

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 313

(BY MR. BOETTNER AND MR. PALUMBO)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to electronic voting systems generally; providing certain definitions; providing procedure for adopting electronic voting systems; providing procedure for terminating use of electronic voting systems; establishing duty of county commission to acquire vote recording devices, automatic tabulating equipment and to provide a central counting center; providing for approval of electronic voting system by state election commission; authorizing compensation for qualified experts; establishing minimum requirements of electronic voting systems; providing for ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; providing for inspection of vote recording devices; prescribing manner of delivery of vote recording devices; requiring examination of vote recording devices before use; providing for use of reserve vote recording devices in place of vote recording device in disrepair; establishing procedures at polling places; providing for control of and accounting for ballots and other duties of

election officers and penalties for violations; establishing procedures for independent voting in primary elections; establishing procedures for absent voter ballots; establishing procedures for challenged ballots; requiring testing of automatic tabulating equipment; providing procedure for central counting center; providing for post-election custody and inspection of vote recording devices, ballot labels, ballot cards and materials; establishing canvass and recount procedures; and defining criminal offenses for tampering with vote recording devices; ballot labels, ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment, and setting forth penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

- 1 As used in this article, unless otherwise specified:
- 2 (a) "Automatic tabulating equipment" means all
3 apparatus necessary to electronically count votes recorded on
4 ballot cards and tabulate the results;
- 5 (b) "Ballot card" means a tabulating card or paper on
6 which votes may be recorded by means of perforating or
7 marking in electronic sensitized ink or pencil;
- 8 (c) "Ballot labels" means the cards, papers, booklet, pages
9 or other material showing the names of offices and candidates
10 and the statements of measures to be voted on, which are
11 placed on the vote recording device;
- 12 (d) "Central counting center" means a facility equipped
13 with suitable and necessary automatic tabulating equipment,
14 selected by the county commission, for the electronic
15 counting of votes recorded on ballot cards;
- 16 (e) "Electronic voting system" is a means of conducting an
17 election whereby votes are recorded on ballot cards by means
18 of marketing with electronic sensitized ink or perforating,
19 and such votes are subsequently counted by automatic
20 tabulating equipment at the central counting center;

21 (f) "Program deck" means the actual punch card deck or
22 decks containing the program for counting and tabulating the
23 votes, including the "application program deck";

24 (g) "Application program deck" means the punch card
25 deck containing specific option cards, used and necessary to
26 modify the program of general application, to conduct and
27 tabulate a specific election according to applicable law;

28 (h) "Standard validation test deck" means a deck of ballot
29 cards wherein all voting possibilities which can occur in an
30 election are represented; and

31 (i) "Vote recording device" means equipment in which
32 ballot labels and ballot cards are placed to allow a voter to
33 record his vote.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system that has been approved in
2 accordance with section eight of this article may be adopted
3 for use in general, primary and special elections in any county
4 by either of the following procedures, and not otherwise:

5 (1) By a majority of the members of the county
6 commission voting to adopt the same at a special public
7 meeting called for the purpose of said adoption, with due
8 notice thereof published as a Class II-0 legal advertisement in
9 compliance with the provisions of article three, chapter
10 fifty-nine of this code and the publication area for such
11 publication shall be the county involved: *Provided*, That such
12 meeting shall be held not less than six months prior to a
13 general election or six months prior to a primary election. If at
14 such meeting, such county commission shall enter an order of
15 its intention to adopt the use of an electronic voting system, it
16 shall thereafter forthwith cause to be published a certified
17 copy of such order as a Class II-0 legal advertisement in
18 compliance with the provisions of article three, chapter
19 fifty-nine of this code, and the publication area for such
20 publication shall be the county involved. The first publication
21 of such order shall not be less than twenty days after the entry
22 of such order. Such county commission shall not adopt the
23 use of an electronic voting system until six months after the
24 entry of such order of its intention to adopt the same.
25 Promptly after the expiration of six months after the entry of
26 such order of intention to adopt the use of an electronic
27 voting system, if no petition has theretofore been filed with
28 such county commission requesting a referendum on the

29 question of adoption of an electronic voting system as
30 hereinafter provided, such county commission shall enter a
31 final order adopting the electronic voting system, and the
32 electronic voting system shall thereby be adopted.

33 If five percent or more of the registered voters of such
34 county shall sign a petition requesting that an electronic
35 voting system be not adopted for use in such county and such
36 petition be filed with the county commission of such county
37 within six months after the entry of such order of intention to
38 adopt the use of an electronic voting system, such county
39 commission shall submit to the voters of such county at the
40 next general or primary election, whichever shall first occur,
41 the question: "Shall an electronic voting system be adopted
42 inCounty?" If this question be answered in the
43 affirmative by a majority of the voters in such election upon
44 the question, an electronic voting system shall thereby be
45 adopted. If such question shall not be answered in the
46 affirmative by such majority, the use of an electronic voting
47 system shall not be adopted.

48 (2) By the affirmative vote of a majority of the voters of
49 such county voting upon the question of the adoption of an
50 electronic voting system in such county. If five percent or
51 more of the registered voters of such county shall sign a
52 petition requesting the adoption of an electronic voting
53 system for use in such county, and such petition be filed with
54 the county commission of such county, such county
55 commission shall submit to the voters of such county at the
56 next general or primary election, following by not less than
57 six months the date of the filing of such petition, the
58 question: "Shall an electronic voting system be adopted in
59 County?" If this question be answered in the
60 affirmative by a majority of the voters of such county voting
61 upon the question, an electronic voting system shall thereby
62 be adopted. If such question shall not be answered in the
63 affirmative by such majority, the use of an electronic voting
64 system shall not be adopted: *Provided, however,* That nothing
65 in this section shall be construed to affect or invalidate the
66 adoption of any electronic voting system by any county in
67 accordance with applicable law prior to the effective date of
68 this section.

§3-4A-4. Procedure for terminating use of electronic voting systems.

1 The use of an electronic voting system may be terminated:

2 (1) By a majority of the members of the county
3 commission voting to terminate use of the system at a special
4 public meeting called for the purpose of said termination,
5 with due notice thereof published as a Class II-0 legal
6 advertisement in compliance with the provisions of article
7 three, chapter fifty-nine of this code, and the publication area
8 for such publication shall be the county involved: *Provided*,
9 That such meeting shall be held not less than six months
10 prior to a general election or six months prior to a primary
11 election. If at such meeting, such county commission shall
12 enter an order of its intention to terminate use of an electronic
13 voting system, it shall thereafter forthwith cause to be
14 published a certified copy of such order as a Class II-0 legal
15 advertisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and the publication area
17 for such publication shall be the county involved. The first
18 publication of such order shall not be less than twenty days
19 after the entry of such order. Such county commission shall
20 not terminate the use of an electronic voting system until
21 ninety days after the entry of such order of its intention to
22 terminate the same. Promptly after the expiration of ninety
23 days after the entry of such order of intention to terminate the
24 use of an electronic voting system, if no petition has
25 theretofore been filed with such county commission
26 requesting a referendum on the question of termination of the
27 electronic voting system as hereinafter provided, such county
28 commission shall enter a final order terminating the use of
29 the electronic voting system, and the use of electronic voting
30 system shall thereby be terminated. If a petition has been
31 submitted as provided in this subdivision, the county
32 commission shall not terminate the use of the system but
33 shall proceed as provided in this subdivision.

34 If five percent or more of the registered voters of such
35 county shall sign a petition requesting that the use of an
36 electronic voting system be terminated in such county and
37 such petition be filed with the county commission of such
38 county within ninety days after the entry of such order of
39 intention to terminate the use of an electronic voting system,
40 such county commission shall submit to the voters of such
41 county at the next general or primary election, whichever
42 shall first occur, the question: "Shall the use of an electronic
43 voting system be terminated inCounty?" If this
44 question be answered in the affirmative by a majority of the

45 voters in such election upon the question, the use of an
46 electronic voting system shall thereby be terminated. If such
47 question shall not be answered in the affirmative by such
48 majority, the use of an electronic voting system shall
49 continue.

50 (2) By the affirmative vote of a majority of the voters of
51 such county voting upon the question of termination of the
52 use of an electronic voting system in such county. If five
53 percent or more of the registered voters of such county shall
54 sign a petition requesting the termination of the use of an
55 electronic voting system in such county, and such petition be
56 filed with the county commission of such county, such
57 county commission shall submit to the voters of such county
58 at the next general or primary election, following by not less
59 than ninety days the date of the filing of such petition, the
60 question: "Shall the use of an electronic voting system be
61 terminated inCounty?" If this question be
62 answered in the affirmative by a majority of the voters of such
63 county voting upon the question, the use of an electronic
64 voting system shall thereby be terminated. If such question
65 shall not be answered in the affirmative by a majority of the
66 voters of such county voting upon the question, the use of an
67 electronic voting system shall thereby continue.

**§3-4A-5. Duty of county commission to acquire vote recording
devices, acquire use of automatic tabulating
equipment, and provide a central counting center.**

1 If the use of an electronic voting system shall have been
2 adopted as hereinbefore provided, it shall be the duty of the
3 county commission of such county to acquire the necessary
4 number of vote recording devices to supply all or part of the
5 election precincts within such county as soon as possible, and
6 to acquire such reserve vote recording device or devices as
7 will be deemed necessary. All such acquisition of vote
8 recording devices shall be by sealed competitive bidding.

9 If it shall be impossible for the county commission to
10 comply with its order or with the decision of the voters in a
11 referendum at the next primary or general election, it shall in
12 any event do so at the next following primary or general
13 election, whichever shall first occur.

14 It shall be the further duty of the county commission of
15 such county to acquire prior to any election in which such
16 electronic voting system is to be used, the use of automatic

17 tabulating equipment approved by the state election
18 commission, for the purpose of counting votes in such
19 election. In addition, the county commission of such county
20 shall provide the necessary central counting center for use in
21 said election. Such central counting center shall be located at
22 the county seat of the county involved.

**§3-4A-8. Approval of electronic voting system by state election
commission; expenses; compensation of persons
examining system.**

1 Any person or corporation owning or being interested in
2 any electronic voting system may apply to the state election
3 commission to the end that such system may be examined
4 and a report be made on its accuracy, efficiency, capacity, and
5 safety. Upon the written application of any vendor tendered
6 to the secretary of state or to any clerks in his office in charge
7 of receiving filings for any purpose, it shall be the
8 nondelegable, nondiscretionary duty of the secretary of state
9 to fix a date, time and place, not more than thirty days after
10 the receipt of such application, for a meeting of the state
11 election commission for mutual consideration of such
12 application, and to mail notice thereof by certified mail to
13 each member of the commission.

14 The state election commission shall appoint two qualified
15 computer experts who are not members of the same political
16 party to examine the system and make full reports thereon to
17 the commission within thirty days from the date of the
18 application. They shall state in the report whether or not the
19 system so examined complies with the requirements of this
20 article and can be safely used by voters at elections under the
21 conditions prescribed in this article. If the report be in the
22 affirmative on said question, the system may be approved by
23 the commission and, if approved by the commission, a
24 system of its make and design may be adopted for use at
25 elections as herein provided: *Provided*, That under no
26 circumstances shall a system be approved that is not capable
27 of accurately tabulating returns based upon all possible
28 combinations of voting patterns including, but not limited to,
29 crossover voting and in accordance with section five, article
30 six of this chapter.

31 No electronic voting system shall be used at any election
32 unless it has heretofore or hereafter been approved under this
33 section or its former provisions. Each of the two qualified

34 computer experts appointed by the commission shall be
35 entitled to reasonable compensation and expenses in making
36 such examination and report, and such compensation shall
37 be paid by the person or corporation applying for such
38 examination, which sum shall be paid in advance of making
39 the examination and which sum shall be the sole
40 compensation to be received by any such expert for his work
41 hereunder.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
2 shall not be approved by the state election commission or be
3 purchased, leased, or used, by any county commission unless
4 it shall fulfill the following requirements:

5 (1) It shall secure or insure the voter absolute secrecy in
6 the act of voting, or, at the voter's election, shall provide for
7 open voting;

8 (2) It shall be so constructed that no person except in
9 instances of open voting, as herein provided for, can see or
10 know for whom any voter has voted or is voting;

11 (3) It shall permit each voter to vote at any election for all
12 persons and offices for whom and which he is lawfully
13 entitled to vote, whether or not the name of any such person
14 appears on a ballot label as a candidate; and it shall permit
15 each voter to vote for as many persons for an office as he is
16 lawfully entitled to vote for; and to vote for or against any
17 question upon which he is lawfully entitled to vote and the
18 automatic tabulating equipment used in such electronic
19 voting systems shall reject choices recorded on any ballot
20 card or paper ballot if the number of such choices exceeds the
21 number to which a voter is entitled;

22 (4) It shall permit each voter to deposit, write in, or affix
23 upon devices to be provided for that purpose, ballots
24 containing the names of persons for whom he desires to vote
25 whose names do not appear upon the ballot labels;

26 (5) It shall permit each voter to change his vote for any
27 candidate and upon any question appearing upon the ballot
28 labels up to the time when his ballot or ballot card is
29 deposited in the ballot box;

30 (6) It shall contain a program deck consisting of cards that
31 are sequentially numbered and capable of tabulating all votes
32 cast in each election;

33 (7) It shall contain two standard validation test decks

34 approved as to form and testing capabilities by the state
35 election commission;

36 (8) It shall correctly record and count accurately all votes
37 cast for each candidate and for and against each question
38 appearing upon the ballots or ballot labels;

39 (9) It shall permit each voter at any election other than
40 primary elections, by one mark or punch to vote a straight
41 party ticket, and by one mark or punch to vote for all
42 candidates of one party for presidential electors; and to vote a
43 mixed ticket selected from the candidates of any and all
44 parties and from independent candidates; and it shall permit
45 the proper counting, to the fullest extent possible, of all votes
46 cast for all candidates: *Provided*, That, in the event of
47 cross-over voting from a straight party ticket, the system shall
48 not discard any vote on the straight ticket, unless (i) a
49 candidate opposite the discarded vote on the straight ticket
50 has been clearly chosen by the voter, or (ii) the voter, by mark
51 or punch has clearly indicated which choices on each ticket,
52 not in excess of the total number permitted, the voter has
53 made, or (iii) the choices made by the voter are so
54 contradictory that the voter's choice is indiscernable, in
55 which event, all votes for the candidates for such office shall
56 be discarded;

57 (10) It shall permit each voter in primary elections to vote
58 only for the candidates of the party with which he has
59 declared his affiliation, and preclude him from voting for any
60 candidate seeking nomination by any other political party,
61 permit him to vote for the candidates, if any, for nonpartisan
62 nomination or election, and permit him to vote on public
63 questions;

64 (11) It shall be provided with means for sealing the vote
65 recording device to prevent its use and to prevent tampering
66 with ballot labels, both before the polls are open or before the
67 operation of the vote recording device for an election is begun
68 and immediately after the polls are closed or after the
69 operation of the vote recording device for an election is
70 completed;

71 (12) It shall have the capacity to contain the names of
72 candidates constituting the tickets of at least nine political
73 parties, and to accommodate the wording of at least fifteen
74 questions;

75 (13) It shall be durably constructed of material of good
76 quality and in a workmanlike manner and in a form which
77 shall make it safely transportable;

78 (14) It shall be so constructed with frames for the placing
79 of ballot labels and with suitable means for the protection of
80 such labels, that the labels on which are printed the names of
81 candidates and their respective parties, titles of offices, and
82 wording of questions shall be so reasonably protected from
83 mutilation, disfigurement or disarrangement;

84 (15) It shall bear a number that will identify it or
85 distinguish it from any other machine;

86 (16) It shall be so constructed that a voter may easily learn
87 the method of operating it and may expeditiously cast his
88 vote for all candidates of his choice, and upon any public
89 question; and

90 (17) It shall be accompanied by a mechanically operated
91 instruction model which shall show the arrangement of ballot
92 labels, party columns or rows, and questions.

**§3-4A-12. Ballot label arrangement in vote recording devices;
when uniform numbering required; drawing by lot
to determine position of candidates on ballots or
ballot labels; sealing of devices; record of
identifying numbers.**

1 When the ballot labels are printed and delivered to the clerk
2 of the county commission, he shall place them in the vote
3 recording devices in such manner as will most nearly
4 conform to the arrangement prescribed for paper ballots, and
5 as will clearly indicate the party designation or emblem of
6 each candidate. Each column, row or page containing the
7 names of the office and candidates for such office shall be so
8 arranged as to clearly indicate the office for which the
9 candidate is running. The names of the candidates for each
10 office indicated shall be placed on the ballot label and the
11 arrangement of the ballot label shall conform as nearly as
12 practicable to the plan herein given:

| Democratic Ticket | | Republican Ticket | |
|------------------------|------|------------------------|------------|
| For House of Delegates | | For House of Delegates | |
| Name | | Name | |
| Democratic: | 79 ▶ | ◀80 | Republican |
| Democratic: | 81 ▶ | ◀82 | Republican |
| Democratic: | 83 ▶ | ◀84 | Republican |
| Democratic: | 85 ▶ | ◀86 | Republican |

13 or:

| Democratic Ticket | | Republican Ticket | |
|------------------------|------|------------------------|--|
| For House of Delegates | | For House of Delegates | |
| Name | | Name | |
| | | ◀69 | |
| | 70 ▶ | | |
| | | ◀71 | |
| | 72 ▶ | | |
| | | ◀73 | |
| | 74 ▶ | | |
| | | ◀75 | |
| | 76 ▶ | | |

13 The secretary of state shall assign a uniform number
 14 applicable to all counties using electronic voting for all
 15 straight party tickets and for all candidates running for

16 offices to be voted upon by all of the voters of the state. The
17 numbers so designated by the secretary of state shall be used
18 by all counties using electronic voting systems irrespective of
19 the fact that in one or more such counties the number or
20 numbers so designated may result in other than strict
21 sequential ballot arrangement.

22 After taking into account the numbers so assigned by the
23 secretary of state to straight party tickets and all candidates
24 for offices to be voted upon by all the voters of the state, the
25 clerk of the circuit court shall appoint a time at which all
26 candidates for the House of Delegates, magistrate and the
27 office of delegate to a political party national convention are
28 to appear in his office for the purpose of drawing by lot to
29 determine where their names will appear on the ballots or
30 ballot labels. The clerk shall give due notice of such time to
31 each such candidate by registered or certified mail, return
32 receipt requested. At the time appointed, all such candidates
33 for the House of Delegates, magistrate and the office of
34 delegate to a political party national convention shall
35 assemble in the office of such clerk and such candidates shall
36 then proceed to draw by lot to determine where their names
37 shall appear on the ballots or ballot labels. The number so
38 drawn by each such candidate shall determine where his or
39 her name shall appear on the ballots or ballot labels. In the
40 event any candidate or candidates fail to appear at the time
41 appointed, the clerk shall draw for such absent candidate or
42 candidates in the presence of those candidates assembled, if
43 any, and the number so drawn by the clerk shall determine
44 where the name of any absent candidate or candidates shall
45 appear on the ballots or ballot labels. The circuit clerk shall
46 record the number drawn by each candidate and his name in
47 an appropriate book. The ballot commissioners shall proceed
48 to have the ballot labels printed according to the provisions of
49 this article. After receiving the printed ballot labels, the clerk
50 of the county commission shall ascertain their accuracy and
51 proceed to have the ballot labels placed in the vote recording
52 devices. The clerk of the county commission shall then seal
53 the vote recording devices so as to prevent tampering with
54 ballot labels. The clerk of the county commission shall then
55 enter in an appropriate book, opposite the number of each
56 precinct, the identifying or distinguishing number of the
57 specific vote recording device or devices to be used in that
58 precinct.

§3-4A-13. Inspection of vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices.

1 When the clerk of the county commission has completed
2 the preparation of the vote recording devices, as provided in
3 the next preceding section, and not later than seven days
4 before the date of the election, he shall notify the members of
5 the county commission and the ballot commissioners that the
6 devices are ready for use. Thereupon the members of the
7 county commission and the ballot commissioners shall
8 convene at the office of the clerk or at such other place
9 wherein the vote recording devices are stored, not later than
10 five days before the day of the election, and shall inspect the
11 devices to determine whether the requirements of this article
12 have been met. Notice of the place and time of such
13 inspection shall be published, no less than three days prior
14 thereto, as a Class I-0 legal advertisement in compliance with
15 the provisions of article three, chapter fifty-nine of this code
16 and the publication area for such publication shall be the
17 county involved. Any candidate, and one representative of
18 each political party on the ballot may be present during such
19 examination. If the devices are found to be in proper order,
20 the members of the county commission and the ballot
21 commissioners shall endorse their approval in the book in
22 which the clerk entered the numbers of the devices opposite
23 the numbers of the precincts. The devices shall then be
24 secured in double lock rooms. The county clerk and the
25 president or president pro tempore of the county commission
26 shall each have a key. The rooms shall be unlocked only in
27 their presence and only for the removal of the devices for
28 transportation to the polls. Upon such removal of the devices,
29 the county clerk and president or president pro tempore of
30 the county commission shall certify in writing signed by
31 them that the same were found to be sealed when removed
32 for transportation to the polls.

33 Not later than three days before the election the election
34 commissioner of each precinct who shall have been
35 previously designated by the ballot commissioners, shall
36 attend at the office of the clerks of the circuit and county
37 courts of such county to receive the necessary election
38 records, books and supplies required by law. Such election
39 commissioners shall receive the per diem mileage rate

40 prescribed by law for this service. Such election
41 commissioners shall give the ballot commissioners a
42 sequentially numbered written receipt, on a printed form,
43 provided by the clerk of the county commission, for such
44 records, books and supplies. Such receipt shall be prepared
45 in duplicate. One copy of the receipt shall remain with the
46 clerk of the county commission and one copy shall be
47 delivered to the president or president pro tempore of the
48 county commission.

**§3-4A-16. Delivery of vote recording devices; time; arrangement
for voting.**

1 The clerk of the county commission shall deliver or cause to
2 be delivered each vote recording device to the polling place
3 where it is to be employed. Such delivery shall be made not
4 less than one hour prior to the opening of the polls and shall
5 be made in the presence of the precinct election
6 commissioners. At the time of the delivery of the vote
7 recording device, it shall be sealed in such a way to prevent its
8 use prior to the opening of the polls and to prevent any
9 tampering with the ballot labels. Immediately prior to the
10 opening of the polls on election day, the seal shall be broken
11 and the vote recording device shall be opened in the presence
12 of the precinct election commissioners, who shall certify in
13 writing signed by them to the clerk of the county
14 commission, that the devices have been delivered in their
15 presence, that the devices were found to be sealed upon such
16 delivery, and that the seals have been broken and the devices
17 opened in their presence. The election commissioners shall
18 then cause the vote recording device to be arranged in the
19 voting booth in such manner that the front of the vote
20 recording device, on which the ballot labels appear, will not
21 be visible, when the vote recording device is being operated,
22 to any person other than the voter if the voter shall elect to
23 close the curtain, screen or hood to the voting booth.

**§3-4A-17. Check of vote recording devices before use;
corrections; reserve vote recording devices.**

1 Before permitting the first voter to vote, the election
2 commissioners shall examine the vote recording devices to
3 ascertain whether the ballots or ballot labels are arranged as
4 specified on the facsimile diagram furnished to the precinct.
5 If the ballots or ballot labels are arranged incorrectly, the
6 commissioners shall immediately notify the clerk of the

7 county commission of the foregoing facts in writing,
8 indicating the number of the device, and obtain from such
9 clerk a reserve vote recording device, and thereafter proceed
10 to conduct the election. Any reserve vote recording device so
11 used shall be prepared for use by the clerk or his duly
12 appointed deputy and said reserve vote recording device
13 shall be prepared, inspected and sealed, and delivered to the
14 polling place wherein the seal shall be broken and such
15 device opened in the presence of the precinct election
16 commissioners who shall certify in writing signed by them to
17 the clerk of the county commission, that the reserve vote
18 recording device was found to be sealed upon delivery to the
19 polling place, that the seal was broken and the device opened
20 in their presence at the polling place. The vote recording
21 device found to have been with incorrect ballot labels shall be
22 returned immediately to the custody of the clerk who shall
23 then promptly cause such vote recording device to be
24 repaired, prepared and resealed in order that it may be used
25 as a reserve vote recording device if needed.

**§3-4A-18. Disrepair of vote recording devices in use; reserve
vote recording devices.**

1 If, during the conduct of an election, a vote recording
2 device becomes in a state of disrepair so that it cannot be
3 operated in a manner that will comply with the provisions of
4 this article, the election commissioners shall seal the device
5 in such manner as to prevent further voting thereon. Then the
6 election commissioners shall secure from the county clerk a
7 reserve vote recording device, which shall be prepared,
8 inspected and delivered to the polling place wherein the seal
9 shall be broken and such device opened in the presence of the
10 precinct election commissioners who shall certify in writing
11 signed by them to the clerk of the county commission, that
12 the reserve vote recording device was found to be sealed
13 upon delivery to the polling place, that the seal was broken
14 and the device opened in their presence at the polling place.
15 The commissioners shall proceed to conduct the election.

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

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

5 (2) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner
7 representing the party to which the voter belongs shall direct
8 the voter to the vote recording device which will allow the
9 voter to vote only for the candidates who are seeking
10 nomination on the ticket of the party with which the voter is
11 affiliated.

12 (3) The poll clerk shall issue to each voter when he signs
13 the pollbook a card or ticket numbered to correspond to the
14 number on the pollbook of such voter, and in the case of a
15 primary election, indicating the party affiliation of such voter,
16 which numbered card or ticket shall be presented to the
17 election commissioner in charge of the vote recording device.

18 (4) One hour before the opening of the polls the precinct
19 election commissioners shall arrive at the polling place and
20 set up the voting booths so that they will be in clear view of
21 the election commissioners, open the vote recording devices,
22 place them in the voting booths, and examine them to see that
23 they have the correct ballots or ballot labels by comparing
24 them with the sample ballots, and are in proper working
25 order. They shall open and check the ballots, ballot cards,
26 supplies, records and forms, and post the sample ballots or
27 ballot labels and instructions to voters. Upon ascertaining
28 that all ballots, ballot cards, supplies, records and forms
29 arrived intact, the election commissioners shall so certify in
30 writing their findings upon forms provided and collected by
31 the clerk of the county commission over their signatures to
32 the clerk of the county commission. Any discrepancies shall
33 be so noted and reported immediately to the clerk of the
34 county commission. The election commissioners shall then
35 number in sequential order the ballot card stub of each ballot
36 card in their possession and report in writing to the clerk of
37 the county commission the number of ballot cards received.
38 They shall issue such ballot cards in sequential order to each
39 voter.

40 (5) Each voter shall be instructed how to operate the vote
41 recording device before he enters the voting booth.

42 (6) Any voter who shall spoil, deface or mutilate the ballot
43 or ballot card delivered to him, on returning the same to the
44 poll clerks, shall receive another in place thereof. Every
45 person who does not vote any ballot or ballot card delivered
46 to him shall, before leaving the election room, return such
47 ballot or ballot card to the poll clerks. When a spoiled or

48 defaced ballot or ballot card is returned, the poll clerks shall
49 make a minute of the fact on the pollbooks, at the time, and
50 the word "spoiled" shall be written across the face of the
51 ballot or ballot card and it shall be placed in an envelope for
52 spoiled ballots or ballot cards.

53 Immediately on closing the polls, the election
54 commissioners shall ascertain the number of spoiled ballots
55 or ballot cards during the election and the number of ballots
56 or ballot cards remaining not voted. The election
57 commissioners shall also ascertain from the pollbooks the
58 number of persons who voted and shall report, in writing
59 signed by them to the clerk of the county commission, any
60 irregularities in the ballot boxes, the number of ballots or
61 ballot cards cast, the number of ballots or ballot cards spoiled
62 during the election and the number of ballots or ballot cards
63 unused. All unused ballots or ballot cards shall at the same
64 time be returned to the clerk of the county commission who
65 shall count them and record the number. If there is no
66 discrepancy, the unused ballots or ballot cards shall be
67 destroyed forthwith, before a representative of each party on
68 the ballot, by fire or otherwise, by the clerk of the county
69 commission or a duly designated deputy clerk. If there is a
70 discrepancy, the unused ballots or ballot cards shall be
71 impounded and secured under double locks until the
72 discrepancy is resolved. The county clerk and the president
73 or president pro tempore of the county commission shall each
74 have a key. Upon resolution of the discrepancy, the unused
75 ballots or ballot cards shall forthwith, before a
76 representative of each party on the ballot, be destroyed by
77 fire or otherwise, by the clerk of the county commission or a
78 duly designated deputy clerk.

79 Each commissioner who is a member of an election board
80 which fails to account for every ballot or ballot card delivered
81 to it shall be guilty of a misdemeanor, and, upon conviction
82 thereof, shall be fined not more than one thousand dollars or
83 confined in the county jail for not more than one year, or both.

84 The board of ballot commissioners of each county, or the
85 chairman thereof, shall preserve the ballots or ballot cards
86 that are left over in their hands, after supplying the precincts
87 as provided, until the close of the polls on the day of election,
88 and such ballots or ballot cards, shall then be destroyed by
89 such board, or the chairman thereof, by fire or otherwise.

90 (7) Where ballot cards are used, the voter, after he has
91 marked his ballot card, shall, before leaving the voting booth,
92 place the ballot card inside the envelope provided for this
93 purpose, with the stub extending outside said envelope, and
94 return it to an election commissioner who shall remove the
95 stub and deposit the envelope with the ballot card inside in
96 the ballot box. No ballot card from which the stub has been
97 detached shall be accepted by the officer in charge of the
98 ballot box, but such ballot card shall be marked "spoiled" and
99 placed with the spoiled ballots or ballot cards.

100 (8) The precinct election commissioners shall prepare a
101 report in quadruplicate of the number of voters who have
102 voted, as indicated by the pollbooks, and shall place two
103 copies of this report in the ballot box, which thereupon shall
104 be sealed with a paper seal signed by the election
105 commissioners so that no additional ballots may be deposited
106 or removed from the ballot box. Two election commissioners
107 of different political parties shall forthwith deliver the ballot
108 box to the clerk of the county commission at the central
109 counting center and receive a signed numbered receipt
110 therefor, which receipt shall carefully set forth in detail any
111 and all irregularities pertaining to the ballot boxes and noted
112 by the precinct election officers.

113 The receipt shall be prepared in duplicate, a copy of which
114 shall remain with the clerk of the county commission who
115 shall have any and all irregularities noted. The time of their
116 departure from the polling place shall be noted on the two
117 remaining copies of the report, which shall be immediately
118 mailed to the clerk of the county commission.

119 (9) The pollbooks, register of voters, unused ballots or
120 ballot cards, spoiled ballots or ballot cards and other records
121 and supplies shall be delivered to the clerk of the county
122 commission, all in conformity with the provisions of this
123 section.

§3-4A-20. "Independent" voting in primary elections.

1 If at any primary elections, nonpartisan candidates for
2 office and public questions are submitted to the voters and on
3 which candidates and questions persons registered as
4 "independent" are entitled to vote, as provided in section
5 eighteen, article two of this chapter, the election officers shall
6 provide a vote recording device so that such "independent"
7 voters may vote only those portions of the ballot or ballot card

8 relating to the nonpartisan candidates and the public
9 questions submitted, or provide a ballot card containing only
10 provision for voting for those candidates and/or upon those
11 issues common to the ballots provided to all voters regardless
12 of political party affiliation.

13 If vote recording devices are not available for the
14 “independent” voters, provision shall be made for sealing the
15 partisan section or sections of the ballot or ballot labels on a
16 vote recording device using temporary seals, thus permitting
17 the independent voter to vote for the nonpartisan section or
18 sections of the ballot or ballot labels. After the “independent”
19 voter has voted, the temporary seals may be removed and the
20 device may then be used by partisan voters.

**§3-4A-21. Absent voter ballots; issuance, processing and
tabulation.**

1 Absentee voters shall cast their votes on absent voter ballot
2 cards. If absentee voters shall be deemed eligible to vote in
3 person at the office of the clerk of the circuit court, in
4 accordance with the provisions of article three of this chapter,
5 the clerk of the circuit court of each county shall provide a
6 vote recording device for the use of such absentee voters. For
7 all absentee voters deemed eligible to vote an absent voter’s
8 ballot card by mail, in accordance with the provisions of
9 article three of this chapter, the clerk of the circuit court of
10 each county shall prepare and issue an absent voter ballot
11 packet consisting of the following:

- 12 (a) One official absent voter ballot card;
- 13 (b) One punching tool;
- 14 (c) One disposable styrofoam block to be placed behind
15 the ballot card for voting purposes and to be discarded after
16 use by the voter;
- 17 (d) One absent voter instruction ballot;
- 18 (e) One absent voter’s ballot envelope No. 1, unsealed,
19 which shall have no writing thereon and which shall be
20 identical to the secrecy envelope used for placement of ballot
21 cards at the polls; and
- 22 (f) One absent voter’s ballot envelope No. 2, which
23 envelope shall be marked with the proper precinct number
24 and shall provide a place on its seal for the absent voter to
25 affix his signature. Such envelope shall also otherwise
26 contain the forms and instructions as provided in section five,
27 article three of this chapter, relating to the absentee voting of
28 paper ballots.

29 Upon receipt of an absent voter's ballot card by mail, the
30 voter shall mark the ballot card with the punch tool and the
31 voter may receive assistance in voting his absent voter's
32 ballot card in accordance with the provisions of section six,
33 article three of this chapter.

34 After the voter has voted his absent voter's ballot card, he
35 shall (1) enclose the same in absent voter's ballot envelope
36 No. 1, and seal that envelope, (2) enclose sealed absent voter's
37 ballot envelope No. 1 in absent voter's ballot envelope No. 2,
38 (3) complete and sign the forms, if any, on absent voter's
39 ballot envelope No. 2 according to the instructions thereon,
40 and (4) mail, postage prepaid, sealed absent voter's ballot
41 envelope No. 2 to the clerk of the circuit court of the county in
42 which he is registered to vote, unless the voter has appeared
43 in person, in which event he shall hand deliver the sealed
44 absent voter's ballot envelope No. 2 to the clerk.

45 Upon receipt of such sealed envelope, the circuit clerk shall
46 (1) enter onto the envelope such information as may be
47 required of him according to the instructions thereon; (2)
48 enter his challenge, if any, to the absent voter's ballot; (3)
49 enter the required information into a record of persons
50 making application for and voting an absent voter's ballot by
51 personal appearance or by mail (the form of which record and
52 information to be entered therein shall be prescribed by the
53 secretary of state); and (4) place such sealed envelope in a
54 secure location in his office, there to remain until delivered to
55 the polling place in accordance with the provisions of this
56 article or, in case of a challenged ballot, to the county
57 commission sitting as a board of canvassers.

58 When absent voters' ballots have been delivered to the
59 election board of any precinct, the election commissioners
60 shall, at the close of the polls, proceed to determine the
61 legality of such ballots as prescribed in article three of this
62 chapter. The commissioners shall then open the No. 2
63 envelope. Without opening the absent voter ballot envelope
64 No. 1, the commissioners shall shuffle and intermingle them
65 and deposit same in the ballot box. The commissioner shall
66 provide an absent voter ballot envelope No. 1 for any voted
67 ballot card which, when opened, has no such envelope.

§3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in
2 accordance with provisions of article one of this chapter

3 relating to the challenging of voters, and a vote recording
4 device is used that tabulates the vote as an individual vote,
5 such person shall be permitted to cast his vote by use of the
6 vote recording device. He shall be provided with a challenged
7 ballot card and ballot envelopes for the insertion of the ballot
8 card after voting. There shall be an inner envelope marked
9 with the precinct number for the challenged ballot card.
10 There shall also be an outer envelope for the inner envelope
11 and the challenged voter stub, which envelope shall provide a
12 place for the challenged voter to affix his signature on the seal
13 of such outer envelope.

14 After the county commission, as prescribed in article one of
15 this chapter, has determined that the challenges are
16 unfounded, the commissioners shall remove the outer
17 envelopes. Without opening the inner envelope, the
18 commissioners shall shuffle and intermingle such inner
19 envelopes. The commissioners shall then open the inner
20 envelopes, remove the ballot cards and add the votes to the
21 previously counted totals.

§3-4A-26. Test of automatic tabulating equipment.

1 One week prior to the start of the count of the votes
2 recorded on ballots or ballot cards, the clerk of the county
3 commission shall have the automatic tabulating equipment
4 tested to ascertain that it will accurately count the votes cast
5 for all offices and on all measures. Public notice of the time
6 and place of the test shall be given not less than forty-eight
7 hours nor more than two weeks prior thereto by publication
8 of such notice as a Class I-0 legal advertisement, in
9 compliance with the provisions of article three, chapter
10 fifty-nine of this code, and the publication area for such
11 publication shall be the county involved.

12 The test shall be open to representatives of the political
13 parties, candidates, the press and the public. It shall be
14 conducted five times by processing two separate sets of a
15 preaudited group of ballots or ballot cards as appropriate, so
16 punched or marked as to record a predetermined number of
17 valid votes for each candidate and on each measure. It shall
18 include for each multi-candidate office one or more ballot
19 cards which have cross-over votes in order to test the ability
20 of the automatic tabulating equipment to record those votes
21 in accordance with the provisions of this article and
22 applicable law, and it shall include for each office one or more

23 ballot cards which have votes in excess of the number
24 allowed by law in order to test the ability of the automatic
25 tabulating equipment to reject such votes. If, in the process of
26 any of the test counts, any error is detected, the cause of such
27 error shall be ascertained and corrective action promptly
28 taken. After the completion of said corrective action, the test
29 counts shall continue, including a retesting of those precincts
30 previously test counted. Prior to the continuation of the
31 testing, the county commission shall certify in writing, signed
32 by them, the nature of the error, the cause thereof and the
33 type of corrective action taken. Such certification shall be
34 recorded in the office of the clerk of the county commission
35 in the miscellaneous record book. Immediately after
36 conclusion of this completed test, a certified duplicate copy
37 of the program deck shall be sent by certified mail to the
38 offices of the state election commission, where it shall be
39 preserved and secured for one year, and made available for
40 comparison or analysis by order of a circuit court or the
41 supreme court of appeals.

42 The program deck to be used in the election shall
43 immediately be certified by the county commission to be free
44 from error as determined by the test, shall be placed with
45 such certification in a sealed container and kept under
46 individual multiple locks with individual keys for each lock.
47 The number of locks and keys shall be the same as the
48 number of county commissioners together with the county
49 clerk, with each commissioner and the county clerk having a
50 single key in his possession. Such sealed container shall be
51 opened to conduct the test required to be conducted
52 immediately before the start of the official count.

53 The test shall be repeated immediately before the start of
54 the official count. The test shall also be conducted at the
55 conclusion of the official count before the count is approved
56 as errorless and before the election returns are approved as
57 official.

58 All results of all of the tests shall be immediately certified
59 by the county commission and filed in the office of the clerk
60 of the county commission and immediately recorded in the
61 miscellaneous record book. On completion of the count, the
62 program deck, test materials and ballot cards shall be sealed,
63 except for purposes of the canvass as provided in section
64 twenty-eight of this article, and retained and kept under
65 individual multiple locks with individual keys for each lock.

66 Said numbers of locks and keys shall be the same as the
67 number of county commissioners together with the county
68 clerk, with each commissioner and the county clerk having a
69 single key in his possession.

§3-4A-27. Proceedings at the central counting center.

1 (1) All proceedings at the central counting center shall be
2 under the supervision of the clerk of the county commission,
3 and shall be conducted under circumstances which allow
4 observation by all persons entitled to be present. The
5 proceedings shall take place in a room of sufficient size and
6 satisfactory arrangement to permit such observation. Those
7 persons entitled to be present shall include all candidates
8 whose names appear on the ballots being counted, or if such
9 candidate be absent, a representative of such candidate, and
10 two representatives of each political party on such ballot, who
11 shall be chosen by the local chairman of such political party's
12 executive committee. A reasonable number of the general
13 public shall also be freely admitted to the room. In the event
14 all members of the general public desiring admission to the
15 room cannot be admitted at one time, the county commission
16 shall provide for a periodic and convenient rotation of
17 admission to the room for observation, to the end that each
18 member of the general public desiring admission shall,
19 during the proceedings at the central counting center, be
20 granted such admission for reasonable periods of time for
21 observation: *Provided*, That no person except those
22 authorized for the purpose shall touch any ballot or ballot
23 card or other official records and papers utilized in the
24 election during such observation. All persons who are
25 engaged in processing and counting of the ballots shall be
26 representative of each political party on the ballot, and shall
27 be deputized in writing and take an oath that they will
28 faithfully perform their assigned duties. Such deputies shall
29 be issued an official badge or identification card which shall
30 be assigned an identity control number, and such deputies
31 shall prominently wear on his or her outer garments the
32 issued badge or identification card. Upon completion of the
33 deputies' duties, the badges or identification cards shall be
34 returned to the county clerk. If any ballot card is damaged or
35 defective so that it cannot properly be counted by the
36 automatic tabulating equipment, a true duplicate copy shall
37 be made of the damaged ballot card in the presence of
38 representatives of each political party on the ballot and

39 substituted for the damaged ballot card. All duplicate ballot
40 cards shall be clearly labeled "duplicate" and shall bear a
41 serial number which shall be recorded on the damaged or
42 defective ballot card and on the replacement ballot card.

43 (2) The returns printed by the automatic tabulating
44 equipment at the central counting center, to which have been
45 added write-in and other valid votes, shall, when certified by
46 the board of canvassers, constitute the official return of each
47 precinct or election district. Further, all such returns shall be
48 printed on a precinct basis. Upon completion of the count, the
49 returns shall be open to the public by posting such returns
50 precinct by precinct at the central counting center. Upon
51 completion of the canvass, the returns shall be posted in the
52 same manner.

53 (3) If for any reason it becomes impracticable to count all
54 or a part of the ballots with tabulating equipment, the board
55 of canvassers may direct that they be counted manually,
56 following as far as practicable the provisions governing the
57 counting of paper ballots.

58 (4) As soon as possible after the completion of the count,
59 the clerk of the county commission shall have the vote
60 recording devices properly boxed or securely covered and
61 removed from the polling place to a proper and secure place
62 of storage.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

1 (1) The vote recording devices, the ballot labels, ballot
2 cards, program decks and standard validation test decks shall
3 remain sealed during the canvass of the returns of the
4 election and for a period of seven days thereafter, except that
5 such equipment may be opened for the canvass and it shall be
6 resealed immediately thereafter. During such period any
7 candidate or the local chairman of a political party may be
8 permitted to examine any of the materials so sealed:
9 *Provided*, That a notice of the time and place of such
10 examination shall be posted at the central counting center
11 before and on the hour of nine o'clock in the morning on the
12 day ~~of~~ the examination is to occur, and all persons entitled to
13 be present at the central counting center may, at their option,
14 be present. Upon completion of the canvass and after a
15 seven-day period has expired, the vote recording devices, the
16 ballot labels, ballot cards, program decks and standard
17 validation test decks shall be sealed for one year: *Provided*,

18 *however*, That the vote recording devices and all tabulating
19 equipment may be released for use in any other lawful
20 election to be held more than ten days after the canvass is
21 completed, and any of the electronic voting equipment herein
22 discussed may be released for inspection or review by a
23 request of a circuit court or the supreme court of appeals.

24 (2) In canvassing the returns of the election, the board of
25 canvassers shall examine all of the vote recording devices, the
26 ballot labels, ballot cards and the automatic tabulating
27 equipment used in such election and shall determine the
28 number of votes cast for each candidate and for and against
29 each question and by such examination shall procure the
30 correct returns and ascertain the true results of the election.
31 Any candidate or his party representative may be present at
32 such examination.

33 (3) If any candidate shall demand a recount of the votes
34 cast at an election, the ballots and ballot cards shall be
35 reexamined during such recount for the purpose of
36 reascertaining the total number of votes cast for any
37 candidate in the same manner and according to the same
38 rules as are utilized in the original vote count pursuant to
39 section twenty-seven of this article.

40 (4) During the canvass and any requested recount, at least
41 five percent of the precincts shall be chosen at random and
42 the ballot cards cast therein counted manually. The same
43 random selection shall also be counted by the automatic
44 tabulating equipment. If the variance between the random
45 manual count and the automatic tabulating equipment count
46 of the same random ballots, is equal to or greater than one
47 percent, then a manual recount of all ballot cards shall be
48 required. In the course of any recount, if a candidate for an
49 office shall so demand, or if the board of canvassers shall so
50 elect to recount the votes cast for an office, the votes cast for
51 that office in any precinct shall be recounted by manual
52 count.

**§3-4A-33. Tampering with vote recording devices, ballot labels,
ballot or ballot cards, program decks, standard
validation test decks, or other automatic
tabulating equipment; other dishonest practices;
attempts; penalty.**

1 Any person not an election officer or other public official
2 who shall tamper or attempt to tamper with any vote

3 recording device, ballot label, ballot or ballot card, program
4 deck, standard validation test deck, or automatic tabulating
5 equipment, or in any way intentionally impair or attempt to
6 impair, their use, and any person who shall be guilty of or
7 shall attempt any dishonest practice upon any such devices
8 or equipment, or with or by their use, shall be deemed guilty
9 of a felony, and, upon conviction thereof, shall be confined in
10 the penitentiary for not less ~~more~~ than one year nor more than
11 ten years, or fined not less than five thousand dollars, or both.

12 Any clerk of a county commission, county commissioner,
13 ballot commissioner, election commissioner, or poll clerk, or
14 any custodian, technician, or other public official authorized
15 to take part in the holding of an election or in preparing for an
16 election, who, with intent to cause or permit any vote
17 recording device, program deck, standard validation test
18 deck, or other automatic tabulating equipment to fail to
19 record, test or tabulate correctly all votes cast thereon or
20 tabulated therewith, tampers with or disarranges such device
21 in any way, or any part or appliance thereof, or who causes or
22 consents to the use of such device or equipment for vote
23 recording, testing or tabulating at any election with
24 knowledge of the fact that the same is not in order, or not
25 perfectly set and adjusted so that it will correctly record, test
26 or tabulate all votes cast, or who, with the purpose of
27 defrauding or deceiving any voter or of causing it to be
28 doubtful for what ticket or candidate or candidates or
29 proposition any vote is cast, or of causing it to appear on said
30 device or devices that the votes cast for one ticket, candidate
31 or proposition, were cast for another ticket, candidate or
32 proposition, removes, changes or mutilates any ballot, ballot
33 card or ballot label on said device or any part thereof, or does
34 any other thing intended to interfere with the validity or
35 accuracy of the election, shall be deemed guilty of a felony,
36 and, upon conviction thereof, shall be confined in the
37 penitentiary not less than one year nor more than ten years, or
38 fined not less than five thousand dollars, or both.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayler

Chairman Senate Committee

Tony E. Whitlow

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage

Todd C. Huib

Clerk of the Senate

V. A. Blankenship

Clerk of the House of Delegates

Walter R. McInaw

President of the Senate

John M. Seese, Jr.

Speaker House of Delegates

The within is approved this the 31
day of March, 1982.

John D. Rhyne, Jr.

Governor

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OFFICE OF THE GOVERNOR

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