meet the requirements of subdivisions two through six of §3-1-28(a) of this code;

(B) Must be a junior or senior student in good standing who is attending a public or private secondary educational institution or being home schooled at the time of the election for which he or she is to be appointed as an election official;

(C) Must have a cumulative grade point average equivalent to at least 3.0 on a 4.0 scale, if attending a public or private secondary educational institution;

(D) Must have the written approval of his or her parent or legal guardian, as applicable;

(E) Must have the written approval of the principal of the public or private secondary

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educational institution he or she attends, if

(i) attending a public or private secondary educational institution, and

(ii) if the appointment requires the student to work on a day when school is in session; and

(F) Must have satisfactorily completed the training program for election officials set forth in §3-1-46 of this code.

(2) Only one election official qualifying under this subsection may serve per political party per precinct. Prior to appointment, an election official qualifying under this subsection must certify in writing to the governing body responsible for appointing election officials his or her political party affiliation.

(3) Students appointed as election officials under this subsection shall not be counted as absent from school on the day they serve as election officials.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(d) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years upon petition of 25 registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in §31-1-28(b) of this code: *Provided*, That the petition requesting the suspension of the election official is filed with the county commission at least 90 days prior to an election date. The names of those persons signing the petition must be kept confidential.

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§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term "standard receiving board" means those election officials charged with conducting the process of voting within a polling location and consists of no less than five persons, to be comprised as follows:

(A) Each polling location shall have at least one team of poll clerks, one team of election commissioners for the ballot box, and one additional election commissioner; and

(B) At the discretion of the county clerk and county commission, any county may add additional teams of poll clerks and commissioners to any polling location, as necessary to fairly and efficiently conduct an election;

(2) The term "counting board" means those election officials charged with counting the ballots at the polling location in counties using paper ballots and includes one team of poll clerks, one team of election commissioners, and one additional commissioner.

(3) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: *Provided*, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

(4) The term "election official trainee" means an individual who is 16 or 17 years of age who meets the requirements of subdivisions §3-1-28(2–6) of this code.

(b) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various polling locations according to the provisions of this section. At least 84 days before each primary and general election the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(c) Until July 1, 2032, for each municipal election held at a time when there is no county or state election:

(1) The governing body of the municipality shall perform the duties of the county commission as provided in this section; and

(2) The standard receiving board may, at the discretion of the official charged with the administration of election, consist of as few as four persons, including one team of poll clerks and one team of election commissioners for the ballot box.

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§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

NOTE: West Virginia Code §3-1-30 was amended by two bills passed during the 2022 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The latter act, House Bill 4353 (passed on March 12, 2022), amended West Virginia Code §3-1-30 to read as follows:

(a) For any primary, general, or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners, or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general, or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

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(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general, or special election ordered by the county commission and any joint county and municipal election;

(2) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed; and

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve, or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

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(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, later than a time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half-day shifts for poll clerks during any election.

The earlier act, Senate Bill 191 (passed on January 25, 2022) amended West Virginia Code §3-1-30 to read as follows:

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a

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majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder

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of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates. However, no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*,

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That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, a later time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half day shifts for poll clerks during any election.

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§3-1-30a. Oaths of election commissioners and poll clerks, substitution of persons.

(a) Each commissioner of election and poll clerk, as defined in this article, before entering upon his or her duties, shall take orally and subscribe to the appropriate oath, as prescribed herein. Such oath may be taken before and administered by one of the election commissioners or poll clerks, who in turn may take the same before another election commissioner or poll clerk. For the purposes of this article, all election commissioners and poll clerks, having first been sworn, are authorized to administer oaths.

(1) The oath for members of the receiving board shall be as follows:

State of West Virginia

..... County

I, ..., a qualified and registered voter of the county affiliated with the ..... Party, do solemnly swear that I will faithfully and honestly discharge my duties as ..... (poll clerk or election commissioner) of the receiving board according to the requirements of law in this election; that I will not knowingly permit any person to vote an unchallenged ballot who is not a resident of the precinct and a properly registered voter qualified to vote the ballot provided; that I will not challenge a ballot without just cause; that I will not cause any unnecessary delay in voting; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

Subscribed and sworn to before me this ..... day of ....., 19....

.....

Signature and official title

of person before whom sworn

(2) The oath for the members of the counting board shall be as follows:

State of West Virginia

..... County

I, ..., a qualified and registered voter of the county affiliated with the ..... Party, do solemnly swear that I will faithfully and honestly discharge my duties as .....(poll clerk or election commissioner) of the counting board

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according to the requirements of law in this election; that I will carefully and accurately read and record the votes cast on each ballot voted in the election which contains the signatures of both poll clerks; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I will not disclose the votes cast for any candidate or any other information about the result of the election prior to the posting of the precinct returns on the door of the polling place; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

.....

Subscribed and sworn to before me this ..... day of ....., 19....

.....

Signature and official title

of person before whom sworn

(3) The Secretary of State may prescribe the form of such oaths.

(b) When any election official is unable to perform the duties for which he or she was appointed, a substitution may be made, as follows:

(1) An eligible person of the same political party shall assume the duties after taking the oath. One of the election commissioners shall make an entry in the space provided on the oath form, indicating the name of the official being replaced, the reason for the change, the name of the person assuming the duties, the time at which the change occurred and the poll slip number of the last voter who signed a poll slip before the change occurred;

(2) If it is necessary for a poll clerk of one political party to exchange duties with an election commissioner of the same political party, the change of duties for each person shall be recorded in the same manner;

(3) If an election commissioner or poll clerk is unable or fails to perform the duties of the office adequately and according to the requirements of law to the extent such failure interferes with the conduct of the election, the clerk of the county commission may order the exchange of duties with another official of the same party, or if necessary, remove the official. The fact of that order shall be entered on the record, along with the information required in subdivision (1) of this subsection.

(c) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county

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commission specified in this section.

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§3-1-31. Days and hours of elections; scheduling of local elections; extension or shortening of terms of certain elected local officials.

(a) General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall be held on the days provided by law therefor: *Provided*, That all local municipal elections shall be held concurrently with a regularly scheduled statewide primary or general election. In exercising this obligation, a municipality shall negotiate an agreement with the county commission to establish the election date, election officials, registration books to be used, and other matters pertaining to changing the municipal election to be held on the same day as a regularly scheduled statewide primary or general election: *Provided, however*, That a municipality which enters into an agreement with a county commission to hold elections at the same time as a regularly scheduled statewide primary or general election day pursuant to §8-5-5 of this code shall share in the administrative costs of holding the election, which shall not exceed the municipality's pro rata share of voters registered in the municipality compared with the total voters registered in the county: *Provided further*, That the municipality shall also comply with the requirements of §8-5-5 of this code regarding an agreement with the county regarding use of county election officials in municipal elections.

(b) At every primary, general, or special election the polls shall be opened in each precinct on the day of the election at 6:30 in the morning and be closed at 7:30 in the evening.

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§3-1-32. Opening and closing polls; procedure.

At the time of opening the polls in all precincts wherein voting machines are not to be used, the election commissioners shall examine the ballot box and ascertain that there are no ballots in the same, and they shall thereupon securely lock the box and give one key to one of the commissioners and one to a commissioner of the opposite political party, who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives and for that purpose. At or before opening the polls, the commissioners of election shall open the package containing the ballots in such manner as to preserve the seals intact and thereupon deliver all of the ballots to the poll clerk. Before any voter is permitted to vote, the commissioners of election shall proclaim that such election is opened. When the polls are closed, proclamation must be made of the fact by one of the commissioners of election to the people outside, in a loud and audible tone of voice, and a minute of such proclamation and of the time when it was made must be entered on the pollbooks by the clerks. The election commissioner shall permit those electors to vote who are present at the polling place prior to the hour specified for the closing of the polls: Provided, That at that time they are in a line awaiting their turn to vote within the voting room itself or, if the line extends outside of the voting room itself, within that line. In that event an election commissioner from each party shall immediately after the closing proclamation begin with the last voter in line and together supply the voters within the line with waiting-voter permits which shall be prescribed by the Secretary of State. Each voter shall sign his permit in the presence of both commissioners who shall then likewise affix their signatures to the permit in the presence of the voter and each other. After each such voter in line has received and signed his permit and the election commissioners have affixed their signatures thereto, voting shall be resumed. Each voter shall present his permit to one of the poll clerks so that the signature thereon may be compared to the voter's signature when he signs the pollbook. Each permit so presented shall be attached to the page in the pollbook on which the voter affixed his signature. In no case shall any person who arrives at the polling place after the closing hour be given a waiting-voter permit or be allowed to vote. After the final voter presents his waiting-voter permit and casts his ballot no more ballots shall be cast or received.

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§3-1-33. How elections conducted by double boards.

In all precincts wherein two election boards shall have been appointed, the receiving board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election. The counting board shall attend at the voting place not later than three hours after the opening of the polls, and shall take charge of the ballot box containing the ballots theretofore cast in that precinct. They shall retire to a partitioned room or space in the voting place and there proceed to count and tabulate the ballots cast, as they shall find them deposited in the ballot box. The receiving board shall continue to receive the vote of electors in the other box, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The county board shall, before exchanging the ballot boxes as herein provided, seal the ballots counted by it in envelopes to be provided for the purpose, which shall not be opened until the two boards shall together proceed with counting, tabulating and summarizing the votes as by this chapter provided. The two boards shall then exchange the first box for the second box, and so continue until the hour of closing the polls arrives.

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

(a) A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the person's name and residence in a clear and distinct tone of voice. The person desiring to vote shall present to one of the poll clerks a valid identifying document meeting the requirements of §3-1-34(a)(1) or §3-1-34(a)(2) of this code, and the poll clerk shall inspect and confirm that the name on the valid identifying document conforms to the name in the individual's voter registration record and that, if the valid identifying document contains a photograph, the image displayed is truly an image of the person presenting the document. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. A ballot may not be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(1) A document is a valid identifying document if it:

(A) Has been issued either by the State of West Virginia, one of its political subdivisions or instrumentalities, or by the United States Government;

(B) Contains the name of the person desiring to vote; and

(C) Contains a photograph of the person desiring to vote: *Provided*, That a driver's license or identification card issued in accordance with §17B-2-1(f)(4) of this code that does not contain a photograph of the person desiring to vote is a valid identifying document.

(2) Notwithstanding the provisions of §3-1-34(a)(1) of this code, the following documents, if they contain the voter's name, shall be considered valid identifying documents, and a person desiring to vote may produce any of the following:

(A) A valid West Virginia driver's license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles, including a driver's license or identification card issued in accordance with §17B-2-1(f)(4) of this code.

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

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

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

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

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

(G) A valid voter registration card that includes the voter's photograph issued by a county clerk in the State of West Virginia or the Secretary of State. The county clerk or the Secretary of State may not charge or collect a fee for the application or issuance of a voter registration card that includes the voter's photograph.

(3) Any expired document identified in §3-1-34(a)(2) of this code is a valid identifying document if presented by a registered voter 65 years of age or older: *Provided*, That the identifying document was not expired on the registered voter's 65th birthday.

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

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

(6) If the person desiring to vote is unable to furnish a valid identifying document, or if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to §3-1-34(a)(6)(B) of this code.

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

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

"State of West Virginia

County of.....

I do solemnly swear (or affirm) that my name is .....; that I reside

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at.....; and that I am the person listed in the precinct register under this name and at this address.

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

.....

Signature of voter

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

.....

Name of Election Official

.....

Signature of Election Official".

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

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

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

(10) The Secretary of State shall educate voters about the requirement to present a valid identifying document and develop a program to help ensure that all eligible voters are able to obtain a valid identifying document.

(b) The clerk of the county commission may, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than 30 days prior to the date of the election. A handicapped person who has not made a request for a transfer of registration at least 30 days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the

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person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

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

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

(e) (1) A voter may not receive any assistance in voting unless, by reason of blindness, disability, advanced age, or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting may:

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

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

(C) Be assisted by any person of the voter's choice, other than the voter's present or former

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employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

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

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

(ii) Voters are not voting or waiting to vote inside the polling place.

(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in §3-1-8 of this code as it relates to the specific voting system in use.

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

(4) One or more of the Election Commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter received assistance in voting if when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The Election Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the reason for such challenge on the form and in the manner prescribed or authorized by §3-3-1 *et seq*. of this code.

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

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

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice, or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. There is no requirement that a person providing assistance to a voter is

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required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in §5-15-3 of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled "list of assisted voters", on a form as prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall make and subscribe to an oath of that fact on the list.

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

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

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

(i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

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§3-1-35. Ballots to be furnished voters.

In general and special elections the ballots for all voters of an election precinct shall be the same. In primary elections the ballot of the voter's political party at that election in that precinct shall be furnished to the voter together with separate ballots, if any, on any nonpartisan candidates and any public questions submitted to the voters generally at such primary election. In the event the voter is lawfully registered as "independent" or as an adherent of a political party not appearing on any primary election ballot to be voted in his precinct, he shall not, in a primary election, be given or entitled to vote any party ballot but shall be furnished any separate ballots to be voted thereat on nonpartisan candidates and public questions.

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§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.

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§3-1-37. Restrictions on presence and conduct at polls.

(a) Except as otherwise provided in this section, no person, other than the election officers and voters going to the election room to vote and returning therefrom, may be or remain within one hundred feet of the outside entrance to the building housing the polling place while the polls are open. This subsection does not apply to persons who reside or conduct business within such distance of the entrance to the building housing the polling place, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within one hundred feet of such entrance.

(b) A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within one hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within one hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within one hundred feet of the entrance until such time as the voter is to be transported from the polling place.

(c) The election commissions shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his or her ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

(d) Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his or her ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his or her ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

(e) The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article or to any child fourteen years of age or younger who accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the age of a child accompanying a parent, grandparent or legal guardian who is voting shall be determined by the election commissioners.

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§3-1-38. Disorder at polls; procedure.

The commissioners of election shall preserve order at, and in the vicinity of, the polls, and keep the way to the polls open and free from obstruction, and may direct disorderly persons to be removed therefrom, and, if necessary and proper, to be taken and held in custody until sunrise of the next day, or for any shorter time, which may be done by any sheriff or constable or other person or persons designated by the commissioners of election. For such purpose no warrant or authority in writing shall be necessary. The jail of the county or other place designated by the commissioners of election may be used as the place of custody. But any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desires and shall be prepared to do so promptly.

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§3-1-39. Illegal voting; affidavit; procedure.

(a) If at any time during the election any qualified voter shall appear at the polls for the purpose of stating that any person who has voted is an illegal voter in the precinct, that person shall be admitted to the election room and shall appear before a commissioner of election to make an affidavit explaining why he or she believes the accused to be an illegal voter.

(b) All affidavits alleging illegal voting shall be placed in a strong and durable envelope by the commissioners of election. The envelope shall be securely sealed and each of the commissioners shall endorse his or her name on the back of the envelope. At the close of the count the envelope shall be delivered to the clerk of the circuit court in accordance with section sixteen, article five of this chapter and section eight, article six of this chapter. The clerk of the circuit court shall carefully preserve the envelope containing the affidavits and deliver it, with the seal unbroken, to the prosecuting attorney in the county. The prosecuting attorney shall proceed as if it had been made before him or her.

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§3-1-40.

Repealed.

Acts, 2003 Reg. Sess., Ch. 100.

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

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

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

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

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

(4) If the person fails to present a valid identifying document pursuant to section 34 of this article; or

(5) If any other valid challenge exists against the voter pursuant to section 10, article three of this chapter.

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

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

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

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

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challenged voter was entitled to vote.

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

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

(h) During the early in-person voting period, and in the case of a voter’s address change within the county, the voter may vote in the precinct serving their new address without casting a provisional ballot if the voter shows proof of new address and the change is completed in the state-wide voter registration system by the county clerk prior to canvass.

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§3-1-42. Time off for voting.

Every person entitled to vote at any election who may be employed by any person, company, or corporation on the day on which such election shall be held in this state, shall, on written demand of such employee, made at least three days prior thereto, be given a period of not more than three hours, if necessary, between the opening and the closing of the polls on such day, for the purpose of enabling such person to repair to the place of voting to cast his vote and return, without liability to any penalty or deduction from his usual salary or wages on account of such absence, except that any employee, who has three or more hours of his own time away from his work or place of employment at any time between the hours of the opening and the closing of the polls on election day and who fails or neglects to vote or elects not to vote during such free time away from his work or employment, may be subject to wage or salary deductions for the time actually absent from his work or employment for voting in such election.

In essential government, health, hospital, transportation and communication services and in production, manufacturing and processing works requiring continuity in operation, the employer may, upon receipt of such written demand for voting time off, arrange and schedule a calendar of time off for any and all of his employees for voting so as to avoid impairment or disruption of essential services and operations, but every such schedule or calendar of time off for voting so arranged shall provide ample and convenient time and opportunity for each employee of such services or works to cast his vote as herein provided.

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§3-1-43. Disposition of miscellaneous election papers.

At the expiration of twenty-two months after any election, the affidavits taken and returned by any registrar or any election officer, applications for absent voters' ballots, rejected absent voters' ballots, certificates of nominations of candidates, and the written designations of election officers and of ballot commissioners shall be destroyed. If the further preservation of any of the documents mentioned in this section shall be required by the order of the court, the same shall be destroyed at the expiration of the time fixed for the further preservation thereof by such order.

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§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner receive allowance for more than 10 days' services for any one primary, general, or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, for one day's services for attending the school of instruction for election officials if the commissioner provides one day's service, or the poll clerk provides at least one half day's service during an election and a sum for his or her services at any one election: *Provided*, That each commissioner of election and poll clerk is to be paid a sum for his or her services at any of the three special elections described in §3-1-44(g) of this code.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the county commission, for one day's services for attending the school of instruction for election officials: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks obtaining and delivering the election supplies, as provided in §3-1-24 of this code, and returning them, as provided in §3-5-1 *et seq.* and §3-6-1 *et seq.* of this code, are to be paid an additional sum, fixed by the county commission, for his or her services pursuant to this subsection at any one election. In addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services.

(e) The compensation of election officers, cost of printing ballots and all other expenses incurred in holding and making the return of elections, other than the three special elections described in §3-1-44(f) of this code, are to be audited by the county commission and paid out of the county treasury.

(f) All persons within a class of election officials, as classified in this section, shall be paid the same amount within the county.

(g) The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts, and ordinances of a constitutional convention are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state. All expenses of these special elections are to be audited by

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the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the state Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies, and facilities.

(h) Notwithstanding the authority granted to county commissions to set compensation for election officials in this section, the Secretary of State may set maximum rates of compensation of the election officials identified in this section at any election for which the obligations incurred by the ballot commissioners, clerks of the county commissions, and county commissions of the various counties are determined to be obligations of the state.

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§3-1-45. Court proceedings to compel performance of duties, etc.

Any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction by writ and shall, upon affidavit filed showing a proper case, issue a writ to be returned, heard and determined within fifteen days from the commencement of the proceedings. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of the board in the performance of its duties, under the provisions of this article, in any case concerning the election of a member of the House of Delegates, or a state senator, and shall fail to enter a final order in the proceedings, settling all questions presented therein within fifteen days from the commencement of the proceedings, unless delayed by proceedings in the Supreme Court of Appeals, or a judge thereof in vacation, the writ shall be dismissed. The board shall convene within not less than five days thereafter and proceed forthwith to the performance of its duties under the provisions of this article. A mandamus shall lie from the Supreme Court of Appeals, or any one of the judges thereof in vacation, returnable before court, to compel any officer herein to do and perform legally any duty required of him or her. In an election of a member of the House of Delegates and state senator, a writ of certiorari, mandamus or prohibition shall lie from the Supreme Court of Appeals, or a judge thereof in vacation, returnable before the court, to correct any error of law and review and correct the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers. When any rule to show cause why a writ of mandamus, prohibition or certiorari is issued by the court, or a judge thereof in vacation, it shall be the duty of the court to convene in special session at the state capital, not later than ten days from the date of the writ, to hear and determine all matters arising upon the writ. The issues raised in the petition for a writ of mandamus, prohibition or certiorari shall have precedence over all other business pending before the court. The issues before the court shall be determined within five days from the assembling of the court and, in any case, in ample time for the case to be remanded and final action taken by the circuit court and the board of canvassers in order that the board may perform its duty and issue the certificate of election before the second Wednesday in January, then next following. Mandamus and prohibition proceedings under this section may be upon affidavit alone.

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§3-1-46. Training program for election officials.

(a) The Secretary of State in conjunction with the state Election Commission shall produce one or more audio-visual programs which explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting on each voting system in use in the state.

(b) One copy of the appropriate training program shall be distributed to and kept and preserved by the clerk of the county commission of each county. The program shall be shown to all election officials before each election as part of their instructional program. The clerk of the county commission shall conduct an adequate number of sessions to train all election officials, shall schedule the regular sessions not less than seven days before each election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.

(c) No person may serve as an election commissioner or poll clerk in any election unless he or she has attended the instructional program required by subsection (a) of this section within thirty days prior to an election. If an election official fails to attend the instructional program, another person shall be appointed in the election official's place in the same manner as persons are appointed under the provisions of section thirty of this article to replace election officials refusing to serve. The clerk of the county commission shall conduct an additional instructional program within seven days prior to the election for any such person so appointed: Provided, That in cases of emergency, when no person who has attended the instructional program for that election is available to fill a vacancy on the election board, the clerk of the county commission may appoint the substituted person as a commissioner or poll clerk notwithstanding that he or she has not received the instruction.

(d) The requirements of this section apply to all elections conducted by municipalities, except that the recorder or municipal clerk responsible for the election shall perform the duties of the clerk of the county commission defined in this section. The clerk of the county commission may assist the recorder or municipal clerk in conducting the instructional program.

(e) When the instructional program is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the Secretary of State.

(f) The Secretary of State shall cause the instructional program to be amended, edited or reproduced whenever he or she is of the opinion such revision is necessary in light of changes in the election laws of this state.

(g) No elected official may appear in any training program either in person or by visual image or by name.

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(h) Every county clerk shall attend a training, to be conducted by the Secretary of State every two years, for the purpose of reviewing the election official training and receiving updates on election law matters.

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§3-1-47.

Repealed.

Acts, 1991 Reg. Sess., Ch. 68.

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§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems; Secretary of State expenditures from County Assistance Voting Equipment Fund.

(a) Legislative findings. — The Help America Vote Act of 2002, PL 107-252, 52 U.S.C. §20901 *et seq*., provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired, or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) State Election Fund. — The special revenue account created in the State Treasury and known as the State Election Fund account is continued. Expenditures from the account shall be used by the Secretary of State for the administration of this chapter in accordance with the provisions of 52 U.S.C. § 20901 *et seq*., the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of §4-11-1 *et seq*. of this code.

(c) Establishment of special revenue account. — There is created in the State Treasury a special revenue revolving fund account known as the County Assistance Voting Equipment Fund which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed $8,500,000 from the State Election Fund established under §3-1-48(b) of this code pursuant to legislative appropriation; any future funds received from the federal government under the Help America Vote Act of 2002, PL 107-252, 52 U.S.C. § 20901, *et seq*., or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and obtain necessary related services including voting systems, technology, and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

(d) Use of funds. — The money in the fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in the County Assistance Voting Equipment Fund may not be designated or transferred for any purpose other than those set forth in this section.

(e) Administration of the fund. — The Secretary of State shall administer the fund with the

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approval of the State Election Commission.

(f) Investment of fund. — The moneys of the fund shall be invested pursuant to §12-6-1 *et seq*. of this code and in such a manner that sufficient moneys are available as needed for loans authorized under this section.

(g) Loans to counties. — The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and necessary related services including voting systems, technology, and methods for casting and counting votes: *Provided*, That any county commission that purchased an electronic voting system prior to November 13, 2004, is eligible to apply for matching funds under this section to upgrade the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting system under the Secretary of State's authorized contract. The loans shall be made under the following terms and conditions:

(1) The State Election Commission shall, subject to availability of funds, loan no more than 50 percent of the cost of the voting equipment or services to any county commission: *Provided*, That a portion or all of the county matching requirement may be waived in limited circumstances as determined by the State Election Commission pursuant to this section.

(2) The county commission shall provide sufficient documentation to establish to the satisfaction of the State Election Commission that the county commission has at least 50 percent of the money necessary to obtain the voting equipment, software, or services for which the loan is sought.

(3) The county commission shall enter into a contract with the State Election Commission for the repayment of the loan over a period not to exceed five years or the length of the contract to obtain the equipment, software, or services, whichever is less.

(4) The county commission shall use the loan for voting equipment and services certified by the State Election Commission pursuant to the provisions of §3-4a-1 *et seq*. of this code and authorized for use by the Secretary of State.

(5) A county commission may apply for a loan on a form provided by the Secretary of State. The form shall, in addition to requesting information necessary for processing the application, state the deadline for submitting the application and the eligibility requirements for obtaining a loan.

(6) The State Election Commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the Secretary of State the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the

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satisfaction of the State Election Commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the State Election Commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) Application. — An application for a loan shall be approved by the State Election Commission if the requirements of this section have been met.

(i) Rulemaking. — The Secretary of State shall promulgate in accordance with §29A-3-1 *et seq*. of this code emergency and legislative rules necessary to effectuate the purposes of this section.

(j) Availability of loans. — The State Election Commission may not approve a loan under this section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the Secretary of State or the National Institute for Standards and Technology. The State Election Commission may not approve a loan for the purchase, lease, rental, or other similar transaction to obtain electronic voting equipment, software, or necessary related services unless obtained under a contract authorized by the Secretary of State pursuant to rules promulgated under this section.

(k) Repayment of loans. — The Secretary of State may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

(l) Notwithstanding the provisions of this section relating to loan procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board, and consistent with the legislative rules of the program, approve a grant to a county for the purchase of election systems, or election system upgrades, payable from the County Assistance Voting Equipment Fund: *Provided*, That the Secretary of State shall promulgate emergency rules setting forth the criteria for the issuance of grants to the counties pursuant to the provisions of §29A-3-15 of this code.

(m) Notwithstanding the provisions of this section relating to loan or grant procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board or other relevant federal entity and consistent with the legislative and emergency rules of the program, approve expenditures by the Secretary of State, payable from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state, where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress: *Provided*, That the State Election Commission shall promulgate emergency rules setting forth the criteria governing the application and approval process for these expenditures by the Secretary of State, pursuant to the provisions of §29A-3-15 of this code.

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§3-1-49. Voting system standards.

(a) In accordance with 42 U. S. C. §1530, et seq., the Help America Vote Act of 2002, Public Law 107-252, each voting system used in an election for federal office shall:

(1) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(2) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error; and

(3) If the voter selects votes for more than one candidate for a single office: (A) Notify the voter that the voter has selected more than one candidate for a single office on the ballot; (B) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (C) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted: Provided, That a county that uses a paper ballot voting system, a punch card voting system or an optical scan voting system may meet the requirements of this paragraph by establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and providing the voter with instructions on how to correct the ballot before it is cast and counted, including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.

(4) Ensure that any notification required under this section preserves the privacy of the voter and the confidentiality of the ballot.

(b) Each voting system used in an election for federal office shall produce a record with an audit capacity for the system which shall meet the following requirements:

(1) Produce a permanent paper record with a manual audit capacity for the system; and

(2) Provide the voter with an opportunity to change the ballot or correct any error before the ballot is cast and counted and before the permanent paper record is produced.

(c) Each voting system used in an election for federal office shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters: Provided, That the provisions of this subsection may be satisfied through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

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§3-1-50. Establishment of state-based administrative complaint procedures.

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

(1) The procedures shall be uniform and nondiscriminatory.

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

(3) Any complaint filed under the procedures shall be in writing, notarized and signed and sworn by the person filing the complaint.

(4) The Secretary of State may consolidate complaints filed under this section.

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

(6) 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.

(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

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inapplicable.

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§3-1-51. Identity verification of voters executing voter identity affidavit.

(a) The clerk of the county commission shall cause a letter to be mailed by first class mail to each voter who executed a voter identity affidavit pursuant to section thirty-four of this article. The letter shall be mailed within sixty days after the election. The clerk shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the addressee that a person who did not present a valid identifying document voted using his or her name and address and instruct the addressee to contact the clerk immediately if he or she did not vote. The letter shall also inform the addressee of the procedure for obtaining an identification card from the Division of Motor Vehicles for voting purposes.

(b) The clerk of the county commission shall cause letters mailed pursuant to subsection (a) of this section that are returned as undeliverable by the United States Post Office to be referred to the Secretary of State. The clerk shall also prepare and forward to the Secretary of State a list of all persons who were mailed letters under subsection (a) of this section and who notified the clerk that they did not vote. Upon receipt of notice from a person who receives a letter mailed pursuant to subsection (a) of this section that the person did not vote, or upon receipt of a referral from the clerk, the Secretary of State shall cause an investigation to be made to determine whether fraudulent voting occurred. Beginning July 1, 2019 and each year thereafter, the Secretary of State shall submit a report to the Joint Committee on the Judiciary and the Joint Committee on Government and Finance detailing the results of all investigations of voter identity affidavits, including, but not limited to, the number of investigations, the number of ballots cast, and the number and results of any determinations made regarding fraudulent voting.

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§3-1-52. Ranked-choice voting prohibited.

(a) Definitions:

"Local government" means any municipality, county, school district, special taxing district, or any other regional or local district or unit of government that is governed by one or more elected officials.

"Ranked-choice voting", "cumulative voting", or "instant-runoff voting" means a method of casting and tabulating votes in which:

(1) Voters rank candidates in order of preference;

(2) Tabulation proceeds in rounds such that in each round either a candidate or candidates are elected or the last-place candidate is defeated;

(3) Votes are transferred from elected or defeated candidates to the voters' next ranked candidate or candidates in order of preference; and

(4) Tabulation ends when a candidate receives the majority of votes cast or the number of candidates elected equals the number of offices to be filled.

(b) No state, county, or local elections office may use ranked choice voting or instant runoff voting to conduct an election or nomination of any candidate in this state for any local government, statewide, or federal elective office.

(c) Any existing or future ordinance enacted or adopted by a county, a municipality, or any other local government entity which is in conflict with this section is void.

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§3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expense.

The "State Election Commission," heretofore created, is continued and is composed of the Secretary of State, and four persons appointed by the Governor, by and with the advice and consent of the Senate. The commission shall from this membership elect a chairman for a term of two years. Each member of the commission shall be reimbursed for all reasonable and necessary expenses actually paid the per diem and expense reimbursement established for the Legislature in section seven, article two-a, chapter four of this code in the performance of his or her duties as a member of the commission.

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§3-1A-2. Qualifications of members of commission.

No member of the commission appointed by the Governor shall be a candidate for or hold any public office other than that of membership on the commission; nor shall such appointed member be a member of any committee of a political party. Any person who, directly or indirectly, (1) designs, owns, manufactures, distributes or sells any voting machine, or (2) owns any patent rights or contract rights thereto, or (3) has any interest in any joint venture, partnership, firm, corporation or association designing, owning, manufacturing, distributing or selling any voting machine, or owning any patent rights or contract rights thereto, shall be disqualified from serving as a member of the commission. At least one member appointed by the Governor shall be selected with special reference to his expert knowledge as a student of the problems of public elections. Not more than two members appointed by the Governor shall be members of the same political party. In case a member appointed by the Governor becomes a candidate for or is appointed to any other public office or political committee, his office as member of the commission shall be deemed immediately vacated.

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§3-1A-3. Terms of office of commission members; filling vacancies.

The terms of office of the members of the commission shall be six years. Members in office shall continue as members until their respective terms expire on June 4, 1969 and 1972. On the expiration of these terms and every three years thereafter appointments shall be made for six-year terms. Appointments to fill vacancies shall be for the unexpired term.

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§3-1A-4. Office and meetings of commission.

(a) The office and place of meeting of the commission is the office of the Secretary of State in the State Capitol. The commission may also conduct meetings via video, telephone or Internet conferencing.

(b) The commission shall hold such meetings as may be called by the chairman, the Governor or the Secretary of State.

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

(a) The commission has the power and duty to approve or disapprove applications for approval of any voting machine as provided in section seven, article four of this chapter.

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

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

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

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

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

(5) To advise the Secretary of State on carrying out the duties to which he or she is assigned pursuant to the West Virginia Supreme Court of Appeals Public Campaign Financing Program, established in article twelve of this chapter;

(6) To carry out the duties assigned to the commission by the West Virginia Supreme Court of Appeals Public Campaign Financing Program, established in article twelve of this chapter; and

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

(c) It is the commission's further duty to prepare and distribute in its name, within available appropriations and upon the recommendation of the Secretary of State, nonpartisan educational material to inform voters of the importance of voting, to encourage voters to vote, to inform voters of election laws and procedures, and to inform voters of the effect of any public question, Constitutional amendment or bond issue that is to be voted upon by all the voters of the state and that has been authorized to be placed upon the ballot by the Legislature, and manuals to assist county commissions, ballot commissioners, circuit and county clerks and other election officials in the proper performance of their duties in the conduct of elections.

(d) The commission shall propose for promulgation emergency and legislative rules, in accordance with article three, chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the administration of article eight of this chapter, and may

WV Legislature

propose for promulgation other rules, in accordance with article three, chapter twenty-nine-a of this code, relating to the conduct and administration of elections as the commission determines to be advisable.

(e) Meetings of the commission conducted for the purpose of confirming the eligibility of individual candidates to receive public campaign financing under the West Virginia Supreme Court of Appeals Public Campaign Financing Fund are expressly exempted from the public notice and public meeting requirements of article nine-a, chapter six of this code.

WV Legislature

§3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees.

(a) The Secretary of State shall be the chief election official of the state. Except for those rules required by the provisions of section five of this article to be promulgated by the commission, the Secretary of State shall have the authority, after consultation with the state Election Commission, of which he or she is a member, to make, amend and rescind such orders and to promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the provisions of this chapter. All election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks shall abide by any orders that may be issued and any legislative rules that may be promulgated by the Secretary of State and the commission.

(b) The Secretary of State also shall have authority to require collection and report of statistical information and to require other reports by county commissions, clerks of county commissions and clerks of circuit courts.

(c) The Secretary of State shall also advise with election officials; furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules issued or promulgated thereunder; investigate the administration of election laws, frauds and irregularities in any registration or election; report violations of election laws to the appropriate prosecuting officials; and prepare an annual report.

(d) The Secretary of State shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence and fix the time and place for hearing any matters relating to the administration and enforcement of this chapter, or the rules promulgated by the state Election Commission or by the Secretary of State as the chief election official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he or she may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production of papers, books, records, registration records and other evidence.

(e) (1) The Secretary of State shall also have the power, after consultation with the Secretary of the Department of Military Affairs and Public Safety, to implement emergency procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election in the event of natural disaster as declared by the Governor of this state, terrorist attack, war or general emergency, if any of which occur during or immediately preceding an election.

(2) For purposes of this subsection, a "general emergency" means circumstances preventing the casting of ballots in one or more voting precincts. The chief judge of the circuit court of the county where the casting of ballots is being prevented must declare by order that a general emergency exists."

WV Legislature

(f) All powers and duties vested in the Secretary of State pursuant to this article may be exercised by appointees of the Secretary of State at his or her discretion, but the Secretary of State shall be responsible for their acts.

WV Legislature

§3-1A-7. Candidate's financial disclosure statement.

Candidates for election to any state, county or municipal office, county school board, district school board, or to the position of county or district school board superintendent, shall file a financial disclosure statement with the Ethics Commission as may be required under subsection (a), section six, article two, chapter six-b of this code.

WV Legislature

§3-1A-8. Investigators for the Secretary of State.

(a) An employee of the Secretary of State, who has attended a course of instruction at the State Police Academy or its equivalent, has all the lawful powers delegated to members of the state police to enforce the provisions of this chapter and the criminal laws of the state in any county or municipality of this state. The Secretary of State may allow an investigator who has met the standards set forth in section four, article seven, chapter sixty-one of this code to carry a firearm and concealed weapon while performing their official duties: Provided, That as a precondition of being authorized to carry a firearm or concealed weapon in the course of their official duties, any such designated personnel must obtain and maintain firearms training and certification which is equivalent to that which is required of members of the state police. The designated persons must also possess a license to carry a concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of this code, or otherwise be exempted from the code's provisions.

(b) Before entering upon the discharge of his or her duties, an employee shall execute a bond with security in the sum of $3,500, payable to the State of West Virginia, conditioned for the faithful performance of his or her duties. The bond shall be approved as to form by the Attorney General and filed with the Secretary of State and preserved in his or her office. The State Police and a county sheriff or deputy sheriff or a municipal police officer, upon request by the Secretary of State or his or her appointee, is authorized to assist the Secretary of State or his or her appointee in enforcing the provisions of this chapter and the criminal laws of the state.

WV Legislature

§3-1A-9. Nonpublic funding sources for election administration and related expenses.

(a) No county commission, clerk of a county commission, municipal governing body, or other public official or body responsible for overseeing, administering, or regulating an election held within the State of West Virginia may directly receive or accept any gift, grant, contribution, or donation of money or anything of value for election administration and related expenses from any private individual, corporation, partnership, trust, or third party, and all such gifts, grants, contributions, or donations may only be accepted, received, expended, distributed, and utilized by the Secretary of State pursuant to the requirements of this section.

(b) There is created in the State Treasury a special revenue revolving fund account known as the Nonpublic Funding for Election Administration Fund which shall be an interest-bearing account. The fund shall consist of all monetary gifts, grants, contributions, and donations from private individuals, corporations, partnerships, trusts, or any third party for election administration and related expenses; and any accrued interest or other return on the monies in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

(c) The monies in the Nonpublic Funding for Election Administration Fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, monies in the Nonpublic Funding for Election Administration Fund may not be designated or transferred for any purpose other than those set forth in this section.

(d) The monies in the Nonpublic Funding for Election Administration Fund shall be invested pursuant to §12-6-1 *et seq*. of this code.

(e) The Nonpublic Funding for Election Administration Fund shall be administered by the Secretary of State, with the approval of the State Election Commission, in accordance with legislative rules promulgated by the Secretary of State in accordance with §29A-3-1 *et seq*. of this code.

(f) All gifts, grants, contributions, or donations of tangible property or any non-monetary thing of value from private individuals, corporations, partnerships, trusts, or any third party for election administration and related expenses shall be accepted, distributed, and utilized by the Secretary of State, only with the approval of the State Election Commission, in accordance with legislative rules promulgated by the Secretary of State in accordance with §29A-3-1 *et seq*. of this code.

WV Legislature

§3-1B-1. Legislative findings, purpose, declaration and intent.

The Legislature hereby finds and declares that every candidate for public office in this state should follow the basic principles of decency, honesty and fairness in the course of their campaign practices.

The Legislature hereby further declares that the code of fair campaign practices, as contained in this article, is a standard to which all candidates for public office should aspire and is a guideline for voters to determine fair play in the conduct of campaigns for public office.

It is the further goal of the Legislature that every candidate for public office in this state will voluntarily subscribe and adhere to the code of campaign practices.

WV Legislature

§3-1B-2. Definitions.

For purposes of this article:

(a) "Campaign advertising or communication" means a communication authorized by a candidate or a candidate's committee for the purpose of advocating the nomination, election or defeat of a candidate;

(b) "Candidate for public office" means an individual who has filed a precandidacy statement pursuant to the provisions of section five-e, article eight of this chapter, has qualified to have his or her name listed on the ballot of any election, or who has declared his or her intention to seek nomination or election through a petition or write-in procedure for any state, regional, county, municipal or district office which is to be filled at an election;

(c) "Code" means the code of fair campaign practices as set forth in this article;

(d) "Commission" means the state election commission created pursuant to the provisions of article one-a of this chapter; and

(e) "Political committee" means all of those persons and entities required to keep accounts and file financial statements pursuant to the provisions of section five, article eight of this chapter.

WV Legislature

§3-1B-3. Powers and duties of the commission.

In addition to the powers and duties of the commission as prescribed in section five, article one-a of this chapter, the commission has:

(a) The power to issue advisory opinions on whether an action or proposed action of a subscribing candidate violates the code of fair campaign practices;

(b) The duty to prepare and distribute copies of the code of fair campaign practices to voters, circuit clerks, county clerks and other election officials;

(c) The duty to receive, investigate and act on complaints or other information concerning noncompliance with the code by candidates for public office who subscribe to the code; and

(d) The duty to make public the name and identity of candidates subscribing to the code and the findings of compliance or noncompliance with the code upon the conclusion of a hearing conducted pursuant to section four of this article.

WV Legislature

§3-1B-4. Hearing; disposition; sanctions.

If a majority of the commission determines that there is a reasonable likelihood that a candidate for public office who subscribes to the code of fair campaign practices has violated a provision of the code, then the commission shall inform the candidate in writing and notify the candidate in writing that the candidate has ten days from receipt of the notice to request a hearing. If the candidate requests a hearing, then one shall be scheduled within ten days after such request. Said hearing may be continued only for good cause shown. If a majority of the commission determines, based upon clear and convincing evidence, after a hearing or after a candidate has declined to request a hearing, that such candidate has violated a provision of the code, the commission may issue a public opinion stating the candidate has committed a violation of the code. If the commission does not find by clear and convincing evidence that a subscribing candidate has violated a provision of the code, then the commission shall issue a public statement that the candidate has not violated the code. Said statement shall be issued on the same day of the hearing.

WV Legislature

§3-1B-5. Code of fair campaign practices.

At the time an individual files his or her precandidacy statement, certificate of announcement, nominating petition, and other paper evidencing an intention to be a candidate for public office, or when an individual files the statement of organization of a political committee, the circuit clerk, county clerk or Secretary of State receiving such filing shall furnish the individual with a form containing the text of the code of fair campaign practices which shall read as follows:

CODE OF FAIR CAMPAIGN PRACTICES

I SHALL CONDUCT this campaign openly and publicly, discussing the issues as I see them, presenting positions and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of candidates or political parties which merit such criticism.

I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander or scurrilous attacks on any candidate or his or her personal family life.

I SHALL CONDEMN the use of campaign advertising or communication of any sort which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate or issue raised in my campaign.

I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical disability or age.

I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder, prevent, or discourage any eligible person from registering to vote, or from voting, or which is intended to affect voting through the buying of influence or votes.

I SHALL NOT COERCE election help or campaign contributions for myself or my committee or for any other candidate or any ballot issue from my employees or from any person under my authority, influence or control.

I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support on behalf of or in opposition to any candidacy deriving from any individual or group which resorts to the methods and tactics which I condemn. I shall accept responsibility to take firm action against any subordinate or associate who violates any provisions of this code or the laws governing elections.

I PERSONALLY SUPPORT a limit on campaign expenditures that when reasonable, sufficient and fairly applied, does not limit or restrict the expression of ideas of the candidate or others on behalf of the candidate, but instead challenges individuals to engage in open dialogue on the issues rather than merely to purchase the excessive repetition of images and slogans.

WV Legislature

ACCORDINGLY, IF I AM A CANDIDATE for one of the offices listed below, I will, in conjunction with the committee or committees organized on my behalf, adhere to the following limitations on campaign spending specified for the office I seek:

	PRIMARY	GENERAL
Governor	1,000,000	1,000,000
Constitutional Officers	150,000	150,000
Supreme Court of Appeals	150,000	150,000
State Senate	50,000	50,000
House of Delegates	25,000	25,000
Circuit Judge	50,000	50,000

Expenditures which do not exceed the limits designated for the primary election may not be added to the limits for the general election.

I SHALL DEFEND AND UPHOLD the right of every qualified voter to full and equal participation in the electoral process.

I, the undersigned, a candidate for election to public office in the State of West Virginia, or the chairperson of a political committee supporting one or more candidates for election, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct this campaign in accordance with the above principles and practices. I understand that subscription and adherence to the code is voluntary.

_____ _____

Date Signature

_____ _____

Candidate for/Committee Name Address and City

WV Legislature

§3-1B-6. Forms.

The Secretary of State in consultation with the election commission, shall prescribe the forms containing the text of the code and shall furnish the forms to the circuit clerks, county clerks and municipal clerks or recorders in quantities and at times requested by the clerks.

WV Legislature

§3-1B-7. Retention of forms; public inspection.

The officer receiving the filing shall accept, at all times prior to the election, all completed forms evidencing subscription to the code.

Forms filed with the circuit clerk shall be immediately forwarded to the county clerk. The county clerk, Secretary of State, and municipal recorder or clerk shall retain such forms filed with them for public inspection until one hundred eighty days after the general election.

WV Legislature

§3-1B-8. Voluntary subscription to the code.

Subscription to and adherence to the provisions of the code set forth in this article is voluntary and in no event may any person be required to subscribe to, adhere to or endorse the code.

WV Legislature

§3-1B-9. Release from subscription to the code.

In the event that an opponent to a subscribing candidate exceeds the voluntary campaign spending limitations set forth in section five of this article, the subscribing candidate who has not exceeded the spending limitations shall be automatically released from that portion of the code establishing the campaign spending limitations, and the commission shall make public the fact of such release.

WV Legislature

§3-1B-10. Adjustment of spending limitations.

The commission may from time to time increase the voluntary campaign spending limitations established in this article pursuant to legislative rule promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

WV Legislature

§3-1C-1. Short title.

This article may be cited as "The Accessible Voting Technology Act".

WV Legislature

§3-1C-2. Findings.

The Legislature makes the following findings:

(1) Microchip and digital technologies are increasingly changing the way Americans vote;

(2) State and political subdivisions are replacing antiquated voting methods and machines with computer- and electronic-based voting systems, but nonvisual access, whether by speech, Braille or other appropriate means is often overlooked in certifying and purchasing the latest voting technology;

(3) Voting technology and systems which allow the voter to access and select information solely through visual means are a barrier to access by individuals who are blind or visually impaired, thereby discouraging them from exercising the right to vote, the most fundamental right of citizenship in a free and democratic society;

(4) Software and hardware adaptations have been created so that voters can interact with voting technology and systems through both visual and nonvisual means allowing blind and visually impaired people to cast a secret ballot and independently verify their vote; and

(5) In promoting full participation in the electoral process, the goals of the state and its political subdivisions must recognize the right of all citizens regardless of blindness or visual impairment to vote and to cast and verify their ballots independently.

WV Legislature

§3-1C-3. Definitions.

As used in this article, unless the context otherwise requires a different meaning, the term:

(1) "Access" means the ability to receive, use, select and manipulate data and operate controls included in voting technology and systems;

(2) "Nonvisual" means synthesized speech, Braille and other output methods not requiring sight.

WV Legislature

§3-1C-4. Requirements for accessible voting technology and systems.

(a) If any county upgrades or replaces existing voting equipment or an existing voting system and the upgraded or new equipment or system is certified by the Secretary of State to have the capability to provide or the capability to be upgraded to provide blind and visually impaired individuals with nonvisual access which is equivalent to that access provided to individuals who are not blind or visually impaired, then the county must purchase or lease at least one voting mechanism which provides such nonvisual access to be used during the period of voting regular absentee ballots in person. The voting mechanism must also be used in a precinct, as designated by the county commission, on election day.

(b) The county commission of any county may place voting mechanisms that provide nonvisual access to blind or visually impaired persons in as many other precincts of the county as the county commission determines is feasible for use on election day, if the type of voting mechanism to be used has been certified by the Secretary of State.

WV Legislature

§3-2-1. Permanent voter registration law; uniform system of voter registration.

(a) This article, providing a permanent and uniform system for the registration of the voters of the State of West Virginia, may be cited as the "Permanent Voter Registration Law."

(b) A permanent voter registration system is hereby established which shall be uniform in its requirements throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while continuing to reside within the same county, unless the voter's registration is canceled as provided in this article.

(c) A person who is not eligible or not duly registered to vote shall not be permitted to vote at any election in any subdivision of the state, except that such a voter may cast a "provisional" or "challenged" ballot as provided in this chapter if the voter's eligibility or registration is in question, and such "provisional" or "challenged" ballot may be counted only if a positive determination of the voter's eligibility and proper registration can be ascertained.

WV Legislature

§3-2-2. Eligibility to register to vote.

(a) Any person who possesses the constitutional qualifications for voting may register to vote. To be qualified, a person must be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: Provided, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a federal, state, county, municipal or special primary election if he or she will be eighteen years of age by the time of the corresponding general election.

(b) Any person who has been convicted of a felony, treason or bribery in an election, under either state or federal law, is disqualified and is not eligible to register or to continue to be registered to vote while serving his or her sentence, including any period of incarceration, probation or parole related thereto. Any person who has been declared mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that disability continues.

WV Legislature

§3-2-3. State authority relating to voter registration; chief election official.

(a) The Secretary of State, as chief election official of the state as provided in section six, article one-a of this chapter, shall have general supervision of the voter registration procedures and practices and the maintenance of voter registration records in the state and shall have authority to require reports and investigate violations to ensure the proper conduct of voter registration throughout the state and all of its subdivisions. Upon written notice to the clerk of the county commission of a county of the need for voter registration record maintenance and the failure of that clerk to complete such maintenance within ninety days of the notice, the Secretary of State may make changes in the voter registration data necessary to comply with list maintenance requirements of sections four-a, twenty-three, twenty-five, twenty-six and twenty-seven of this article: Provided, That the secretary shall send the notice by certified mail, return receipt requested.

(b) The Secretary of State, as chief election official of the state, is responsible for implementing, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.

(c) The Secretary of State is hereby designated as the chief election official responsible for the coordination of this state's responsibilities under 42 U.S.C. §1973gg, et seq., the "National Voter Registration Act of 1993". The Secretary of State shall have general supervision of voter registration procedures and practices at agencies and locations providing services as required by the provisions of this article and shall have the authority to propose procedural, interpretive and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for application for registration, transmission of applications, reporting and maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

WV Legislature

§3-2-4. Authority and responsibility of the clerk of the county commission and of the county commission relating to voter registration.

(a) Subject to the authority of the Secretary of State, the clerk of the county commission shall be the chief registration authority in each respective county and all subdivisions therein, and shall supervise their deputies, employees, and registrars in the performance of their respective duties.

(b) The county commission of each county shall allocate sufficient resources for the proper and efficient performance of duties relating to voter registration as required by law, and shall provide for temporary clerical assistance necessary for systematic purging procedures or other duties of short duration required by the provisions of this article.

(c) The county commission shall have authority on its own motion to summon and examine any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers, and to conduct hearings on any matters relating to the registration of voters.

(d) The clerk of the county commission shall be responsible for the administration of voter registration within the county and shall establish procedures and practices which ensure the full implementation of the requirements of federal and state laws and rules relating to voter registration, and which ensure nondiscriminatory practices. The clerk of the county commission, at his or her discretion, may maintain and store all voter registration records in a digital format: *Provided,* That prior to destroying any physical voter registration records, the clerk of the county commission shall follow the records destruction process and digital copy creation requirements set forth in W.Va. Code § 3-2-29.

WV Legislature

§3-2-4a. Statewide voter registration database.

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state, as follows:

(1) The statewide voter registration database shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The statewide voter registration database shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) In the statewide voter registration database, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The statewide voter registration database shall be coordinated with other agency databases within the state and elsewhere, as appropriate.

(5) The Secretary of State, any clerk of the county commission, or any authorized designee of the Secretary of State or clerk of the county commission, may obtain immediate electronic access to the information contained in the statewide voter registration database.

(6) The clerk of the county commission shall electronically enter voter registration information into the statewide voter registration database on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The statewide voter registration database shall serve as the official voter registration list for conducting all elections in the state.

(b) The provisions of subdivision (6), subsection (a) of this section notwithstanding, the Secretary of State or any clerk of a county commission shall perform maintenance with respect to the statewide voter registration database on a regular basis as follows:

(1) If an individual is to be removed from the statewide voter registration database he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the statewide voter registration database with state agency records and shall establish procedures for the removal of names of individuals who are not qualified to vote due to felony status or death. No state agency may withhold information regarding a voter's status as deceased or as a felon unless ordered by a court of law.

WV Legislature

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the statewide voter registration database;

(2) Only voters who are not registered, who have requested in writing that their voter registration be canceled, or who are not eligible to vote are removed from the statewide voter registration database;

(3) Duplicate names are eliminated from the statewide voter registration database; and

(4) Deceased individuals' names are eliminated from the statewide voter registration database.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the statewide voter registration database established under this section.

(e) The Secretary of State shall ensure, and may perform such maintenance necessary to ensure, that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, et seq., registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter, who have not otherwise updated their voter registration address, and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote;

(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U. S. C. §1973gg, et seq.; and

(3) Through safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may be accepted only when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the

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applicant's driver's license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's Social Security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles identification card, or a Social Security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. The number assigned under this subdivision shall be the unique identifying number assigned under the statewide voter registration database.

(g)(1) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the statewide voter registration database with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(2) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement for the Division of Motor Vehicles to provide all name fields, residence and mailing address fields, driver’s license or state identification number, last four digits of the Social Security number, date of birth, license or identification issuance and expiration dates, and current record status of individuals eligible to register to vote to the Secretary of State for the purpose of voter registration list maintenance comparison through an interstate data-sharing agreement designated by the Secretary of State as permitted by subdivision (2), subsection (e) of this section.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §401, et seq., the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve of this article.

WV Legislature

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a)(1) All state forms for application for voter registration shall be prescribed by the Secretary of State and shall conform with the requirements of 42 U.S.C. §1973gg, *et seq.*, the National Voter Registration Act of 1993 and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver's license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing and may be revised and reissued as required by the Secretary of State to provide for the efficient administration of voter registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986 and the mail voter registration application form prescribed by the Federal Election Commission pursuant to 42 U.S.C. §1973gg, *et seq.*, and the National Voter Registration Act of 1993, are accepted as valid forms of application for registration pursuant to the provisions of this article.

(3) The Secretary of State is authorized to promulgate procedures to permit persons to register to vote through a secure electronic voter registration system.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by 42 U.S.C. §1973gg, *et seq.*, the National Voter Registration Act of 1993;

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the application for registration unless the political party has determined otherwise;

(4) The applicant's driver's license number or an identification number issued by the Division of Motor Vehicles. If the applicant does not have a driver's license or an identification card issued by the Division of Motor Vehicles, then the last four digits of the applicant's Social Security number; and

(5) Any other instructions or information essential to complete the application process.

(c) Each application form shall require that the following be provided by the applicant, under oath, and an application which does not contain each of the following is incomplete:

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(1) The applicant's legal name, including the first name, middle or premarital name, if any, and last name;

(2) The month, day, and year of the applicant's birth;

(3) The applicant's residence address including the number and street or route and city and county of residence except:

(A) In the case of a person eligible to register under the provisions of 42 U.S.C.§1973ff, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act, the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided;

(B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence; or

(C) In the case of a participant in the Address Confidentiality Program administered by the Secretary of State in accordance with section one hundred three, article twenty-eight (a), chapter forty-eight of this code, the designated address assigned to the participant by the Secretary of State; and

(4) The applicant's signature, under penalty of perjury as provided in section thirty-six of this article, to the attestation of eligibility to register to vote and to the truth of the information given. The clerk may accept the electronically transmitted signature kept on file with another approved state database for an applicant who applies to register to vote using an approved electronic voter registration system in accordance with procedures promulgated by the Secretary of State.

(d) The applicant shall be requested to provide the following information, but no application may be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

(2) The applicant's choice of political party affiliation, if any, or an indication of no affiliation. An applicant who does not enter a choice of political party affiliation is listed as having no party affiliation on the voting record;

(3) The applicant's residence mailing address if different than the residence street address;

(4) The last four digits of the applicant's Social Security number;

(5) The applicant's telephone number;

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(6) The applicant's e-mail address;

(7) The address where the applicant was last registered to vote, if any, for the purpose of cancelling or transferring the previous registration;

(8) The applicant's gender; and

(9) A statement as to whether the applicant requests to register as an organ donor and be included in the National Donate Life Registry.

(e) The Secretary of State shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form: *Provided*, That any physical voter registration records created under this article may be destroyed under the process described in §3-2-29 of this code.

(f) Application forms prescribed in this section may refer to various public officials by title or official position but in no case may the actual name of an officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than July 1 of each odd-numbered year, the Secretary of State shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning September 1 of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

(h) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article, including, but not limited to, the collection of the minimum personal information to be collected and transferred to a national organ donor registry, as provided in §3-2-5(d)(9) of this code.

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§3-2-6. Time of registration application before an election.

(a) Voter registration before an election closes on the 21st day before the election or on the first day thereafter which is not a Saturday, Sunday, or legal holiday at

(1) 11:59 p.m. for online registration; or

(2) At the close of business at county clerk's offices and the Secretary of State's office.

(b) An application for voter registration, transfer of registration, change of name, or change of political party affiliation submitted by an eligible voter by the close of voter registration is effective for any subsequent primary, general, or special election if the following conditions are met:

(1) The application contains the information required by §3-2-5(c) of this code. Incomplete applications for registration containing information which are submitted within the required time may be corrected within four business days after the close of registration if the applicant provides the required information; and

(2) The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:

(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and is postmarked by the postal service no later than the date of the close of registration. If the postmark is missing or illegible, the application is presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application is received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application is received by the clerk, deputy clerk, or registrar no later than the close of registration;

(D) If accepted through an approved electronic voter registration system, the application is received by the clerk of the county commission or other entity designated by the Secretary of State no later than 11:59 p.m. on the final day of registration; and

(3) The verification notice required by the provisions of §3-2-16 of this code mailed to the voter at the residence indicated on the application is not returned as undeliverable.

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§3-2-6a. Extended time for certain persons to register in person.

(a) Notwithstanding the provisions of section six of this article, the following persons are entitled to register to vote, in person, at the office of the clerk of the county commission up to, but not including, the day of the election:

(1) Any member of a uniformed service of the United States, as defined in 42 U. S. C. § 1973ff-6 (7), who is on active duty;

(2) Any member of a uniformed service of the United States, as defined in 42 U. S. C. § 1973ff-6 (7), who is discharged from active duty during the sixty days immediately preceding the election;

(3) Any member of the Merchant Marine of the United States;

(4) Any person residing outside the country by virtue of his or her employment in support of national security functions or purposes and presents appropriate documentation of such employment as prescribed by the Secretary of State; and

(5) Any spouse or dependent residing with a person listed in subdivisions (1), (2), (3) or (4) of this subsection.

(b) The provisions of subsection (a) apply only to those persons who are otherwise qualified to register and who, by reason of such active duty or temporary overseas residency:

(1) Are normally absent from the county in which they reside; or

(2) Have been absent from such county and returned to reside there during the twenty-one days immediately preceding the election.

(c) A person qualifying and registering to vote pursuant to this section, after the close of voter registration set forth in section six, article two of this chapter, shall be required to cast a provisional ballot and that provisional ballot shall be counted during the canvass of the election, unless the voter is determined by the Clerk of the County Commission to otherwise fail to meet the eligibility requirements for voter registration.

(d) The Secretary of State shall prescribe procedures for the addition of persons registered under this section to the lists of registered voters.

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§3-2-7. Hours and days of registration in the office of the clerk of the county commission; in-person application for voter registration; identification required.

(a) The clerk of the county commission shall provide voter registration services at all times when the office of the clerk is open for regular business.

(b) An eligible voter who desires to apply for voter registration in person at the office of the clerk of the county commission shall complete a voter registration application on the prescribed form and shall sign the oath required on that application in the presence of the clerk of the county commission or his or her deputy: Provided, That an individual may apply for voter registration using an approved electronic voter registration system if available at the office of the clerk. Such system may electronically transfer the voter's signature stored in the database of another state agency in accordance with procedures promulgated by the Secretary of State. The applicant shall present valid identification and proof of age. The clerk may waive the proof of age requirement if the applicant is clearly over the age of eighteen.

(c) The clerk shall attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes.

(d) Upon receipt of the completed registration application, the clerk shall either:

(1) Provide a notice of procedure for verification and notice of disposition of the application and immediately begin the verification process prescribed by the provisions of section sixteen of this article; or

(2) Upon presentation of a current driver's license or state-issued identification card containing the residence address as it appears on the voter registration application, issue the receipt of registration.

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§3-2-8. Registration outreach services by the clerk of the county commission; challenge of voter's registration.

(a) Registration outreach services, including application for registration, change of address, name or party affiliation and correction or cancellation of registration, may be provided at locations outside the office of said clerk of the county commission by the clerk, one or more of his or her deputy clerks, or by temporary registrars or volunteer registrars appointed in accordance with the provisions of section nine of this article.

(b) (1) The clerk of the county commission may establish temporary registration offices to provide voter registration services to residents of the county. The clerk shall file a list of the scheduled times and locations of any temporary registration offices with the county commission at least fourteen days prior to opening the temporary office and shall solicit public service advertising of the location and times for any temporary registration office on radio, television and newspapers serving that county.

(2) The clerk of the county commission shall establish an approved program of voter registration services for eligible high school students at each high school within the county and shall conduct that program of voter registration at an appropriate time during each school year, but no later than forty-five days before a statewide primary election held during a school year. The Secretary of State shall issue guidelines for approval of programs of voter registration for eligible students, and all such programs shall include opportunities for students to register in person and present identification at the high school where the student is enrolled. Official school records shall be accepted as identification and proof of age for eligible students.

(c) When the boundaries of precincts are altered requiring the transfer of a portion of the voters of one precinct to another precinct, the clerk of the county commission or temporary registrars appointed for the purpose may conduct door-to-door registration services in the areas affected by the boundary changes and may register, alter or transfer the registration of voters found to reside in those areas. Upon a determination that a voter who previously registered in the area canvassed no longer resides at that address, except for those persons who are qualified to maintain a legal residence at the address, the clerk of the county commission shall challenge the registration of the voter in accordance with the provisions of section twenty-eight of this article.

(d) The procedures required upon receipt of an application for registration as prescribed in subsection (b), section seven of this article shall also be performed by the authorized persons conducting the registration outreach services.

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§3-2-9. Appointment of temporary and volunteer registrars for registration outreach services.

(a) Temporary registrars and volunteer registrars may be appointed to perform registration outreach services as provided in section eight of this article. Whenever registration outreach services are conducted by temporary registrars or volunteer registrars, two persons of opposite political parties shall serve together. All temporary registrars and volunteer registrars shall be trained by the clerk of the county commission before beginning their duties and shall thereafter be supervised by said clerk.

(b) Temporary registrars and volunteer registrars shall have the same eligibility qualifications as required of election officials and shall be subject to suspension by the same procedures as prescribed for election officials as provided in section twenty-eight, article one of this chapter. Eligibility may be suspended for the following reasons:

(1) Failure to appear at the required time and place or to perform the duties of a registrar as required by law;

(2) Alteration or destruction of a voter registration application;

(3) Improper influence of the choice of party affiliation of a voter, or other improper interference or intimidation relating to the voter's decision to register or not to register to vote; or

(4) Being under the influence of alcohol or drugs, or having anything wagered or bet on an election.

(c) Each temporary or volunteer registrar, before beginning the duties of the office, shall take an oath to perform the duties of the office according to law and the oath shall be filed with the clerk of the county commission.

(d) (1) The county commission may appoint temporary registrars to conduct registration as provided in section eight of this article. An equal number of such registrars shall be selected from the two major political parties. The county commission shall notify each county executive committee, in writing, specifying the number of registrars to be appointed, the general schedule of registration activities to be performed, and the date by which the nominations must be received, which date shall be not less than twenty-eight days following the date of the notice. Each executive committee, by majority vote of the committee, may nominate the number of persons needed to serve as registrars and shall submit the nominations in writing to the county commission by the date specified in the notice. The clerk of the county commission shall notify those persons so nominated and appointed. If any person declines to serve or fails to appear, the clerk of the county commission shall fill the vacancy with a qualified person of the same political party.

(2) Temporary registrars shall be compensated at a rate not less than the federal minimum

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wage and may be reimbursed for mileage traveled between the county courthouse and any temporary registration site.

(e) The clerk of the county commission may appoint volunteer registrars to conduct registration outreach services as provided in section eight of this article. Volunteer registrars shall serve without compensation. At least fourteen days before beginning any registration outreach service to be conducted by volunteer registrars, the clerk shall notify the county commission in writing listing the proposed schedule for all registration outreach activities and the name and party affiliation of each volunteer registrar appointed.

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§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Application shall be made on a prescribed form as provided by section five of this article.

(b) To the extent possible, with funds allocated annually for such purpose, the Secretary of State shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The Secretary of State shall make a record of all requests by entities or organizations for two hundred or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The Secretary of State shall also require the entity or organization requesting the forms to provide contact information on a form prescribed by the Secretary of State. The Secretary of State may limit the distribution to a reasonable amount per group.

(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms available for distribution through organized voter registration programs within the county. The clerk of the county commission shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount per group.

(d) The applicant shall provide all required information and, only after completing the information, sign the prescribed applicant's oath under penalty of perjury as provided in section thirty-six of this article. No person may alter or add any entry or make any mark which would alter any material information on the voter registration application after the applicant has signed the oath: Provided, That the clerk of the county commission may correct any entry upon the request of the applicant provided the request is properly documented and the correction is dated and initialed by the clerk.

(e) Completed applications shall be mailed or delivered to the clerk of the county commission of the county in which the voter resides. If a clerk receives a completed mail application form from a voter whose residence address is located in another county, the clerk shall forward that application within three days to the clerk of the county commission of the county of the applicant's residence.

(f) Upon receipt of the application for registration by the appropriate clerk of the county commission, the clerk shall:

(1) Attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes; and

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(2) Immediately begin the verification process required by the provisions of section sixteen of this article.

(g) Any person who registers by mail pursuant to this section and who has not previously voted in an election in the state shall be required to present the following forms of identification to the Secretary of State or clerk of the county commission:

(1) In the case of an individual who votes in person, a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter;

(2) In the case of an individual who votes by mail, a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter, submitted with the ballot.

(h) An individual who desires to vote in person or by mail, but who does not meet the requirements of subsection (g) of this section, may cast a provisional ballot.

(i) Subsection (g) of this section does not apply in the case of a person:

(1) Who registers to vote by mail under 42 U.S.C. §1973gg–4, et seq., and submits as part of his or her registration either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;

(2) (A) Who registers to vote by mail under 42 U.S.C. §1973gg-4, et seq., and submits with his or her registration either a driver's license number or at least the last four digits of the individual's social security number; and (B) with respect to whom the Secretary of State or clerk of the county commission matches the information submitted under paragraph (A) of this subdivision with an existing state identification record bearing the same number, name and date of birth as provided in the registration; or

(3) Who is: (A) Entitled to vote by absentee ballot under 42 U.S.C. §1973ff-1, et seq., the Uniformed and Overseas Citizens Absentee Voting Act; (B) provided the right to vote otherwise than in person under 42 U.S.C. §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act; (C) entitled to vote otherwise than in person under any other federal law: Provided, That any person who has applied for an absentee ballot pursuant to the provisions of subdivision (1), subsection (b), section one, article three of this chapter; paragraph (B), subdivision (2) of said subsection; subdivision (3) of said subsection; or subsection (c) of said section may not have his or her ballot in that election challenged for failure to appear in person or for failure to present identification.

(j) Any person who submits a state mail voter registration application to the clerk of the

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county commission in the county in which he or she is currently registered for the purpose of entering a change of address within the county, making a change of party affiliation or recording a change of legal name shall not be required to make his or her first vote in person or to present identification or proof of age.

(k) On and after July 1, 2006, any person who agrees to mail or to deliver a signed voter registration application to the Secretary of State or the clerk of the county commission and who intentionally interferes with the applicant's effort to register either by destroying the application or by failing to mail or to deliver the application in a timely manner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in a jail for not more than one year, or both. For purposes of this subsection, the mailing or delivery of an application is timely if it is mailed or delivered within fifteen days after the applicant signs the application or in accordance with the provisions of article two, chapter three of this code for processing before the closing of the registration records for the pending election, whichever comes first.

(l) On or after July 1, 2006, any person who intentionally solicits multiple registrations from any one person or who intentionally falsifies a registration application 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.

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§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services, shall, except with respect to foreign driver's licenses recognized pursuant to reciprocal agreements under §17A-2-10b of this code, obtain as an integral and simultaneous part of every process of application for the issuance, renewal, or change of address of a motor vehicle driver's license, or official identification card pursuant to §17B-2-1 *et seq*. of this code, when the division's regional offices are open for regular business, the following information from each qualified registrant:

(1) Full name, including first, middle, last, and any premarital names;

(2) Date of birth;

(3) Residence address and mailing address, if different;

(4) The applicant's electronic signature and photograph;

(5) Telephone number, if available;

(6) Email address, if available;

(7) Political party membership, if any;

(8) Driver's license number and last four digits of Social Security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements;

(10) United States citizenship status;

(11) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

(12) Date of application; and

(13) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update his or her voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section to the Secretary of State, who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already-registered voter pursuant to law. The Division of Motor Vehicles shall notify the applicant that by submitting his or her signature, the applicant grants

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written consent for the submission of the information obtained and required to be submitted to the Secretary of State pursuant to this section.

(c) As soon as practicable, but no later than 90 days following the effective date of amendments made during the 2024 regular legislative session, the Division of Motor Vehicles shall create a regular process, including, but not limited to, the requirements of §3-2-11(p) of this code, that ensures the Secretary of State can fulfill his or her duties as provided by §3-2-3 of this code to confirm that any applicant to register to vote in West Virginia through the Division of Motor Vehicles is in fact a U.S. citizen eligible to vote in West Virginia and to ensure that persons who are noncitizens of the United States have not and cannot register to vote in West Virginia.

(d) Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(e) A qualified voter who submits the required information or update to his or her voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing, or transferring his or her driver's license or official identification card, and who presents identification and proof of age at that time, is not required to make his or her first vote in person or to again present identification in order to make that registration valid.

(f) A qualified voter, who submits, by mail or by delivery by a third party, an application for registration on the form used in conjunction with driver licensing, is required to make his or her first vote in person and present identification as required for other mail registration in accordance with §3-2-10(g) of this code. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation, or other correction, the presentation of identification and first vote in person is not required.

(g) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.

(h) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law, serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(i) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

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(j) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State, and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

(k) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

(l) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(m) This section does not require the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(n) Except for the changes made to subsection (b) of this section during the 2017 regular legislative session, the changes made to this section during the 2016 regular legislative session become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division of Motor Vehicles. The Commissioner of the Division of Motor Vehicles, the Secretary of the Department of Transportation, and the Secretary of State shall each appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary, during the first interim meetings of such committees occurring after September 1, 2019, to present written reports containing a full and complete list of any infrastructure each agency requires to achieve the purposes of this section. Along with the report required by this subsection, the Division of Motor Vehicles shall submit a written schedule to both committees outlining how the division will implement the requirements of this section by July 1, 2021.

(o) The Secretary of State shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the requirements of this section.

(p) Notwithstanding any other provisions of this code to the contrary, the Division of Motor Vehicles shall expeditiously and comprehensively release and forward all information obtained pursuant to subsection (a) of this section purporting to document an applicant's status as a U.S. citizen to the Secretary of State of any applicant attempting to register to vote in West Virginia. This information shall be used for the express purpose of expediting the Secretary of State's fulfillment of his or her duties pursuant to §3-2-11(c) and §3-2-3 of this code requiring the Secretary of State to confirm that persons who are noncitizens of the United States have not and cannot register to vote in the state of West Virginia.

(q) The amendments to this section enacted by the Legislature in the 2024 regular session are effective January 1, 2025.

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§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.

[Repealed].

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§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

(a) For the purposes of this article, "agency" means a department, division or office of state or local government, or a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) The following agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the Aid to Families with Dependent Children (AFDC) program, the Women, Infants and Children (WIC) program and the Medicaid program;

(2) Those state-funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices;

(4) Armed services recruitment offices, as required by federal law; and

(5) The Department of Revenue, if it provides a check box on any form provided to the general public authorizing the Department of Revenue to request a voter registration application by mail from the Secretary of State on behalf of the applicant.

(c) No later than October 1, 1994, the Secretary of State shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with disabilities and shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the National Voter Registration Act of 1993 (42 U.S.C. §1973gg, et seq.). The offices and programs so designated shall begin providing voter registration services on January 1, 1995.

(d) In each even-numbered year, the Secretary of State shall, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by the provisions of subsection (c) of this section. The Secretary of State shall periodically review and revise, if necessary, the legislative rule designating the specific agencies required to provide voter registration services.

(e) Each state agency required to provide services pursuant to the provisions of this article shall designate a current employee of that agency to serve as a state supervisor to administer voter registration services required in all programs under the agency's jurisdiction. Each state supervisor is responsible for coordination with the Secretary of

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State, overall operation of the program in conjunction with services within the agency, designation and supervision of local coordinators and for the review of any complaints filed against employees relating to voter registration as provided in this chapter.

(f) The state supervisor shall designate a current employee as a local coordinator for voter registration services for each office or program delivery center who shall be responsible for the proper conduct of voter registration services, timely return of completed voter registration applications, proper handling of declinations and reporting requirements. Notice of the designation of these persons shall be made upon request of the Secretary of State and within five days following any change of designation. Each local coordinator shall receive biannual training provided by the Secretary of State.

(g) The registration application forms used for agency registration shall be issued pursuant to the provisions of section five of this article.

(h) The Secretary of State, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe the form or portion of the appropriate agency form required by the provisions of 42 U.S.C. §1973gg, et seq., section 7(a)(6)(B) of the National Voter Registration Act of 1993, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. The form or portion of the form is designated the "declination form".

(i) A person who provides voter registration services may not:

(1) Seek to influence an applicant's political preference or party registration;

(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter registration.

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§3-2-14. Registration procedures at agencies.

(a) For the purpose of this section, "applicant" means a person who applies in person, whether at an agency office or other site of direct contact with an agency employee responsible for accepting applications, seeking services or assistance for himself or herself or for a member of his or her immediate family.

(b) No later than December 1, 1994, the Secretary of State shall promulgate procedural rules governing the duties and training of agency employees responsible for providing voter registration services, including the distribution, handling, transmittal and retention of voter registration applications and other forms used in conjunction with agency registration, and any reporting necessary to comply with the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg).

(c) Beginning on January 1, 1995, or on July 1, of any subsequent odd-numbered year after which an agency has been designated, each agency designated under the provisions of section thirteen of this article shall:

(1) Distribute with each application for service or assistance, and with each recertification, renewal or change of address form relating to that service or assistance, the declination form prescribed in subsection (h), section thirteen of this article, and a voter registration application issued for the purposes of agency registration pursuant to the provisions of section five of this article;

(2) Provide to each applicant who does not decline to register to vote the same degree of assistance in voter registration as is provided for the completion of the agency's other forms, unless the applicant refuses assistance;

(3) Accept completed voter registration applications and forward those applications to the Secretary of State within five days of receipt;

(4) Accept declination forms and retain or forward those forms in a manner prescribed by procedural rules promulgated by the Secretary of State;

(5) Provide, on the request of an applicant or person assisting an applicant, a reasonable number of mail application forms for use by other eligible persons residing with the applicant; and

(6) Make any reports as may be required.

(d) Any applicant who checks "no" or fails to check "yes" or "no" on the declination form shall be deemed to have declined to register; and any applicant who checks "yes" on the declination form, but fails or refuses to sign the voter registration application or fails to return the voter registration application to an agency or to an appropriate voter registration office shall be deemed to have declined to register.

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(e) Upon receipt of registration forms from an agency, the Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(f) Any qualified voter who submits the application for registration pursuant to the provisions of this section in person at an agency or to an agency employee providing services at another location, and who presents identification and proof of age at that time or has previously presented identification and proof of age to the same agency, shall not be required to make his or her first vote in person or to again present identification in order to make that registration valid.

(g) Any qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with agency registration shall be required to make his or her first vote in person and to present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article.

(h) Voter registration application forms which are returned to an agency unmarked shall be collected for reuse according to procedures prescribed by the Secretary of State.

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§3-2-15. Special procedures relating to agency registration at marriage license offices.

When a qualified voter appears in person to apply for a marriage license, the applicant shall be presented a voter registration application. If the applicant does not intend to change his or her legal name or residence address upon marriage, the applicant may immediately apply to register or to update a previous registration, in accordance with the procedures prescribed in section fourteen of this article, except that the completed applications shall be forwarded directly to the registration office of the clerk of the county commission if the residence given is within the same county. If the applicant does intend to change his or her legal name or residence address upon marriage, and desires to register to vote, the applicant shall instead be given a mail registration card for use after the change of name or address has occurred.

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§3-2-16. Procedures upon receipt of application for registration by the clerk of the county commission; verification procedure and notice of disposition of application for registration.

(a) Upon receipt of an application for voter registration, the clerk of the county commission shall determine whether the application is complete, whether the applicant appears to be eligible to register to vote within the county and whether the applicant is currently registered within the county. If the application is incomplete or the applicant appears not to be eligible, the clerk shall take the appropriate action as prescribed in section seventeen of this article.

(b) If the application received is complete and appears to be from an eligible person who has not previously been registered within the county, or has not been included within the active voter registration files as defined in section eighteen of this article within the preceding calendar year and does not present a driver's license containing the residence address pursuant to the provisions of subdivision (2), subsection (d), section seven of this article, the clerk of the county commission shall conduct the following verification procedure:

(1) The clerk shall issue or mail, by first-class nonforwardable return requested, a verification notice addressed to the applicant at the residence and mailing address given on the application, except that the mailing address shall not be included on the notice if it appears to identify a distinctly different location from the residence address, such as a business address, another residence or a different city or town, unless the voter has registered as a uniformed services, overseas or homeless voter and provided a local residence address pursuant to the provisions of subdivision (4), subsection (c), section five of this article.

(2) The verification notice shall state the purpose of the procedure, the fact that no further action is required of the applicant, and the fact that a notice of the disposition of the registration application will be mailed after the ten day return period has expired.

(3) If the verification notice is not returned as undeliverable within ten days, the application for registration shall be accepted and entered into the active voter registration files and a registration receipt mailed designating the voter's assigned precinct.

(4) If the verification notice is returned undeliverable within ten days, the clerk shall compare the address given on the voter registration application with the address used on the envelope and, if there is any discrepancy, shall send a second verification notice to the correct address. If there is no discrepancy, the application for registration shall be denied and the notice of denial prescribed in section seventeen of this article shall be mailed.

(5) If the verification notice is returned undeliverable after the registration has been accepted, the clerk shall initiate the confirmation procedure prescribed in section twenty-six of this article.

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(c) If the application received is complete and appears to be from an eligible person who is currently registered within the county, or has been included within the active voter registration files as defined in section eighteen of this article within the preceding calendar year, the clerk of the county commission shall send, by first-class nonforwardable return requested mail, a registration receipt or other notice of the disposition of the application; and

(1) If the application is for a change of name, change of address, change of political party affiliation, reinstatement or other correction of the previous voter registration, the clerk shall include a new voter registration receipt;

(2) If the application does not make any change in the previous voter registration, the clerk shall notify the registrant that the voter is not required to reregister or update the registration as long as he or she lives at the same address and has the same legal name; or

(3) If the notice of disposition is returned undeliverable after the registration has been accepted, the clerk shall initiate the confirmation procedure prescribed in section twenty-six of this article.

(d) If the application contains information indicating the address at which the applicant was previously registered to vote in another county or state, the clerk of the county commission shall give notice to the clerk or registrar of that jurisdiction for the purpose of canceling the previous registration.

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§3-2-17. Denial of registration application; notice; appeal to clerk of the county commission, decision; appeal to county commission, hearing, decision; appeal to circuit court.

(a) If the clerk of the county commission finds that any of the following is true, based on the application or official documentation of ineligibility, the clerk shall deny the application for voter registration:

(1) The applicant, at the time the application is received, is not eligible to register in the county and state pursuant to the provisions of section two of this article;

(2) The applicant has submitted an application which is incomplete, pursuant to the provisions of subsection (c), section five of this article; or

(3) The verification notice as required in section sixteen of this article is returned as undeliverable at the address given by the voter.

(b) When the clerk of the county commission determines that the application must be denied, the clerk shall send, by first class forwardable return requested mail, a notice that the application for registration was denied and the reasons therefor.

(1) If the reason for denial is an incomplete application, the clerk shall inform the voter of the right to reapply and shall enclose a mail voter registration form for the purpose.

(2) If the reason for denial is return of the verification notice as undeliverable at the address given, the clerk shall inform the voter of the right to present proof of residence in order to validate the registration.

(3) If the reason for denial is ineligibility, the notice shall include a statement of eligibility requirements for voter registration and of the applicant's right to appeal the denial.

(c) An applicant whose application for registration is denied by the clerk of the county commission because of ineligibility or for failure to submit proof of residence may make a written request for a reconsideration by the clerk, and may present information relating to his or her eligibility. The clerk shall review the request for consideration and shall issue a decision in writing within fourteen days of the receipt of the request.

(d) If the application is denied upon reconsideration pursuant to the provisions of subsection (c) of this section, the applicant may make a written request for a hearing before the county commission. The county commission shall schedule and conduct the hearing within thirty days of receipt of the request and shall issue a decision, in writing, within fifteen days of the hearing.

(e) An applicant may appeal the decision of the county commission to the circuit court. The circuit court shall only consider the record before the county commission, as authenticated by the clerk of the county commission. The circuit court may affirm the order of the county

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commission, whether the order be affirmative or negative; but if it deems such order not to be reasonably justified by the evidence considered, it may reverse such orders of the county commission in whole or in part as it deems just and right; and if it deems the evidence considered by the county commission in reaching its decision insufficient, it may remand the proceedings to the county commission for further hearing. Any such order or orders of the circuit court shall be certified to the county commission.

(f) Any party to such appeal may, within thirty days after the date of a final order by the circuit court, apply for an appeal to the Supreme Court of Appeals which may grant or refuse such appeal at its discretion. The Supreme Court of Appeals shall have jurisdiction to hear and determine the appeal upon the record before the circuit court and to enter such order as it may find that the circuit court should have entered.

(g) It shall be the duty of the circuit court and the Supreme Court of Appeals, in order to expedite registration and election procedures, to hold such sessions as may be necessary to determine any cases involving the registration of voters. Judges of the circuit court and the Supreme Court of Appeals in vacation shall have the same power as that prescribed in this section for their respective courts.

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§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records.

(a) For the purposes of this article:

(1) "Original voter registration record" means all records submitted or entered in writing or electronically, where permitted by law, for voter registration purposes, including:

(A) Any original application or notice submitted by any person for registration or reinstatement, change of address, change of name, change of party affiliation, correction of records, cancellation, confirmation of voter information, or other request or notice for voter registration purposes; and

(B) Any original entry made on any voters' registration record at the polling place or made or received by the clerk of the county commission relating to any voters' registration such as records of voting, presentation of identification and proof of age, challenge of registration, notice of death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence, or other original document which may affect the status of any person's voter registration.

(2) "Active voter registration records" means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates, and other required information for all persons within a county who are registered to vote and whose registration has not been designated as inactive or canceled pursuant to the provisions of this article.

(3) "Inactive voter registration records" means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates, and other required information for all persons designated inactive pursuant to the provisions of §3-2-27 of this code following the return of the prescribed notices as undeliverable at the address provided by the United States Postal Service or entered on the voter registration, or for failure of the contacted voter to return a completed confirmation notice within 30 days of the mailing.

(4) "Canceled voter registration records" means the records containing all required information for all persons who have been removed from the active and inactive voter registration records and who are no longer registered to vote within the county.

(5) "Pending application records" means the temporary records containing all information submitted on a voter registration application, pending the expiration of the verification period.

(6) "Rejected application records" means the records containing all information submitted on a voter registration application which was rejected for reasons as described in this article.

(7) "Confirmation pending records" means the records containing all required information for persons who have been identified to be included in the next succeeding mailing of address confirmation notices as set forth by the National Voter Registration Act of 1993 (42

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U.S.C. § 1973gg *et seq*.).

(b) For the purposes of this chapter or of any other provisions of this code relating to elections conducted under the provisions of this chapter, whenever a requirement is based on the number of registered voters, including, but not limited to, the number of ballots to be printed, the limitations on the size of a precinct, or the number of petition signatures required for election purposes, only those registrations included on the active voter registration files shall be counted and voter registrations included on the inactive voter registration files, as defined in this subdivision, are not to be counted.

(c) Active voter registration records, confirmation pending records, and inactive voter registration records may be maintained in the same physical location, providing the records are coded, marked, or arranged in such a way as to make the status of the registration immediately obvious. Canceled voter registration records, pending application records, and rejected application records may be maintained in separate physical locations. However, all such records shall be maintained in the statewide voter registration database, subject to this article.

(d) The effective date of any action affecting any voter's registration status shall be entered on the voter record, including the effective date of registration, change of name, address or party affiliation or correction of the record, effective date of transfer to inactive status, return to active status, or cancellation. When any registration is designated inactive or is canceled, the reason for the designation or cancellation and any reference notation necessary to locate the original documentation related to the change shall be entered on the voter record.

(e) Within 80 days after each primary, general, municipal, or special election, the clerk of the county commission shall enter the voting records into the statewide voter registration database.

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§3-2-19. Maintenance of active and inactive registration records for municipal elections.

(a) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) Clerks of the county commissions shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county, and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other pollbooks or voter lists to make up a complete set of registration records for the municipal election precinct.

(2) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(b) Within 30 days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter’s address is within the boundaries of the municipality.

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§3-2-20.

Repealed.

Acts, 2003 Reg. Sess., Ch. 100.

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§3-2-21. Maintenance of records in the statewide voter registration database in lieu of precinct record books.

(a) The clerk of the county commission of each county shall maintain a voter registration data system record book into which all required records of appointments of authorized personnel, tests, repairs, program alterations or upgrades and any other action by the clerk of the county commission or by any other person under supervision of the clerk affecting the programming or records contained in the system, other than routine data entry, alteration, use, transfer or transmission of records shall be entered.

(b) The clerk of the county commission shall appoint all personnel authorized to add, change or transfer voter registration information within the statewide voter registration database, and a record of each appointment and the date of authorization shall be entered as provided in subsection (a) of this section. The assignment and confidential record of assigned system identification or authorized user code for each person appointed shall be as prescribed by the Secretary of State.

(c) Voter registration records entered into and maintained in the statewide voter registration database shall include the information required for application for voter registration, for maintenance of registration and voting records, for conduct of elections and for statistical purposes, as prescribed by the Secretary of State.

(d) No person shall make any entry or alteration of any voter record which is not specifically authorized by law. Each entry or action affecting the status of a voter registration shall be based on information in an original voter registration record, as defined in section eighteen of this article.

(e) The clerk of the county commission shall maintain, within the statewide voter registration database, active and inactive voter registration records, confirmation pending records, canceled voter registration records, pending application records and rejected application records, all as defined in section eighteen of this article.

(f) Upon receipt of a completed voter registration application, the clerk shall enter into the statewide voter registration database the information provided on the application, mark the records as pending and initiate the verification or notice of disposition procedure as provided in section sixteen of this article. Upon completion of the verification or notice of disposition, the status of the voter record shall be properly noted in the statewide voter registration database.

(g) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to an active voter registration record, the change shall be entered in the record and the required notice of disposition mailed.

(h) Upon receipt of an application or written confirmation from an inactive voter of a change

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of address within the county, change of name, change of party affiliation or other correction to a registration record, any necessary change shall be entered in the record, the required notice of disposition mailed and the record updated to active status, and the date of the transaction shall be recorded. Receipt of an application or written confirmation from an inactive voter that confirms the voter's current address shall be treated in the same manner.

(i) Upon receipt of a notice of death, a notice of conviction or a notice of a determination of mental incompetence, as provided in section twenty-three of this article, the date and reason for cancellation shall be entered on the voter's record and the record status shall be changed to canceled.

(j) Upon receipt from the voter of a request for cancellation or notice of change of address to an address outside the county pursuant to the provisions of section twenty-two of this article, or as a result of a determination of ineligibility through a general program of removing ineligible voters as authorized by the provisions of this article, the date and reason for cancellation shall be entered on the voter's record and the record status shall be changed to canceled.

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§3-2-22. Correction of voter records.

(a) Any registered voter who moves from one residence to another within the county may file a request for change of address on the voter registration records by completing and signing, under penalty of perjury, as provided in section thirty-six of this article, and filing:

(1) A change of address form at the office of the clerk of the county commission or through any of the voter registration outreach services established pursuant to the provisions of section eight of this article;

(2) A state or federal mail registration form;

(3) A change of address form for driver licensing purposes;

(4) A change of address form for voter registration purposes at any authorized voter registration agency;

(5) A confirmation of change of address form received pursuant to the provisions of section twenty-four, twenty-five, twenty-six or twenty-seven of this article; or

(6) An affidavit of change of address at the polling place of the precinct in which the new residence is located on election day.

(b) Upon the receipt of any request for change of address as provided in subsection (a) of this section, the clerk shall enter the change, assign the proper county precinct number and, if applicable, assign the proper municipal precinct number, and issue an acknowledgement notice or mail that notice to the voter at the new address.

(c) When the clerk of the county commission receives notice that a voter may have moved from one residence to another within the county from the United States postal service or through state programs to compare voting registration records with records of other official state or county agencies which receive, update and utilize residence address information, the clerk shall enter the change of address onto the voter registration record and send the confirmation notice as prescribed in section twenty-six of this article.

(d) Any registered voter who changes his or her legal name through marriage or by order of the circuit court may file a request for change of address on the voter registration records by completing and signing, under penalty of perjury, as provided in section thirty-six of this article, and filing:

(1) Any voter registration application form authorized by this article; or

(2) An affidavit of change of legal name at the polling place on election day.

(e) Upon the receipt of any request for change of legal name as provided in subsection (d) of this section, the clerk shall enter the change and issue an acknowledgement notice or mail

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the notice to the voter.

(f) Any registered voter who desires to change his or her political party affiliation may do so by filing, no later than the close of voter registration for an election, any voter registration application form authorized by the provisions of this article. Upon receipt of a request for change of political party affiliation, the clerk shall enter the change and issue an acknowledgement notice or mail the notice to the voter.

(g) Any registered voter who finds an error in the information on his or her voter registration record may request a correction of the record by completing, signing and filing any voter registration form authorized by the provisions of this article, or an affidavit requesting such correction at the polling place on election day: Provided, That any voter who, in a primary election, alleges the party affiliation entered on the voter registration record at the polling place is incorrect and who desires to vote the ballot of a political party for which he or she does not appear to be eligible, may vote a challenged or provisional ballot of the desired political party: Provided, however, That the ballot may be counted in the canvass only if the original voter registration record contains a designation of such political party which has been filed no later than the close of registration for the primary election in issue.

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§3-2-22a.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-23. Cancellation of registration of deceased or ineligible voters.

The clerk of the county commission shall cancel the registration of a voter:

(1) Upon the voter's death as verified by:

(A) A death certificate from the Registrar of Vital Statistics or a notice from the Secretary of State that a comparison of the records of the registrar with the county voter registration records show the person to be deceased;

(B) The publication of an obituary or other writing clearly identifying the deceased person by name, residence and age corresponding to the voter record; or

(C) An affidavit signed by the parent, legal guardian, child, sibling or spouse of the voter giving the name and birth date of the voter, and date and place of death;

(2) Upon receipt of an official notice from a state or federal court that the person has been convicted of a felony, of treason or bribery in an election;

(3) Upon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence;

(4) Upon receipt from the voter of a written request to cancel the voter's registration, upon confirmation by the voter of a change of address to an address outside the county, upon notice from a voter registrar of another jurisdiction outside the county or state of the receipt of an application for voter registration in that jurisdiction, or upon notice from the Secretary of State that a voter registration application was accepted in another county of the state subsequent to the last registration date in the first county, as determined from a comparison of voter records; or

(5) Upon failure to respond and produce evidence of continued eligibility to register following the challenge of the voter's registration pursuant to the provisions of section twenty-eight of this article.

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§3-2-23a. Cancellation of registration of deceased or ineligible voter.

The Secretary may propose legislative rules regarding the maintenance of the security and privacy of the voter registration records and the procedures to be followed by clerks of the county commission and the Secretary to make changes in voter registration records, including cancellations.

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§3-2-24.

Repealed.

Acts, 2013 Reg. Sess., Ch. 68.

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§3-2-25. Systematic purging program for removal of ineligible voters from active voter registration files; comparison of data records; confirmation notices; public inspection list.

(a) The systematic purging program provided in this section shall begin no earlier than October 1 of each odd-numbered year and shall be completed no later than February 1 of the following year. The clerk of the county commission shall transmit, or mail to the Secretary of State, a certification that the systematic purging program has been completed and all voters identified as no longer eligible to vote have been canceled in the statewide voter registration database in accordance with the law no later than February 15 in the year in which the purging program is completed.

(b) The Secretary of State shall provide for the comparison of data records of all counties. The Secretary of State shall, based on the comparison, prepare a list for each county which shall include the voter registration record for each voter shown on that county's list who appears to have registered or to have updated a voter registration in another county at a subsequent date. The resulting lists shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure for those voters as prescribed in §3-2-26 of this code.

(c) The Secretary of State may provide for the comparison of data records of counties with the data records of the Division of Motor Vehicles, the registrar of vital statistics, and with the data records of any other state agency which maintains records of residents of the state, if the procedure is practical and the agency agrees to participate. Any resulting information regarding potentially ineligible voters shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure as prescribed in §3-2-26 of this code.

(d) The records of all voters not identified pursuant to the procedures set forth in subsections (b) and (c) of this section shall be combined for comparison with United States Postal Service change of address information, as described in section 8(c)(A) of the National Voter Registration Act of 1993 (42 U. S. C.§1973gg, et seq.). The Secretary of State shall contract with an authorized vendor of the United States Postal Service to perform the comparison. The cost of the confirmation notices, labels, and postage shall be paid for by the counties.

(e) The Secretary of State shall return to each county the identified matches of the county voter registration records and the postal service change of address records.

(1) When the change of address information indicates the voter has moved to a new address within the county, the clerk of the county commission shall enter the new address on the voter record and assign the proper precinct.

(2) The clerk of the county commission shall then mail to each voter who appears to have moved from the residence address shown on the registration records a confirmation notice

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pursuant to §3-2-26 of this code and of section 8(d)(2) of the National Voter Registration Act of 1993 (42 U. S. C.§1973gg, et seq.). The notice shall be mailed, no later than December 31, to the new address provided by the postal service records or to the old address if a new address is not available.

(f) The clerk of the county commission shall indicate in the statewide voter registration database the name and address of each voter to whom a confirmation notice was mailed and the date on which the notice was mailed.

(g) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (e) of this section, the clerk shall immediately enter the date and type of response received in the statewide voter registration database and shall then proceed in accordance with the provisions of §3-2-26 of this code.

(h) For purposes of complying with the recordkeeping and public inspection requirements of the National Voter Registration Act of 1993 (42 U. S. C.§1973gg, et seq.), and with the provisions of §3-2-27 of this code, the public inspection lists shall be maintained either: (1) In printed form kept in a binder prepared for such purpose and available for public inspection during regular business hours at the office of the clerk of the county commission; or (2) in read-only data format available for public inspection on computer terminals set aside and available for regular use by the general public. Information concerning whether or not each person has responded to the notice shall be entered into the statewide voter registration database upon receipt and shall be available for public inspection as of the date the information is received.

(i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (e) of this section who fails to respond to the notice, or to update his or her voter registration address by February 1 immediately following the completion of the program, shall be designated inactive in the statewide voter registration database. Any voter designated inactive shall be required to affirm his or her current residence address on a form prescribed by the Secretary of State, upon appearing at the polls to vote.

(j) In addition to the preceding purging procedures, all counties using the change of address information of the United States Postal Service shall also, once each four years during the period established for systematic purging in the year following a presidential election year, conduct the same procedure by mailing a confirmation notice to those persons not identified as potentially ineligible through the change of address comparison procedure but who have not updated their voter registration records and have not voted in any election during the preceding two calendar years. The purpose of this additional systematic confirmation procedure shall be to identify those voters who may have moved without filing a forwarding address, moved with a forwarding address under another name, died in another county or state so that the certificate of death was not returned to the clerk of the county commission, or who otherwise have become ineligible.

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§3-2-26. Confirmation notices for systematic purging program.

(a) For purposes of this article, a "confirmation notice" means a specific notice sent to a registered voter when that voter appears to have moved or to have become ineligible to vote, based on:

(1) A mailing returned as undeliverable as provided in sections sixteen, seventeen and twenty of this article; or

(2) Information obtained through a systematic purging program as provided in sections twenty-four and twenty-five of this article.

(b) A confirmation notice shall be sent by first class, forwardable mail and shall include a preaddressed, postage prepaid or business reply return card on which the registrant may state his or her current address, together with a notice prescribed by the Secretary of State to meet the specific requirements of Section 8(d)(2) of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg).

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§3-2-27. Procedure following sending of confirmation notices; correction or cancellation of registrations upon response; designation of inactive when no response; cancellation of inactive voters; records.

(a) Upon receipt of a confirmation response card mailed pursuant to the provisions of §3-2-26 of this code and returned completed and signed by the voter, the clerk shall either:

(1) Update the voter registration by noting the confirmation of the current address if no other changes are requested or by entering any change of address within the county, change of name, or other correction requested by the voter; or

(2) Cancel the voter's registration if the voter confirms that he or she has moved out of the county.

(b) Upon receipt of the confirmation notice returned undeliverable, the clerk may either:

(1) Send a second confirmation notice to the old residence address if the first notice was sent to a new address provided by the postal service; or

(2) Designate the registration as inactive or transfer it to the inactive voter registration file, as defined in section 19 of this article.

(c) If no response to the confirmation notice is received by February 1 following the mailing of the confirmation notice, the clerk shall designate the registration as inactive or transfer it to the inactive voter registration file as provided in §3-2-19 of this code.

(d) An inactive voter registration shall be returned to active status or transferred to the active voter registration file upon the voter's application to update the registration or to vote in any election while they remain on the inactive list.

(e) The clerk of the county commission shall cancel the records of all voters on the inactive file who have not responded to the confirmation notice, otherwise updated their voter registrations or voted in any state, county, or municipal primary, general or special election held within the county during a period beginning on the date of the notice and ending on the day after the date of the second general election for federal office which occurs after the date of the notice.

(f) Upon notification by the Secretary of State, the clerk of the county commission shall cancel the records of all voters who are no longer West Virginia citizens and have obtained a driver’s license in another state based on information provided by the Division of Motor Vehicles under § 3-2-4a(g) of this code.

(g) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.

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§3-2-28. Challenges; notice; cancellation of registration.

(a) The registration of any registered voter may be challenged by the clerk of the county commission, the Secretary of State, any registrar of the county, the chairman of any political party committee or by any voter who shall appear in person at the clerk's office. The person challenging the registration shall complete a form prescribed by the Secretary of State giving the name and address of the voter and the reason for challenge. The challenge shall be filed as a matter of record in the office of the clerk of the county commission.

(b) Upon the receipt of a challenge, the clerk of the county commission shall mail a notice of challenge to the registrant, setting forth that the voter's registration will be canceled if the voter does not appear in person during business hours at the clerk's office within a period of thirty days from the mailing of the notice and present evidence of his or her eligibility. The form of the notice of challenge shall be prescribed by the Secretary of State and shall be mailed by certified mail, return receipt requested.

(c) If the notice of challenge is returned as undeliverable at the registration address, or if the challenged registrant does not appear and present evidence of continued eligibility within the prescribed time, the voter's registration shall be immediately canceled. Returned mail or failure to appear shall be prima facie evidence of the registrant's ineligibility. If the registrant does timely appear and present evidence of his or her eligibility, the clerk shall determine eligibility to be registered as a voter as in any other case. If the reason for ineligibility is that the voter does not reside at the address on the registration and the voter presents evidence of residence elsewhere in the county, the clerk of the county commission shall accept a request for change of address and remove the challenge.

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§3-2-29. Custody of original registration records.

(a) All original registration records in paper format shall remain in the custody of the county commission, by its clerk, or, electronically, in the statewide voter registration database and shall not be removed except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the Secretary of State pursuant to the provisions of section six, article one-a of this chapter.

(b) All original voter registration records shall be retained for a minimum of five years following the last recorded activity relating to the record, except that any application which duplicates and does not alter an existing registration shall be retained for a minimum of two years following its receipt: *Provided*, That following approval by the Secretary of State pursuant to subsection (c) of this section, the clerk of the county commission may destroy original registration records that have been retained for a period of time if an exact digital or facsimile copy of each of the records is made and stored in an electronic format in a secure manner on one or more servers under the control of the clerk of the county commission. Digital or facsimile copies may include but are not limited to PDF or JPEG formats. The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific retention times and procedures required for original voter registration records.

(c) Prior to the destruction of original voter registration applications or registration cards of voters whose registration has been canceled at least five years previously, the clerk of the county commission shall notify the Secretary of State of the intention to destroy those records. If the Secretary of State determines, within ninety days of the receipt of the notice, that those records are of sufficient historical value that microfilm or other permanent data storage is desirable, the Secretary of State may require that the records be delivered to a specified location for processing at state expense.

(d) Active, inactive, pending, rejected, and canceled registration records shall be maintained as a permanent record, as follows:

(1) Individual canceled registration records shall be maintained in the statewide voter registration database for a period of at least five years following cancellation. Upon the expiration of five years, those individual records may be removed from the statewide voter registration database and disposed of in accordance with the appropriate document retention policy.

(2) Rejected registration records shall be maintained in the same manner as provided for cancelled registration records.

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§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

1. Any person may examine the active, inactive, rejected and canceled voter registration records during office hours of the clerk of the county commission in accordance with chapter twenty-nine-b of this code.

Active, inactive, rejected and canceled voter files are to be maintained in electronic data format. Any person may examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available. The data files available for examination and copying shall include all registration and voting information maintained in the file, but may not include the registrant's telephone number, email address, Social Security number or driver's license number or nonoperator's identification number issued by the Division of Motor Vehicles.

(b) The clerk of the county commission shall, upon request, provide printed copies of the lists of voters for each precinct. No list prepared under this section may include the registrant's telephone number, email address, Social Security number or driver's license number or nonoperator's identification number issued by the Division of Motor Vehicles. The clerk shall establish a written policy, posted within public view, listing the options for selection and sorting criteria and available data elements. The data elements shall include, at least:

(1) The name, residence address, political party affiliation and status of the registrant;

(2) The available formats of the lists; and

(3) The times at which lists will be prepared. A copy of the county policy shall be filed with the Secretary of State no later than January 1 of each even-numbered year.

(c) Lists of registered voters may be obtained for noncommercial purposes in data format on disk or as a printed list provided by the clerk of the county commission at a cost of one cent per name. No data file prepared under this subsection may include the registrant's telephone number, email address, Social Security number or driver's license number or nonoperator's identification number issued by the Division of Motor Vehicles.

(d) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk and may be used for the purpose of defraying the cost of the preparation of the voter lists. After deducting the costs of preparing voter lists, the clerk shall deposit the net proceeds from the sale of the voter lists in the State Election Fund as set forth in subsection (b), section forty-eight, article one of this chapter.

(e) The Secretary of State shall make voter lists available for sale subject to the limitations as provided in subsection (a) of this section. The fees for the voter lists shall be as prescribed

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in section two-b, article one, chapter fifty-nine of this code. The revenue associated with purchase of a partial list or associated with a complete statewide list shall be deposited in the State Election Fund as set forth in subsection (b), section forty-eight, article one of this chapter.

(f) No voter registration lists or data files containing voter names, addresses or other information derived from voter data files obtained pursuant to the provisions of this article may be used for commercial or charitable solicitations or advertising, sold or reproduced for resale.

(g) This section may not be interpreted to prevent the Secretary of State from sharing data files containing voter information with authorized service providers or sharing data across state lines with any state or local election official for the purpose of voter registration and election administration in accordance with this chapter or applicable federal law.

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§3-2-31. Rules pertaining to voting after registration or change of address within the county.

(a) A voter who designates a political affiliation with a major party on a registration application filed no later than the close of voter registration before the primary may vote the ballot of that political party in the primary election. Political parties, through the official action of their state executive committees, shall be permitted to determine whether unaffiliated voters or voters of other parties shall be allowed to vote that party's primary election ballot upon request.

(b) A voter whose registration record lists one residence address but the voter has since moved to another residence address within the precinct shall be permitted to update the registration at the polling place and vote without challenge for that reason.

(c) A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct. The voter shall be permitted to vote as follows:

(1) The voter may cast a challenged or provisional ballot at the new polling place if the voter's registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on election day, the challenge shall be removed and the ballot shall be counted;

(2) During the early in-person voting period, the voter may vote in the precinct serving their new address without casting a provisional ballot if the voter shows proof of new address and the change is completed in the state-wide voter registration system by the county clerk prior to canvass.

(d) A voter whose registration record has been placed on an inactive status or transferred to an inactive file and who has not responded to a confirmation notice sent pursuant to the provisions of section 24, 25, or 26 of this article and who offers to vote at the polling place where he or she is registered to vote shall be required to affirm his or her present residence address under penalty of perjury, as provided in section 36 of this article.

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§3-2-32. Unlawful registration or rejection of voter; penalties.

(a) Any registrar or clerk of the county commission who knowingly registers or permits to be registered a person not lawfully entitled to be registered, or who knowingly refuses to register a person entitled to be registered, or who knowingly assists in preventing such person from being registered, or who inserts or intentionally permits to be inserted a name or other entry in any registration form or file, knowing or having reason to know that the entry should not be made, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one $1,000 or confined in the county jail for not more than one year, or both, in the discretion of the court.

(b) Any person who registers or applies to be registered, or persuades or assists another to be registered, or who applies for a change of residence address, knowing or having reason to know that he or she is not entitled to be registered or to have his or her residence address changed on the registration record, or any person who declares an address known not to be his or her legal residence or who impersonates another in an application for registration, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or both, in the discretion of the court.

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§3-2-33. Neglect of duty by registration officers; penalties.

Any registrar or clerk of the county commission or his or her authorized deputies or any other persons upon whom a duty is imposed pursuant to the provisions of this article, or the rules, regulations or directions promulgated or issued by the Secretary of State as the chief registration official of the state, who shall willfully delay, neglect or refuse to perform such duty, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or both, in the discretion of the court.

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§3-2-34. Alteration or destruction of records; penalties.

(a) Any person who wrongfully and intentionally inserts or permits to be wrongfully inserted any name or material entry on any registration form, file or any other record in connection with registration, or who wrongfully alters or destroys an entry which has been duly made, or who wrongfully takes and removes any such registration form, or any other record authorized or required in connection with registration from the custody of any person having lawful charge thereof, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or both, in the discretion of the court.

(b) Any person, in the absence of specific authority provided under the provisions of this article, who destroys or attempts to destroy any registration document or record, or who removes or attempts to remove such registration document or record, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 nor more than $1,000 or confined in the county jail for not more than one year, or both, in the discretion of the court.

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§3-2-35. Withholding information; penalties.

Any person who neglects to or refuses to furnish to the Secretary of State, to the county commission, or to the clerk of the county commission any information which he or she is authorized to obtain in connection with registration, or to exhibit any records, papers or documents herein authorized to be inspected by them, shall be 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, at the discretion of the court.

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§3-2-36. Crimes and offenses relating to applications for registration or change of registration; penalties.

(a) A person who willfully provides false information concerning a material matter or thing on an application for registration or change of registration, under oath, affirmation or attestation, shall be deemed guilty of perjury; one who induces or procures another person to do so shall be deemed guilty of subordination of perjury.

(b) A person who knowingly offers any application for registration or transfer of registration when the applicant therein is not qualified to register or transfer his registration, or any person who knowingly administers an oath or affirmation to an applicant for registration or change of registration when the application contains false information concerning a material matter or thing, or any person who falsely represents that an oath or affirmation was executed by an applicant for registration or change of registration, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than three years, or fined not less than $500 nor more than $5,000, or both fined and imprisoned, or, in the discretion of the court, be confined in the county jail for not more than one year, or fined not less than $500 nor more than $5,000, or both fined and imprisoned.

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§3-2-37. Effective date.

(a) Except as may otherwise be specifically provided in this section, the provisions of this article shall take effect on January 1, 1995. The provisions of this article relating to the preparation for implementation of voter registration programs and procedures under this article and under the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg), including sections three, five, twelve and thirteen of this article and subsections (a) and (b), section fourteen of this article and subdivision (4), subsection (b), section nineteen of this article and section twenty of this article, shall take effect upon the effective date of this article.

(b) All procedures and requirements established by the previous enactment of this article, except the provisions of subsection (d), section twenty-two of this article, shall continue in effect until December 31, 1994 inclusive, as if article two of this chapter had not been amended.

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§3-2-38.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-39.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-40.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-41.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-42.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-43.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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§3-2-44.

Repealed.

Acts, 1994 Reg. Sess., Ch. 58.

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

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

(b) Registered voters and other qualified voters in the county may vote an absentee ballot by mail in the following circumstances:

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

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

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

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

(2) Any voter who is absent from his or her county of residence throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

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

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

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, *et seq*., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, and spouses and dependents of those members on active duty;

(4) Any citizen of the United States temporarily residing abroad who:

(A) Immediately prior to their departure from the United States was domiciled in West Virginia and:

(i) Was last registered to vote, or last eligible to register and vote, in West Virginia; or

(ii) Would have been eligible to register and vote in West Virginia except that the citizen had not reached 18 years of age, but has since reached 18 years of age; and

(iii) Is not registered or qualified to vote elsewhere in the United States;

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(B) Holds a valid passport or passport card or other proof of citizenship issued under the authority of the Secretary of State of the United States; and

(C) Has not established permanent residency in any other state or country.

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

(c) Registered voters and other qualified voters in the county may vote an electronic absentee ballot in the following circumstances:

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

(2) The voter is absent from the county throughout the period and available hours for voting in person and is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, *et seq*., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, and spouses and dependents of those members on active duty;

(3) The voter is a citizen of the United States, temporarily residing abroad, who meets the conditions in subdivision (4), subsection (b) of this section for voting an absentee ballot by mail; or

(4) The voter is a qualified first responder called away on duty to respond to an emergency outside the voter’s county of residence, which prevents the voter from participating in the election by in-person and mail-in absentee voting. For purposes of this section, "qualified first responder" means a person with specialized training who arrives and provides aid at the scene of an emergency, such as an accident, natural disaster, or act of terrorism. First responders typically include emergency medical technicians, firefighters, law-enforcement officers, neighborhood assistance officers, and paramedics.

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

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

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

(3) Any voter who becomes confined, on or after the 7th day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: *Provided*, That the county clerk may

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require a written confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse that the voter meets the criteria of this subdivision before permitting the voter to vote an emergency absentee ballot; and

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

(e) Any overseas federal election voter may register to vote and may apply for and vote an absentee ballot by mail in any federal election held in the election district of this state in which the voter was formerly domiciled.

(f) Any overseas federal election voter who was born outside the United States may register to vote and may apply for and vote an absentee ballot by mail in any federal election held in the election district of this state in which the voter's parent, legal guardian, or spouse was formerly domiciled.

(g) A United States citizen who was never domiciled in West Virginia is not eligible to vote in any state, county, municipal, or special election.

(h) Any overseas state and federal voter may register to vote and may apply for and vote an absentee ballot by mail in a state election and a federal election held in the election district of this state in which the voter was formerly domiciled.

(i) The amendments to this section enacted during the 2026 regular session of the Legislature are effective January 1, 2027.

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§3-3-1a. Definitions.

(a) For the purposes of this article, the following terms and phrases have the meanings ascribed to them.

(1) "Disability" means a physical or mental impairment that substantially limits one or more major life activities.

(2) "Federal election" means any general, special, or primary election held for the purpose of nominating or electing any candidate for President or Vice President of the United States, Presidential elector, United States Senate, or United States House of Representatives.

(3) "Overseas federal election voter" means any citizen of the United States who:

(A) Was born outside the United States;

(B) Is not a voter under subdivision (4), subsection (b) of this section or an "overseas state and federal voter" under subdivision (4) of this section;

(C) Would otherwise satisfy the state's voter eligibility requirements, except for the West Virginia residency requirement, if the last place where the parent, legal guardian, or spouse of the voter was, or would have been eligible to register and vote before departure from the United States is within West Virginia; and

(D) Has not previously registered to vote elsewhere in the United States.

(4) "Overseas state and federal voter" means a citizen of the United States residing abroad who does not intend to return or whose intent to return is uncertain, and:

(A) Immediately prior to departure from the United States was domiciled in West Virginia; and

(i) Was registered to vote, or last eligible to register and vote, in West Virginia; or

(ii) Would have been eligible to register and vote in West Virginia except that the citizen had not reached 18 years of age, but has since reached 18 years of age; and

(iii) Is not registered or qualified to vote elsewhere in the United States;

(B) Holds a valid passport or passport card or other proof of citizenship issued under the authority of the Secretary of State of the United States; and

(C) Has not established permanent residency in any other state or country.

(5) "Physical disability" means a physical impairment that substantially limits one or more major life activities and renders a person unable to vote in person, at the polls, without assistance.

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(6) "State election" means any general, special, or primary election held for the purpose of:

(A) Nominating or electing a candidate as:

(i) Governor, Secretary of State, Attorney General, Treasurer, Auditor, or Commissioner of Agriculture; or

(ii) A member of the State Senate or the House of Delegates; or

(B) Approving or rejecting any amendment to the West Virginia Constitution.

(b) The amendments to this section enacted during the 2026 regular session of the Legislature are effective January 1, 2027.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Upon the designation of a community voting location, the county clerk shall, not less than 30 days prior to an election, give notice of the community voting location address and the dates and times when the location will be open for early voting by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq*. of this code;

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

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

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

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

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

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

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

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

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

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

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

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

(B) Any designated area is subject to the same requirements as the primary location for early

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in-person voting.

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

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

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§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified to vote and who is physically disabled and unable to vote in person at the polls in an election may apply to the official designated to supervise and conduct absentee voting for placement on the special absentee voting list.

(b) Any person who is registered and otherwise qualified to vote and who is participating in the Address Confidentiality Program, as established by §48-28A-103 of this code, may apply to the program manager within the office of the Secretary of State for placement on the special absentee voting list. The program manager will notify the designated county contact to coordinate the provision of an absentee ballot to the program participant.

(c) The application is to be on a form prescribed by the Secretary of State which is to include:

(1) The voter's name and signature;

(2) The voter's residence address, unless the applicant is a participant in the Address Confidentiality Program as established by §48-28A-103 of this code;

(3) (A) A statement that the voter has a physical disability and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect; or

(B) A statement that the voter is a program participant in the Address Confidentiality Program; and

(4) If the voter has a physical disability, whether the voter requests a mail-in absentee ballot or an electronic absentee ballot.

(d) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list which is to be maintained in a secure and permanent record. The person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person is no longer a resident of the county, is purged from the voter registration books, or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States Postal Service; (4) the person no longer has a physical disability; (5) the person dies; or (6) in the case of an Address Confidentiality Program participant, the person withdraws or is removed from that program.

(e) The official designated to supervise and conduct absentee voting shall, not later than 46 days before each election:

(1) Deliver an absentee ballot by mail to each voter active on the special absentee voting list due to a physical disability who requested a mail-in absentee ballot on the application; and

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(2) Electronically transmit an absentee ballot to each voter on the special absentee voting list due to a physical disability who requested an electronic absentee ballot on the application.

(f) The Address Confidentiality Program manager shall, in coordination with the designated county contact, mail to each person on the special absentee voting list due to participation in the Address Confidentiality Program an absentee ballot by mail not later than 46 days before each election.

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§3-3-3. Early voting in person.

(a) The voting period for early in-person voting is to be conducted during regular business hours beginning on the 13th day before the election and continuing through the third day before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early voting period.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or representative designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she is required to sign his or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided. A ballot may not be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter's signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter's absentee ballot as provided in this article: *Provided*, That the clerk or his or her representative may not challenge the voter's absentee ballot if the voter has had an address change within the county, shows proof of new address, and the address change is completed in the state-wide voter registration system by the county clerk prior to canvass.

(e) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the Secretary of State:

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: *Provided*, That the

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voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: *Provided, however*, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope; and

(3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk

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

(a) In addition to the persons declared eligible to vote absent voters' ballots pursuant to the provisions of section one of this article, duly registered and otherwise qualified voters who are members of a religious denomination with an established history of observing Saturday as the sabbath may vote absentee by personal appearance in any election to be held on a Saturday.

(b) Application for an absent voter's ballot authorized by the provisions of this section shall be made on a form prescribed by the Secretary of State. The procedures for voting by personal appearance set forth in section three of this article, to the extent not in conflict with the provisions of this section, shall otherwise govern the procedures herein.

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§3-3-4. Assistance to voter in voting an absentee ballot by personal appearance; penalties.

(a) Any registered voter who requires assistance to vote by reason of blindness, physical disability, advanced age, or inability to read and write may be given assistance by a person of the voter's choice: *Provided*, That the assistance may not be given by the voter's present or former employer or agent of that employer, by the officer or agent of a labor union of which the voter is a past or present member, or by a candidate on the ballot.

(b) Any voter who requests assistance in voting an absentee ballot but who is determined by the official designated to supervise and conduct absentee voting not to be qualified for assistance under the provisions of this section and §3-1-34 of this code may vote a provisional absentee ballot with the assistance of any person authorized to render assistance pursuant to this section. The official designated to supervise and conduct absentee voting shall, in this case, challenge the absentee ballot on the basis of his or her determination that the voter is not qualified for assistance.

(c) Any one or more of the election commissioners or poll clerks in the precinct to which an absentee ballot has been sent may challenge the ballot on the grounds that the voter received assistance in voting the ballot when in his or their opinion: (1) The person who received the assistance in voting the absentee ballot did not require assistance; or (2) the person who provided the assistance in voting did not make an affidavit as required by this section. The election commissioner or poll clerk or commissioners or poll clerks making a challenge shall enter the challenge and reason for the challenge on the form and in the manner prescribed or authorized by this article.

(d) Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting by personal appearance shall make an affidavit, the form of which is to be prescribed by the Secretary of State, that he or she will not in any manner request, seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question; that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment; and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, which ticket the voter voted, how the voter voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth, except when required, pursuant to law, in a judicial proceeding.

(e) In accordance with instructions issued by the Secretary of State, the official designated to supervise and conduct absentee voting shall complete a form entitled "List of Assisted Voters", which list is to be divided into two parts, as follows:

(1) Part A is to be entitled "Unchallenged Assisted Voters"; and Part B is to be entitled "Challenged Assisted Voters".

(2) Under Part A, the official designated to supervise and conduct absentee voting shall

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enter the name of each voter receiving unchallenged assistance in voting an absentee ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absentee ballot, the name of the person providing the voter with assistance in voting an absentee ballot, the fact that the person rendering the assistance in voting made and subscribed the affidavit required by this section, and the signature of the official designated to supervise and conduct absentee voting, certifying to the fact that he or she had determined that the voter who received assistance in voting an absentee ballot was qualified to receive the assistance under the provisions of this section.

(3) Under Part B, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for the challenge, and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absentee ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list that the list is correct in all particulars.

(4) If no voter has been assisted in voting an absentee ballot as provided in this section, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath of that fact on the list.

(5) The "List of Assisted Voters" is to be available for public inspection in the office of the official designated to supervise and conduct absentee voting during regular business hours throughout the period provided for voting an absentee ballot by personal appearance and, unless otherwise directed by the Secretary of State, the official shall transmit the list, together with the affidavits, applications, and absentee ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this section from persons providing assistance in voting, together with the "List of Assisted Voters", are to be returned by the election commissioners to the clerk of the county commission, along with the election supplies, records, and returns. The clerk shall make the oaths and the "List of Assisted Voters" available for public inspection and shall preserve the oaths and list for 22 months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.

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

(h) Any person who provides a voter assistance in voting an absentee ballot in the office of the official designated to supervise and conduct absentee voting who is not qualified or permitted by this section to provide assistance is guilty of a misdemeanor and, upon

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conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any official designated to supervise and conduct absentee voting, election commissioner, or poll clerk who authorizes or allows a voter to receive or to have received unchallenged assistance in voting an absentee ballot when the voter is known to the official designated to supervise and conduct absentee voting or election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

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

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

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

(2) The person, if eligible to vote by electronic absentee ballot due to physical disability or is a qualified first responder as defined in §3-3-1(c)(3) of this code, may complete and verify the application by available electronic means prescribed by the Secretary of State.

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

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

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

(3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than the 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

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

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

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

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

(4) The address to which a ballot is to be mailed is an address outside the county if the voter

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is applying to vote by mail under §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-1(b)(3), or §3-3-1(b)(4) of this code;

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

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

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

(2) If the official designated to supervise and conduct electronic voting determines that a voter is eligible to submit an electronic ballot because the voter is an absent uniformed services voter or overseas voter or a person with a physical disability, or a qualified first responder as defined in §3-3-1(c)(3) of this code, the official designated to supervise absentee voting shall cause the absentee ballot to be transmitted electronically in the manner required for the electronic ballot marking tool or other electronic means.

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

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

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

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

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

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

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

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, *et seq*., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or is a qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically, as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

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

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

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

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

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

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

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

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

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

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

(1) The ballot is received by the official designated to supervise and conduct absentee voting

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no later than the day after the election; or

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

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under §3-3-1(b)(3) of this code, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Voted ballots submitted electronically are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the close of polls on election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's office shall enter into an agreement with the Federal Voting Assistance Program of the United States Department of Defense to transmit the ballots to the county clerks at a time when two individuals of opposite political parties are available to process the received ballots. For persons casting absentee ballots electronically due to physical disability or by qualified first responders as defined in §3-3-1(c)(3) of this code, the county clerk shall designate two individuals of opposite political parties to process the received ballots in the manner required by the particular electronic ballot marking tool or other electronic means of returning the electronic absentee ballot.

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

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

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

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

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

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

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

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

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

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§3-3-5a. Processing federal postcard applications.

When a federal postcard registration and absentee ballot request (FPCA), as defined in subdivision (2), subsection (b), section two of this article, is received by the official designated to supervise and conduct absentee voting, the official shall examine the application and take the following steps:

(1) The official shall first enter the name of the applicant in the permanent absentee voter's record for each election for which a ballot is requested, make a photocopy of the application for each election for which a ballot is requested and place the separate copies in secure files to be maintained for use in the various elections.

(2) The official designated to supervise and conduct absentee voting shall determine if the applicant is registered to vote at the residence address listed in the voting residence section of the application. If the applicant is not registered, or not registered at the address given, the official shall deliver the original FPCA to the clerk of the county commission for processing, and the clerk of the county commission shall process the application as an application for registration and, if the application is received after the close of voter registration for the next succeeding election, the official shall challenge the absentee ballot for that election.

(3) Except as provided in subdivision (2) of this section, the federal application for an absentee ballot received from a person qualified to use the application as provided in section two of this article is to be processed as all other applications and the ballot or ballots for each election for which ballots are requested by the applicant is to be mailed to the voter on the first day on which both the application and the ballot are available.

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§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

(a) Notwithstanding any other provisions of this chapter, a person qualified to vote an absentee ballot in accordance with subdivision (3), subsection (d), section one of this article may apply not earlier than January 1, of an election year for a special write-in absentee ballot for a primary or general election, in conjunction with the application for a regular absentee ballot or ballots. If the application is received after the forty-ninth day preceding the election, the official designated to supervise and conduct absentee voting shall honor only the application for local, state and federal offices in general, special and primary elections.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form.

(c) In order to qualify for a special write-in absentee ballot, the voter must state that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated areas or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the Secretary of State and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of the application within the time required, the official designated to supervise and conduct absentee voting shall issue the special write-in absentee ballot which is to be the same ballot issued under the provisions of 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The ballot is to permit the elector to vote in a primary election by indicating his or her political party affiliation and the names of the specific candidates for each office, and in a general election by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

(e) When a special federal write-in ballot is received by the official designated to supervise and conduct absentee voting from a voter: (1) Who mailed the write-in ballot from any location within the United States; (2) who did not apply for a regular absentee ballot; (3) who did not apply for a regular absentee ballot by mail; or (4) whose application for a regular absentee ballot by mail was received less than thirty days before the election, the write-in ballot may not be counted.

(f) Any write-in absentee ballot must be received by the official designated to supervise and conduct absentee voting prior to the close of the polls on election day or it may not be counted.

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§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as provided in §3-3-1(c) of this code, may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Qualified voters in hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles of the county seat; (2) qualified voters in nursing homes within the county; or (3) qualified voters who become confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: Provided, That the policy is to be adopted by the county commission at least 90 days prior to the election that will be affected and a copy of the policy is to be filed with the Secretary of State.

(b) On or before the 56th day preceding the date on which any election is to be held, the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of §3-1-1 et seq. of this code. Emergency absentee ballot commissioners have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election or poll clerks obtaining and delivering election supplies under the provisions of §3-1-44 of this code.

(d) Upon request of the voter or a member of the voter's immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the Secretary of State and is to include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy or physical disability, he or she is to make his or her mark on the signature line provided for an illiterate or disabled applicant, the mark is to be

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witnessed. The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement of the person applying for an emergency absentee ballot, and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting. Upon delivering the application and the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of this code.

(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be challenged for the appropriate reason provided for in §3-3-10 of this code.

(i) If either or both of the emergency absentee ballot commissioners refuse to sign any application for voting an emergency absentee ballot, the voter may vote as an emergency absentee and the ballot will be challenged in accordance with the provisions of §3-3-10 of this code, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of §3-3-6 of this code. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.

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§3-3-6. Assistance to voter in voting an absentee ballot by mail.

(a) No voter shall receive any assistance in voting an absentee ballot by mail unless he or she shall make a declaration at the time he or she makes application for an absentee ballot that because of blindness, physical disability, advanced age, or inability to read or write he or she requires assistance in voting an absentee ballot.

(b) Upon receipt of an absentee ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance and the reasons therefor on the application may select any eligible person to assist him or her in voting.

(c) The person providing assistance in voting an absentee ballot by mail shall make an affidavit on a form as may be prescribed by the Secretary of State, that he or she will not in any manner request, seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question; that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment; and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, which ticket the voter voted, or how the voter voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth, except when required, pursuant to law, in a judicial proceeding.

(d) The term “assistance in voting”, as used in this section, means assistance in physically marking the official absentee ballot for a voter or reading or directing the voter’s attention to any part of the official absentee ballot.

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§3-3-7. Delivery of absentee ballots to polling places.

(a) Except as otherwise provided in this article, in counties using paper ballots systems or voting machines, the absentee ballots of each precinct, together with the applications for the absentee ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the Secretary of State, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided in section twenty-four, article one of this chapter.

(b) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to section twenty-four, article one of this chapter, by the official designated to supervise and conduct absentee voting in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in subsection (g), section five of this article are to be delivered to the board of canvassers along with the provisional ballots.

WV Legislature

§3-3-8. Disposition and counting of absent voters' ballots.

(a) In counties using paper ballots, all absentee ballots shall be processed as follows:

(1) The ballot boxes containing the absentee ballots shall be opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) Absentee ballots shall be delivered to the polls to be opened and counted in accordance with section thirty-three, article one of this chapter, section fifteen, article five of this chapter; and section six, article six of this chapter. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a per se violation of the oath taken by the counting board. In all other counties, counting is to begin immediately after closing of the polls.

(b) In counties using optical scan systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(c) In counties using direct recording elections systems, the absentee ballots shall be counted as follows:

(1) On election day, the ballot boxes containing the paper absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) Each absentee ballot shall be recorded on a direct recording voting terminal designated by the clerk of the county commission as the terminal for absentee tabulations, after being read aloud by a separate team of two representatives of opposite political parties; and

(3) The ballot shall be verified by both teams as being accurately printed on the paper receipt before the ballot is tabulated; and

(4) The appropriate election officials shall follow the procedures set out in subsections (a), (b), (d) and (e), section twenty-seven, article four-a of this chapter and subdivisions (3), (4), (5) and (6), subsection (c) of said section.

(d) The provisional ballots shall be deposited in a provisional ballot envelope and delivered to the board of canvassers.

WV Legislature

(e) Any election official who determines a person has voted an absent voter's ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

WV Legislature

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

(b) Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot on any of the following grounds:

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

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

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

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

WVLegislature

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

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

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

(8) That the person voted an absent voter's ballot under authority of subdivision (3), subsection (b), section one of this article and is or was present in the county in which he or she is registered to vote between the opening and closing of the polls on election day; and

(9) On any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.

No challenge may be made to any absent voter ballot if the voter was registered and qualified to vote pursuant to the provisions of subsection (a), section one of this article.

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

(d) Absent voters' ballots challenged by the official designated to supervise and conduct absentee voting under the provisions of this article are to be transmitted by the official directly to the county commission sitting as a board of canvassers. The absent voters' ballots challenged by the election commissioners and poll clerks under the provisions of this article may not be counted by the election officials but are to be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on challenged absent voters' ballots is to be governed by the provisions of section forty-one, article one of this chapter.

WVLegislature

§3-3-11. Preparation, number and handling of absent voters' ballots.

(a) Absent voters' ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided in any specific election law in which case the lesser number of days applies, the clerks of the county commissions of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters' ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the county commission of the county not less than forty-six days before the day of the election at which they are to be used.

(b) The official designated to supervise and conduct absentee voting shall be responsible for the mailing, transmitting, receiving, delivering and otherwise handling of all absent voters' ballots. He or she shall keep a record, as may be prescribed by the Secretary of State, of all ballots delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her and shall deliver to the commissioner of election a certificate stating the number of ballots delivered, transmitted, or mailed to absent voters and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered, transmitted, or mailed or by whom they have been marked, if marked before him or her.

WV Legislature

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

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

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

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

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

(2) The size and form of absent voter's ballot envelope nos. 1 and 2, and carrier envelopes;

(3) The information which is to be placed on absent voter's ballot envelope no. 1 and the forms and information which are to be placed on absent voter's ballot envelope no. 2;

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

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

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

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

WV Legislature

§3-3-13. Absentee voting in municipal elections.

The provisions of this article relating to absentee voting shall apply to all municipal elections, except where clearly not adaptable thereto, and the governing bodies of the several municipalities of the state shall by ordinance implement the provisions hereof so as to develop and provide a complete and satisfactory absentee voting system for municipal elections.

WV Legislature

§3-3A-1. Short title.

This article shall be known as the "West Virginia Vote By Mail Pilot Program".

WV Legislature

§3-3A-2. Vote by mail pilot program.

This article establishes a two phase pilot project that will allow certain municipalities to vote by mail. Phase one authorizes Class IV municipalities to conduct only early voting for municipal elections by mail beginning with the municipal election of 2010. Phase two authorizes five municipalities in the state to conduct all voting by mail beginning with the primary election of 2011. The pilot project will permit registered and other qualified voters of the authorized municipalities to vote a ballot by mail during the pilot program period. The Class IV municipalities that choose to participate in phase one may conduct only the early voting for the municipal elections entirely by mail. The five municipalities selected for participation in phase two may conduct both the primary and general elections entirely by mail.

WV Legislature

§3-3A-3. Secretary of State Rulemaking.

(a) The Secretary of State is hereby directed to propose emergency and legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement phase one of the vote by mail pilot program. In addition to any other provisions the Secretary believes are necessary to provide for the effective, efficient and orderly administration of phase one of the vote by mail pilot program, the rules proposed by the Secretary shall provide for phase one municipal elections the requirements and procedures for conducting an election by mail including:

(1) That a notice of early voting by mail will be mailed to each registered voter in the municipality no more than four weeks nor less than two weeks prior to the start of the early voting period. The notice may be included in any utility or service statement or invoice mailed to every household in the municipality or a postcard sent to all registered voters in the municipality;

(2) That each ballot packet shall consist of the actual ballot, instructions, a secrecy envelope and a ballot return envelope;

(3) That each ballot will be mailed with detailed instructions on how to mark the ballot, place it in the secrecy envelop and the ballot return envelope and how to sign the ballot return envelope, a warning that the ballot return envelope must be signed or the ballot will not be counted, a warning that signing someone else's ballot return envelope is illegal, an alternative procedure for any person who is unable to sign a ballot return envelope and a procedure for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and

(4) That each ballot must be mailed or brought to the municipal precinct by the close of the early voting period.

(b) The Secretary of State is hereby directed to propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the phase two vote by mail pilot program. In addition to any other provisions the Secretary believes are necessary to provide for the effective, efficient and orderly administration of phase two of the vote by mail pilot program, the rules proposed by the Secretary shall include:

(1) Criteria for the selection of up to five municipalities to participate in the vote by mail pilot program;

(2) Procedures for conducting voting by mail including those specified in subsection (a) of this section;

(3) Requirements and criteria for the designation of places of deposit for the ballots cast in an election; and

WV Legislature

(4) Dates and times the places of deposit must be open and the security requirements for the places of deposit. Places of deposit shall be open on the date of the election for a period of eight or more hours, but must be open until at least eight p.m., at a minimum.

(c) Each municipality wishing to conduct early voting by mail shall adopt an ordinance expressing the municipality's intent and notifying the public of the changes in voting.

(d) It is the duty of all officials designated to supervise and conduct the vote by mail program, other municipal officials, and all election commissioners and poll clerks to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

WV Legislature

§3-3A-4. Authority to conduct voting by mail.

The voting by mail program is to be supervised and conducted by the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within the municipality. All other provisions of this article for conducting a municipal election shall apply.

WV Legislature

§3-3A-5. Termination of pilot project.

The provisions of this article related to phase two of the pilot project shall terminate on January 1, 2014, unless sooner terminated, continued or reestablished.

WV Legislature

§3-3B-1. Short title.

This article shall be known as the "Uniformed Services and Overseas Voter Pilot Program."

WV Legislature

§3-3B-2. Uniformed services members and overseas voter pilot program.

This article authorizes a pilot program that will allow counties that meet the minimum requirements contained in section four to use available voting technology for the purposes of voting by absent uniformed services members and overseas citizens, as defined by 42 U.S.C. §1973ff, et seq. Participation in the pilot program will assist counties and the state in identifying areas for potential modification as larger pilot programs of this type begin to be authorized by the federal government under the Military and Overseas Voter Empowerment Act Pub. L. No. 111-84 (2009). Pilot programs authorized by this article are only applicable to the primary and general elections to be held during the year 2010.

WV Legislature

§3-3B-3. Process for selection by Secretary of State.

(a) On or before the close of business on January 8, 2010, for the 2010 primary and general election, and on or before the close of business on July 30, 2010, for the 2010 general election only, any county interested in participating in the pilot program must submit a proposal to the Secretary of State. The proposal shall include:

(1) The name of the vendor or vendors, if any, whose voting system will be implemented for voting by uniformed military and overseas citizen voters;

(2) The anticipated cost to the county of implementing the proposal;

(3) The manner in which the voting system complies with the provisions of section four of this article; and

(4) An option for the voter to choose not to vote using the pilot voting system, but rather by mail, fax or e-mail at the voter's discretion as provided in sections five and five-b, article three, chapter three of this code.

(b) The Secretary of State shall evaluate each proposal and shall approve those proposals which meet the criteria described in section four of this article.

(c) On or before January 29, 2010, for the 2010 primary and general election, and on or before August 13, 2010, for the 2010 general election only, each county that has submitted a proposal shall be notified by the Secretary of State that the application has either been approved or denied.

(d) Any county that applied by January 8, 2010, and was approved by the Secretary of State is considered approved for program participation in both the 2010 primary election and 2010 general election.

(e) Following the primary election, the secretary shall evaluate the functional effectiveness of pilot programs conducted under this article and shall terminate any program that fails to adequately and securely ensure that absent uniformed services voters and overseas voters have their absentee ballots cast and counted in the primary election.

(f) Ninety days following the 2010 primary election and ninety days following the 2010 general election, the secretary shall submit to the Legislature reports on the progress and outcomes of any pilot program conducted under this article, together with recommendations:

(1) For the conduct of additional pilot programs; and

(2) For such other legislation as the secretary determines appropriate.

WV Legislature

§3-3B-4. Minimum requirements for pilot program voting systems.

Provisions of sections eight and nine, article four-a, chapter three of this code notwithstanding, a voting system may be approved by the Secretary of State for use in the pilot program authorized by this article if it meets the following minimum requirements:

(1) Basic Operational Elements of the Online Voting System.

(A) System is web-based.

(B) System has an intuitive, easy-to-navigate interface.

(C) System is localized (in terms of date, time and address formats) to major areas in the world.

(D) System can handle five thousand voters over ten days, with likely spikes in use at beginning and end of voting period.

(2) Accessability.

(A) System interoperates with a wide variety of client-side platforms, including:

(i) Microsoft Windows;

(ii) MacOS;

(iii) Other common operating systems (Linux, etc.);

(iv) Internet Explorer version 3 or higher;

(v) Firefox version 3 or higher;

(vi) Safari version 1 or higher;

(vii) Opera version 3 or higher;

(viii) Netscape version 3 or higher; and

(ix) Chrome version 1 or higher.

(B) System does not require use of Java/JavaScripts (or detects whether browser accepts Java/JavaScript and provides alternate interfaces.

(C) System detects whether browser accepts images and provides alternate interfaces.

(D) System works for users who use screen readers.

WV Legislature

(E) System works for users who access the Internet using a text-only browser.

(F) System is sensitive to low-bandwidth/slow-modem environment of some users.

(3) Verification of Voters.

(A) System verifies a voter's member number, password and PIN number.

(B) System alerts administrator of suspected efforts at fraud (including repeated guesses of passwords, excessive votes from a single PC).

(4) Secret But Verifiable Ballots. System implements secret balloting, while allowing independent third-party monitors to verify that the ballots counted are the same as the ballots cast.

(5) Support for Ballot Marking Rules. System either:

(A) Does not allow mismarking of ballots; or

(B) Checks validity of ballots immediately upon submission, and returns ballot to voter for resubmission if there is an error.

(6) Data Security.

(A) System protects the security, integrity, and confidentiality of members' personal data.

(B) System protects the security, integrity, and confidentiality of ballots.

(C) Ideally, system provides no way for anyone (even vendor employees) to determine how an individual voter voted; at a minimum, system provides reasonable safeguards to prevent such data access.

(7) Verifiability of Software and Procedures.

(A) System and vendor make it possible to verify that the software performs according to specification.

(B) System and vendor make it possible to verify that the vendor is running the software correctly.

(C) Vendor will allow independent third-party monitors to review:

(i) Software, before and during election; and

(ii) Procedures (how many people have access to what parts of the system, how passwords are issued, how backups are done).

WV Legislature

(D) System incorporates safeguards to assure that vendor employees do not cast votes for users who do not vote.

(E) System provides mechanism for verifying that the system is operating the way it is supposed to; this may involve mathematical procedures or cryptographic protocols that will reveal if ballots have been tampered with, audit trails, or other mechanisms suggested by the vendor.

(F) System automatically verifies the number of ballots sent in and the size and consistency of the database(s), and warns the administrator and stops the voting until the administrator manually authorizes it to continue.

(8) Vendor Transparency and Openness.

(A) Vendor will be sufficiently transparent and open about the system's design and function so as to foster confidence among users.

(B) Vendor will allow independent third-party monitors to verify that the voting system is working according to the specification and proposal.

(9) Vendor Capability.

(A) Vendor is committed to the success of the voting system.

(B) Vendor provides access to 24-hour technical support during the 10-day voting period.

(C) Vendor has tested its voting systems in a production environment.

(D) Vendor will test the voting system prior to the election.

(E) Vendor has, and provides reference for, prior experience with similar systems.

WV Legislature

§3-4-1.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-2.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-3.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-4.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-5.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-6.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-7.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-8.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-9.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-10.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-11.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-12.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-12a.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-13.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-14.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-15.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-16.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-17.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-18.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-19.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-20.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-21.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-22.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-23.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-24.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-25.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-26.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-27.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-28.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-29.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-30.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-31.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4-32.

Repealed.

Acts, 2011 Reg. Sess., Ch. 26.

WV Legislature

§3-4A-1. Use of electronic voting systems authorized.

(a) Electronic voting systems may be used for the purpose of registering or recording and computing votes cast in general, special and primary elections: Provided, That the use of the electronic voting systems shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

(b) Each county which is authorized to use electronic voting systems in any statewide election shall establish a written policy for securing the electronic voting equipment. The policy shall outline how the equipment is secured from tampering and under what circumstances county personnel are authorized to have access. The clerk of the county commission shall submit a copy of the policy to the Secretary of State by February 1 in each even-numbered year. The clerk shall also submit a copy of any change to the policy within thirty days after its adoption.

WV Legislature

§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

(1) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballots, tabulate the results and produce necessary reports;

(2) "Ballot" means a logical or physical device that presents races, candidates and contests, and facilitates the capture of the voter's choices or intent;

(3) "Central counting center" means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

(4) "Electronic poll book" means an electronic device containing voter registration information for the purpose of facilitating voting at the precinct;

(5) "Electronic voting system" is one or more integrated devices that utilize an electronic component for the following functions: Ballot presentation, vote capture, vote recording and tabulation;

(6) "Standard validation test deck" means a group of ballots wherein all voting possibilities which can occur in an election are represented;

(7) "Vote-recording device" means equipment that captures and records voter intent by marking a screen to record selections or by using electronically sensible ink to mark selections; and

(8) "Voter verified paper audit trail" means a physical printout on which the voter's ballot choices, as registered by a direct recording device, are recorded. This shall be visible to the voter and shall be securely locked to avoid tampering.

WV Legislature

§3-4A-3. Procedure for adopting electronic voting systems.

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by the following procedure and not otherwise:

By a majority of the members of the county commission voting to adopt the same at a public meeting regularly called for that purpose: Provided, That the meeting be held not less than six months prior to the next scheduled primary or general election, with notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county involved.

WV Legislature

§3-4A-4. Procedure for terminating use of electronic voting systems.

The use of an electronic voting system may be terminated:

(1) By a majority of the members of the county commission voting to terminate use of the system and replace it with a different voting system meeting the requirements of the Help America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special public meeting called for the purpose of said termination, with due notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to terminate use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not terminate the use of an electronic voting system until ninety days after the entry of such order of its intention to terminate the same. Promptly after the expiration of ninety days after the entry of such order of intention to terminate the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of termination of the electronic voting system as hereinafter provided, such county commission shall enter a final order terminating the use of the electronic voting system, and the use of electronic voting system shall thereby be terminated. If a petition has been submitted as provided in this subdivision, the county commission shall not terminate the use of the system but shall proceed as provided in this subdivision.

If five percent or more of the registered voters of such county shall sign a petition requesting that the use of an electronic voting system be terminated in such county and such petition be filed with the county commission of such county within ninety days after the entry of such order of intention to terminate the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: "Shall the use of an electronic voting system be terminated in ..... County?" If this question be answered in the affirmative by a majority of the voters in such election upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall continue.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of termination of the use of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the termination of the use of an electronic voting system in such county, and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county at the next general or primary election, following by not less than ninety days

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the date of the filing of such petition, the question: "Shall the use of an electronic voting system be terminated in ..... County?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby continue.

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§3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center.

If the use of an electronic voting system shall have been adopted as hereinbefore provided, it shall be the duty of the county commission of such county to acquire the necessary number of vote recording devices to supply all or part of the election precincts within such county as soon as possible, and to acquire such reserve vote recording device or devices as will be deemed necessary. All such acquisition of vote recording devices shall be by sealed competitive bidding.

If it shall be impossible for the county commission to comply with its order or with the decision of the voters in a referendum at the next primary or general election, it shall in any event do so at the next following primary or general election, whichever shall first occur.

It shall be the further duty of the county commission of such county to acquire prior to any election in which such electronic voting system is to be used, the use of automatic tabulating equipment approved by the state election commission, for the purpose of counting votes in such election. In addition, the county commission of such county shall provide the necessary central counting center for use in said election. Such central counting center shall be located at the county seat of the county involved.

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§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

(a) A county commission may acquire vote recording devices by any one or any combination of the following methods:

(1) By purchasing the same and paying the purchase price from funds available from the maximum general levy or from any other lawful source; and

(2) By leasing the same under written contract of lease and paying the rentals from funds available from the maximum general levy or any other lawful source.

(b) A county commission may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor from funds available from the maximum general levy or other lawful source.

(c) A county commission may enter into an agreement with another county commission to share automatic tabulating equipment if the automatic tabulating equipment may be transported to the appropriate central counting centers. No ballots may be transported for counting in any county other than the county in which the votes were cast.

(d) A county commission is authorized to accept as a gift the use of suitable automatic tabulating equipment.

(e) The county commission may also secure a counting center.

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§3-4A-7. Bids and contracts for vote recording devices; false swearing or failure to disclose facts.

Contracts for the purchase or lease of vote recording devices shall be based on competitive bids. The county court shall solicit sealed bids by sending requests by mail to all known manufacturers and suppliers of vote recording devices which have been previously approved by the state election commission as hereinafter provided. The award of contracts of purchase or lease shall be based on the quality, cost, specifications and suitability of the particular vote recording device, technical services to be provided by the manufacturer, and the cost and availability of automatic tabulating equipment suitable for use in connection with said vote recording devices and the ballot cards used therewith.

No bid shall be accepted by the county court unless accompanied by a contract which shall provide that in the event the bid is accepted the party or parties making the sale or lease shall:

(1) Guarantee in writing to keep the vote recording devices in good working order for five years without additional cost to the county court.

(2) Warrant to defend and indemnify the county court against any claim for patent infringement, and in case any vote recording device or devices shall be held to be an infringement of a valid patent, to obtain a license for the use of such patent on the vote recording devices sold or leased to the county court or to modify the devices so that the offending infringement is removed without altering the efficiency or statutory requirements of the devices; all at the sole cost and expense of the supplier of the vote recording devices.

(3) Provide a bond with good corporate surety duly qualified to do business in West Virginia, conditioned upon the due performance of said guaranty and said warranty, in a penal sum to be fixed by the county court.

No bid shall be accepted by the county court unless the party or parties submitting the bid shall file with the bid an affidavit:

(1) Disclosing the name and address of, and the amount of any contribution paid or to be paid to, any individual, partnership, corporation or association hired regularly and specially for the purpose, or party for the purpose, of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

(2) Declaring that no individual, partnership, corporation or association not disclosed in said affidavit shall thereafter be regularly or specially hired and no contribution shall thereafter be paid for the purpose or partly for the purpose of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

For the purpose of this affidavit, the word "contribution" shall mean payment, distribution, loan, advance, deposit, gift of money, property, benefit or other consideration, or any

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agreement providing for a payment, distribution, loan, advance, deposit, or gift by money, property, benefit, or other consideration at any future time.

Any person who shall knowingly or wilfully make any false or fraudulent statement, or who shall knowingly or wilfully fail to disclose any material fact in the affidavit required by this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than $1,000 nor more than $5,000 or imprisonment in the state penitentiary for not less than one year nor more than three years, or both, in the discretion of the court.

In construing this section, the term "person" shall include an individual, partnership, committee, association, and any other organization or group of persons.

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§3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system.

(a) Any person or corporation owning or interested in any electronic voting system may apply to the State Election Commission so that the system may be examined and a report be made on its accuracy, efficiency, capacity and safety. Upon the written application of any vendor tendered to the Secretary of State or to any clerks in his or her office in charge of receiving filings for any purpose, the Secretary of State shall fix a date, time and place, not more than thirty days after the receipt of the application, for a meeting of the State Election Commission for mutual consideration of the application. The Secretary of State shall mail notice of the hearing by certified mail to each member of the commission.

(b) The State Election Commission shall appoint two qualified computer experts who are not members of the same political party to examine the system and make full reports on the system to the commission within ninety days from the date the State Election Commission approves the consideration of the application. They shall state in the report whether the examined system complies with the requirements of this article and the federal agency responsible for certifying voting systems and can be safely used by voters at elections under the conditions prescribed in this article. If the report is in the affirmative on that question, the commission may approve the system and adopt a system of its make and design for use at elections as provided in this article: Provided, That under no circumstances may a system be approved that is not capable of accurately tabulating returns based upon all possible combinations of voting patterns. The vendor of the approved system shall provide the State Election Commission with a report, due on January 1, of each even-numbered year, that outlines any problem that has been experienced with the equipment by any jurisdiction in the state or in any jurisdiction outside the state that uses the same or a similar version of the equipment that has been certified for use in this state.

(c) No electronic voting system may be used at any election unless it has been approved under this section or its former provisions and by the appropriate agency of the federal government whose purpose is to review and issue a certificate of approval. Each of the two qualified computer experts appointed by the commission are entitled to reasonable compensation and expenses in making the examination and report, to be paid in advance of the examination required by subsection (b) of this section by the person or corporation applying for the examination. This sum shall be the sole compensation to be received by any expert for any work performed pursuant to this section. The State Election Commission shall determine the compensation at the time of approving the application for certification.

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§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;

(9) It permits a voter in a primary election to: (A) Vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

(10) It, where applicable, is provided with means for sealing or electronically securing the

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vote-recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote-recording device for an election is begun and immediately after the polls are closed or after the operation of the vote-recording device for an election is completed;

(11) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least 15 questions;

(12) (A) Direct-recording electronic voting machines must generate a paper copy of each voter's vote that will be automatically kept within a storage container that is locked, closely attached to the direct-recording electronic voting machine and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article;

(B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct-recording electronic voting machine;

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy;

(D) The voter may not touch, handle or manipulate the printed copy manually in any way;

(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct-recording electronic voting machine;

(F) Direct-recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code;

(13) Where vote-recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question; and

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows and questions;

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(14) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, they shall:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks or both to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all pre-election, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

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(K) Be constructed to prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

(15) For purposes of this section, all voting systems utilized in any election shall be independent, nonnetworked voting systems, and any component thereof, in whole or in part, shall not at any time connect to the internet.

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§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

(a) For purposes of this section, "ballot-marking accessible voting system" means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently. The ballot-marking device is capable of marking voter selections on an optically readable or mark-sensing ballot which shall be subsequently read and tallied on state certified optically readable or mark-sensing ballot tabulating and reporting systems. Counties are hereby permitted to obtain and employ ballot-marking accessible voting systems that are approved by the State Election Commission.

(b) The ballot-marking accessible voting device shall be a completely integrated ballot-marking device that is designed to allow voters to either view ballot choices through a high resolution visual display or listen to ballot choices with headphones and then enter ballot selections directly through specially designed, integrated accessibility devices.

(c) Ballot-marking accessible voting systems may be used for the purpose of marking or scanning optically readable or mark-sensing ballots cast in all general, special and primary elections and shall meet the following specific requirements:

(1) The ballot-marking accessible voting system, system firmware and programming software must be certified by an independent testing authority, according to current federal voting system standards and be approved by the State Election Commission prior to entering into any contract.

(2) The ballot-marking accessible voting system shall, additionally:

(A) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(B) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue;

(C) Allow the voter to independently review all ballot choices and make any corrections, before the ballot is marked;

(D) Provide the voter with the opportunity to make a write-in ballot choice, where allowed by state law;

(E) Allow voters with disabilities to mark their ballots, in complete independence, and in conformity with both federal and state law concerning mandatory accessibility for disabled persons;

(F) Allow blind or visually impaired voters to vote in complete privacy;

(G) Provide voters with an opportunity to change ballot selections, or correct errors, before

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the ballot is marked for voting, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error;

(H) Provide voters with the ability to view all ballot selections through a high resolution visual display or to have all ballot selections read to the voter through headphones;

(I) Ensure complete ballot privacy, while employing the ballot-marking audio system and providing the voter with the option to turn off the visual ballot display;

(J) Include a completely integrated voter input keypad, using commonly accepted voter accessibility keys with Braille markings;

(K) Include the ability for a voter to employ a sip/puff device to enter ballot choices;

(L) Allow the voter to magnify all ballot choices and to adjust both the volume of the audio feature and the speed of ballot presentation;

(M) Allow the voter to employ his or her own headset as well as the headset provided with the ballot-marking device while being equipped with multiple output connections to accommodate different headsets;

(N) Have multiple-language capability; and

(O) Allow the voter to verify that:

(i) An optical scan ballot inserted into the device at the start of voting is blank; and

(ii) The voted optical scan ballot that is produced by the device is voted as the voter intended.

(d) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to ensure that any system employed by a county under the provisions of this section is publicly tested prior to use in election.

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§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

(a) For purposes of this section, "precinct ballot-scanning device" means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter's ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.

(d) The precinct ballot-scanning device shall additionally:

(1) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(2) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

(3) Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

(e) The precinct ballot-scanning device may be used for tabulating election results only under the following conditions:

(1) The county has at least one precinct ballot-scanning device in each precinct;

(2) No tabulation of results is done at the precinct;

(3) The "tabulation memory device" may be removed from the ballot-scanning device only after the polls close and the votes may only be counted at the central counting center on the night of the election; and

(4) All voters at the precinct are required to use the ballot scanning device as a condition of completing their vote.

(f) If the optical scan ballots from each of the precincts are counted at the central counting center on election night in accordance with section twenty-seven of this article, and the results from that count are the results finally published on election night, then any county

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meeting each of the requirements in paragraphs (1) through (4) of subsection (e), may turn off the over vote switch on the central counting device since every ballot will have been evaluated for over votes by the precinct scanning device.

(g) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.

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§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.

(a) When an electronic voting system is acquired by any county commission, the vote-recording devices, where applicable, and the tabulating equipment shall be immediately placed in the custody of the county clerk and shall remain in his or her custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the vote-recording devices and the tabulating equipment are properly protected and preserved from damage or unnecessary deterioration and shall not permit any unauthorized person to tamper with them. The clerk shall also keep the vote-recording devices and tabulating equipment in repair and prepare the same for voting.

(b) When a county commission elects to acquire and use electronic poll books in lieu of printed poll books, the clerk of the county commission shall immediately take custody of the electronic poll books, which shall remain in his or her custody at all times except when in use at an election or when in the custody of a court or court officers during contest proceedings. The clerk shall ensure that the electronic poll books are properly protected and preserved from damage or unnecessary deteriorations and the clerk shall not permit any unauthorized person to tamper with the electronic poll books. The clerk shall also keep the electronic poll books in good repair and the clerk shall prepare the electronic poll books for election day.

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§3-4A-10a. Proportional distribution of vote-recording devices.

Where vote-recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of active registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: Provided, That a minimum of two vote-recording devices be provided.

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§3-4A-11.

Repealed.

Acts, 2007 Reg. Sess., Ch. 101.

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§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the Intermediate Court of Appeals;

(iii) Judge of the circuit court;

(iv) Family court judge; and

(v) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon.

(4) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

(5) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot

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box and upon which marks do not interfere with the proper tabulation of the votes.

(6) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

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§3-4A-12.

Repealed.

Acts, 2007 Reg. Sess., Ch. 101.

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§3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.

(a) When the clerk of the county commission has completed the preparation of the ballots and of any electronic poll books and vote-recording devices as provided in sections eleven-a and twelve-a of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and any electronic poll books and devices are ready for use.

(b) The members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place at which any vote-recording devices or electronic poll books and the ballots are stored, not later than five days before the day of the election, and shall inspect the devices, electronic poll books and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of the inspection shall be published, no less than three days in advance, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county involved.

(c) Any candidate and one representative of each political party on the ballot may be present during the examination. If the devices and electronic poll books and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts.

(d) The vote-recording devices, the electronic poll books and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, electronic poll books and the ballots for transportation to the polls. Upon removal of the devices, the electronic poll books and the ballots, the clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, the electronic poll books and packages of ballots were found to be sealed when removed for transportation to the polls.

(e) Vote-recording devices used during the early voting period may be used on election day if retested in accordance with all the provisions of this section, including public notice between the close of early voting and prior to precinct placement for election day. Vote-recording devices must comply with the applicable requirements of section twenty-six of this article.

(f) Not later than one day before the election, the election commissioner of each precinct previously designated by the ballot commissioners shall attend at the office of the clerk of the county commission to receive the necessary election records, books and supplies

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required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

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§3-4A-13a.

Repealed.

Acts, 2011 Reg. Sess., Ch. 60.

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§3-4A-14. Election boards where electronic voting systems used.

One receiving board, as defined in article one of this chapter, shall conduct the election in each precinct in which electronic voting systems are used. The provisions of article one of this chapter relating to the qualifications, appointment, substitution, training and compensation of election officers and to the procedure for filling vacancies shall apply.

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§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system that uses a screen upon which votes may be recorded by means of a stylus or by means of touch, the ballot commissioners shall provide for each polling place a sample ballot with each screen as it will appear on the devices, together with written instructions regarding the operation of the devices. Upon request, the election officers shall offer instruction to each voter, before voting, in the operation of the vote-recording device.

(b) The ballot commissioners shall also provide facsimile ballots, at least two of which, or complete sets of which, are to be posted on the walls of each polling place. The facsimile diagrams are exact diagrams of the ballots or screens so that the voter may become familiar with the location of the parties, offices, candidates, and questions as they appear on the ballot to be used in his or her precinct.

(c) The ballot commissioners may, with the consent of the county commission, or the county commission may, prepare and mail to each qualified voter at the address shown on the registration books a facsimile sample of the ballot or screens for his or her precinct.

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by §3-5-1 et seq. and §3-6-1 et seq., which specify the publication of a facsimile sample ballot, are to consist of a facsimile of the absentee ballot, or a facsimile of each of the electronic voting system screens with the names of the candidates and the offices for which they are running shown in their proper positions: Provided, That when the sample ballots for the precincts within the county contain different senatorial, delegate, magisterial, or executive committee districts or when the sample ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided between more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

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§3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting.

The clerk of the county commission shall deliver or cause to be delivered each vote-recording device, electronic poll book and the package of ballots to the polling place where they are to be employed. The delivery shall be made not less than one hour prior to the opening of the polls and in the presence of the precinct election commissioners. At the time of the delivery the device and electronic poll books are to be sealed to prevent any use prior to the opening of the polls and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote-recording device and the seal of the electronic poll book is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed upon delivery and that the seals have been broken and the devices opened in their presence, as may be appropriate. The election commissioners shall then cause the vote-recording device and booth to be arranged so that the front of the vote-recording device will not be visible, when the vote-recording device is being operated, to any person other than the voter. The poll clerks shall ensure that the vote-recording device is placed in a location that maintains voter privacy through the entire period of voting.

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§3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

(a) Any reserve vote-recording device used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote-recording device is to be prepared, inspected and sealed and delivered to the polling place wherein the seal is to be broken and the device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote-recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place.

(b) In counties using electronic poll books, the election commissioners shall examine the electronic poll books to ascertain whether the poll books are in working order before allowing any voters to enter the polling location. If the electronic poll books are not in working order, the election commissioners shall contact the county clerk who shall immediately authorize a printed poll book to serve in place of the electronic poll book for that election. A printed poll book may accompany the electronic poll book to each precinct.

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§3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.

If, during the conduct of an election, a vote recording device becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this article, the election commissioners shall seal the device in such manner as to prevent further voting thereon. Then the election commissioners shall secure from the county clerk a reserve vote recording device, which shall be prepared, inspected and delivered to the polling place wherein the seal shall be broken and such device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place. The commissioners shall proceed to conduct the election.

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§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.

(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

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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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§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures.

(a) Where applicable, every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article is to have two lines for the signatures of the poll clerks. Both of the signature lines are to be printed on a portion of the ballot where votes are not recorded by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his or her ballot and after the ballot stub has been removed. Each of the two poll clerks shall sign his or her name on one of the designated lines provided on each ballot before any ballot is distributed to a voter.

(b) After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot to the voter, which ballot has been signed by each of the two poll clerks as provided in this section: Provided, That where an electronic voting system that utilizes screens upon which votes may be recorded by means of a stylus or by means of touch, an election commissioner shall accompany the voter to the voting device and shall activate the device for voting.

(c) Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas.

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§3-4A-20. Non-affiliated voters in primary elections.

Unless a voter, not affiliated with a party, is permitted to participate in the primary election of a political party, the following provisions apply to voters, not affiliated with a party, in primary elections that include non-partisan candidates or public questions:

(1) Election officers shall provide a vote recording device, where applicable, or the appropriate ballot to be marked by an electronically sensible pen or ink, or by means of a stylus or by means of touch or by other electronic means, so that voters not affiliated with a party may vote only those portions of the ballot relating to the nonpartisan candidates and the public questions submitted, or shall provide a ballot containing only provisions for voting for those candidates and upon those issues submitted common to the ballots provided to all voters regardless of political party affiliation, or both.

(2) In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the voters not affiliated with a party, provisions are to be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the voter not affiliated with a party to vote for the nonpartisan section or sections of the ballot or ballot labels.

(3) After a voter not affiliated with a party has voted, temporary seals may be removed and the device may then be used by partisan voters.

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§3-4A-21.

Repealed.

Acts, 2003 Reg. Sess., Ch. 100.

WV Legislature

§3-4A-22. Assistance to illiterate and disabled voters.

(a) Any duly registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by one of the following means:

(1) By a person of the voter's choice: Provided, That the assistance may not be given by the voter's present or former employer or agent of that employer or by an officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or official write-in candidate; or

(2) If no person of the voter's choice be present at the polling place, the voter may request assistance from the poll clerks or ballot commissioners present at the polling place, whereupon assistance may be given by any two of the election officers of opposite political party affiliation to whom the voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot. The election officers, in the presence of the voter and in the presence of each other, shall thereupon cause the voter's declared choices to be recorded on the ballot or a vote recording device, as may be appropriate, as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting the voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.

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§3-4A-23. Persons prohibited about voting booths; penalties.

Excepting election officials acting under authority of sections nineteen, twenty and twenty-two of this article in the conduct of the election, and qualified persons assisting voters pursuant to section twenty-two of this article, no person other than the voter may be in, about or within five feet of the voting booth during the time the voter is voting at any election. While the voter is voting, no person may communicate with the voter in any manner and the voter may not communicate with any other person or persons. No person may enter a voting booth with any recording or electronic device in order to record or interfere with the voting process. Any conduct or action of an election official about or around the voting booth while the voter is in the process of voting, except as expressly provided in this article, is a violation of this section. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than twelve months, or both fined and confined.

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§3-4A-24. Voting by challenged voter.

Except for electronic voting systems using screens on which votes may be recorded by means of a stylus or by means of touch, if the right of any person to vote be challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. He or she is to be provided with a challenged ballot and ballot envelopes for the insertion of the ballot after voting. There is to be an inner envelope marked with the precinct number for the challenged ballot. There is also to be another envelope for the inner envelope and the challenged voter stub, which envelope provides a place for the challenged voter to affix his or her signature on the seal of the outer envelope.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall remove the outer envelopes. Without opening the inner envelope, the commissioners shall shuffle and intermingle the inner envelopes. The commissioners shall then open the inner envelopes, remove the ballots and add the votes to the previously counted totals.

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§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

If the right of any person to vote is challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. An election commissioner shall enter into the voting device a voter-specific electronic code for any person voting a provisional ballot. The devices are to retain provisional ballots in electronic memory and are not to be tabulated in accordance with the provisions of this code, but are to be reviewed in accordance with the provisions of this code.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall ensure that the ballots are included in the tabulation.

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§3-4A-25. Closing polls.

As soon as the polls have been closed and the last qualified voter has voted, no further voting on any ballot may be had and the vote recording devices utilized in counties with electronic voting systems where votes are recorded by perforating shall be sealed against further voting. All unused ballots shall be placed in a container for return to the clerk of the county commission.

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§3-4A-26. Test of automatic tabulating equipment.

(a) One week prior to the start of the count of the votes recorded on ballots or screens, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. This test shall consist of a test of the entire voting system, including removal of data from a vote-recording device and its transferral to automatic tabulating equipment. The county commission shall give public notice of the time and place of the test not less than forty-eight hours nor more than two weeks prior to the test by publication of a notice as a Class I-0 legal advertisement in the county involved, in compliance with the provisions of article three, chapter fifty-nine of this code.

(b)(1) Vote-recording devices used and tested for early voting may also be used on election day upon compliance with all of the following requirements:

(A) Following the close of early voting, the personal electronic ballot and the programable memory chip shall be removed and replaced with another personal electronic ballot and programable memory chip prepared for, but unused during, the current election period;

(B) The printed paper trail used during the early voting period shall be removed and replaced with a new paper trail; and

(C) The vote-recording device shall be retested prior to being used on election day.

(2) Any personal electronic ballot programable memory chip and printed paper trail removed from a vote-recording device used for early voting shall be securely stored by the county clerk until such time as it is used to tally the votes on election day in accordance with section twenty-seven of this article.

(c) (1) A test performed pursuant to this section shall be open to representatives of the political parties, candidates, the press and the public. It is to be conducted by processing a set of preaudited ballots marked to record a predetermined number of valid votes for each candidate or each measure. For each multicandidate office, the test shall include one or more ballots which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and any other applicable law. For each office, the test shall include one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by each commissioner, the nature of the error, its cause and the type of corrective action taken. The certification shall be recorded in the office of the clerk of the county commission in the record book. Immediately after conclusion of this completed test, a certified duplicate copy

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of the test results shall be sent by certified mail to the offices of the state Election Commission, where it is to be preserved and secured for one year and made available for comparison or analysis by order of a circuit court or the Supreme Court of Appeals.

(2) The tabulating equipment to be used in the election shall be immediately certified by the county commission to be free from error as determined by the test. All testing material shall be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container shall be opened to conduct the test required immediately before the start of the official count.

(3) The test shall be repeated immediately before the start of the official count and at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

(4) All results of all of the tests are to be immediately certified by the county commission, filed in the office of the clerk of the county commission and immediately recorded in the record book. On completion of the count, the test materials and test ballots are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

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§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or, if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose may touch any ballot or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the ballot boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the ballots are to be tabulated according to the processes of the system. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, the voter shall mark the location appropriate for the voting system in the write-in location for that office.

When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded; and

(5) Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot in the presence of representatives of each political party on the ballot and substituted for the damaged ballot. All duplicate ballots are to be clearly labeled "duplicate" and are to bear a serial number which is recorded on the damaged or defective ballot and on the replacement ballot.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the unofficial preliminary returns of the county. Upon completion of the count, the returns are to be open to the public by posting a summary of the returns as have been tabulated at the central counting center. Upon completion of the canvass, the returns are to be posted as tabulated precinct by precinct.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote-recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

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§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

(a) The vote-recording devices, electronic poll books, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: Provided, That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the seven-day period has expired, the vote-recording devices, test results and standard validation test ballots are to be sealed for one year: Provided, however, That the vote-recording devices, electronic poll books and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed and any of the electronic voting equipment or electronic poll books discussed in this section may be released for inspection or review by a request of a circuit court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of canvassers shall examine, as required by subsection (d) of this section, all of the vote-recording devices, electronic poll books, the automatic tabulating equipment used in the election and those voter-verified paper ballots generated by direct recording electronic vote machines, shall determine the number of votes cast for each candidate and for and against each question and, by this examination, shall procure the correct returns and ascertain the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any qualified individual demands a recount of the votes cast at an election, the voter-verified paper ballot shall be used according to the same rules that are used in the original vote count pursuant to section twenty-seven of this article. For purposes of this subsection, "qualified individual" means a person who is a candidate for office on the ballot or a voter affected by an issue, other than an individual's candidacy, on the ballot.

(d) During the canvass, at least three percent of the precincts are to be chosen at random and the voter-verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter-verified paper ballots for all votes cast in a randomly selected precinct:

(1) Differs by more than one percent from the automated vote tabulation equipment; or

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote

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totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.

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§3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements.

(1) When during a canvass or a recount of votes in an election it appears to the board of canvassers or if it is so alleged in a petition for a recount, that a vote recording device or piece of automatic tabulating equipment used in the election has by reason of mechanical failure or improper or fraudulent preparation or tampering, incorrectly recorded or tabulated the actual votes cast or counted on such device or equipment, the board of canvassers shall proceed to determine whether an error has occurred in the vote recorded or counted on such device or equipment. If an error is found, the board of canvassers shall have the cause of the error corrected and the ballots affected recounted so that the election returns will accurately reflect the votes cast at such election if it is possible to accurately correct such error. If the board of canvassers is unable to accurately correct such errors made by said device or equipment and therefore cannot correct the returns to accurately reflect the actual votes cast at such election, the total votes recorded or tabulated on such device or equipment, despite the fact that such vote may be erroneous, shall be accepted in the canvass and in the recount as the votes cast.

(2) If it is necessary for the board of canvassers to test any vote recording device or automatic tabulating equipment counting device for its mechanical accuracy in recording or tabulating the votes cast at such election, such test shall be conducted by the clerk of the county court in the presence of the board of canvassers and of any candidate or his party representative. After the completion of such test the clerk will then and there prepare and file a statement in writing giving in detail the result of the examination and test.

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§3-4A-30. Adjustments in voting precincts where electronic voting system used.

(a) The provisions of section five, article one of this chapter, relating to the number of registered voters in each precinct, shall apply to and control in precincts in counties in which electronic voting systems have been adopted, except that the maximum number of registered voters shall be one thousand five hundred per precinct. The county commissions of such counties, subject to other provisions of this chapter with respect to the altering or changing of the boundaries of voting precincts, may change the boundaries of precincts or consolidate precincts as practicable, to achieve the maximum advantage from the use of electronic voting systems.

(b) The county commission may, in the urban centers of any county adopting an electronic voting system, designate a voting place outside the boundaries of a precinct, provided such voting place is in a public building of sufficient size and in an adjoining precinct. In such event, more than one precinct may vote in any such public building. Upon combination of adjoining precincts pursuant to this subsection, the county commission shall: (1) Publish its order combining the precincts in the same manner as an order of consolidation pursuant to section seven, article one of this chapter; and (2) cause its order to be published with each sample ballot publication required by this chapter.

WV Legislature

§3-4A-31. Use of electronic voting systems in municipal elections.

The county court of any county which has adopted the use of an electronic voting system is hereby authorized to make such system available to any municipality in, or partly in, such county for use in elections conducted by such municipality, and the use of the electronic voting system by such municipality shall be upon such terms and conditions as may be agreed upon between the county court and the municipality.

WV Legislature

§3-4A-32. Applicability of general laws relating to elections.

Except as modified by this article, the general laws applying to regular, special and primary elections shall apply to elections conducted with the use of electronic voting systems.

If it shall be impracticable for the county court of any county, after the adoption of an electronic voting system by such county, to supply the necessary vote recording devices to each precinct of such county for use in any election, the holding of any election in such precincts, which have not been supplied with vote recording devices shall be governed by the general laws with respect to conducting a regular, special and primary election by the use of printed ballots or the laws with respect to conducting such election by the use of voting machines if such machines are used.

WV Legislature

§3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

(a) Any person not an election officer or other public official who shall tamper or attempt to tamper with any vote-recording device, electronic poll book, ballot label, ballot or ballot card, program deck, standard validation test deck or automatic tabulating equipment or in any way intentionally impair or attempt to impair their use and any person who shall be guilty of or shall attempt any dishonest practice upon any such devices or equipment, or with or by their use, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years or fined not less than $5,000, or both.

(b) Any clerk of a county commission, county commissioner, ballot commissioner, election commissioner, or poll clerk, or any custodian, technician or other public official authorized to take part in the holding of an election or in preparing for an election, who, with intent to cause or permit any vote-recording device, electronic poll book, program deck, standard validation test deck or other automatic tabulating equipment to fail to record, test or tabulate correctly all votes cast thereon or tabulated therewith, tampers with or disarranges such device in any way, or any part or appliance thereof, or who causes or consents to the use of such device or equipment for vote recording, testing or tabulating at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted so that it will correctly record, test or tabulate all votes cast or who, with the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear on said device or devices that the votes cast for one ticket, candidate or proposition, were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot, ballot card or ballot label on said device or any part thereof, or does any other thing intended to interfere with the validity or accuracy of the election, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years, or fined not less than $5,000 or both.

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§3-4A-34. Wilful neglect of duty by officials; penalties.

Any public officer or election officer upon whom any duty is imposed by this article who shall wilfully omit or neglect to perform such duty, or who shall do any act prohibited in this article for which punishment is not otherwise provided herein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $500 nor more than $1,000, or imprisonment in the county jail for not less than sixty days nor more than one year, or both, in the discretion of the court.

WV Legislature

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

Primary elections shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May 1986 and in each second year thereafter.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

WV Legislature

§3-5-1a. Time and place of holding primary elections held in the year one thousand nine hundred seventy-eight; hours polls open.

The primary election held in the year 1978 shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May 1978.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

WV Legislature

§3-5-2. Delegates to national conventions; alternate delegates.

(a) At the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, there shall be elected by the voters of each political party of the state, in accordance with a plan adopted by the state party, persons to be delegates to the national convention of the party to be held next after the date of such primary.

(b) The plan adopted by each political party of the state shall state the method, subject to compliance with their national party rules and not inconsistent with the provisions of this chapter, for the election of persons in each congressional district of the state as delegates to the national convention of the party, for the election or selection of persons in each congressional district of the state as alternate delegates to the national convention of the party and for the selection of all remaining delegates and alternate delegates allocated to the party in their national convention. Not less than one hundred twenty days before the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, the governing body of each political party of the state shall certify the plan adopted by the party under signature of the state party chairman and file the plan with the Secretary of State. Any questions regarding whether such plan was rightfully adopted by the party shall be resolved by the party based upon party rules.

(c) The plan adopted by each political party of the state shall, to the extent permissible under their national party rules, provide for the following:

(1) The voters of each political party shall elect in each congressional district the number of persons as delegates to the national convention of the party to which the district is entitled.

(2) If the rules of the national political party do not require the apportionment of delegates on the basis of their commitment for president, the persons receiving the highest number of votes as delegates in any congressional district to the number to which the district is entitled, shall be elected delegates. After the election of delegates in each congressional district to the number to which the district is entitled, the persons receiving the next highest votes in each congressional district and having qualified, as may be provided in the plan adopted by the party, shall be elected as alternate delegates to the number of alternate delegates to which the district is entitled.

(3) If the rules of the national political party require that the percentage of votes cast for the various presidential candidates determine the apportionment of committed candidates to be elected as delegates or alternates, regardless of whether such committed candidates received the highest number of votes, then the plan adopted by the political party of the state shall prescribe the number of delegates and alternates to be elected under such apportionment, the method by which the apportionment shall be made, and the method by which the Secretary of State shall determine which delegates and alternates are elected. A committed candidate for delegate to national convention is one whose preference for particular presidential candidate appears on the ballot.

WV Legislature

(4) In the event the number of persons elected in the primary election in a congressional district is less than the number to which the district is entitled as delegates and alternate delegates to the national convention of the political party, the governing body of the political party of the state shall appoint persons from the congressional district to serve as delegates or alternate delegates to the national convention of the party unless the rules of the party otherwise provide.

(5) The number of persons which each of the congressional districts in the state are entitled to elect as delegates to the national convention of the political party shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party's national convention elected in all congressional districts in the state as the population of the congressional district bears to the total population of the state based upon the census of population taken by the bureau of the census of the United States Department of Commerce in the year one thousand nine hundred ninety, and in every tenth year thereafter.

(d) The official primary ballot at the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter shall, following the names of all candidates for delegates to the national convention of the party, contain the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State."

(e) Unless and until a political party of the state has adopted and certified a plan for the election of delegates to the national convention of the party and filed the plan with the Secretary of State, there shall be elected by the voters of the political party of the state at the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, the number of persons to which the party is entitled as delegates-at-large, and by the voters of each political party in each congressional district in the state the number of delegates to which the district is entitled. The persons receiving the highest number of votes in the state as delegates-at-large, to the number to which the state is entitled, shall be elected delegates. The persons receiving the highest number of votes as delegates in any congressional district, to the number to which the district is entitled, shall be elected delegates. Each delegate so elected shall then appoint an individual to serve as alternate delegate, and shall by registered letter notify the Secretary of State of such appointment within forty days after the primary election.

WV Legislature

§3-5-3. Presidential preference.

In presidential election years, in addition to the candidates required to be nominated at the primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section thirteen of this article, upon the filing with the Secretary of State of the certificate of announcement as provided in section seven of this article and the filing fee or petition in lieu of filing fee as provided in sections eight and eight-a of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the names and certificates of the party aspirants for the party nomination for the office of Governor.

WV Legislature

§3-5-4. Nomination of candidates in primary elections.

(a) At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, and of each county in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

(b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that:

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the State of West Virginia and the requirements of §7-1-1b of this code;

(2) Members of county boards of education shall be elected at primary elections in accordance with §3-5-5 and §3-5-6 of this code;

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in §1-2-2 of this code.

(c) In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by the executive committee of the party for the political division in which such persons are candidates.

(d) A person who was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code may not, after failing to win the nomination of that political party at a primary election, become a candidate of any other recognized political party for the same political office in the next succeeding general election.

(e) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.

WV Legislature

§3-5-5.

Repealed.

Acts, 1993 Reg. Sess., Ch. 43.

WV Legislature

§3-5-6. Election of county board of education members at primary elections.

(a) An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections, as provided by law, but upon a nonpartisan ballot printed for the purpose.

(b) No more than two members may be elected or serve from the same magisterial district. The eligibility of candidates to be declared elected for full terms of four years and for unexpired terms of two or more years based on this limitation shall be determined at the time of certification of the election.

(1) Such eligibility shall be based on the magisterial district residence of incumbent members of the board whose terms will continue beyond July 1, following the primary election.

(A) No person is eligible to be declared elected who resides in a district which has two such incumbent members.

(B) No more than one candidate is eligible to be declared elected who resides in a district which has one such incumbent member.

(C) A person with the highest number of votes may be declared elected to an unexpired term notwithstanding the fact that the person's magisterial district has two representatives serving on the board at the time of the election: Provided, That the number of representatives from that magisterial district will be less than two as of July 1, following the primary.

(2) The person declared elected to an unexpired term shall assume the duties of a member of the board of Education according to the provisions of section two, article five, chapter eighteen of this code.

(c) In each nonpartisan election for Board of Education the board of canvassers shall:

(1) Declare and certify the election of the required number of eligible candidates receiving the highest numbers of votes to fill any full terms;

(2) Declare and certify the election of the required number of eligible candidates receiving the next highest numbers of votes, after all full terms are filled, to fill any unexpired terms.

(d) It is the intent of this statute that any person declared to be elected under the preceding provisions of this section shall take office as a duly elected member or members, even though the person may not have received a majority or plurality of all votes cast at such election.

(e) In case of a tie vote for a seat on a county board of education in any primary election, the provisions of section twelve, article six of this chapter shall control in breaking the tie.

WV Legislature

§3-5-6a. Election of justices of the Supreme Court of Appeals.

(a) An election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose. For election purposes, in each election at which shall be elected more than one justice of the Supreme Court of Appeals, the election shall be by numbered division corresponding to the number of justices being elected. Each justice shall be elected at large from the entire state.

(b) In each nonpartisan election by division for a justice of the Supreme Court of Appeals, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

WV Legislature

§3-5-6b. Election of circuit judges.

(a) An election for the purpose of electing a circuit court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a circuit court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

WV Legislature

§3-5-6c. Election of family court judges.

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a family court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

WV Legislature

§3-5-6d. Election of magistrates.

(a) An election for the purpose of electing a magistrate or magistrates by division shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a magistrate, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

WV Legislature

§3-5-6e. Election of judges of the Intermediate Court of Appeals.

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

WV Legislature

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the county clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of

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that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate's political party on the date the certificate of announcement is submitted and a statement that the candidate: (A) Is a member of and is affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) For candidates for county board of education, a statement that the candidate swears and affirms that he or she has not been convicted of an offense under §61-8A-1 *et seq.*, §61-8B-1 *et seq.,* and §61-8C-1 *et seq.* of this code in which the victim was a minor;

(9) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and

(10) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than 10 days following the close of the filing period, the candidate may not be refused certification for this reason: *Provided, however*, That prior to accepting a Certificate of Announcement for filing for an office which is elected in a partisan election, the Secretary of State's Office, clerk of the county commission, recorder or city clerk shall electronically verify a candidate's current party affiliation as subscribed and sworn to by the candidate. If a candidate's current party affiliation is not as stated on the Certificate of Announcement, the filing shall be refused.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before an officer qualified to administer oaths, who shall certify the same. Any person who

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knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter, received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of §3-5-19 of this code to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

(j) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.

WV Legislature

§3-5-8. Filing fees and their disposition.

(a) Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(1) A candidate for president of the United States, for vice president of the United States, for United States Senator, for member of the United States House of Representatives, for Governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: Provided, That the filing fee for any candidate for president or vice president of the United States shall not exceed $2,500 commencing with the 2004 filing period;

(2) A candidate for the office of judge of a circuit court and judge of a family court shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(3) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office and a candidate for state Senator shall pay a fee of one percent of the total annual salary of the office;

(4) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary, excluding any additional compensation or commission of the office for which the candidate announces. A candidate for county board of education shall pay a fee of $25. A candidate for any other county office shall pay a fee of $10;

(5) Delegates to the national convention of any political party shall pay the following filing fees:

(A) A candidate for delegate-at-large shall pay a fee of $20; and

(B) A candidate for delegate from a congressional district shall pay a fee of $10;

(6) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

(A) A candidate for member of a state executive committee of any political party shall pay a fee of $20;

(B) A candidate for member of a county executive committee of any political party shall pay a fee of $10; and

(C) A candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of $5.

WV Legislature

(b) Candidates shall pay the filing fee to the election official with whom the certificate of announcement is filed according to the provisions of section seven of this article at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

(c) All moneys received by the clerk from the fees shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him or her to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs it shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for judicial or legislative offices to be filled by the voters of one county shall be apportioned to the county in which the boundaries of the district lie.

WV Legislature

§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.

A candidate seeking nomination to any office who is unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

The candidate shall file an oath with the appropriate office required under section eight of this article stating that he or she is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not earlier than the second Monday in January next preceding the primary election day.

Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: Provided, That the filing fee shall be waived, in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought: Provided, however, That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

No qualified voter forfeits his or her opportunity to vote in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk of the county commission may not be required to determine the validity of a greater number of signatures than that required by this section.

Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the clerk of the county commission or Secretary of State, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be prescribed by the Secretary of State.

WV Legislature

§3-5-9. Certification and posting of candidacies.

By the eighty-fourth day next preceding the day fixed for the primary election, the Secretary of State shall arrange the names of all candidates, who have filed announcements with him or her, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of this chapter, and shall forthwith certify the same under his or her name and the lesser seal of the state, and file the same in his or her office.

The certificate of candidates shall show: (1) The name and residence of each candidate; (2) the office for which he or she is a candidate; (3) the name of the political party of which he or she is a candidate; (4) upon what ballot his or her name is to be printed; and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his or her party, or if he or she has no preference, the word "uncommitted".

The Secretary of State shall post a duplicate of the certificate in a conspicuous place in his or her office and keep same posted until after the primary election.

Immediately upon completion of such certification, the Secretary of State shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the county commission in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in that county. He or she shall transmit the certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the seventieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty-six and every primary election held thereafter.

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§3-5-10. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official primary ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election, according to the provisions of this article and §3-4A-1 *et seq.* of this code, as appropriate to the voting system. If any ballot issue is to be voted on in the primary election, the ballot commissioners shall likewise prepare a sample official ballot for that issue according to the provisions of law authorizing the election.

(b) The facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish each sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than 65 percent of the actual size of the ballot, at the discretion of the ballot commissioners: *Provided*, That in counties where an electronic voting system has been adopted, the facsimile sample ballot may be a photographic reproduction of the absentee ballot: *Provided, however,* That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and candidates for each office which will appear on the primary election ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election. All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the

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name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference, shall be included in the list in the same order in which it appears on the ballot. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "official list of candidates", the name of the county, the words "primary election", the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than 14 point; (B) the title of the office shall be printed in bold type no smaller than 12 point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than 10 point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than 10 point and the residence information shall be printed in type no smaller than 10 point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than 14 point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the primary election to be held in the year 2000, the ballot commissioners of any county may choose to publish a facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues instead of the official list of offices and candidates for each office

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for purposes of the last publication required before any primary election.

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§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal on a form provided by the Secretary of State with the same officer with whom the certificate of announcement was filed. If the notarized statement of withdrawal is received by the proper officer by the deadlines set forth in subsection (b) of this section, the candidate's withdrawal is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name shall remain on the ballot.

(b) Deadlines for withdrawing as a candidate:

(1) For primary or special primary elections or nonpartisan elections held in conjunction with a primary election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than the third Tuesday following the close of the candidate filing period.

(2) For general or special general elections or nonpartisan elections held in conjunction with a general election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than 84 days before the general election.

(c) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the county commission shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by the failure of any person of a particular party to file for each available seat of each available office, that vacancy may not be filled: *Provided*, That if no person in any party has filed to run for an available seat or available office by the close of the candidate filing period, the relevant party executive committee may fill the vacancy and submit the name to the appropriate filing officer no later than the third Tuesday following the close of the filing period: *Provided, however*, That if the executive committee fails to make an appointment within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee; *Provided further*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(e) No other vacancy shall be filled after the date of the primary election, except as provided

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in §3-5-19 of this code.

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§3-5-12. Official and sample ballots; color.

There shall be a separate ballot printed on different colored paper for each political party participating in the primary election and the ballot of no two parties may be of the same color or tint. The Secretary of State shall select and determine the color of the paper of the ballot of each of the parties, and shall notify the clerk of the county commission of each county thereof, at the time he or she certifies the names of the candidates of the various parties to the clerk, as herein provided.

A different color of paper shall be selected and designated by the Secretary of State for each party. The sample ballots of each party shall be of a different color than the official ballot and of a different color from one another. There shall be printed across the face of such sample ballot in large letters the words "sample ballot". No sample ballot shall be voted or counted in any election.

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§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words "Nonpartisan Ballot of Election of Judicial Officers" and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of the candidates for the Intermediate Court of Appeals shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(v) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation

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or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of Members of the _____ County Board of Education". The districts for which fewer than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "Nonpartisan Judicial Ballot", "County Ticket", "Nonpartisan Ballot" in a nonpresidential election year, "District Ticket" or, in a presidential election year, "National Convention". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____" with the number to be nominated or elected or "Vote For Not More Than _____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to

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contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree, or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in §3-5-13a of this code.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words “No Candidate Filed”: *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words “No Candidate Filed” may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the Secretary of State” is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot

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voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

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§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives.

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

NONPARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of the circuit court, family judge, magistrate.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NONPARTISAN BALLOT: Nonpartisan elections for board of education, conservation district supervisor, any question to be voted upon.

DISTRICT TICKET: County executive committee.

NATIONAL CONVENTION: Delegate to the national convention -- congressional district, delegate to the national convention -- at-large.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00 a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: *Provided,* That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

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(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

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§3-5-14. General provisions applicable to primary elections.

Provisions of article one of this chapter relating to ballot commissioners, election commissioners and clerks, procedures for obtaining election supplies and conducting elections, loss and replacement of election supplies, challenge of voters, leaves of absence for voting, election expenses and recount procedures shall control and govern primary elections wherever applicable.

In all other particulars, when no specific provision is made in this article for the control, conduct and government of any phase of primary elections, resort shall be had to other provisions of this chapter which may be applicable thereto and controlling thereof.

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§3-5-15. Ascertaining and certifying primary election results.

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

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

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

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

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign three certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, which form shall include the following oath:

We, the undersigned commissioners and poll clerks of the primary election held at precinct No. ..... of ..... district of ..... County, W.Va., on the ..... day of ....., 20..., do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ..... party, and the same is as follows:

The election officers shall enter the name of each office and the full name of each candidate on the ballot and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Two of the certificates of result of election, for each party, shall be sealed in separately addressed envelopes, furnished for that purpose, and shall be disposed of by the precinct commissioners as follows: Two of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the county commission who shall, within forty-eight hours, mail one of the sealed returns for each precinct by certified mail to the Secretary of State. The one unsealed certificate shall be posted on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be sealed in separate envelopes and the commissioners and clerks shall each sign across the seal.

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§3-5-16. Return of supplies and certificates.

Immediately after completion of the count, tabulation and the posting of the certificate of result of the primary election in each precinct, one of the commissioners or poll clerks of each party at the precinct, designated for that purpose, shall return to the clerk of the county commission the ballot boxes, registration books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns.

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§3-5-17. Canvassing and certifying returns; recount procedures.

The commissioners of the county commission, sitting as a board of canvassers, shall convene at the courthouse of the county on the fifth day following any primary election, which is not a Saturday, Sunday or legal holiday, and shall proceed to canvass the returns of the election. The procedures prescribed in section nine, article six, of this chapter relating to canvass of general election returns, shall, where adaptable, be applied in the canvass of the primary election returns. The board shall proceed to ascertain the result of the election in the county and district and election precincts and cause to be prepared and recorded in the primary election precinct record book a table or tables which show, as to each candidate of each political party for each office, the number of votes cast for him or her at each precinct and the total number cast in the entire county. The board shall then make up and enter in said record book a certificate for each political party showing, as to each candidate for each political party for each office, the total number of votes, in words and figures, cast for him or her in the entire county and the number of votes received by all the candidates of such party in such district in the following form:

The board of canvassers of the county of ..... of West Virginia, having carefully and impartially examined the returns of the primary election held in said county on the ..... day of ....., 19...., do hereby certify that in said county or district, at said election, on the official ballot of the ..... party for the office of ....., A. B. received ..... (.....) votes; C. D. received ..... (.....) votes.

And so on for each office for each political party according to the truth. When the certificates are all entered, the report shall be signed by the members of the board or by a majority of the board. Such members shall also sign separate certificates of the result of the election, within the county, for each of the offices to be filled by each political party as provided by the following section.

The provisions of article six of this chapter, relating to the recount of votes in general elections, shall, to the extent applicable, be operative in primary and other elections conducted under provisions of this article.

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§3-5-18. Disposition of certificates of results.

(a) The certificates of the board of canvassers made pursuant to the preceding section shall be by them disposed of as follows: One of the certificates showing the votes received by each candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the state Executive Committee, shall be filed with the Secretary of State, and preserved in his or her office, and a copy thereof filed in the office of the clerk of the county commission of the county of such board, to be preserved by the clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including members of the county executive committee, shall be filed with the clerk of the county commission, and preserved in his or her office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

(b) The Secretary of State shall certify by the seventy-first day next preceding the date of the general election, under the seal of the state, to the clerk of the county commission of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to have his or her name placed on the official ballot in the general election as the nominee of the party for such office. However, the certification shall include any candidates entitled to have their name placed on the official ballot in the general election as the nominee of the party following the filling of vacancies made pursuant to section nineteen of this article or other relevant state law. The Secretary of State shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.

(c) The Secretary of State may not include in the certification any person who has timely filed a notarized statement of withdrawal according to section eleven of this article.

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§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section 11 of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: *Provided*, That if the executive committee holds a duly called meeting in accordance with §3-1-9 of this code but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee: *Provided, however*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of announcement is regularly filed for that office.

(3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office or by withdrawal of a candidate, the vacancy may not be filled.(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than 78 days before the general election. A candidate may be determined disqualified if a written request is made by an individual with information to show a candidate’s ineligibility to the State Election Commission no later than 84 days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

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(6) If a vacancy in nomination is caused by the death of the candidate occurring no later than 25 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 21 days following the date of death or no later than 22 days before the general election, whichever date occurs first.

(b) Except as otherwise provided in §3-10-1 *et seq*. of this code, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than 84 days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than 84 days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than 77 days before the general election.

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§3-5-20. Election contests and court review.

Any candidate for nomination for or election to an office to be filled by the voters of the state or any political subdivision thereof or any candidate for membership on any political party executive committee, may contest the primary election before the county court of the county in which any primary election procedures, practices or results may be in issue. The procedure in such case shall be the same as that governing the contest of a general election by candidates for county offices or offices in magisterial districts. The decision of the county court upon such contest may be reviewed by the circuit court of the county and by the Supreme Court of Appeals of the state. Wherever practicable, the circuit court, on review, may, by order entered of record, consolidate and hear together any such primary election cases arising in one or more counties of the circuit, and the Supreme Court of Appeals, on further review, may likewise consolidate and hear together any such cases whenever considered practicable by the court so to do.

Any action of a political party executive committee in the discharge of any of the duties imposed upon such committee by this article, or of any board of election officials in conducting and ascertaining the result of the primary election, or of any board of canvassers in canvassing and certifying the result of the primary election for the county, may be reviewed by the circuit court of the county, upon the petition of any candidate, political committeeman or delegate voted for at such primary and affected adversely by the action of such committee, board of election officials, or board of canvassers. From the judgment of the circuit court in any such proceeding, an appeal shall lie to the Supreme Court of Appeals of the state.

Any such contest, or petition for review, of a candidate for a nomination not finally determined within ten days next preceding the date of the next election after the primary, or of a candidate for delegate to any convention within ten days next preceding the date fixed for holding the convention, shall stand dismissed, and the person shown by the face of the returns of the primary election to be nominated for any office shall be entitled to have his name printed upon the regular ballot to be voted at the election, and the person shown upon the face of the returns to have been elected as a delegate to any convention shall be entitled to sit in such convention as a delegate.

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§3-5-21. Party conventions to nominate of presidential electors; candidates; organization; duties.

Presidential electors shall be nominated by each political party in a manner governed and prescribed by the rules of that state executive committee and not inconsistent with the rules of that national political party. If party rules do not provide procedures to nominate presidential electors, then candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the months of June, July, or August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and fix the date of the convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party's candidate for Governor at the last preceding general election at which a Governor was elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at the convention.

At least 60 days prior to the date fixed for holding any state convention, the chairman of the party's state executive committee shall cause to be delivered to the party's county executive committee in each county of the state a copy of the resolutions fixing the time and place for holding the state convention and prescribing the number of delegates from each county to the convention. Within 10 days after receipt of the copy of the resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for Governor at the last preceding general election at which a Governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to the state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the county, which meeting shall be held at least 30 days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which the district is entitled in the state convention.

The meeting place in the county shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any mass convention and in the selection of delegates. Notice of the time and place of holding the county mass convention and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county. The first publication shall be made not more than 15 days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of the county, shall choose a chairman and a

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secretary, who, within five days after the holding of the convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

If, after the election, a vacancy exists for a delegate from any magisterial district, the party's county executive committee, within 10 days after the mass convention, shall appoint a member of the political party in the magisterial district to fill the vacancy, and shall certify the appointment to the chairman of the state executive committee of the political party.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and the county executive committee shall, upon written petition of any contest, meet for a hearing and make a determination within 10 days after the holding of a county mass convention. The circuit court of the county and the Supreme Court of Appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state and, in the event of any contest, those prevailing in the contest, shall make up the state convention. The number present of those entitled to participate in any convention shall cast the entire vote to which the county is entitled in the convention, and it shall require a majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified within 15 days thereafter, by the chairman and the secretary of the convention, to the Secretary of State, who shall certify them to the clerk of the circuit court of each county concerned, and the names of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

The delegates to any state convention may formulate and promulgate the party platform or declaration of party principles as to them shall seem advisable.

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§3-5-22. Other party and group nominations; procedure.

Any political party which polled less than ten percent of the total vote cast only for Governor at the general election immediately preceding may nominate candidates and select committees by party conventions, provided such nominations are made and the certificates thereof filed within the time and in the manner provided in section twenty-four of this article, or by certificate in the same manner as groups of citizens may make nominations as provided in the following section.

No delegate or person participating in the selection of delegates under this section shall vote in any primary election held in that year.

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§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file a nomination certificate in accordance with the provisions of this section and the provisions of §3-5-24 of this code.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district, or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ....., ss:

This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters residing in ..... (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ..... (here place name of candidate heading list on certificate) for the office of ..... and others, at the general election to be held on ....., 20.....

Given under my hand and the seal of my office this ..... day of ....., 20.....

.....

Clerk, county commission of ..... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district, or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for the office in the state, district, county, or other political division for which the nomination is to be made, but in no event shall the number be less than 25. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide, congressional, or presidential candidate, but in no event shall the number be less than 25. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. A signature on a certificate

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may not be counted unless it be that of a duly registered voter of the county, district, or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to have the candidates placed on the ballot; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

Notwithstanding any other provision of this code to the contrary, a duly registered voter may sign the certificate provided in this section and may vote for candidates of his or her choosing in the corresponding primary election.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the validity of the certificates and the signatures thereon. If, upon investigation, there is doubt as to the legitimacy and the validity of certificate, the Secretary of State may ask the Attorney General of the state, or the clerk of the county commission may ask the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee by certificate to determine his or her right to the nomination to public office and upon request being made, the Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of the county commission shall, at the request of the Secretary of State or the clerk of the circuit court, compare the information from any certificate to the county voter registration records in order to assist in determining the validity of any certificates.

(f) For the purposes of this section, any person who, at the time of the filing of the nomination certificate or certificates, is registered and affiliated with a recognized political party as defined in §3-1-8 of this code may not become a candidate for political office by virtue of the nomination-certificate process as set forth in this section.

(g) For the purposes of this section, any person who was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code may not, after failing to win the nomination of his or her political party, become a candidate for the same political office by virtue of the nomination-certificate process as set forth in this section.

(h) In addition to penalties prescribed elsewhere for violation of this chapter, any person

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violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail not more than one year, or both fined and confined: Provided, That a criminal penalty may not be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

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§3-5-24. Filing of nomination certificates; time; location; fees; effect of failure to timely file or pay fee.

(a) All certificates nominating candidates for office under section twenty-three of this article shall be filed not later than August 1 preceding the November general election: Provided, That for municipal or other elections not held in conjunction with regular state and county general elections, certificates shall be filed not later than ninety days before the date of the election, unless otherwise provided by charter, ordinance or code.

(b) The nomination certificate required by this section and section twenty-three of this article shall be filed:

(1) In the case of a candidate to be voted for by the voters of the entire state or by any subdivision of the state other than a single county, with the Secretary of State;

(2) In the case of all candidates for county and magisterial district offices, including all offices to be filled by the voters of a single county, with the clerk of the county commission; and

(3) In the case of candidates for election in a municipality, with the recorder or other official designated by charter or ordinance to perform election responsibilities.

(c) Each candidate shall pay the filing fee required by section eight of this article, at the time of the filing of the nomination certificate.

(d) If any nomination certificate is not timely filed or if the filing fee is not timely paid, the certificate may not be received by the Secretary of State, the clerk of the county commission or the recorder or other official designated by charter or ordinance to perform municipal election responsibilities, as the case may be.

(e) This section is inapplicable to nonpartisan elections.

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§3-6-1. Provisions of article govern general elections; applicability of other provisions of chapter; applicability of article to primary and special elections.

The provisions of this article shall govern the conduct and administration of general elections. Other provisions of this chapter, where applicable, shall be considered supplementary and complementary to the provisions of this article regulating and controlling general elections.

In all voting precincts in which voting machines have been approved, procured, and are in use, the provisions of article four of this chapter shall be applicable to the conduct and administration of general elections.

Where applicable and not inconsistent with other positive provisions of law, the provisions of this article shall govern the conduct of and procedures in primary and special elections.

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§3-6-2. Preparation and form of general election ballots.

(a) All ballots prepared under the provisions of this section are to contain:

(1) The name and ticket of each party which is a political party under the provisions of section eight, article one of this chapter;

(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three, article five of this chapter; and

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.

(b) The provisions of paragraphs (C) and (D), subdivision (2), section thirteen, article five of this chapter; subdivision (3) of said section; paragraphs (A) and (B), subdivision (4) of said section; and subdivisions (6), (7), (8) and (9) of said section pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words "Official Ballot, General Election" and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem and the name of each party as prescribed in subsection (a) of this section.

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

(4) For all ballots, any columns, rows or sections in which the ticket of one party appears are to be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices are to be arranged in the order prescribed in section thirteen-a, article five of this chapter under the appropriate tickets, which are to be headed "National Ticket", "State Ticket" and "County Ticket". The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the Secretary of State.

(d) The arrangement of names within each office for all ballot systems is to be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice

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president of each party are to be placed beside a brace with a single voting position, so that a vote for any presidential candidate is a vote for the electors of the party for which the candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected is determined as prescribed in section thirteen-a, article five of this chapter: Provided, That the drawing by lot is to be conducted on the seventieth day next preceding the date of the general election, beginning at 9:00 a.m.

(3) In any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below: Provided, That if the voting system cannot accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is accurately tabulated. However, each candidate shall be separated by a thin line to distinguish between each candidate.

For House of Delegates For House of Delegates

First Delegate District First Delegate District

(Vote For Not More Than Two) (Vote For Not More Than Two)

SUSAN B. ANTHONY

City (County)

JOHN ADAMS

City (County)

ABRAHAM LINCOLN

City (County)

JAMES MONROE

City (County)

---

(4) Each voting system is to provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of

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the candidate is to be placed under the proper office for each vacancy in nomination and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. If no write-in lines are included on the ballot, specific instructions are to be added to the top of the ballot notifying the voter that a write-in vote may be cast by writing the name and office on any location on the front of the ballot.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words "No Candidate Nominated" are to be printed in the space that would be occupied by the name of the candidate and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate section or page of the ballot is to be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates and is to be headed "Nonpartisan Board of Education".

(e) Any constitutional amendment is to be placed following all offices, followed by any other issue upon which the voters are to cast a vote. The heading for each amendment or issue is to be printed in large, bold type according to the requirements of the resolution authorizing the election.

(f) The board of ballot commissioners may not place any issue on the ballot for election which is not specifically authorized under the West Virginia Constitution or statutes or which has not been properly ordered by the appropriate governmental body charged with calling the election.

(g) A ballot may not offer a voter the option of voting a straight party ticket by one mark or punch.

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§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or nominees with no party affiliation unless those persons have actually been nominated by an independent party, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of §3-4A-1 *et seq.* of this code, and for any ballot issue, according to the provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than 26 nor less than 20 days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than 65 percent of the actual size of the ballot, at the discretion of the ballot commissioners: *Provided*, That in counties where an electronic voting system has been adopted, the facsimile sample ballot may be a photographic reproduction of the absentee ballot: *Provided, however,* That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and nominees for each office which will appear on the general election ballot for each political party or as nominees with no party affiliation unless those persons have actually been nominated by an independent party and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

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(1) All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the offices and candidates for each office and the manner of designating the parties shall be as follows:

(A) The offices shall be listed in the same order in which they appear on the ballot;

(B) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be indicated by the one- or two-letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and

(C) The candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate's affiliation shall be indicated as provided in paragraph (B) of this subdivision.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows:

(A) The words “official list of nominees and issues”, the name of the county, the words “General Election” and the date of the election shall be printed in all capital letters and in

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bold type no smaller than 14 point; and

(B) The names of the candidates and the initial within parenthesis designating the candidate's affiliation shall be printed in all capital letters in bold type no smaller than 10 point and the residence information shall be printed in type no smaller than 10 point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than 12 point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

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§3-6-4. Late nominations; stickers.

If a nomination to fill a vacancy is made by a political party executive committee or, on its failure to so act within the time prescribed by law, is made by the chairman of the committee, and certified to the clerk of the county commission after the ballots to be used at the ensuing election shall have been printed, the clerk shall forthwith lay such certificates before the ballot commissioners who, without delay, shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to the election commissioners of each precinct in which the candidate is to be voted for, a number of stickers, containing only the name of the candidate, at least equal to the total number of ballots provided for the precinct; but no such stickers shall be furnished to or received by any person except a commissioner of election. It is the duty of the commissioners holding the election to deliver such stickers to the poll clerks, who shall, in the presence of the election commissioners, affix one of the stickers in a careful manner at the proper place for the name of the candidate, upon each ballot to be voted at the election, before the poll clerks sign their names on the ballots. The stickers may be delivered to the election officers, by the clerk of the county commission, with the ballots, poll books and other supplies.

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§3-6-4a. Filing requirements for write-in candidates.

Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter, shall file a write-in candidate's certificate of announcement as provided in this section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a political party nomination for any office or for election as delegate to national convention.

(a) The write-in candidate's certificate of announcement shall be in a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths containing the following information:

(1) The name of the office sought and the district and division, if any;

(2) The legal name of the candidate and the first and last name by which the candidate may be identified in seeking the office;

(3) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(4) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and

(5) The words "subscribed and sworn to before me this _____ day of _____, ____" and a space for the signature of the officer giving the oath.

(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:

(1) Except as provided in subdivision (2) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the forty-ninth day before the election at which the office is to be filled;

(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the forty-eighth day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later.

(d) Any eligible person who files a completed write-in candidate's certificate of

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announcement with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate:

(1) The Secretary of State shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate to the clerks of the county commissions of the appropriate counties.

(2) The clerk of the county commission shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the election officials of the appropriate precincts, the names of all official write-in candidates and the office sought by each for statewide, district and county offices on the ballot in the precinct for which valid write-in votes will be counted and the names shall be posted at the office where absentee voting is conducted and at the precincts in accordance with section twenty, article one of this chapter.

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§3-6-5. Rules and procedures in election other than primaries.

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote for an official write-in candidate, the voter shall: write with ink or other means or affix a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.

The Secretary of State may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the Secretary of State shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

(b) If the voter marks more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the voter's choice for an office to be filled, the ballot shall not be counted for the office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(c) Except as otherwise specifically provided in this chapter, no ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

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§3-6-6. Ballot counting procedures in paper ballot systems.

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

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

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

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

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

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

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

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

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

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

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

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§3-6-8. Precinct returns; certificates; procedures.

As soon as the results are ascertained, the election officials shall make out and sign, under oath as provided in section fifteen, article five of this chapter, four certificates of result on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, including the name of each office and the full name of every candidate on the ballot and the full name of every official write-in candidate for each office and the number of votes, in words and numbers, received by each, and the designation of each issue on the ballot and the number of votes, in words and numbers, for and against the issue.

The certificates shall be sealed and disposed of as provided in section fifteen, article five of this chapter for certificates of result of a primary election.

Immediately after the completion of the tabulation and the posting of the certificate of result of the general election in each precinct, the ballots, registration books, poll books, tally sheets and other election supplies shall be sealed and delivered to the clerk of the county commission as provided in section sixteen, article five of this chapter.

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

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

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

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

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

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

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

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

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

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

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

(B) For a candidate on the ballot in more than one county, the board may not enter an order certifying the election results for a period of forty-eight hours after the final county's board has publicly declared the results of the election. In such case, each relevant board shall notify the Secretary of State immediately following each relevant board's public declaration

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of results. For offices on the ballot in more than one county, the Secretary of State shall notify the board of each relevant county when the final county has made a public declaration of the results of the election. At the end of the 48-hour period in this section, an order shall be entered by each relevant county certifying all election results except for those offices in which a recount has been demanded.

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

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

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

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

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

(g) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to the candidate in person; or if the candidate is not found, by delivering the copy at the usual place of abode of the candidate and giving information of its purport, to the spouse of the candidate or any other person found there who is a member of his or her family and

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above the age of sixteen years; or if neither the spouse of the candidate nor any other person be found there and the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any sheriff, thereto required, shall serve a notice within his or her county and make return of the manner and time of service; for a failure so to do, he or she shall forfeit $20. The return shall be evidence of the manner and time of service.

(h) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of the recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed $300.

(i) After the board of canvassers has made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerk of the county commission from whom they were received, who shall carefully preserve them for twenty-two months: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter. If there is no contest pending as to any election and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

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

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§3-6-10. Certificates of election results.

Whenever an election is held in any county or district to fill any national, state, county, or district office, the board of canvassers of the county, or a majority of them, under the regulations prescribed in the next preceding section, shall carefully and impartially ascertain the result of the election in their county and in each district thereof, and shall record the same in the following form, or to the following effect: "The board of canvassers of the county of ....., having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ..... day of ....., do hereby certify that in said county for the office of ....., A..... B..... received ..... votes, C..... D..... received ..... votes, and E..... F..... received ..... votes. And we further certify that at said election held in the district of ....., in the said county, for the office of ....., G..... H..... received ..... votes, and I..... J..... received ..... votes." (And so on as to each particular office.) In such certificates shall be set forth, according to the truth, the full name of every person voted for, and, in words at length, the number of votes received for any office. When the certificates are all entered, the record shall be signed by the board or majority of them. The board shall then sign separate certificates of the result of the election within the county, for each of the offices to be filled.

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§3-6-11. Disposition of certificates.

The separate certificates of the board of canvassers, made pursuant to section ten of this article, shall be disposed of by the board of canvassers as follows: Of the certificates respecting the election for delegate or delegates in the Legislature, they shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. The clerk shall transmit a copy to the Secretary of State within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, who shall submit the same to the House of Delegates, on the first day of the next ensuing session, together with a list of the persons appearing thereby to be elected. Of the certificates respecting the election of state senator, they shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. The clerk shall transmit a copy to the Secretary of State within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, to be submitted by the Secretary of State to the Senate, on the first day of the next ensuing session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of state officers, a copy for each officer, except justice of the Supreme Court of Appeals, shall be sealed and transmitted by the commissioners to the Secretary of State within thirty days from the date of the election endorsed on the envelope as follows: "Returns of the election for state officers." Except in the case of a recount, the certificates shall be transmitted within thirty days from the date of the completion of the recount. The Secretary of State shall deliver the certificates to the Speaker of the House of Delegates on the first day of the next session of the Legislature; and the speaker shall, immediately after the organization of the House of Delegates and before proceeding to other business, open and publish the certificates in the presence of a majority of each house of the Legislature, which bodies shall, for that purpose, assemble in the hall of the House of Delegates. The person having the highest number of votes for any one of such offices shall be declared duly elected thereto; but if two or more persons have the same and the highest number of votes for the same office, the Legislature shall, by a joint vote of the two houses, choose one of said persons for the office; and one of each of the last-mentioned certificates shall also be transmitted, under seal, to the Governor, who shall immediately tabulate the vote in all the counties, for each office, and cause the results to be printed in a newspaper published at the seat of government. Of the certificates respecting the election for United States senator, member of the House of Representatives in the Congress of the United States, justice of the Supreme Court of Appeals, judge of a circuit court, and president and vice president of the United States, respectively, the commissioners shall, upon request of the candidate, transmit a copy to any candidate, and a copy to the Governor within thirty days from the date of the election; except that in the case of a recount, within thirty days from the date of the completion of the recount; and the Governor shall ascertain who are elected and make proclamation thereof. The commissioners shall also file a copy of the certificates in the office of the clerk of the county commission to be preserved and made available to the general public and to the

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media. Of the certificates respecting the election of all county and district officers, the commissioners shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media.

No county may be charged for the publication of any certificates of election.

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§3-6-12. Tie vote procedures.

Whenever the Governor or the board of canvassers of a county is to declare the result of an election, and it appears to him or them that two or more of the persons voted for have received the highest and equal number of votes for the same office, so that the election to the office is not decided by the returns, he, or they, being required to declare the result, shall decide the tie by the election of one of such persons, but in the event the board of canvassers shall have failed to decide the tie within thirty days after such tie shall have been found by them to exist, upon application to the Governor by any one of such persons so voted for, he shall break the tie by the selection of one of such persons and shall certify his choice to such board of canvassers and declare such person duly elected for the office for which such person was a candidate.

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§3-6-13.

Repealed.

Acts, 1972 Reg. Sess., Ch. 52.

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§3-7-1. Contests for state offices and judgeships; procedure.

If the election of Governor, Secretary of State, treasurer, Auditor, Attorney General, commissioner of agriculture, a judge of the Supreme Court of Appeals or a judge of a circuit court, is contested, the contestant shall give notice, with specifications and affidavit, to the person whose election is contested within ten days after the election is certified and within ten days thereafter the return notice shall be given to the contestant. The parties shall finish taking depositions within forty days after the notice is delivered. The depositions shall be transmitted to the Clerk of the House of Delegates, to be delivered by him or her to the joint committee or special court hereinafter provided for. In other respects the regulations contained in this article respecting contests for a seat in the Legislature shall be observed, so far as they are applicable.

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§3-7-2. Procedure of Legislature on contest for office of Governor.

When the election of Governor is contested, the notice of contest and the depositions shall be referred to a joint committee of the two houses, for examination and report, which committee shall consist of two senators elected by ballot by the Senate, and three delegates elected in the same manner by the House of Delegates. The contest shall be determined by the Legislature, both houses thereof sitting in joint session in the hall of the House of Delegates, and the President of the Senate shall preside.

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§3-7-3. Contests before special court; procedure; enforcement.

(a) Where the election of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, a justice of the Supreme Court of Appeals, a judge of the Intermediate Court of Appeals, a judge of a circuit court, or a judge of a family court is contested, the case shall be heard and decided by a special court constituted as follows:

(1) The contestee shall select one, the contestant another, and the Governor a third person, who shall preside in said court; and the three, or any two of them, shall meet at a time and place within the state to be appointed by the Governor, and, being first duly sworn impartially to decide according to law and the truth upon the petition, returns, and evidence to be submitted to them, shall proceed to hear, and determine the case and certify their decision thereon to the Governor. They shall be entitled to $10 a day each, and the same mileage as members of the Legislature, to be paid out of the treasury of the state, and the special court may employ a stenographer at a reasonable compensation, to be also paid out of the treasury of the state.

(2) In all hearings or proceedings before the special court, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing by the special court, or any member thereof.

(3) If there is disobedience to a subpoena or other process of the special court, or any member thereof, the special court, or any member thereof, or either of the parties to the contest, may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. And the circuit court, in case of a refusal to obey the subpoena issued to any person, shall issue an order requiring that person to appear before the special court and produce all books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey the order of the circuit court may be punished by the court as a contempt thereof. A written record shall be kept of all testimony and other proceedings before the special court.

(4) Either party to the contest aggrieved by the final decision of the special court may present his or her petition in writing to the Supreme Court of Appeals, or a justice thereof in vacation, within 30 days after the final decision is certified to the Governor, as hereinbefore provided, praying for the suspension, setting aside, or vacation of the final decision. The applicant shall deliver, or cause to be delivered, a copy of the petition to the other party to the contest, or, in case of his or her absence from the state or from his or her usual place of abode, the applicant shall mail, or cause to be mailed a copy of the petition addressed to his or her last known post-office address, before presenting the petition to the court, or the justice. The court, or the justice, shall fix a time for the hearing on the application, but the hearing may not be held sooner than five days, unless by agreement of the parties, after the presentation of the petition, and notice of the time and place of the hearing shall be forthwith delivered to the other party to the contest, or, in case of absence from the state or from his or her usual place of abode, the notice may be given by mailing, or causing to be mailed, the notice, or a copy thereof, addressed to him or her at his or her last known post-

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office address. If the court, or the justice, after the hearing, is of the opinion that a suspending order should issue, the court, or the justice in his or her, discretion, may suspend the final decision and may require bond upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable; and the court, or the justice, shall fix a time for the final hearing on the application. The hearing of the matter shall take precedence over all other matters before the court. For the final hearing, and before the day fixed therefor, the special court shall file with the clerk of the Supreme Court of Appeals all papers, documents, testimony, evidence, and records, or certified copies thereof, which were before it at the hearing resulting in the final decision from which the petitioner appeals, together with a copy in writing of its final decision; and, after argument by counsel, the court shall decide the matter in controversy, both as to the law and the evidence, as it determines to be just and right.

(b) The Supreme Court of Appeals shall enforce the provisions of this section by writ of prohibition, mandamus, certiorari or other appropriate mechanism.

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§3-7-4. Contests of seats in Legislature; notices and procedure.

Any person intending to contest the election of another as senator or delegate shall, within ten days after the election is certified, give him or her notice thereof in writing and a list of the votes he or she will dispute, with the objections to each, and of the votes rejected for which he or she will contend. If the contestant objects to the legality of the election or the qualification of the person returned, the notice shall set forth the facts on which the objection is founded. The person whose election is contested shall, within ten days after receiving the notice, deliver to the contestant a like list of the votes he or she will dispute and of the objection to each, and of the rejected votes he or she will claim; and, if he or she has any objection to the qualification of the contestant, shall specify in the notice the facts on which the objection is founded. Each party shall append to the notice an affidavit that the matters therein set forth, so far as they are stated of his or her knowledge, are true and that, so far as they are stated on the information of others, he or she believes them to be true. If new facts are discovered by either party after he or she has given notice, he or she may give an additional notice or notices to his or her adversary, with specifications and affidavit as above prescribed.

The notice of contest shall be presented to the proper branch of the Legislature, within ten days after its meeting.

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§3-7-5. Depositions; subpoenas; time; tie vote decision.

Either party may begin to take the depositions in such contests for seats in the Legislature at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given, and such notice shall specify the names of the witnesses to be examined. The depositions may be taken before a justice, notary, or any officer authorized to take depositions in civil suits; and the officer before whom they are taken shall certify and seal the same, and endorse his name across the place where they are sealed, and address and transmit the same, by mail or otherwise, to the clerk of the body in which the seat is contested. When the contest is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report. The parties shall finish taking depositions five days at least before the second Wednesday of January next following. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the Legislature.

Subpoenas for witnesses shall be issued by the clerk of the circuit court, or by a justice, upon application of either party; and witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as if summoned to attend before the circuit court in civil suits.

If it be ascertained that an equal number of legal votes was given for the contestant and the person returned, the Senate or the House of Delegates, as the case may be, in which the contest is pending, shall declare which of them is elected.

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§3-7-6. County and district contests; notices; time.

(a) In all cases of contested elections, the circuit court with jurisdiction over the county or district where the election took place shall be the judge of the election, qualifications, and returns of all county, district, and municipal officers.

(b) An election contest challenging the election of any person to any county, district, or municipal office, including the office of magistrate, must be brought within 10 days after the election result is certified. An election contest shall be filed as a civil action in the circuit court with jurisdiction over the county or district where the election took place.

(c) For an election contest challenging specific votes cast, votes rejected, or voters who participated in the election, the recount procedure set forth in §3-6-9 of this code is a prerequisite to the initiation of an election contest and that procedure and any related proceeding must be completed prior to the filing of an election contest on those grounds.

(d) For an election contest challenging an elected candidate's eligibility, the legality of the election, or fraud, an election contest civil action can be initiated without the completion of the recount procedure set forth in §3-6-9 of this code.

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§3-7-7. Circuit court to hear county, district, and municipal contests; procedure; review.

(a) The circuit court with jurisdiction over the county or district where the election took place shall hear and decide election contests initiated pursuant to §3-7-6 of this code.

(b) At the trial of the contest, the circuit court shall hear all legal and proper evidence that may be brought before it by either party, and may, if considered necessary, require the production of the poll books, certificates, and ballots deposited with the county clerk or municipal recorder or clerk, and examine the same.

(c) A contestant has the burden of proof in an election contest.

(d) At the conclusion of the trial of the contest, the circuit court shall direct that a certified copy of the order declaring the result of the contest shall be delivered by the clerk of the circuit court wherein the contest was held to the parties.

(e) An appeal of the decision of the circuit court shall be to the Supreme Court of Appeals.

(f) The Supreme Court of Appeals, exercising the rule-making power granted by §51-1-4 of this code, may promulgate rules and regulations consistent with this article governing the pleadings, practice, and procedure to be employed during county, district, and municipal election contests in the courts of this state.

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§3-7-8. Correction of returns; extent.

Though illegal votes be received, or legal votes be rejected, at any place of voting, the returns of the votes taken at such place shall not be set aside for that cause, but it may be shown, by proper evidence before the tribunal authorized by law to hear and determine contested elections, for whom such illegal votes or any of them were cast, or for whom the legal votes which were rejected would have been given, and the returns shall be corrected only to the extent that it is so shown.

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§3-7-9. Costs in election contests.

The cost of every contested election shall include only the expenses of serving notices, taking depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions, by the person taking the same. If the contestant fails in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the house joint session, or court, which decides the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court, of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate, upon its delivery to such clerk, in like manner as upon a judgment of the circuit court. But no person contesting the seat of another in the Legislature shall be entitled to pay or mileage if the contest fails.

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§3-8-1. Provisions to regulate and control elections.

(a) The Legislature finds that:

(1) West Virginia's population is 1,808,344, ranking 37th among the fifty states.

(2) State Senate districts have a population of approximately one hundred six thousand three hundred seventy-three, and the average Delegate district has a population of approximately thirty-one thousand, one hundred seventy-eight. The size of these districts is substantially smaller than the United States Senatorial and Congressional Districts.

(3) When the relatively small size of the State's legislative and other voting districts is combined with the economics and typical uses of various forms of electioneering communication, history shows that non-broadcast media is and will continue to be a widely used means of making campaign related communications to target relevant audiences. Consequently, non-broadcast communications are prevalent during elections.

(4) Disclosure provisions are appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and the ceilings imposed accordingly serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.

(5) Disclosure of expenditures serve a substantial governmental interest in informing the electorate and preventing the corruption of the political process.

(6) Disclosure by persons and entities that make expenditures for communications that expressly advocate the election or defeat of clearly identified candidates, or perform its functional equivalent, is a reasonable and minimally restrictive method of furthering First Amendment values by public exposure of the state election system.

(7) Failing to regulate non-broadcast media messages would permit those desiring to influence elections to avoid the principles and policies that are embodied in existing state law.

(8) The regulation of the various types of non-broadcast media in addition to broadcast media, is tailored to meet the circumstances found in the State of West Virginia.

(9) Non-broadcast media such as newspapers, magazines or other periodicals have proven to be effective means of election communication in West Virginia. Broadcast, satellite and non-broadcast media have all been used to influence election outcomes.

(10) Certain non-broadcast communications, such as newspaper inserts, can be more effective campaign methods than broadcast media because such communications can be targeted to registered voters or historical voters in the particular district. In contrast,

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broadcasted messages reach all of the general public, including person ineligible to vote in the district.

(11) Non-broadcast media communications in the final days of a campaign can be particularly damaging to the public's confidence in the election process because they reduce or make impossible an effective response.

(12) Identifying those funding non-broadcast media campaigns in the final days of a campaign may at least permit voters to evaluate the credibility of the message.

(13) In West Virginia, contributions up to the amounts specified in this article allow contributors to express their opinions, level of support and their affiliations.

(14) In West Virginia, campaign expenditures by entities and persons who are not candidates have been increasing. Public confidence is eroded when substantial amounts of such money, the source of which is hidden or disguised, is expended. This is particularly true during the final days of a campaign.

(15) In West Virginia, contributions to political organizations, defined in Section 527(e)(1) of the Internal Revenue Code of 1986, substantially larger than the amounts permitted to be received by a candidate's political committee have been recorded and are considered by the legislature to be large contributions.

(16) Independent expenditures intended to influence candidates' campaigns in the state are increasingly utilizing non-broadcast media to support or defeat candidates.

(17) Identification of persons or entities funding political advertisements assists in enforcement of the contribution and expenditure limitations established by this article and simply informs voters of the actual identities of persons or entities advocating the election or defeat of candidates.

(18) Identification of persons or entities funding political advertisements allows voters to evaluate the credibility of the message contained in the advertisement.

(19) Disclosure of the identity of persons or entities funding political communications regarding candidates bolsters the right of listeners to be fully informed.

(b) Political campaign contributions, receipts and expenditures of money, advertising, influence and control of employees, and other economic, political and social control factors incident to primary, special and general elections shall be regulated and controlled by the provisions of this article and other applicable provisions of this chapter.

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§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits, or any other question that is placed before the voters for a binding decision.

(2) "Billboard advertisement" means a commercially available outdoor advertisement, sign, or similar display regularly available for lease or rental to advertise a person, place, or product.

(3) "Broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

(4) "Candidate" means an individual who:

(A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal charter;

(B) Has filed a declaration of candidacy under §3-5-23 of this code;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county, municipal, or party office to be filled at any primary, general, or special election.

(5) "Candidate’s committee" means a political committee established with the approval of, or in cooperation with, a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees are considered one committee for the purpose of contribution limits.

(6) "Caregiving services" means direct care, protection, and supervision of a child, or other person with a disability or a medical condition, for which a candidate has direct caregiving responsibility. For the purposes of this article, the caregiving service expense incurred shall be in direct connection with the candidate’s campaign activities during the current election cycle.

(7) "Caucus campaign committee" means a West Virginia House of Delegates or Senate political party caucus campaign committee that receives contributions and makes expenditures to support or oppose one or more specific candidates or slates of candidates for nomination, election, or committee membership.

(8) "Clearly identified" means that the name, nickname, photograph, drawing, or other

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depiction of the candidate appears, or the identity of the candidate is otherwise apparent through an unambiguous reference, such as "the Governor", "your Senator", or "the incumbent", or through an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for Governor" or "the Republican candidate for Supreme Court of Appeals".

(9) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election, or defeat of a candidate.

(A) A coordinated expenditure is a contribution for the purposes of this article.

(B) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a non-monetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(10) "Coordinated expenditure" is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate’s committee and meeting the criteria provided in §3-8-9a of this code.

(11) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(12) "Direct costs of purchasing, producing, or disseminating electioneering communications" means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs, and postage; or

(B) The cost of airtime on broadcast, cable, or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities, and the charges for a broker to purchase airtime.

(13) "Disclosure date" means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the

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person has made additional expenditures totaling $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications.

(14) "Election" means any primary, general, or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(15)(A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or publication in any newspaper, magazine, or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals, or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election in which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election in which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) "Electioneering communication" does not include:

(i) A news story, commentary, or editorial disseminated through the facilities of any broadcast, cable or satellite television, radio station, newspaper, magazine, or other periodical publication not owned or controlled by a political party, political committee, or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing, or listening area;

(ii) Activity by a candidate committee, party executive committee, a caucus campaign committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided*, That independent expenditures by a party executive

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committee, caucus committee, or a political action committee required to be reported pursuant to §3-8-2 of this code are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate, or his or her status as a candidate; or

(viii) A communication, such as a voter’s guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for, or opposition to, the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(16) "Expressly advocating" means any communication that:

(A) Uses phrases such as "vote for the Governor", "re-elect your Senator", "support the incumbent nominee for Supreme Court", "cast your ballot for the Republican challenger for House of Delegates", "Smith for House", "Bob Smith in ‘04", "vote Pro-Life", or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory", "defeat" accompanied by a picture of one or more candidates, "reject the incumbent";

(B) Communicates campaign slogans or individual words that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say "Smith’s the One", "Jones ‘06", "Baker", etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

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(17) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(18) "Financial transactions" means all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election, or defeat of any candidate to be voted on.

(19) "Firewall" means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate clearly identified in the communication.

(20) "Foreign national" means the following:

(A) A foreign principal, as such term is defined in 22 U.S.C. § 611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;

(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U.S.C. § 1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. § 1101(a)(20).

(21) "Fund-raising event" or "fundraiser" means an event such as a dinner, reception, testimonial, cocktail party, auction, or similar affair through which contributions are solicited or received.

(22) "In concert or cooperation with or at the request or suggestion of" means that a candidate or his or her agent consulted with:

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(A) The sender regarding the content, timing, place, nature, or volume of a particular communication or communication to be made; or

(B) A person making an expenditure that would otherwise offset the necessity for an expenditure of the candidate or candidate's committee.

(23) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate, including supporting or opposing the candidates of a political party; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee, or a political party committee or its agents.

An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(24) "Local" refers to the election of candidates to a city, county, or municipal office and any issue to be voted on by only the residents of a particular political subdivision.

(25) "Major business affiliation" means a person's employer or, if the individual is not an employee, the entity from which a person derives the majority of his or her income.

(26) "Mass mailing" means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this subdivision, "substantially similar" includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient's name, occupation, or geographic location.

(27) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

(28) "Membership organization political action committee" means a labor organization or a trade association, cooperative, or other incorporated membership organization that: Is composed of members; expressly states the qualifications for membership in its articles and by-laws; makes its articles, by-laws, and other organizational documents available to its members; expressly seeks members; acknowledges acceptance of membership, such as by sending membership cards to new members or including them on a membership newsletter list; and is organized such that it operates a subsidiary entity or segregated fund within the membership organization primarily for the purpose of influencing any election on the ballot in the State of West Virginia.

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(29) "Name" means the full first name, middle name, or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee, or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(30) “Occupation” means an individual’s trade, profession, or vocation in which the individual is engaged for the purpose of earning income or other economic benefit.

(31) "Person" means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

(32) "Political action committee" means a committee organized by one or more persons, the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined in this section;

(B) A membership organization political action committee, as that term is defined in this section; and

(C) An unaffiliated political action committee, as that term is defined in this section.

(33) "Political committee" means any candidate committee, political action committee, or political party committee.

(34) "Political party" means a political party as that term is defined by §3-1-8 of this code or any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof, and including national or regional affiliates of the party.

(35) "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination, or defeat of a candidate in any election.

(36) "Political purposes" means supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party, and determining the advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

(37) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

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(38) "Telephone bank" means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions, or trained volunteers.

(39) "Unaffiliated political action committee" means a political action committee that is not affiliated with a corporation or a membership organization.

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§3-8-2. Requirements for reporting independent expenditures.

(a) In addition to any other reporting required by the provisions of this chapter, any person who makes independent expenditures in an aggregate amount or value in excess of $1,000 during a calendar year shall file a disclosure statement, according to the requirements of §3-8-5 of this code, that contains all of the following information:

(1) The name of the person making the expenditure;

(2) The name of any person sharing or exercising direction or control over the activities of the person making the expenditure;

(3) The name of the custodian of the books and accounts of the person making the expenditure;

(4) If the person making the expenditure is an entity, the principal place of business of the partnership, corporation, committee, association, organization, or group which made the expenditure;

(5) The amount of each independent expenditure during the period covered by the statement and the name of the person to whom the expenditure was made;

(6) The elections to which the independent expenditure pertains, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates, and the amount of the total expenditure reported pursuant to subdivision (5) of this subsection spent to support or oppose each of the identified candidates;

(7) The name and address of any person who contributed a total of more than $1,000 between the first day of the preceding calendar year, and the disclosure date, and whose contributions were made for the purpose of furthering the expenditure;

(8) With regard to the contributors required to be listed pursuant to subdivision (7) of this subsection the statement shall also include:

(A) The month, day, and year that the contributions of any single contributor exceeded $1,000;

(B) If the contributor is a political action committee, the name and address the political action committee registered with the Secretary of State, county clerk, or municipal clerk;

(C) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual’s current employer, if any, or, if the individual is self-employed, the name and address of the individual’s business, if any;

(D) A description of the contribution, if other than money; and

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(E) The value in dollars and cents of the contribution; and

(9) A certification that such independent expenditure was not made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

(b) Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(c) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, on behalf of, for, or against each candidate, as reported under this subsection, and shall periodically publish such indices on a timely pre-election basis.

(d)(1) Any person or political committee that makes or contracts to make independent expenditures aggregating $5,000 or more for any statewide, legislative, or multicounty judicial candidate, or $500 or more for any county office candidate, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the 15th day, but more than 12 hours before the date of an election, shall file a report on a form prescribed by the Secretary of State describing the expenditures within 24 hours: *Provided*, That a person making expenditures for any statewide or legislative candidate on or after the 15th day, but more than 12 hours before the day of any election meeting the criteria of this section, but which are subject to the disclosure requirements of §3-8-2b of this code, shall report such expenditures in accordance with the requirements of §3-8-2b of this code and may not file the report otherwise required by this subsection.

(2) Any person who files a report under subdivision (1) of this subsection shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $5,000 or more for any statewide, legislative, or multicounty judicial candidate, or $500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.

(e)(1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating $10,000 or more at any time, up to and including the 15th day before the date of an election, shall file a report on a form prescribed by the Secretary of State describing the expenditures within 48 hours.

(2) Any person who files a report under subdivision (1) of this subsection shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same

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election as that to which the initial report relates.

(f) Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:

(1) Clearly states that the communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure: *Provided*, That if the communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(g) Any person who has spent a total of $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of five years following the filing of a disclosure pursuant to §3-8-2b of this code and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in §3-8-7 of this code.

(h) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, or confined in jail for not more than one year, or both fined and confined.

(i)(1) Any person or political committee who is required to file a statement under this section shall file the statement electronically in accordance with rules promulgated by the Secretary of State.

(2) The Secretary of State shall make any document filed electronically, pursuant to this subsection, accessible to the public on the Internet not later than 24 hours after the document is received by the secretary.

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified by such methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

(j) This section does not apply to candidates for federal office.

(k) The Secretary of State may propose emergency and legislative rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code.

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§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.

(a) For purposes of this section:

(1) "Inaugural committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for a person elected to a statewide public office; and

(2) "Inaugural event" means any event or events held between the general election of a person elected to a statewide public office and ninety days after the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the person elected and for which the person elected is a prominent participant or for which solicitations of contributions include the name of the person elected in prominent display.

(b) Any inaugural committee soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to a statewide office that receives an individual contribution in excess of $250 for any such event shall file and retain detailed records of any such contribution.

(c) No person may contribute more than $5,000 for any inaugural event. For purposes of this section, "contribution" does not include volunteer personal services but does include in-kind contributions of materials or supplies.

(d) Any inaugural committee, financial agent or any person or officer acting on behalf of such committee which is subject to the provisions of this section shall file a verified financial statement with the Secretary of State on a form prescribed by the state Election Commission within ninety days of the event. The financial statement shall contain information as may be required by the provisions of this section relating to any contribution in excess of $250. The Secretary of State shall file and retain such statements as public records for a period of not less than six years.

(e) In addition to any other information required by the state Election Commission, the report of contributions required by the provisions of this section shall include the methodology of the fund raising, the nature of the expenditures made and the names, addresses and amounts paid to any person.

(f) Amounts received by an inaugural committee for any person elected to a statewide public office in excess of the amount expended for an inaugural event may be contributed to any educational, cultural or charitable organization, or to the Governor's Mansion Fund created in section two, article four, chapter five-a of this code. The inaugural committee shall, within sixty days after filing the report required by subsection (d) of this section, expend any excess moneys and report, on a form prescribed by the Secretary of State, any amounts contributed to the Governor's Mansion Fund, any amounts contributed to educational, cultural or

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charitable organizations and the names of the organizations to which such excess moneys were contributed. The Secretary of State shall file and retain such records as public records for a period of not less than six years.

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§3-8-2b. Disclosure of electioneering communication.

(a) Every person who has spent:

(1) A total of $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year; or

(2) A total of $1,000 or more on or after the 15th day, but more than 12 hours before the day of any election, for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year shall, within 24 hours of each disclosure date, file with the Secretary of State a statement which contains all of the information listed in subsection (b) of this section.

(b) A person required, by subsection (a) of this section, to file a statement with the Secretary of State shall provide the following information:

(1) The name of the person making the expenditure, the name of any person sharing or exercising direction or control over the activities of the person making the expenditure, and the name of the custodian of the books and accounts of the person making the expenditure;

(2) If the person making the expenditure is not an individual, the principal place of business of the partnership, committee, association, organization or group which made the expenditure;

(3) The amount of each expenditure of more than $1,000 made for electioneering communications during the period covered by the statement and the name of the person to whom the expenditure was made;

(4) The elections to which the electioneering communications pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the electioneering communication is intended to support or oppose the identified candidates, and the amount of the total expenditure reported in subdivision (3) of this subsection spent to support or oppose each of the identified candidates; and

(5) The names and addresses of any contributors who contributed a total of more than $1,000 between the first day of the preceding calendar year and the disclosure date, and whose contributions were made for the purpose of furthering the electioneering communications.

(c) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (b) of this section, the statement shall also include:

(1) The month, day, and year that the contributions of any single contributor exceeded $1,000;

(2) If the contributor is a political action committee, the name and address the political

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action committee registered with the State Election Commission;

(3) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;

(4) A description of the contribution, if other than money;

(5) The value in dollars and cents of the contribution.

(d)(1) Any person who makes a contribution for the purpose of funding the direct costs of purchasing, producing or disseminating an electioneering communication under this section shall, at the time the contribution is made, provide his or her name and address to the recipient of the contribution;

(2) Any individual who makes contributions totaling $1,000 or more between the first day of the preceding calendar year and the disclosure date for the purpose of funding the direct costs of purchasing, producing or disseminating electioneering communications shall, at the time the contribution is made, provide the name of his or her occupation and of his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(e) In each electioneering communication, a statement shall appear or be presented in a clear and conspicuous manner that:

(1) Clearly indicates that the electioneering communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure for the electioneering communication: *Provided*, That if the electioneering communication appears on or is disseminated by broadcast, cable, or satellite transmission, the statement required by this subsection shall be both spoken clearly and appear in clearly readable writing at the end of the communication.

(f) Within five business days after receiving a disclosure of electioneering communications statement pursuant to this section, the Secretary of State shall make information in the statement available to the public through the Internet.

(g) For the purposes of this section, a person is considered to have made an expenditure when the person has entered into a contract to make the expenditure at a future time.

(h) The Secretary of State shall propose emergency and legislative rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code.

(i) If any person, including, but not limited to, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any

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expenditure for electioneering communications which is coordinated with and made with the cooperation, consent or prior knowledge of a candidate, candidate's committee, or agent of a candidate, the expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordinated with and made with the cooperation or consent of a state or local political party or committee, agent or official of that party, the expenditure shall be treated as a contribution to and expenditure by the candidate's party.

(j) This section does not apply to candidates for federal office. This section is not intended to restrict or to expand any limitations on, obligations of, or prohibitions against any candidate, committee, agent, contributor, or contribution contained in any other provision of this chapter.

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§3-8-2c. Party headquarters committee; detailed accounts and verified financial statements; funding for headquarters; limitations; reporting requirements.

(a) Notwithstanding the definitions contained in section one-a of this article, for purposes of this section:

(1) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or, a transfer of money or other tangible thing of value to a person, made for the purpose of funding the rental, purchase, construction or financing of the lease, purchase or construction of a party headquarters, and for the utilities, maintenance, furniture, fixtures, and equipment for the party headquarters. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(2) "Party headquarters" means a physical structure or structures that is the physical location of the office of a state executive committee of a political party.

(3) "Party headquarters committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding the lease, purchase, construction or financing of the lease, purchase, or construction of a party headquarters, including utilities, maintenance, furniture, fixtures, and equipment for the party headquarters, or for a county executive committee's headquarters.

(4) "County executive committee" means the executive committee of a political party, as defined by §3-1-8 of this code, which is situate in, and responsible for, the conduct of that party's business in one of the constituent counties of the state.

(b) A political party, or a county executive committee of a political party, may establish a party headquarters committee to solicit and receive contributions for the exclusive purpose of the purchase, construction or lease of an office building or financing of the lease, purchase, or construction of a party headquarters, including utilities, maintenance, furniture, fixtures, and equipment, to be used as a state political party's headquarters, or, as a county executive committee's headquarters.

(c) Contributions received pursuant to this section may not be expended for:

(1) The purchase, construction or lease of satellite offices or other facilities;

(2) Utilities, maintenance, furniture, fixtures, equipment or signage for satellite offices or other facilities; or

(3) Political purposes.

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(d) A party headquarters committee may not accept contributions in excess of $10,000, in the aggregate, from any person for the purposes of this section.

(e) A party headquarters committee may not receive contributions or make expenditures for the purpose of funding the rental, purchase, construction, or financing of a state executive committee headquarters, or a county executive committee's headquarters, which are in excess of $1 million.

(f) (1) A party headquarters committee, financial agent, or any person or officer acting on behalf of the committee, that is subject to the provisions of this section, shall file a verified financial statement with the Secretary of State, on a form prescribed by the secretary, within 90 days of any contribution or expenditure in excess of $250.

(2) Each financial statement shall contain, but is not limited to, the following information:

(A) The name, residence and mailing address and telephone number of the party headquarters committee, financial agent, or any person or officer acting on behalf of the committee, who is filing the financial statement.

(B) The balance of cash, and any other sum of money, on hand at the beginning and the end of the period covered by the financial statement.

(C) The name of any person making a contribution, the amount of the contribution, and the residence and mailing address of the contributor.

(D) The total amount of contributions received during the period covered by the financial statement.

(E) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(F) The name, residence, and mailing address of any individual, or the name and mailing address of each partnership, firm, association, committee, organization, or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(G) The total outstanding balance of all loans at the end of the period.

(H) The name, residence, and mailing address of any person to whom each expenditure was made, or liability incurred, together with the amount and purpose of each expenditure or liability incurred, and the date of each transaction.

(I) The total amount of expenditures made during the period covered by the financial

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statement.

(3) The Secretary of State shall file and retain the statements as public records for not less than six years.

(g) Contributions received by a party headquarters committee may be contributed to any educational, cultural, or charitable organization.

(h) The Secretary of State shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to effectuate the provisions of this section.

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§3-8-3. Committee treasurers; required to receive and disburse funds.

Every political committee shall appoint and retain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members, for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be unlawful for any such committee or any of its members to collect, receive or disburse money for any such purposes. All moneys collected or received by any such committee, or by any of its members, for election expenses shall be paid over to, and pass through the hands of, the treasurer, and shall be disbursed by him, and it shall be unlawful for any such committee, or any of its members, to disburse any money for election expenses unless such money shall be paid to, and disbursed by, the treasurer. The same person may be designated to act as treasurer for two or more political party committees.

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§3-8-4. Treasurers and financial agents; written designation requirements.

(a) No person may act as the treasurer of any political action committee or political party committee supporting, aiding, or opposing the nomination, election, or defeat of any candidate for an office encompassing an election district larger than a county unless a written statement of organization, on a form to be prescribed by the Secretary of State, is filed with the Secretary of State. A change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate committee for a candidate for any office encompassing an election district larger than a county, any legislative office, or any circuit judgeship unless a written statement of organization designating that person as the treasurer or financial agent is filed with the Secretary of State. A change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(c) No person may act as treasurer of any political committee advocating for candidates to be nominated or elected by the voters of a county or a district therein, except legislative and circuit judge candidates, unless a written statement of organization designating him or her as the treasurer is filed with the clerk of the county commission or the Secretary of State. A change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(d) Prior to engaging in any activity, a political committee shall file a statement of organization required by subsection (a) of this section. A statement of organization form required by this section shall be certified as accurate and true and signed by the treasurer and the chairman of the committee, and shall include the following information:

(1) The name of the political committee;

(2) The name of the treasurer;

(3) The mailing address, telephone number, and e-mail address of the committee;

(4) The mailing address, telephone number, and e-mail address of the treasurer, if different from the committee information;

(5) The name of the chairman of the committee;

(6) The affiliate organization, if any;

(7) The type of political committee, as determined by the description of types of committees included in the definitions of "political committee" and "political action committee" in §3-8-1a of this code; and

(8) Whether the committee will participate in statewide or local elections.

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(e) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a filing designating a treasurer for a state, county, or municipal political committee may be made any time before the committee either accepts or spends funds. Once a designation is made by a state, county, or municipal political committee, no additional designations are required under this section until a successor treasurer is designated.

(f) A state, county, or municipal political committee may terminate a designation made pursuant to this section by making a written request to terminate the designation on a form prescribed by the Secretary of State and by filing a report of financial information required in §3-8-5 of this code indicating that the political committee has no funds or debts remaining in the committee's account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a), (b), and (c) of this section.

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§3-8-4a. Termination of political committees.

(a) A political committee may terminate by filing a written request, in accordance with the provisions of section four of this article, and by stating in the request that it will no longer receive any contributions or make any disbursements and that it has no outstanding debts or obligations. At such time, any excess funds of the committee may be transferred to a political committee established by the same candidate pursuant to the provisions of §3-8-4 or §3-8-5e of this code.

(b) The provisions of this section may not be construed to eliminate or limit the authority of the Secretary of State, in consultation with the State Election Commission, to establish procedures for: (1) The determination of insolvency with respect to any political committee; (2) the orderly liquidation of an insolvent political committee and the orderly application of its assets for the reduction of outstanding debts; and (3) the termination of an insolvent political committee after such liquidation and application of assets.

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§3-8-5. Detailed accounts and verified financial statements required.

(a) Record-keeping requirements. —

(1) Except for candidates for party committeeman and committeewoman, all candidates for nomination or election to state or local offices and all persons supporting, aiding, or opposing the nomination, election, or defeat of any such candidate shall keep, for a period of two years, records of receipts and expenditures which are made for political purposes.

(2) Every candidate or treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value and of all expenditures and disbursements made, or liabilities incurred, by the candidate or political committee.

(3) A person that is not a political committee and makes independent expenditures or electioneering communications must keep detailed accounts of every sum of money or other thing of value received by him or her for the purpose of furthering any independent expenditure or electioneering communication and of all disbursements made for independent expenditures or electioneering communications.

(b) Financial reporting requirements. —

(1) Every person required to keep detailed accounts under subsection (a) of this section shall file a detailed, itemized sworn statement, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

(A) On April 1 of each year, the person shall file a statement of all financial transactions dating from January 1 to March 31 of the same year, to be filed within six days thereafter;

(B) On July 1 of each year, the person shall file a statement of all financial transactions dating from April 1 to June 30 of the same year, to be filed within six days thereafter;

(C) On October 1 of each year, the person shall file a statement of all financial transactions dating from July 1 to September 30 of the same year, to be filed within six days thereafter; and

(D) On January 1 of each year, the person shall file a statement of all financial transactions dating from October 1 to December 31 of the previous year, to be filed within six days thereafter.

(2) In addition to the statements required in subdivision (1) of this subsection, a candidate or candidate’s committee shall file detailed itemized sworn statements, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

(A) On the 15th day preceding the primary election in which a candidate is on the ballot, the candidate or committee shall file a statement of all financial transactions subsequent to the

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previous statement, if any, to be filed within four business days after the 15th day; and

(B) On the 15th day preceding the general election in which a candidate, including an official write-in candidate, is on the ballot, the candidate or committee shall file a statement of all financial transactions subsequent to the previous statement, if any, to be filed within four business days after the 15th day.

(c) A person required to file reports pursuant to 52 U.S.C. §30104 is exempt from the requirements of subsection (b) of this section but is not exempt from the state-level electioneering communication reports requirements in §3-8-2b of this code or the independent expenditure reporting requirements in §3-8-2 of this code.

(d) Every person who is qualified as an official write-in candidate for any elective office shall individually, or by candidate committee, comply with all of the applicable requirements of this section.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of §19-21A-1 et seq. of this code are required to file only the report required by paragraph (A), subdivision (2), subsection (b) of this section immediately prior to the applicable general election that is held concurrently with the state's primary election.

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§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering communications pursuant to §3-8-2b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer, or person and the name, address, and telephone number of each association, organization, or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a contribution and the amount of the contribution. If the total contributions of any one person in any one election cycle amount to more than $250, the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation shall also be reported. A contribution totaling more than $50 of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of §3-8-5d of this article.

(4) The total amount of contributions received during the period covered by the financial statement.

(5) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(6) The name, residence, and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization, or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The name, residence, and mailing address of any person to whom each expenditure was made or liability incurred, including expenditures made on behalf of a candidate or political committee that otherwise are not made directly by the candidate or political committee, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election, or defeat of a candidate or any person supporting, aiding, or opposing the nomination, election, or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

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(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any contribution except from his, her, or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation, and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee, or fund permitted by §3-8-8 of this code to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative, or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person may accept any contribution for the purpose of influencing the nomination,

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election, or defeat of a candidate or for the passage or defeat of any ballot issue unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals $25 or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals $25 or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(l) Notwithstanding the provisions of §3-8-5 of this code or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party committee in filing financial reports for fund-raising events if the total profit does not exceed $5,000 per year. A political party committee may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets, or memorabilia, except that any receipt of more than $50 from an individual or organization shall be reported as a contribution. A political party committee using this alternative method of reporting shall report:

(i) The name of the committee;

(ii) The type of fund-raising activity undertaken;

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(iii) The location where the activity occurred;

(iv) The date of the fundraiser;

(v) The name of any individual who contributed more than $50 worth of items to be sold;

(vi) The name and amount received from any person or organization purchasing more than $50 worth of food, beverages, services, novelty items, raffle tickets, or memorabilia;

(vii) The gross receipts of the fundraiser; and

(viii) The date, amount, purpose, and name and address of each person or organization from whom items with a fair market value of more than $50 were purchased for resale.

(m) All financial statements filed after January 1, 2027, in any municipal, county, or other non-statewide election shall be filed with Secretary of State's Office.

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§3-8-5b. Where financial statements and reports shall be filed; filing date prescribed.

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices, circuit judge, and family court judge, and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county, except circuit judge and family court judge; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

(b)(1) The following statements or reports shall be filed electronically, in a manner prescribed by the Secretary of State:

(A) Financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, State Senate, House of Delegates, Supreme Court of Appeals, circuit judge, or family court judge;

(B) Financial statements filed by political committees;

(C) Electioneering communication reports; and

(D) Independent expenditure reports.

(2) If through or by no fault of the candidate the candidate is unable to file the campaign financial statement, the candidate shall then file said statement in person, via facsimile or other electronic means of transmission, or by certified mail postmarked at the first reasonable opportunity.

(3) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(c) Candidates for all offices not identified in subsection (b) of this section may file financial statements by mail, in person, by facsimile, or by other electronic means of transmission. For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State, or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during

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regular business hours of that office.

(d) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the Internet by the Secretary of State within 10 business days from the date the financial statement is filed.

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§3-8-5c. Contribution limitations.

(a)(1) A person, political party, or political action committee may not, in an election cycle:

(A) Contribute more than $2,800, directly or indirectly, to a candidate's committee for a candidate seeking nomination, including by making contributions to the candidate's committee; or

(B) Contribute more than $2,800, directly or indirectly, to a candidate's committee for a candidate seeking election, including by making contributions to the candidate's committee: Provided, That a candidate may receive contributions for the general election prior to nomination, however, such funds may not be expended until after the date of the nomination is declared.

(2) The contribution limits of this section apply only to elections to be held after the effective date of this section and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(b) A person, except candidate committees and caucus campaign committees, may not, directly or indirectly, make contributions to a state party executive committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee which, in the aggregate, exceed $10,000 in any calendar year: *Provided*, That a person may not earmark or otherwise designate any portion of a contribution made pursuant to this subsection to be used to support or oppose the election of a particular candidate: *Provided, however*, That any such designation or earmark that accompanies a contribution made pursuant to this subsection may not be binding on the entity that receives the contribution.

(c) A person may not, directly or indirectly, make contributions to a political action committee, related to a particular election, which, in the aggregate, exceed $5,000.

(d) Candidate committees and caucus campaign committees may make contributions to their affiliated state party executive committees, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee up to $75,000.

(e) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

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§3-8-5d. Offenses and penalties.

(a) Any person who makes or receives a contribution of currency of the United States or currency of any foreign country of more than $50 in value is guilty of a misdemeanor, and, upon conviction, shall be fined a sum equal to three times the amount of the contribution.

(b) Notwithstanding any provision of section twenty-four, article nine of this chapter to the contrary, a criminal prosecution or civil action for a violation of this article may be commenced within five years after the violation occurred.

(c) No person required to report under this article shall be found in violation of this article if any person, firm, association or committee making a contribution has provided false information to such person: Provided, That any person, firm, association or committee who provides false information to a person required to report under this article is guilty of a misdemeanor and, subject to the penalties provided in section twenty-three, article nine of this chapter.

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§3-8-5e. Pre-candidacy financing and expenditures.

(a) Notwithstanding any other provisions of this code, it is lawful for a person, otherwise qualified to be a candidate for any public office or position to be determined by public election, to receive contributions or make expenditures, or both personally or by another individual acting as a treasurer, to determine the advisability of becoming such a candidate or preparing to be such a candidate: *Provided*, That an individual may file his or her pre-candidacy papers, and may receive contributions and make expenditures related thereto, beginning on the day after the general election is held for the term of office immediately preceding the term of office for which the person may become a candidate, if such term of office is four years or less: *Provided, however*, That such pre-candidacy papers may be filed, such contributions may be received, and such expenditures may be made only during the four years immediately preceding the term of office for which such person may be a candidate, if such term of office is more than four years: *Provided further*, That no person is disqualified from receiving contributions or making expenditures as permitted under the provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall designate himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in §3-8-4 of this code before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of §3-8-5 of this code regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or herself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him or her, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by §3-8-5 of this code.

(d) Regardless of whether such person becomes a candidate as originally intended, becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he or she actually seeks shall be applicable to and inclusive of the receipts had and expenditures made during such pre-candidacy period as well as after the person becomes a candidate.

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§3-8-5f. Loans to candidates, organizations or persons for election purposes.

(a) No candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may receive any money or any other thing of value as a loan toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed.

(b) Loans may only be made in the regular course of business by a lending institution which is a state bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits are insured by the federal deposit insurance corporation or the national credit union administration. Such loans shall be subject to the following requirements:

(1) Endorsements or guarantees of such loans may be made by the candidate or his or her spouse;

(2) Endorsements or guarantees of such loans by parties other than the candidate or his or her spouse may be made only to the extent of the contribution limits established in this article; and

(3) No other form of security shall be furnished in connection with such loans by any party other than the candidate or his or her spouse.

(c) The provisions of this section shall not be construed to prohibit a candidate or his or her spouse from lending money to the candidate or to the candidate's political committee: Provided, That the spouse of a candidate may not borrow money from a third party other than a lending institution authorized to make loans under this section for the purposes of lending money to the candidate or the candidate's political committee.

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§3-8-5g. Prohibition on political contributions and expenditures by foreign nationals.

(a) A foreign national may not, directly or indirectly, make:

(1) A contribution or donation, or an express or implied promise to make a contribution or donation, to a candidate's committee, a political committee, or a political party; or

(2) An independent expenditure or any disbursement for an electioneering communication related to a state or local election.

(b) A person may not solicit, accept, or receive a contribution or donation described in subsection (a) of this section.

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§3-8-6. Financial statement forms; filing; disposition.

Blank forms for all financial statements required under this article shall be provided by the state election commission. The content of the forms shall be as prescribed by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Pending legislative approval of such legislative rule, the state election commission may by emergency rule prescribe the contents of the forms. Copies thereof, together with a copy of this article, shall be furnished through the county clerk or otherwise, as the Secretary of State may deem expedient, to all treasurers of political committees, to all political financial agents, and to all candidates for nomination or election to any office, upon the filing of a petition or announcement for nomination, and to all other persons required by law to file such statements who shall apply therefor. The form shall also be furnished, at a nominal cost, on computer disc or magnetic media. All statements filed in accordance with the provisions of this article shall be received, endorsed and filed by the Secretary of State and county clerks, and shall be preserved for five years, after which time they may be destroyed, if not required to be further preserved by the order of any court.

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§3-8-6a. Financial statement forms; filing; disposition.

(a) For each financial statement required by the provisions of this article, the following information may not be made publicly available in any manner, including, but not limited to, disclosure on any governmental websites or in response to public records requests under the West Virginia Freedom of Information Act, §29B-1-1 *et. seq.* of this code:

(1) The street number and street name in the residence and mailing address of any individual who makes a contribution, or who makes or cosigns a loan;

(2) The major business affiliation of that individual; and

(3) The street number and street name in the residence and mailing address of the treasurer.

(b) Notwithstanding the provisions of subsection (a) of this section, the information protected from disclosure by subsection (a) of this section may be disclosed or released to a government entity for any purposes authorized by federal law, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq.* of this code.

(c) The effective date of the requirements of subsection (a) of this section is January 1, 2027, and the requirements of subsection (a) of this section do not apply to financial statements submitted before January 1, 2027.

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§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any person, candidate, financial agent, or treasurer of a political committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or confined in jail for not more than one year, or both fined and confined. Sixty days after any primary or other election, the Secretary of State, county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent, or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located, or has its principal place of business.

(b) (1) Any person, candidate, financial agent, or treasurer of a political committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement shall be assessed a civil penalty by the Secretary of State of $10 a day for each day after the due date the statement is delinquent, grossly incomplete, or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete, or grossly inaccurate statement by any person, candidate, financial agent, or treasurer of a political committee and forward copies of such delinquent, incomplete, or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to this section shall be payable to the State of West Virginia and is collectable as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete, or inaccurate statement.

(4) The Secretary of State shall publish online a list of all persons required to file statements with the Secretary of State who file statements after the deadline in an election cycle. This list shall be maintained and be publicly available online to include late activity for, at a minimum, the previous five years up to the current year.

(5) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with §29A-3-1 et seq. of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) (1) Any candidate, whether nominated by primary election or appointed by executive committee or executive committee chair, who has failed to file any sworn statement as

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required by this article relating to the immediately preceding primary election for any office by the 84th day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of §3-8-5b(d) of this code notwithstanding, any sworn statement filed after the deadline required by §3-8-5 of this code must be received in the office indicated by §3-8-5b(a) of this code by the close of business on the 84th day before the general election.

(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file any sworn statement required by this article and no person may enter upon the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of the statement.

(3) The vacancy on the ballot created by the disqualification in this subsection is subject to §3-5-19 of this code.

(d) As used in this section, "grossly" means substantive and material, and specifically includes false or misleading representations and acts of omissions.

(e) The Secretary of State shall provide by rule protocols for written notice via certified mail, return receipt requested, to the person, candidate, financial agent, or treasurer of a political party committee that is not in compliance with the requirements of this section. With respect to a violation of subsection (c) of this section, the notice shall be provided 60 days after any primary or other election.

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§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) An officer, agent, or person acting on behalf of any membership organization or any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may not pay, give, lend, or authorize to be paid, any money or other thing of value belonging to the corporation to any candidate or candidate's campaign committee for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(b) A person may not solicit or receive any payment, contribution, or other thing from any membership organization or any corporation or from any officer, agent, or other person acting on behalf of the membership organization or corporation to any candidate or candidate's campaign committee for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(c)(1) The provisions of this section do not prohibit a membership organization or corporation from soliciting, through any officer, agent, or person acting on behalf of the membership organization or corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees.

(2) It is unlawful for:

(A) A membership organization, corporation, or separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By physical force, job discrimination, or financial reprisal; (ii) by the threat of force, job discrimination, or financial reprisal; or (iii) as a condition of employment;

(B) Any person soliciting a membership organization member, stockholder, executive, or administrative personnel member or their family members for a contribution to a membership organization, corporation, or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a membership organization, corporation, or separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) A separate segregated fund established by a membership organization or a corporation: (i) To solicit contributions to the fund from any person other than the membership organization's members or the corporation's stockholders and their families, or its executive or administrative personnel and their families; or (ii) to contribute any membership organization or corporate funds;

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(E) A separate segregated fund established by a membership organization or corporation to receive contributions to the fund from any person other than the membership organization's members or corporation's stockholders and their immediate families and their executive or administrative personnel and their immediate families;

(F) A membership organization or corporation to engage in job discrimination or to discriminate in job promotion or transfer because of a member's or an employee's failure to make a contribution to the membership organization or corporation or a separate segregated fund;

(G) A separate segregated fund to make any contribution, directly or indirectly, in excess of the amounts permitted in §3-8-5c of this code in connection with or on behalf of any campaign for nomination or election to any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting, or aiding the nomination or election of any candidate for any such office; or

(H) A membership organization or corporation to pay, give, or lend or to authorize payment, giving, or lending of any moneys or other things of value belonging to the membership organization or corporation to a separate segregated fund for the purpose of making a contribution to a candidate or a candidate's committee. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities, and equipment of a membership organization or corporation solely to establish, administer, and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (e) of this section: Provided, That any such membership organization or corporation shall also permit any group of its employees represented by a bona fide political action committee to use the real property of the membership organization or corporation solely to establish, administer, and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection.

(3) For the purposes of this section, the term "executive or administrative personnel" means individuals employed by a membership organization or corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional, or supervisory responsibilities.

(d) Any person, membership organization, or corporation violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000. A membership organization or corporation may not reimburse any person the amount of any fine imposed pursuant to this section.

(e) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to membership organization and corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the

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provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 52 U.S.C. §30118.

(f) In addition to the powers and duties set forth in §3-1A-1 et seq. of this code, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records, and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney 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.

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

(h) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

(i) Any person who discloses the fact of any complaint, investigation, or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000, nor more than $5,000, and shall be confined in jail not less than six months nor more than one year.

(j) The amendments to this section enacted during the second extraordinary session of the Legislature, 2008, are intended to conform to the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.

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§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No financial agent or treasurer of a political committee may pay, give, or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment, and other furnishing of offices to be used as political headquarters and for the payment of necessary employees;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment, and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary employees;

(3) For printing and distributing books, pamphlets, circulars, and other printed matter, radio and television broadcasting, and painting, printing, and posting signs, banners, and other advertisements, including contributions to charitable, educational, or cultural events, for the promotion of the candidate or the candidate's name, or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents, and committees and for stationery, postage, telegrams, telephone, express, freight, and public messenger service;

(6) For preparing, circulating, and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein, and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments, and any information relating to any political issue, candidate, or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection, collation, and evaluation of information reflecting public opinion, needs, and

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preferences as to any candidate, group of candidates, party, issue, or issues. No such poll may be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition, or other matter to be voted on by the public at any election: *Provided*, That nothing herein may prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9), and (10) of this subsection;

(12) For the purchase of memorials, flowers, or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within 30 days thereafter;

(14) For the payment of dues or subscriptions to any national, state, or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee, or a caucus campaign committee;

(16) For transfers to any national, state, or local committee of any political party when that committee is acting in the role of a vendor: *Provided*, That no such transfer may involve any coordination between the candidate and the political party committee without being considered as a contribution;

(17) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(18) For payment for food and drink for campaign-related purposes;

(19) For the payment of any required filing fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate's committee pursuant to this article;

(20) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code; and

(21) For expenses related to caregiving services.

(b) A political action committee may not contribute to another political action committee or

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receive contributions from another political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred, and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent, or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by the candidate which shall be in such form and filed in accordance with §3-8-4 of this code.

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§3-8-9a. Coordinated expenditures.

(a) Except as provided in §3-8-9b of this code, a coordinated expenditure is considered to be a contribution and is subject to all requirements for contributions contained in this article.

(b) An expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate's committee is a coordinated expenditure if the communication resulting from the expenditure is paid for, in whole or in part, by a person other than the candidate, candidate committee, or party committee, and one of the following circumstances exists:

(1) The communication is created, produced, distributed, or undertaken at the request or suggestion of a candidate, candidate committee, or party committee.

(2) The candidate, candidate committee, or party committee is involved in the creation, production, or distribution of the communication, or has had discussions about the communication with any person or the agents of a person who has paid for or played a role in the creation, production, or distribution of the communication: Provided, That this paragraph does not apply if the information or materials used in the creation, production, distribution, or undertaking of the communication was obtained from a publicly available source.

(3) Any person involved in the creation, production, or distribution of the communication has, in the four months preceding the date on which the expenditure is made, been an employee or vendor of campaign services for the candidate, candidate committee, or party committee.

(c) An expenditure is not a coordinated expenditure, based solely on any of the following circumstances:

(1) A candidate committee or a political party committee responds to an inquiry about the candidate's or political party committee's positions on legislative or policy issues, including substantive discussion of the legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs;

(2) A candidate endorses another candidate;

(3) A candidate solicits funds for another candidate, a political committee, a party committee, or organizations eligible to receive tax-deductible donations under 26 U. S. C. §170 (or any successor provision) and regulations of the U. S. Department of Treasury; or

(4) A candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, if the communication does not refer to an election or another candidate who seeks the same office as that candidate.

(d)(1) An expenditure otherwise meeting the description of a coordinated expenditure

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contained in subdivision (3), subsection (b) of this section, is not a coordinated expenditure if the commercial vendor, former employee, or political committee at issue has established and implemented a firewall that meets the following requirements:

(A) The firewall is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to a candidate, or a committee supporting or opposing a candidate, clearly identified in the communication; and

(B) The firewall is described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.

(2) A communication does not qualify for the exemption contained in this subsection if, despite the firewall, information subject to the firewall concerning a candidate, candidate's committees, or a party committee's campaign plans, projects, activities, or needs that are material to the creation, production, or distribution of the communication is used or conveyed to the person paying for the communication.

(e) Any communication that results from a coordinated expenditure must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate, the candidate committee, or the party committee with which it was coordinated.

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§3-8-9b. Coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates.

(a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political party and caucus campaign committee may make coordinated expenditures in any amount with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, and House of Delegates.

(b) Any communication that results from a political expenditure and is made in coordination with a state committee of a political party and caucus campaign committee must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate or candidate's committee with whom it was coordinated.

(c) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

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§3-8-9c. Joint fundraising.

(a) Political committees may engage in joint fund-raising efforts with other political committees or with committees registered with the Federal Election Commission pursuant to a written joint fund-raising agreement.

(b) A written joint fund-raising agreement must be filed with the Secretary of State and must provide terms for the allocation of fund-raising proceeds between or among political committees engaging in the joint fund-raising effort. The Secretary of State shall post all joint fund-raising agreements on the Internet within 10 business days from the date the agreement is filed.

(c) Any person soliciting funds for a joint fund-raising effort shall disclose, in making or publishing solicitations, the name of all political committees involved in the joint fund-raising effort and how any proceeds, including any contributions, will be allocated between or among such committees.

(d) A person, not otherwise prohibited by this article from making contributions, may make a contribution to a joint fund-raising effort subject to the contribution limits in §3-8-5c of this code.

(e) The State Election Commission shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to provide requirements for written joint fund-raising agreements and to implement the provisions of this section consistently, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission in 11 C.F.R. §102.17.

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§3-8-10. Use of certain contributions.

(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) Used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) Contributed by the candidate, after the general election, to:

(A) Any charitable organization or subsequent campaign by the same candidate, without limitation;

(B) Any national committee in accordance with federal requirements;

(C) Any state party executive committee or state party legislative caucus committee, in any amount; or

(D) Any local committee of any political party or any other candidate for public office, in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of §29A-1-1 *et seq*. of this code, to establish guidelines for the administration of this section.

(c) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

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§3-8-11. Specific acts forbidden; penalties.

(a) Any person who, directly or indirectly, by himself, or by any other person on his or her behalf, makes use of, or threatens to make use of, any force, violence or restraint, or inflict, or threatens to inflict, any damage, harm, or loss, upon or against any person, or by any other means attempt to intimidate or exert any undue influence, in order to induce that person to vote or refrain from voting, or on account of that person having voted or refrained from voting, at any election, or who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the suffrage by any elector, or thereby compels, induces, or prevails upon any elector either to vote or refrain from voting for or against any particular candidate or measure; or

(b) Any person who, being an employer, or acting for or on behalf of any employer, gives any notice or information to his or her employees, containing any threat, either express or implied, intended or calculated to influence the political view or actions of the workmen or employees; or

(c) Any person who, knowingly, makes or publishes, or causes to be made or published, any false statement in regard to any candidate, which statement is intended or tends to affect any voting at any election whatever; or

(d) Any person who pays any owner, publisher, editor or employee or any newspaper or other periodical, to advocate or oppose editorially, any candidate for nomination or election, or any political party, or any measure to be submitted to the vote of the people; or any owner, publisher, editor or employee, who solicits or accepts the payment is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $10,000, or confined in jail for not more than one year, or, in the discretion of the court, shall be subject to both such fine and imprisonment.

(e) Any individual whose street number and street name or major business affiliation is disclosed to the public in violation of §3-8-6a of this code, and any treasurer whose address is disclosed to the public in violation of §3-8-6a of this code, shall provide notice of the violation to the government agency or government entity responsible for the disclosure via certified mail addressed to the lead employee for the government agency or government entity. If the governmental agency or government entity fails to remove or redact the information within 10 business days of the receipt of the notice, the aggrieved individual may recover a civil penalty in the amount of $1,000 from the government agency or government entity responsible for each report on which that information is publicly disclosed.

(f) Any state or local officer or employee who knowingly and willfully discloses to the public an individual’s street number and street name or major business affiliation in violation of §3-8-6a of this code, or a treasurer's address in violation of §3-8-6a of this code, 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, in the discretion of the court, both fined and

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imprisoned.

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§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

(a) A person may not publish, issue, or circulate, or cause to be published, issued, or circulated, any anonymous letter, circular, placard, radio or television advertisement, or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor, or employee of a newspaper or other periodical may not insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision of the state. An officer, agent, clerk, or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office, or room, occupied for any official purpose, may not knowingly permit any person to enter any building, office, or room, occupied for any official purpose, for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in §3-8-8 of this code, a person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies, or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land, or building is to be made, in whole or in part, from public funds may not, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land, or buildings, directly or indirectly, make any contribution to any political party, committee, or candidate for public office, or to any person for political purposes or use nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation, or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

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(f) A person may not, directly or indirectly, make any contribution in excess of the amounts permitted by §3-8-5c of this code, in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting, or aiding the nomination or election of any candidate for any of the offices.

(g) It is unlawful for any person to create, establish, or organize more than one political committee with the intent to avoid or evade the contribution limitations contained in this article.

(h) A person may not, directly or indirectly, make contributions to a state party executive committee or caucus campaign committee which, in the aggregate, are in excess of the amounts permitted by §3-8-5c of this code in any calendar year.

(i) The limitations on contributions contained in this section do not apply to transfers among a state party executive committee, a caucus campaign committee, and a national committee of the same political party: Provided, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(j) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: Provided, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. A person may not coerce or intimidate any nonelective salaried employee into making a contribution. A person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in or refraining from any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation, or solicitation.

(k) A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration, or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(l) A person may not place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the

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receptacle. The term "roadside receptacle" means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(m) Any person violating any provision of this section 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 fined and confined.

WV Legislature

§3-8-13. Parties liable and subject to penalties.

In all cases of violation of the provisions of this article by any partnership, committee, association, corporation, or other organization or group of persons, the officers, directors, or managing or controlling heads thereof, who knowingly and willingly participate in such violation, shall be subject to the penalties and punishments provided herein.

WV Legislature

§3-8-14. Effective date of certain criminal offenses.

The criminal offenses created in sections two, seven and twelve of this article by the provisions of Enrolled Committee Substitute for House Bill No. 402 during the fourth extraordinary session, two thousand five, shall be effective ninety days from passage.

WV Legislature

§3-8-15. Disclosure of contributions during legislative session.

(a) In addition to other reporting required under this article, any member, or any candidate committee for a member of the Legislature who is a candidate for legislative office, who has a fund-raising event while the Legislature is in session, shall disclose the existence of the event and the receipt of all contributions, including the source and amounts, within five business days after the fund-raising event.

(b) The reporting requirements under this section also apply to former candidates or candidate committees for legislative office who are still holding any legislative office and who use a fund-raising event to retire or pay-off debt of a campaign account while the Legislature is in session.

(c) The reporting requirements of this section do not relieve a candidate or candidate's committee from reporting contributions received and disclosed in conformity with this section from reporting them as required by the regular reporting requirements as contained in section five of this article.

(d) The Secretary of State shall prepare a form for disclosure of these contributions and publish the information on the Secretary of State's website within forty-eight hours of the Secretary of State receiving the completed form: Provided, That as an alternative, the Secretary of State is authorized to establish a means for electronic filing and disclosure.

(e) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State may propose rules and emergency rules for legislative approval relating to procedures and policies consistent with this section.

WV Legislature

§3-9-1. False or fraudulent returns; tampering with, destroying or misdelivering ballots, records, etc.; forgeries; aiding, etc., in offense; penalties.

Every person named and identified in this section, who shall violate any of the provisions of the election laws as herein specified, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in a state correctional facility for not less than one nor more than ten years:

(a) Any commissioner of election or poll clerk who shall knowingly make or cause to be made, or conspire with others to make, a false return of the result of the votes cast for any candidate at any precinct in an election held pursuant to law; or

(b) Any commissioner of election receiving the ballot of a voter to be deposited in the ballot box at any election precinct, who shall put another ballot in the box instead of the one received by him; or

(c) Any commissioner of election or poll clerk, who knowingly shall count and string a ballot not taken from the ballot box, in lieu of one taken, or which should have been taken from such ballot box; or

(d) Any commissioner of a county court, whether acting as such or ex officio as a member of a board of canvassers or otherwise, clerk of a county court, or other person, who shall, except as authorized by law, abstract any ballot from any package of ballots voted, sealed or returned from any election precinct, either before or after they are filed with the clerk of the county court, or who shall in any manner change any such ballot from what it was when voted by the voter, or who shall put another ballot in such package in the place of the one so abstracted therefrom; or

(e) Any commissioner of a county court, whether acting as such commissioner or ex officio as a member of a board of canvassers, or otherwise, who shall knowingly make and enter of record, or in any way aid, counsel, or advise the same to be done, or permit the same to be done without objection on his part, any false or fraudulent statement of the result of any election held within the county; or

(f) Any person who shall falsely make, or fraudulently deface, or fraudulently destroy, any certificate of nomination, or any part thereof, or file any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof; or erase, deface, or change in any manner, any election record, or any ballot, poll book, tally sheet or certificate of election, deposited with either of the clerks of the county or circuit courts; or conspire with another to do any of said acts; or induce or attempt to induce any other persons to do any of said acts; or

(g) Any person who shall aid, assist, counsel or advise in the commission of any of the offenses above specified, whether or not said acts, or any of them be committed or attempted to be committed; or

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(h) Any person, who, without the assent of another, shall sign the name of such other person to any certificate, affidavit, ballot, report, statement or writing, required under any provision of this chapter, with intent to mislead and deceive; or who shall use or employ any certificate, affidavit, ballot, report, statement or writing to which the name of a person has been signed without the authority of such person, knowing that such name has been so signed with intent to mislead or deceive; or

(i) Any clerk of a court, poll clerk, member of the board of ballot commissioners, commissioner of election, or messenger intrusted with the custody of the ballots, who shall open unlawfully any of the packages in which the ballots are contained, or permit any of them to be opened, or destroy any of such ballots, or permit them to be destroyed, or give, or deliver any such packages or ballots to any person not lawfully entitled to receive them, as in this chapter provided, or conspire to procure, or in any way aid, abet, or connive at any robbery, loss or unlawful destruction of any such ballots or packages; or

(j) Any person not duly authorized by law who shall, during the progress of any election in this state, or after the closing of the polls and before the ballots are counted and the results ascertained, or within twelve months thereafter, open without breaking, or break open or violate, the seals or locks of any ballot box, paper, envelope or bag, in which ballots have been deposited at or after such election, or who shall obtain possession of such ballot box, paper, envelope or bag containing such ballots, and cancel, withhold, or destroy such ballots, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited therein, or who shall fraudulently make any erasure or alteration of any kind, upon any tally sheet, poll book, list of voters, or election returns, deposited therein; or

(k) Any person who knowingly, willfully and without authorization from the Secretary of State, a county clerk or municipal clerk directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer or computer network that contains voter registration files, records or data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network that contains voter registration files, records or data; or

(l) Any person who knowingly, directly or indirectly, accesses, attempts to access, or causes to be accessed any voter registration files, records or data stored on or in a computer owned by the Secretary of State, a county commission or municipality, without authorization; or

(m) Any person employed by the Secretary of State, a county commission or a municipality who knowingly, directly or indirectly accesses, attempts to access or causes to be accessed any voter registration files, records or data stored on or in a computer in an unauthorized manner, in excess of his or her authorization or for unauthorized use or purpose.

WVLegislature

§3-9-2. Unlawful printing, possession or delivery of ballots; penalties.

No one, except the person employed and authorized by the ballot commissioners to do so, shall print any ballot for any election. No person engaged or employed in printing such ballots shall deliver any ballot to any person except a member of the board of ballot commissioners, or knowingly permit any other person to obtain possession of any ballot; or print, or cause to be printed, any ballot in any other form, or with the names of any other persons thereon, or with the names thereon spelled or arranged in any other manner than that prescribed by the ballot commissioners. No person shall print, have in his possession, or deliver, any imitation ballot having a similitude or likeness to the official ballot, and which would be calculated to deceive: Provided, however, That nothing herein contained shall prohibit any person from printing or having in his possession a sample ballot printed on paper of a color different from the official ballot, and not calculated to deceive. Any person violating any provision of this section shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state penitentiary for not less than one nor more than ten years.

Any person who shall unlawfully take or remove, with or without the consent of the lawful custodian thereof, any ballot from the place at which such ballots are lawfully kept for the time being; or unlawfully remove or attempt to remove any ballot from the election room; or have in his possession outside of the election room during the election any ballot, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or, in the discretion of the court, be confined in jail for not more than one year.

WV Legislature

§3-9-3. False swearing; penalties.

(a) If any election official, or other person, making any affidavit required under any provision of this chapter, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall be guilty of a misdemeanor, and, on conviction therefor shall be fined not less than $50 nor more than $1,000 and imprisoned in the county jail for a period of not more than one year.

(b) If any person making any declaration required under any provision of this chapter shall knowingly make a false statement or representation therein, or if any person shall counsel, advise, aid or abet another to make such a declaration containing any false statement or representation, any such person shall be deemed to be guilty of false swearing although no oath was administered, and such offense is hereby declared to be a misdemeanor. Upon conviction of such offense, any such person shall be fined not less than $50 nor more than $1,000 and imprisoned in the county jail for a period of not more than one year.

WV Legislature

§3-9-4. Commissioner's failure to procure or return supplies; penalties.

Any commissioner of election designated to call for and deliver election supplies as provided in article one of this chapter who shall wilfully or negligently fail to appear at the offices of the clerks of the circuit and county courts of his county and procure and deliver such supplies, or who shall wilfully or negligently fail or refuse to return such supplies, as provided in articles five and six of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than $10 nor more than $100.

WV Legislature

§3-9-5. Destruction or removal of election supplies and equipment; attempts; penalties.

If any person shall, during the election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments as aforesaid, or delivered to the voter for the purpose of enabling the voter to prepare his ballot or shall, during an election, remove, tear down or deface, the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booths or other convenience provided for such election, or shall induce or attempt to induce any person to commit any of such acts, whether or not any of such acts be committed, or attempted to be committed, then such person shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or both, in the discretion of the court.

WV Legislature

§3-9-6. Unauthorized presence in election room; 100-foot limit; penalties.

If any person, not herein authorized so to do, enters or attempts to enter the election room, except upon a lawful errand and for a proper purpose, or remains within 100 feet of the outside entrance to the building housing the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than $50 nor more than $500, or confined in the county jail for not more than 30 days.

Excepting those individuals provided for expressly in this or other sections of the code, only full-time employees of the Secretary of State's office or full-time employees of the respective county offices of the county clerk or the county prosecutor may enter or otherwise disturb the polling place.

WV Legislature

§3-9-7. Wrongful refusal or allowance of votes; malicious or frivolous challenges; penalties.

Any election officer who refuses the vote of a duly registered and qualified voter, whom he knows is entitled to vote or who accepts the vote of a person whom he knows to be not lawfully registered, without challenging such persons, shall be guilty of a misdemeanor, and, upon conviction, fined not more than $1,000 or confined in the county jail for not more than one year, or both, at the discretion of the court.

Any person who shall maliciously or frivolously, and without probable cause, challenge the right of any person to vote, shall be guilty of a misdemeanor, and, upon conviction, be fined not more than $100 or confined in the county jail for not more than ninety days, or both, in the discretion of the court.

WV Legislature

§3-9-8. Distinguishing marks on ballots; conspiracies; penalties.

If any person shall induce, or attempt to induce, any voter to write, paste or otherwise place on his ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such voter voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce a voter to so place a distinguishing name or mark on his ballot, whether or not such act be committed or attempted to be committed, such person so offending shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000, or be imprisoned in the county jail for not more than one year, or both, in the discretion of the court.

WV Legislature

§3-9-9. Electioneering defined; unlawful acts at polling places; exceptions; penalties.

(a) As used in this section, “electioneering” means the displaying of signs or other campaign paraphernalia, the distribution of campaign literature, cards, or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question. “Electioneering” does not include exit polling, so long as persons conducting exit polling are not otherwise engaging in electioneering activities described above, or bumper stickers or signs affixed to a person’s vehicle which is parked within or passing through a distance of one hundred feet of the entrance to a polling place while such person is voting or transporting any voter to the polls.

(b) No officer of election may disclose to any person the name of any candidate for whom a voter has voted. No officer of election may do any electioneering on election day.

(c) No person may do any electioneering on election day within any polling place, or within one hundred feet of the outside entrance to the building housing the polling place. No person may do any electioneering in the polling place or within one hundred feet of the outside entrance of any polling place where early voting is conducted during the period in which early voting is offered during the hours while such early voting is actually taking place. Nothing in this subsection shall prohibit a citizen from doing any electioneering upon his or her own private property, regardless of distance from the polling place, so long as that electioneering conforms to other existing laws and ordinances.

(d) No person may apply for or receive any ballot in any polling place, other than that in which the person is entitled to vote, nor may any person examine a ballot which any voter has prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement, directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of election, may receive from any voter a ballot prepared by him or her for voting. No voter may receive a ballot from any person other than one of the poll clerks; nor may any person other than a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No voter may deliver any ballot to a commissioner of election to be voted, except the one he or she receives from the poll clerk. No voter may place any mark upon his or her ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him or her.

(e) Whoever violates any provision of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail for not more than one year, or both fined and confined.

WV Legislature

§3-9-10. Disorder at polls; prevention; failure to assist in preventing disorder; penalties.

Any person who shall, by force, menace, fraud or intimidation, prevent or attempt to prevent any officer whose duty it is by law to assist in holding an election, or in counting the votes cast thereat, and certifying and returning the result thereof, from discharging his duties according to law; or who shall, by violence, threatening gestures, speeches, force, menace or intimidation, prevent or attempt to prevent an election being held; or who shall in any manner obstruct or attempt to obstruct the holding of an election, or who shall, by any manner of force, fraud, menace or intimidation, prevent or attempt to prevent any voter from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, shall be guilty of a misdemeanor, and, upon conviction, fined not more than $1,000, or confined in the county jail for not more than one year, or both, in the discretion of the court.

Any person who, being thereto commanded by the commissioners of election, or either of them, shall fail or refuse to assist to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than $100.

WV Legislature

§3-9-11. Failure to make returns; penalties.

Any election officer who shall wilfully fail, neglect or refuse to prepare and return certificates of the result of the election in the manner provided, within twelve hours after the completion of the count, tabulation and declaration of the results, shall be guilty of a misdemeanor, and, upon conviction, fined not more than $1,000, or confined in the county jail for not more than one year, or both, in the discretion of the court.

WV Legislature

§3-9-12. Improper influence and bribery by candidates; penalties.

Whoever, being a candidate for any office, loans or gives, directly or indirectly, or offers or promises to loan, or give, any money, or other thing of value, to any elector, for the purpose of influencing or retaining the vote of such elector, or inducing such elector to work or labor for the election of such candidate, or to refrain from working or laboring for the election of any other candidate; or to any person to secure or to retain the influence or vote of such elector, in his behalf as such candidate, or to be used by such person in any way to influence the vote of any elector, or of electors generally, for himself or any candidate or ticket, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than $1,000, or confined in the county jail for not more than one year, or both, in the discretion of the court.

WV Legislature

§3-9-13. Buying or selling vote unlawful; penalties.

(a) It is unlawful for any person to offer or to pay money or any other thing of value to any person as consideration for the vote of the offeree or payee, as the case may be, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 or imprisoned for a period of not less than one year, nor more than five years, or both.

(b) It is likewise unlawful for any person to accept or agree to accept money or other thing of value as consideration for the vote of the acceptee, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or imprisoned in the county jail not more than one year, or both.

WV Legislature

§3-9-14.

Repealed.

Acts, 2010 Reg. Sess., Ch. 76.

WV Legislature

§3-9-15. Unlawful acts by employers; penalties.

Any employer or agent of any employer or corporation, who prints or authorizes to be printed upon any pay envelope or who distributes directly or indirectly, or gives directly to any employee any statement intended or calculated to influence the political action of his employees for any candidate for public office, or posts or exhibits in the establishment, any posters, placards, or handbills, or delivers verbally any message to any such employees, containing any threat, notice or information that if any such candidate is elected or defeated, work in the establishment will cease, in whole or in part, or other threats expressed or implied, intended to influence the political opinions or votes of his employees, shall be guilty of corrupt practices, and, upon conviction, shall be fined not less than $1,000 nor more than $20,000 or be imprisoned in jail not more than one year, or both.

WV Legislature

§3-9-16. Receiving or soliciting bribes by voters; penalties.

Any voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, solicit, demand, receive, agree or contract for any money, gift, loan, or valuable consideration, office, place of employment, or solicit any endorsement on a note or other paper, public or private, for himself or for any other person, for voting or agreeing to vote, or for voting for any person or candidate or object, or agreeing so to vote, or from refraining or agreeing to refrain from voting at any election; or any person who shall, after any election, directly or indirectly, by himself, or by any other person on his behalf, solicit, demand or receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than $1,000, or confined in jail for not more than one year, or both, in the discretion of the court.

WV Legislature

§3-9-17. Illegal voting; deceiving voters; penalties.

(a) Any person who knowingly and willfully votes or attempts to vote more than once at the same election held in this state; in more than one county in this state at the same or equivalent election; or, in this state and another state or territory at the same or equivalent election, irrespective of different offices, questions, or candidates on the ballot, knowing the same to be illegal, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than $10,000, or both, in the discretion of the court.

(b) Any person who knowingly and willfully votes or attempts to vote when the person knows he or she is not legally entitled to do so; or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or causes or assists in causing a legal vote to be rejected, knowing the same to be legal, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than $10,000, or both, in the discretion of the court.

(c) Any person who knowingly and willfully, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than $10,000, or both, in the discretion of the court.

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§3-9-18. Unlawful voting in primary elections; penalties.

Any person voting, in any primary election, any ticket of a party other than that of which he is registered as a member, and any election officer receiving the vote of any such person, knowing, or having reason to believe, that such voter is not a member of the party the ticket of which he is voting, shall, at the primary election to be held to nominate candidates for the same office, vote at such primary election; shall in each instance be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than $1,000, or be confined in the county jail for not more than one year, or both, in the discretion of the court.

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

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

(b) Notwithstanding subsection (a) of this section, any person who, having procured an absent voter's official ballot or ballots, shall willfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise willfully violate any of the provisions of said article three of this chapter, is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $250, or confined in jail for not more than three months. If the clerk of the county commission of any county, or any member of the board of ballot commissioners, or any member of the board of canvassers refuses or neglects to perform any of the duties required of him or her by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or discloses to any other person or persons how any absent voter voted, he or she shall, in each instance, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in jail for not more than six months.

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§3-9-20. Obstructing employees' freedom to vote; penalties.

Any corporation violating any provision of section forty-two of article one of this chapter or preventing or attempting to prevent any voter in its employ from attending any election, or from freely exercising his right of suffrage, at any election, at which he is entitled to vote, by any threat, direct or indirect, express or implied, to discharge such voter or deprive him of his employment, or shall discharge such voter or deprive him of his employment because of any vote he may cast, or refuse to cast, at any election at which he is entitled to vote, under the provisions of this chapter, shall, in each instance, be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than $1,000. Any employer, other than a corporation, whether an individual or member of an association or partnership, and any officer, agent or manager of any corporation violating any provision of this section or of section forty-two of article one of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding five $500 or imprisoned in the county jail for a period not exceeding six months, or, in the discretion of the court, be subject to both such fine and imprisonment.

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§3-9-21. Improper interference with voters' travel to and from the polls; penalties.

Any person, during hours a polling place is open for any election, who intentionally physically interferes with a voter's travel on the walkways, driveways, and parking areas adjacent to a building in which a polling place is located with the intention to delay, hinder, interrupt, harass, or intimidate a voter shall be guilty of a misdemeanor and fined not more than $1,000 or confined in jail for not more than one year or both fined and confined.

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§3-9-22. Wagering or betting on elections; penalties.

It shall be unlawful to bet or wager money or other thing of value on any election held in this state. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, he shall forfeit the value of the money or thing so bet or wagered and shall be fined not more than $50.

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§3-9-23. Punishment where penalty not prescribed or where failure to perform duty not specifically made an offense.

Any person who shall commit any act made an offense by any provision of this chapter, for which no penalty or punishment is prescribed by any other provision contained therein, or any person who shall fail to perform any duty prescribed therein which has not been specifically made an offense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or, in the discretion of the court, be confined in jail for not more than one year.

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§3-9-24. Limitations on prosecutions.

No person shall be prosecuted for any crime or offense under any provision of this chapter, unless upon an indictment found and presentment made within five years after the date of the commission of the crime or offense.

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§3-10-1. Elections to fill vacancies.

(a) When a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article. As used in this article, unless otherwise indicated by the context:

(1) "General cutoff date" means the eighty-fourth day before the general election that immediately precedes the general election where the office would be on the ballot for election if there were not a vacancy; and

(2) "Primary cutoff date" means the eighty-fourth day before the primary election that immediately precedes the general cutoff date.

(b) When this article requires an appointment to fill a vacancy in an elected office, the appointment shall be made within thirty days of the vacancy, unless this code specifically states a different time period for the specific office. The term that the appointee holds the office shall depend on when the vacancy occurs, as follows:

(1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the office until the end of the term of office: Provided, That if the vacancy for any county office or United States Senate occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections four, six, seven and eight of this article, depending on the specific office vacated, shall be followed; or

(2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled at the following regular primary and subsequent general election pursuant to this article and the appointee shall hold the office until a qualified replacement is elected and certified at that general election. The elected replacement shall hold the office until the end of the original term of office.

(c) If an election is required to fill the vacancy by subsection (b) of this section and the other provisions of this article, the election shall proceed depending on when the vacancy occurs and in which office it occurs. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections, unless otherwise stated in this article.

(1) For a vacancy in the Office of Governor, the times for the special elections contained in section two of this article shall control. The proclamation entered pursuant to section two of this article by the person acting as Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. All aspects of this section, where not in conflict with section two of this article, shall also be followed. If a regularly scheduled primary or general election fits within the times for the special elections contained in section two of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special

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election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(2) For a vacancy in the offices of United States House of Representatives or United States Senate, the times for the special election, if necessary, contained in section four of this article shall control. All aspects of this section, where not in conflict with section four of this article, shall also be followed.

(A) With regard to United States House of Representatives, the proclamation entered pursuant to section four of this article by the Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. If a regularly scheduled primary or general election fits within the times for the special elections contained in section four of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(B) With regard to United States Senate, if a special general election following the regular general election is required by section four of this article, and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(3) For all other offices, the Governor, or other person granted authority by this article, shall issue a proclamation stating that the office will appear on the next regular primary election and subsequent general election, in order to fill the vacancy: Provided, That if the vacancy for any county office occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections six, seven and eight of this article shall be followed. If the candidate filing period for the next regular primary election has closed or has less than one week remaining, the proclamation shall provide for a special primary candidate filing period. If there are less than eighty-four days between the vacancy and the next regular primary election, then the proclamation shall state that the office will appear on the subsequent regular primary election and corresponding general election following the next regular primary election.

(d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the day after the proclamation and shall close no earlier than close of business on the fourteenth day following the proclamation. A notarized declaration of candidacy and filing fee provided by section seven, article five of this chapter shall be filed either in person, by United States mail, electronic means or any other means authorized by the Secretary of State and received by the appropriate office before the close of the filing period. For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five of this chapter: Provided, That the minimum number of signatures required is equivalent to one qualified signature per one whole dollar of the filing

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fee for that office.

(2) If a primary election is required by the provisions of this article:

(A) For all statewide, multicounty and legislative elections, drawing for the primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party.

(B) For county elections, drawing for the primary election ballot position will take place at the county clerk's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by the chairperson of the county democratic and republican executive committees or their designee, and the president of the county commission or his or her designee.

(3) Ballot position for a general election required by this article shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter. If a general election required by this article occurs in conjunction with a regularly scheduled primary election, the general election shall be listed along with the nonpartisan portion of each ballot in the order of offices provided for regular ballots in this chapter.

(e) When an election is required to fill a vacancy, the date of the election and offices to be elected, as well as any other information required in the proclamation, shall be published prior to such election as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state that is eligible to vote in the election for those offices.

(f) If an election is required by this article, citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four, article five of this chapter: Provided, That when an election is required by the provisions of this article to be held at some time other than with a regularly scheduled election, all certificates nominating candidates shall be filed with the appropriate official no later than ninety days before the election.

(g) The persons elected, having first duly qualified, shall enter upon the duties of their respective offices. The elected replacement shall hold the office until the end of the original term of office.

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§3-10-2. Vacancy in Office of Governor.

(a) In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President of the Senate, for any of the above-named causes, shall be or become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases where there is no one to act as Governor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the Office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy.

(b) The new election shall consist of a special primary election and a special general election, and shall occur at such time as will permit the person elected as Governor in the new election to assume office within one year of the date the vacancy occurred: Provided, That the special general election provided in this section may not apply to section eight, article one of this chapter. Within thirty days from the date the vacancy occurs, the person acting as Governor pursuant to the State Constitution shall issue a proclamation fixing the time for a statewide election to fill the vacancy in the Office of Governor. The special primary election to fill a vacancy in the Office of Governor shall take place no less than ninety days after the proclamation and no later than one hundred forty days from the date that the vacancy in the office occurs. The proclamation issued by the person acting as Governor pursuant to the State Constitution shall also provide for a special general election to take place no sooner than ninety days after the special primary election and no later than two hundred eighty days from the date that the vacancy in the office occurs.

(c) The election shall follow the requirements of section one of this article that are not in conflict with this section.

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§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election: *Provided*, That any such person appointed by the Governor must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy: *Provided, however*, That the Governor may appoint a temporary acting official in the event of a vacancy in the offices of Secretary of State, Auditor, Treasurer, Attorney General, or Commissioner of Agriculture to carry out the duties of said office until such vacancy is filled by appointment pursuant to this subsection: *Provided further*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than three years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code. The amendments to this subsection enacted during the regular session of the Legislature in the year 2022 shall be applicable to any vacancy existing at the date of passage of such amendments.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent nonpartisan judicial election held concurrently with the primary or general election, whichever occurs first, to fill the remainder of the term.

(d)(1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of the circuit court, or judge of a family court, occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

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(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than three years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than three years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified: *Provided*, That the provisions of this subsection (d) do not apply to a vacancy in the office of magistrate.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.

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§3-10-3a. Judicial Vacancy Advisory Commission.

(a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court. The Governor shall make the appointment to fill the vacancy, as required by this article, within 30 days following the receipt of the list of qualified candidates or within 30 days following the vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed members appointed by the Governor for six-year terms, including four public members and four attorney members. The Governor shall appoint attorney members from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than 20 nor less than 10 of the most qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) (1) No more than two appointed members of the commission may be residents of the same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment: *Provided*, That the members appointed to, and serving on, the commission prior to the enactment of this subdivision are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(2) No more than three appointed members of the commission may be residents of the same congressional district: *Provided*, That, if the number of congressional districts in the state is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district: *Provided, however*, That the members appointed to, and serving on, the commission prior to the date on which the number of congressional districts in the state is reduced to two are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as ex officio members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually

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incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment, and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members, including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter 29A of this code but shall be filed with the Secretary of State.

(g) A majority of the commission shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of §6-9A-1 *et seq*. of this code. An "organizational meeting" means an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq*. of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter 29B of this code, except for the list of the most qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of the most qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of the most qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of the most qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

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§3-10-4. Vacancies in representation in United States Congress.

(a) (1) If there is a vacancy in the representation from this state in the House of Representatives in the Congress of the United States, the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation setting dates for a special general election that is not less than 84 nor more than 120 days from the date of the vacancy and requiring nomination of candidates as provided in §3-10-4(a)(2) of this code: *Provided*, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the 84th day prior to the regularly scheduled general election for a new full term of the office. The election shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.

(2) The party executive committees for the congressional district for which there is a vacancy shall each, within 30 days of the Governor's proclamation, nominate a candidate to stand at the general election required by §3-10-4(a)(1) of this code.

(b) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*, That any such person appointed by the Governor must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy.

Furthermore,

(1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held pursuant to §3-10-1 of this code; or

(2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a special primary election to be held in conjunction with the upcoming general election; and (C) a special general election to be held not less than 84 nor more than 120 days following the date of the special primary election. Each election shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.

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§3-10-4a.

Repealed.

Acts, 2013 Reg. Sess., Ch. 76.

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§3-10-5. Vacancies in state Legislature.

(a) Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party senatorial district executive committee or party delegate district executive committee, or, in the case of a single-county senatorial or delegate district, the county executive party, as applicable, of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*, That any such person appointed by the Governor must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy.

(b) In the case of a member of the House of Delegates, if the member was elected to a multi-county delegate district, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. If the member was elected to a delegate district situated entirely within a single county, the list shall be submitted by the county executive committee in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a state senator, if the member was elected to a multi-county senatorial district, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. If the member was elected to a senatorial district situated entirely within a single county, the list shall be submitted by the county executive committee in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in said section.

(d) No person may be appointed to fill a vacancy in the office of state senator or as a member of the House of Delegates who has not for one year preceding the appointment been a resident within the district he or she will represent. Notwithstanding any provision of this code to the contrary, the process to compose and submit the list, which is required to be submitted by the political party under which the person holding the office immediately preceding the vacancy was elected, shall be governed by the rules of the state executive committee of that political party.

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§3-10-6. Vacancy in office of circuit court clerk.

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges shall fill the same within thirty days of the vacancy, for the period required by §3-10-1 of this code, by appointment of a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*, That any such person appointed by the circuit court must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy.

(b) Notwithstanding any code provision to the contrary, the chief judge may appoint a temporary successor to the office of clerk of the circuit court until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.

(c) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation, by order and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

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§3-10-7. Vacancies in offices of county commissioner or councilor and clerk of county commission or council.

(a) Any vacancy in the office of county commissioner or councilor, or clerk of county commission or council shall be filled by appointment by the county commission or council. The appointee for the office of county commissioner or councilor must reside in a magisterial district in which no other member of the county commission or council resides. The appointee for either clerk of the county commission or council, or the office of county commissioner or councilor, must be a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*, That at the time of appointment, the appointee must have been a member of that political party for at least one year prior to the occurrence of the vacancy.

(b) If a quorum of the county commission or council fails to make an appointment within 30 days, the county executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office, shall submit a list of three legally qualified persons to fill the vacancy for a county having three elected commissioners, or shall submit a list of five legally qualified persons to fill the vacancy for a county having five elected commissioners or councilors. Within 15 days from the date on which the list is received, the county commission or council shall appoint a candidate from the list to fill the vacancy.

(1) In a county having three elected county commissioners, if the county commission or council fails to make the appointment within the specified time, then the county commissioner or councilor with the longest tenure shall eliminate one name from the submitted list, followed by the county commissioner or councilor with the second-longest tenure then eliminating one name from the submitted list. The name remaining after those two names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

(2) In a county having five elected county commissioners or councilors, if the county commission or council fails to make the appointment within the specified time, then the county commissioners or councilors shall strike one name from the list, in turn, in the following order of precedence:

(A)(i) First, all county commissioners or councilors affiliated with the same political party from which the vacating commissioner, councilor, or clerk was elected shall strike a name from the list before those not affiliated with the vacating commissioner, councilor, or clerk's party;

(ii) Second, of the county commissioners or councilors affiliated with the same party from which the vacating commissioner, councilor, or clerk was elected, the commissioner or councilor with the longest tenure shall strike before those with lesser tenure; and

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(iii) Third, if there be county commissioners or councilors with equal tenure affiliated with the same party from which the vacating commissioner, councilor, or clerk was elected, a drawing by lot shall be conducted within the timeframe required to fill the vacancy to determine which of them shall eliminate one name from the submitted list before the other commissioner or councilor with equal tenure.

(B) After the county commissioners or councilors affiliated with the same party from which the vacating commissioner, councilor, or clerk was elected make their strikes, the remaining county commissioners or councilors shall follow the same procedure in the same order of precedence provided herein. The name remaining after four names have been eliminated shall be deemed to be appointed by the county commission or council.

(c) If the number of vacancies in a county commission or council deprives that body of a quorum, the Governor shall make an appointment to fill any vacancy in the county commission or council necessary to create a quorum, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office. The Governor shall make any appointments necessary, beginning with the vacancy first created, to create a quorum in accordance with the same procedures applicable to county commissions and councils under §3-10-7(a) of this code. Once a quorum of the county commission or council is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of this code.

(d) An appointment made pursuant to this section is for the period of time provided in §3-10-1 of this code.

(e) Notwithstanding any code provision to the contrary, a county commission or council may appoint a temporary successor to the office of clerk of the county commission or council until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.

(f) If an election is necessary under §3-10-1 of this code, the county commission or council, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by §3-10-1 of this code.

(g) §3-10-1 of this code shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission or council of the county, shall be placed upon the ballot to be voted at the next general election.

(h) If the election for an unexpired term is held at the same time as the election for a full

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term for county commissioner or councilor, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

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§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor, and surveyor.

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor, or county surveyor shall be filled by the county commission within 30 days of the vacancy by appointment of a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for the office. The appointee must have been a member of that political party for at least one year prior to the occurrence of the vacancy. The appointed person shall hold the office for the period stated by section one of this article.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

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§3-10-9. Costs of special elections paid by state.

If an election as required by section two or four of this article cannot be held in conjunction with the regular election dates, then the cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the new election to fill a vacancy are obligations of the state incurred by the ballot commissioners, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the new election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of the new election to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the new election services, supplies and facilities.

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§3-11-1. Proposing amendments to state Constitution; withdrawal of proposed amendments.

Any amendment to the Constitution of the State may be proposed in either house of the Legislature by a joint resolution.

When an amendment as proposed is agreed to as provided by section two, article fourteen of the Constitution, the question of ratification or rejection of such amendment shall be submitted to the voters of the state.

The Legislature may, by concurrent resolution adopted by a two-thirds vote of the members elected to each house, withdraw from consideration the question of ratification or rejection by the voters of such amendment in any session prior to the election at which it is to be submitted to the voters.

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§3-11-2. Title and summary of amendment; position on ballot; designation of election for submission of amendment.

In any joint resolution proposing an amendment to the West Virginia Constitution, for ratification or rejection by the voters, the Legislature shall for convenience of reference thereto, assign a title to such proposed amendment and shall set forth a summary of the purpose of such proposed amendment. If the Legislature shall fail in any such resolution to include a title and summary, or either, the Secretary of State shall supply such omission or omissions, and certify the same to the ballot commissioners of each county. Whether set forth in such resolution or certified by the Secretary of State, it shall be the duty of the ballot commissioners in each county to place upon the official ballot at the election at which such proposed amendment is to be voted upon, or upon the ballot label in counties where voting machines are used, the title and summary of such proposed Constitutional amendment.

The Legislature may, in the joint resolution, give a proposed amendment a number. If this is done, and if there is more than one amendment submitted at the same election, the position of such amendment on the ballot shall be in accordance with the number so designated. When numbers are not so designated by the Legislature, the Secretary of State, in certifying the election ballot, shall number the amendments consecutively in accordance with the dates of their final submission by the Legislature.

The Legislature shall, in the joint resolution, designate the election at which the proposed Constitutional amendment shall be submitted to the voters.

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§3-11-3. Publication of proposed amendment by Secretary of State.

The Secretary of State shall cause each proposed amendment, with its title and summary of purpose, to be published as a Class I legal advertisement at least three months before such election in some newspaper in every county in the state in which a newspaper is printed. The cost of such publication, determined in accordance with the provisions of section three, article three, chapter fifty-nine of this code, shall be paid out of funds appropriated to the office of Secretary of State.

WV Legislature

§3-11-4. Form of ballot; conduct of election.

For the purpose of enabling the voters of the state to vote on the question of proposed amendments to the Constitution at the election at which they are to be submitted, the board of ballot commissioners of each county shall place upon, and at the foot of, the official ballot to be voted at that election, under the heading "Ballot on Constitutional Amendments," as to each proposed amendment, the following:

No. .....

(title of amendment)

.....

.....

(summary of purpose)

[ ] For

[ ] Against

The election on each proposed amendment at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election, and all the provisions of the law relating to general elections, including all duties to be performed by any officer or board, as far as practicable, and not inconsistent with anything herein contained, shall apply to an election held under the provisions of this article. The ballots cast on the question of any proposed amendment shall be counted as other ballots cast at said election.

WV Legislature

§3-11-5. Certificates of election commissioners; canvass of vote; certifying result.

As soon as the result is ascertained as to an amendment to the Constitution, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof as to each separate amendment, which certificates shall be in the following form or to the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be), of the election held at Precinct No....., in the district of ....., in the county of ....., on the ..... day of ....., one thousand nine hundred ....., upon the question of ratification or rejection of the proposed Constitutional amendment, do hereby certify that the result of said election was as follows:

"Amendment No. .....

(title of amendment)

"For ratification ..... votes.

"Against ratification ..... votes.

"Given under our hands this ..... day of ....., one thousand nine hundred ....."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers, or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court within such time as will enable the commissioners of the county court to convene as a board of canvassers on the fifth day (Sundays excepted) after such election for the purpose of ascertaining the result of said election. As soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the following form or to the following effect:

"We, the board of canvassers of the county of ....., having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ..... day of ....., one thousand nine hundred ....., do certify that the result of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

WV Legislature

"Amendment No.....

(title of amendment)

"For ratification ..... votes.

"Against ratification ..... votes.

"Given under our hands this ..... day of ....., one thousand nine hundred ....."

Separate certificates shall be made as to each Constitutional amendment.

One of the certificates shall be filed in the office of the clerk of the county court and the other forwarded by registered mail to the Secretary of State, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as provided in section six of this article.

WV Legislature

§3-11-6. Proclamation of result of election by Secretary of State; effective date of amendment ratified.

On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the Secretary of State shall ascertain from said certificates the result of the election in the state, and declare the same by proclamation published as a Class I-0 legal advertisement in two newspapers printed at the seat of government. The cost of such publication, determined in accordance with the provisions of section three, article three, chapter fifty-nine of this code, shall be paid out of funds appropriated to the office of Secretary of State. If a majority of the votes cast at said election upon said question be for ratification of an amendment, the amendment so ratified shall be in force and effect from the date of such ratification, as part of the Constitution of the State.

WV Legislature

§3-12-1. Termination of the West Virginia Supreme Court of Appeals Public Campaign Financing Program.

The West Virginia Supreme Court of Appeals Campaign Financing Pilot Program established pursuant to this article will terminate on June 30, 2026: *Provided,* That on or after July 1, 2026, any unexpended balance remaining in the Supreme Court of Appeals Public Campaign Financing Fund shall be transferred to the General Revenue Fund.

WV Legislature

§3-12-2. Legislative findings and declarations.

[Repealed]

WV Legislature

§3-12-3. Definitions.

[Repealed]

WV Legislature

§3-12-4. Alternative public campaign financing option.

[Repealed]

WV Legislature

§3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.

[Repealed]

WV Legislature

§3-12-6. Sources of revenue for the fund.

[Repealed]

WV Legislature

§3-12-7. Declaration of intent.

[Repealed]

WV Legislature

§3-12-8. Exploratory period; contributions; expenditures.

[Repealed]

WV Legislature

§3-12-9. Qualifying contributions.

[Repealed]

WV Legislature

§3-12-10. Certification of candidates.

[Repealed]

WV Legislature

§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments.

[Repealed]

WV Legislature

§3-12-12. Restrictions on contributions and expenditures.

[Repealed]

WV Legislature

§3-12-13. Reporting requirements.

[Repealed]

WV Legislature

§3-12-14. Duties of the State Election Commission; Secretary of State.

[Repealed]

WV Legislature

§3-12-15. Criminal penalties.

[Repealed]

WV Legislature

§3-12-16. Civil penalties.

[Repealed]

WV Legislature

§3-12-17.

Repealed.

Acts, 2013 Reg. Sess., Ch. 70.

WV Legislature