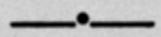


No: 630

RECEIVED
1985 MAY -3 PM 4:42
OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

Committee Substitute for

SENATE BILL NO. 630

(By Mr. *Polunski*)



PASSED *April 12* 1985

In Effect *immediately upon* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 630

(MR. PALUMBO, *original sponsor*)

(Originating in the Committee on Government Organization.)

[Passed April 13, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, twenty-one, twenty-three, twenty-four, twenty-five, twenty-seven, thirty-four, thirty-six and forty-three, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twenty and forty-one, article two; sections three, four, five, six and eleven, article three; section twelve, twenty-one and twenty-two, article four; sections nine, eleven, twelve, thirteen, sixteen, twenty-two, twenty-three and thirty, article four-a, all of said chapter; to further amend said article four-a by adding thereto a new section designated section ten-a; to amend and reenact sections one, five, seven and nine, article five; sections two, six and nine, article six; sections five, five-a, seven and twelve, article eight, all of said chapter; and to further amend said article eight by adding thereto a new section, designated section five-f, all relating to elections; voting precincts, number of voters in precincts and exceptions relating thereto; precinct maps; preparation of paper ballots and time requirements relating thereto; notification of certain candidates of drawing by lot for ballot

position; duty of county commissions to arrange and equip polling places; minimum number of voting booths; delivery and receipt of election supplies and time requirements relating thereto; delivery of supplies by special messenger; receipt and return of municipal precinct registration records and time requirements relating thereto; procedures for voters to receive, prepare and deposit ballots at the polling place; disposition of spoiled ballots; voters qualified to receive assistance in voting; procedures for rendering assistance to such voters; persons qualified to render assistance to such voters; challenge of ballots cast with assistance; requiring affidavit of person rendering assistance to a voter and oaths to be contained therein; recordation of certain information relation to assisted voters; receipt and preservation of certain election materials by the clerks of the county commissions; penalties for false swearing; penalties for allowing an unqualified voter to receive unchallenged assistance in voting; report on and disposition of ballots spoiled or unused; preservation of unused ballots, penalties for failure to account for all ballots delivered; disposition of certain election papers; procedure for voter registration; procedure for registration and transfer of registration by mail; form required for registration by mail and distribution thereof; information to be provided and excluded from such form; requiring validation of registration by mail and certain exceptions thereto; application and procedures for voting an absent voter's ballot by personal appearance in the offices of the circuit clerks; voters qualified to vote an absent voter's ballot by personal appearance; duties of the clerks of the circuit court in conducting voting of absent voter's ballots by personal appearance; voters qualified to receive assistance in voting an absent voter's ballot by personal appearance; persons qualified to render assistance to such voters; challenge of absent voter's ballots cast with assistance; requiring affidavit of person rendering assistance to a voter voting an absent voter's ballot and oaths to be contained therein; recordation of certain information relating to assisted voters voting an absent voter's ballot; penalties for false swearing; penalties for assistance of a voter by unqualified person; penalties for allowing an unqualified voter to vote an absent voter's ballot; definitions of certain

terms; application and procedures for voting an absent voter's ballot by mail; voters qualified to vote an absent voter's ballot by mail; assistance to voters in voting an absent voter's ballot by mail; requiring affidavit of person rendering assistance to such a voter and oaths to be contained therein; definitions of certain terms; duties of circuit clerks in preparation of absent voter's ballots, handling of ballots received by mail and recordation of information relating thereto; delivering and receipt of election supplies in counties using voting machines and time requirements relating thereto; assistance in voting by voting machine; persons qualified to render assistance in voting by voting machine; affidavits required of such persons and oaths to be contained therein; prohibiting all persons from area about voting machines, certain exceptions thereto and penalties therefor; minimum requirements of electronic voting systems; requiring proportional distribution of voting devices at a primary election; preparation of ballot labels and certain supplies for electronic voting and time requirements relating thereto; ballot label arrangement in vote recording devices; requiring uniform numbering for candidates for certain offices; requiring drawing by lot to determine position of certain candidates on ballot labels; duties of the clerks of the circuit courts and clerks of the county commissions in the preparation of ballot labels; providing for inspection, maintenance, removal and certification of vote recording devices and ballot cards; delivery and receipt of election supplies used in electronic voting and time requirements relating thereto; assistance in voting by electronic voting device; persons qualified to render assistance in voting by electronic voting device; affidavits required of such persons and oaths to be contained therein; prohibiting all persons from area about voting devices, certain exceptions thereto and penalties therefor; voting precincts in counties using electronic voting systems and the maximum number of voters therein; time and place of holding primary elections and hours polls open; announcements of candidacy for county boards of education and time requirements for filing thereof; announcements of candidacy for other offices and time requirements for filing thereof; certification and posting of candidacies by the secretary of state and time requirements relating thereto;

preparation and form of general election ballots and information contained thereon; ballot counting procedures; canvas of election returns; declaration and certification procedures for recount of ballots; and preservation and destruction of certain election papers; requiring accounts of financial transactions; filing of reports relating thereto with certain exceptions; time requirements for such filing; definitions of certain terms; information required in reports of financial transactions; prohibiting anonymous contributions and providing for distribution thereof; requiring written loan agreements and reporting thereof; penalties relating to filing reports of financial transactions; prohibiting certain activities related to campaigns and elections; prohibiting any person from soliciting campaign contributions unless such person reveals the compensation to be received if such contribution is successfully collected and penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections five, twenty-one, twenty-three, twenty-four, twenty-five, twenty-seven, thirty-four, thirty-six and forty-three, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections twenty and forty-one, article two; sections three, four, five, six and eleven, article three; sections twelve, twenty-one and twenty-two, article four; sections nine, eleven, twelve, thirteen, sixteen, twenty-two, twenty-three and thirty, article four-a, all of said chapter, be amended and reenacted; that said article four-a be further amended by adding thereto a new section, designated section ten-a; that sections one, five, seven and nine, article five; sections two, six and nine, article six; sections five, five-a, seven and twelve, article eight, all of said chapter, be amended and reenacted; and that said article eight be further amended by adding thereto a new section, designated section five-f, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

- 1 The precinct shall be the basic territorial election unit.
- 2 The county commission shall divide each magisterial

3 district of the county into election precincts, shall number
4 the precincts, shall determine and establish the boundaries
5 thereof, and shall designate one voting place in each
6 precinct, which place shall be established as nearly as
7 possible at the point most convenient for the voters of the
8 precinct. Each magisterial district shall contain at least one
9 voting precinct and each precinct shall have but one voting
10 place therein.

11 Each precinct within any urban center shall contain not
12 less than three hundred nor more than eight hundred
13 registered voters. Each precinct in a rural or less thickly
14 settled area shall contain not less than two hundred nor
15 more than seven hundred registered voters, unless upon a
16 written finding by the county commission that
17 establishment of or retention of a precinct of less than two
18 hundred voters would prevent undue hardship to the voters,
19 the secretary of state determines that such precinct be
20 exempt from the two hundred voter minimum limit. If, at
21 any time the number of registered voters shall exceed the
22 maximum number in either case herein specified, it shall be
23 the duty of the county commission to, and it shall, rearrange
24 the precincts within the political division so that the new
25 precincts formed therefrom, or from any part thereof, shall
26 each contain a number of registered votes within the limits
27 above provided. If such county commission fails to so act as
28 herein directed, any qualified voter of the county may apply
29 for a writ of mandamus to compel the performance of this
30 duty.

31 In order to facilitate the conduct of local and special
32 elections and the use of election registration records
33 therein, precinct boundaries shall be established to
34 coincide with the boundaries of any municipality of the
35 county and with the wards or other political subdivisions of
36 the municipality except in instances where found by the
37 county commission to be wholly impracticable so to do.

38 The provisions of this section shall be subject to the
39 provisions of section twenty-eight of article four of this
40 chapter relating to the number of voters in precincts in
41 which voting machines are used.

42 The county commission shall keep available at all times
43 during business hours in the courthouse at a place
44 convenient for public inspection a map or maps of the
45 county with the current boundaries of all precincts.

§3-1-21. Ballots.

1 It shall be the duty of the board of ballot commissioners
2 for each county to provide printed ballots for every election
3 for public officers in which the voters or any of the voters
4 within the county participate, and cause to be printed, on
5 the appropriate ballot, the name of every candidate, but in
6 no case shall the ballot contain any title, position, rank,
7 degree, or such, including but not limited to, doctor,
8 reverend, PhD., or the equivalent, whose name has been
9 certified to or filed with the clerk of the circuit court of the
10 county in any manner provided for in this chapter. In any
11 case wherein the constitution or statutes limit or prescribe
12 the number of candidates or elected officers to be selected
13 by the voters in any district or other governmental
14 subdivision, the ballot commissioners, in the preparation of
15 such ballots, shall cause to be printed thereon, in plainly
16 worded language, the number of candidates to be voted for
17 in each district or other governmental subdivision.

18 The clerk of the circuit court shall appoint a time at which
19 all candidates for the office of delegate to a political party
20 national convention are to appear in his office for the
21 purpose of drawing by lot to determine where their names
22 will appear on the ballots. The clerk shall give due notice of
23 such time to each such candidate by United States mail,
24 directed to the address given by the candidate in his or her
25 announcement of candidacy. At the time appointed, all such
26 candidates for the office of delegate to a political party
27 national convention shall assemble in the office of such
28 clerk and such candidates shall then proceed to draw by lot
29 to determine where their names shall appear on the ballots.
30 The number so drawn by each such candidate shall
31 determine where his or her name shall appear on the ballots.
32 In the event any candidate or candidates fail to appear at
33 the time appointed, the clerk shall draw for such absent
34 candidate or candidates in the presence of those candidates
35 assembled, if any, and the number so drawn by the clerk
36 shall determine where the name of any absent candidate or
37 candidates shall appear on the ballots.

38 The printing of the ballots, and all other printing caused
39 to be done by the board of ballot commissioners, shall be
40 contracted for with the lowest responsible bidder. Ballots
41 other than those caused to be printed by the respective

42 boards of ballot commissioners, according to the provisions
43 of this chapter, shall not be cast, received or counted in any
44 election.

45 For each such election to be held in their county and at
46 least forty-two days before the date of such election, the
47 board of ballot commissioners shall cause to be printed
48 official ballots to not more than one and one-fifth times the
49 number of registered voters in the county. Provisions of
50 article five of this chapter shall govern the printing of
51 ballots for primary elections. The ballots so printed shall be
52 wrapped and tied in packages, one for each precinct in their
53 county, containing ballots to the number of one and one-
54 twentieth times the number of registered voters in such
55 precinct. Each package of ballots shall be sealed with wax,
56 and plainly marked with the number of ballots therein, the
57 name of the magisterial district, and the number of the
58 voting place therein, to which it is intended to be sent. The
59 names of the ballot commissioners shall also be endorsed
60 thereon.

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

1 The county commission in each county, before each
2 election, shall secure, for each voting precinct in the county,
3 a suitable room or building in which to hold the election,
4 and shall cause the same to be suitably provided with heat,
5 drinking water and light and a sufficient number of booths
6 or compartments, each containing a table, counter or shelf,
7 and furnished with proper supplies for preparing ballots, at
8 or in which voters may conveniently prepare their ballots,
9 so that in the preparation thereof they may be secure from
10 the observation of others. The number of such booths or
11 compartments shall not be less than two. Such room or
12 building shall be located in such precinct: *Provided,*
13 *however,* That at upon a determination of the county
14 commission that a suitable room or building in which to
15 hold the election is not reasonably available in such
16 precinct then the county commission may secure a suitable
17 room or building in which to hold the election for such
18 precinct in an adjacent precinct in said county, in a location
19 as near as may be to the territory of the precinct for which
20 such room or building is provided. At any polling place for

21 which parking spaces are available nearby, at least one
22 parking space shall be reserved for handicapped voters and
23 clearly designated as such.

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

1 It shall be the duty of the board of ballot commissioners to
2 appoint one or more of the commissioners of election at each
3 precinct of the county to attend at the offices of the clerks of
4 the circuit court and county commission, as the case may be,
5 at least one day before each election to receive the ballots,
6 ballot boxes, poll books, registration records and forms and
7 all other supplies and materials for conducting the election
8 at the respective precincts. The clerks shall take a receipt
9 for the respective materials delivered to the above
10 commissioner or commissioners of election, and shall file
11 such receipt in their respective offices. It shall be the duty of
12 such commissioners to receive such supplies and materials
13 from the respective clerks and to deliver the same with the
14 seal of all sealed packages unbroken, at the election
15 precinct in time to open the election.

16 Such commissioner or commissioners, if they perform
17 such services, shall receive the per diem and mileage rate
18 prescribed by law for this service.

19 Ballots shall be delivered in sealed packages with seals
20 unbroken. For general and special elections the ballots so
21 delivered shall not be in excess of one and one-twentieth
22 times the number of registered voters in the precinct. For
23 primary elections the ballots for each party shall be in a
24 separately sealed package containing not more than one
25 and one-twentieth times the number of registered voters of
26 such party in the election precinct.

27 For primary elections one copy of the poll books,
28 including the forms for oaths of commissioners of election
29 and poll clerks written or printed thereon, shall be supplied
30 at each voting precinct for each political party appearing on
31 the primary ballot.

32 There shall be two ballot boxes for each election precinct
33 for which a receiving and a counting board of election
34 commissioners have been appointed.

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

1 In case any commissioner of election so appointed shall

2 fail to appear at the offices of the clerks of such county and
3 circuit courts, by the close of the clerk's office on the day
4 prior to any election, as required by the preceding section,
5 the board of ballot commissioners, or the chairman thereof,
6 shall forthwith dispatch a special messenger to the
7 commissioners of election of each respective precinct with
8 the ballots, registration records, ballot boxes, poll books
9 and other supplies for such precinct. Such messenger, if not
10 a county employee, shall be allowed five dollars for this
11 service and, even if he be a county employee, twenty cents a
12 mile for the distance necessary to be traveled by him, and
13 shall promptly report to the clerks of the circuit court and
14 county commission, respectively, and file with such clerks
15 the receipts of the person to whom he delivered such ballots
16 and other supplies, and his affidavit, stating when and to
17 whom he delivered them.

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

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

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

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

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

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

25 shall be the duty of the municipality to pay for such
26 replacement.

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

1 Any person offering to vote in an election shall, upon
2 entering the election room, clearly state his name and
3 residence to one of the poll clerks who shall thereupon
4 announce the same in a clear and distinct tone of voice. If
5 such person is found to be duly registered as a voter at that
6 precinct, he shall be required to sign his name in the space
7 marked "signature of voter" on the pollbook prescribed and
8 provided for the precinct. If such person be physically or
9 otherwise unable to sign his name, his mark shall be affixed
10 by one of the poll clerks in the presence of the other and the
11 name of the poll clerk affixing the voter's mark shall be
12 indicated immediately under such affixation. No ballot
13 shall be given to such person until he so signs his name on
14 the pollbook or his signature is so affixed thereon.

15 The county clerk shall be authorized, upon verification
16 that the precinct at which such person is registered is not
17 handicap accessible, to transfer such person's registration
18 to the nearest polling place in the county in which is
19 handicap accessible. Requests by such persons for a
20 transfer of registration shall be received by the county clerk
21 no later than thirty days prior to the date of the election.

22 When the voter's signature is properly on the pollbook,
23 the two poll clerks shall sign their names in the places
24 indicated on the back of the official ballot and shall deliver
25 the ballot to the voter to be voted by him then without
26 leaving the election room. If he returns the ballot spoiled to
27 the clerks, they shall immediately mark such ballot
28 "spoiled" and the same shall be preserved and placed in a
29 spoiled ballot envelope together with other spoiled ballots
30 to be delivered to the board of canvassers and deliver to the
31 voter another official ballot, signed by the clerks on the
32 reverse side as before done. The voter shall thereupon retire
33 alone to the booth or compartment prepared within the
34 election room for voting purposes and there prepare his
35 ballot, using a ballpoint pen not less than five inches in
36 length or other indelible marking device of not less than five
37 inches in length. In voting for candidates in general and

38 special elections, the voter shall comply with the rules and
39 procedures prescribed in section five, article six of this
40 chapter.

41 It shall be the duty of a poll clerk, in the presence of the
42 other poll clerk, to indicate by a check mark inserted in the
43 appropriate place on the registration record of each voter
44 the fact that such voter voted in the election. In primary
45 elections the clerk shall also insert thereon a distinguishing
46 initial or initials of the political party for whose candidates
47 the voter voted. If a person is challenged at the polls, such
48 fact shall be indicated by the poll clerks on the registration
49 record together with the name of the challenger. The
50 subsequent removal of the challenge shall be recorded on
51 the registration record by the clerk of the county
52 commission.

53 No voter shall receive any assistance in voting unless, by
54 reason of blindness, disability, advanced age or inability to
55 read and write, that voter is unable to vote without
56 assistance.

57 Any voter qualified to receive assistance in voting under
58 the provisions of this section may: (1) Declare his or her
59 choice of candidates to an election commissioner of each
60 political party who, in the presence of the voter and in the
61 presence of each other, shall prepare the ballot for voting in
62 the manner hereinbefore provided, and, on request, shall
63 read over to such voter the names of candidates on the ballot
64 as so prepared; or (2) require the election commissioners to
65 indicate to him or her the relative position of the names of
66 the candidates on the ballot, whereupon the voter shall
67 retire to one of the booths or compartments to prepare his
68 ballot in the manner hereinbefore provided; or (3) be
69 assisted by any person of the voter's choice: *Provided*, That
70 such assistance may not be given by the voter's present or
71 former employer or agent of that employer or by the officer
72 or agent of a labor union of which the voter is a past or
73 present member.

74 Any voter who requests assistance in voting but who is
75 believed not to be qualified for such assistance under the
76 provisions of this section shall nevertheless be permitted to
77 vote a challenged ballot with the assistance of any person
78 herein authorized to render assistance.

79 Any one or more of the election commissioners or poll

80 clerks in the precinct may challenge such ballot on the
81 ground that the voter thereof received assistance in voting it
82 when in his or their opinion that the person who received
83 assistance in voting is not so illiterate, blind, disabled or of
84 such advanced age as to have been unable to vote without
85 assistance. The election commissioner or poll clerk or
86 commissioners or poll clerks making such challenge shall
87 enter the challenge and reason therefor on the form and in
88 the manner prescribed or authorized by article three of this
89 chapter.

90 An election commissioner or other person who assists a
91 voter in voting (1) shall not in any manner request, or seek to
92 persuade, or induce the voter to vote any particular ticket or
93 for any particular candidate or for or against any public
94 question, and shall not keep or make any memorandum or
95 entry of anything occurring within the voting booth or
96 compartment, and shall not, directly or indirectly, reveal to
97 any person the name of any candidate voted for by the voter,
98 or which ticket he had voted, or how he had voted on any
99 public question, or anything occurring within the voting
100 booth or compartment or voting machine booth, except
101 when required pursuant to law to give testimony as to such
102 matter in a judicial proceeding; (2) shall sign a written oath
103 or affirmation before assisting such voter on a form
104 prescribed by the secretary of state stating that he or she
105 will not override the actual preference of the voter being
106 assisted, attempt to influence the voter's choice or mislead
107 the voter into voting for someone other than the candidate
108 of voter's choice. Such person assisting the voter shall also
109 swear or affirm that he or she believes that the voter is
110 voting free of intimidation or manipulation.

111 In accordance with instructions issued by the secretary of
112 state, the clerk of the county commission shall provide a
113 form entitled "List of Assisted Voters," the form of which
114 list shall likewise be prescribed by the secretary of state.
115 The commissioners shall enter the name of each voter
116 receiving assistance in voting the ballot, together with the
117 poll slip number of that voter and the signature of the
118 person or the commissioner from each party who assisted
119 the voter. If no voter shall have been assisted in voting the
120 ballot as herein provided, the commissioners shall likewise
121 make and subscribe to an oath of that fact on such list.

122 After preparing the ballot the voter shall fold the same so
123 that the face shall not be exposed and so that the names of
124 the poll clerks thereon shall be seen. The voter shall then
125 announce his name and present his ballot to one of the
126 commissioners who shall hand the same to another
127 commissioner, of a different political party, who shall
128 deposit it in the ballot box, if such ballot is the official one
129 and properly signed. The commissioner of election may
130 inspect every ballot before it is deposited in the ballot box,
131 to ascertain whether it is single, but without unfolding or
132 unrolling it, so as to disclose its content. When the voter has
133 voted, he shall retire immediately from the election room,
134 and beyond the sixty-foot limit thereof, and shall not
135 return, except by permission of the commissioners.

136 Following the election, the affidavits required by this
137 section from those assisting voters together with the "List
138 of Assisted Voters," shall be returned by the election
139 commissioners to the clerk of the county commission along
140 with the election supplies, records and returns, who shall
141 make such oaths and list available for public inspection and
142 who shall preserve the same for a period of twenty-two
143 months or until disposition is authorized or directed by the
144 secretary of state, or court of record.

145 Any person making an affidavit required under the
146 provisions of this section who shall therein knowingly
147 swear falsely, or any person who shall counsel, or advise,
148 aid or abet another in the commission of false swearing
149 under this section, shall be guilty of a misdemeanor, and,
150 upon conviction thereof, shall be fined not more than one
151 thousand dollars, or imprisoned in the county jail for a
152 period of not more than one year, or both.

153 Any election commissioner or poll clerk who authorizes
154 or provides unchallenged assistance to a voter when such
155 voter is known to such election commissioner or poll clerk
156 not to require assistance in voting shall be guilty of a felony,
157 and, upon conviction thereof, shall be fined not more than
158 five thousand dollars, or imprisoned in the penitentiary for
159 a period of not less than one year nor more than five years,
160 or both fined and imprisoned.

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

1 Any voter who shall spoil, deface or mutilate the ballot

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

11 Immediately on closing the polls, the commissioners of
12 election shall ascertain the number of ballots spoiled during
13 the election and the number of ballots remaining not voted.
14 The commissioners of election shall also ascertain from the
15 pollbooks the number of persons who voted and shall
16 report, over their signatures, to the clerk of the county
17 commission, the number of votes cast, the number of ballots
18 spoiled during the election and the number of ballots not
19 voted. All unused ballots shall at the same time be returned
20 to the clerk of the county commission, who shall separately
21 package the unused ballots from each precinct, mark the
22 name and number of the precinct on the package and retain
23 them securely along with other election materials.

24 Each commissioner who is a member of an election board
25 which fails to account for every ballot delivered to it is
26 guilty of a misdemeanor, and, upon conviction thereof, shall
27 be fined not more than one thousand dollars or confined in
28 the county jail for not more than one year, or both fined and
29 imprisoned.

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

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

1 At the expiration of twenty-two months after any
2 election, the affidavits taken and returned by any registrar
3 or any election officer, applications for absent voters'
4 ballots, rejected absent voters' ballots, certificates of
5 nominations of candidates, and the written designations of
6 election officers and of ballot commissioners shall be
7 destroyed. If the further preservation of any of the
8 documents mentioned in this section shall be required by

9 the order of the court, the same shall be destroyed at the
10 expiration of the time fixed for the further preservation
11 thereof by such order.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-20. Completing registration forms; registration receipts.

1 Each applicant for voter registration shall fill in and
2 complete only one registration form, except in those cases
3 where a separate record for municipal elections is required,
4 in which cases those registrants who are required to be
5 listed in separate municipal record lists shall fill in and
6 complete two forms. The signature of the applicant on all
7 forms shall be written in ink. Upon the completion of the
8 registration of any person and the presentation of valid
9 identification and proof of age, the registration official
10 shall issue to such person a signed and dated receipt of such
11 registration. The form for such receipt shall be prescribed
12 by the secretary of state.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

1 (a) In addition to any procedures which may be used in
2 effecting the biennial checkup as provided under section
3 twenty-one of this article, central registration and transfer
4 as provided under sections twenty-two and twenty-seven of
5 this article, and the provision with respect to registration of
6 absentee voters under section twenty-three of this article,
7 any qualified person may register or transfer his
8 registration by mail.

9 (b) Completed applications, when received by any
10 county clerk not later than the forty-two days and by the
11 appropriate county clerk not later than thirty days before
12 the following primary, general or special election, entitle
13 the applicant to vote in such election if he is otherwise
14 qualified. Any county clerk receiving an application from a

15 person who does not reside in his county but who does
16 reside elsewhere in the state shall forthwith forward such
17 application to the proper county clerk. Each county clerk
18 shall make an entry on such application of the date it is
19 received by such clerk, and the application shall remain on
20 file in the office of the clerk for at least two years from the
21 date it was received.

22 (c) Applications for use pursuant to this section shall be
23 made available by the county clerk to every adult person of
24 the county, not registered, and to any registered voter of the
25 county upon request. The application for use pursuant to
26 this section shall be a uniform statewide application in a
27 form to be prescribed by the secretary of state and shall
28 include the information required under the form provisions
29 of section nineteen of this article. The form, which shall be
30 self-addressed, is to be as widely and freely distributed as
31 possible and shall be a bifold self-mailer which shall be
32 compatible with local systems of voter registration data
33 collection and storage.

34 (d) In addition to the information required under the
35 form provisions of section nineteen of this article, the form
36 shall contain such other information as the secretary of
37 state may reasonably require and shall also include the
38 following information:

39 (1) Notice that those currently registered do not need to
40 reregister unless they have moved or failed to vote at least
41 once during a period covering two statewide primary and
42 two general elections as indicated by their registration
43 records;

44 (2) Instructions on how to fill out and submit the form
45 and that the form must be received by the appropriate
46 county clerk at least thirty days prior to the election at
47 which the applicant may vote;

48 (3) Notice that registration or transfer is not complete
49 until the form is received by the appropriate county clerk;

50 (4) Notice of a voter's right to register centrally;

51 (5) A warning to the voter that it is a crime to procure a
52 false registration and notice of the felony offenses provided
53 for in section forty-two of this article;

54 (6) Notice that political party enrollment is optional
55 but, in order to vote in a primary election of a political
56 party, a voter must enroll in that political party;

57 (7) Notice that the applicant must be a citizen of the
58 United States, at least seventeen years old and will be
59 eighteen years old on or before the next general election,
60 and a resident of the county to which application is made;

61 (8) Notice that a voter notification form will be mailed
62 to those applicants whose complete form is received;

63 (9) A space for the applicant to indicate whether or not
64 he has ever been registered before and, if so, his name and
65 address at the time of prior registration;

66 (10) A space for the applicant to indicate his choice of
67 party, if any, in which space the names of all parties are
68 provided so that the applicant can check one with a clear
69 alternative provided for an applicant to decline to affiliate
70 with any party;

71 (11) A space for the applicant to indicate his social
72 security number; and

73 (12) A place for the applicant to execute the application
74 on a line which is clearly labeled "signature of applicant"
75 and contained in the following specific form of oath or
76 affirmation:

77 "I do solemnly swear or affirm that the information
78 provided in the preceding uniform statewide application is
79 true to the best of my knowledge, information and belief,
80 and I understand that if I willingly provide false
81 information concerning a material matter or thing therein, I
82 shall be deemed guilty of the felony offense of perjury and
83 shall be subject to the penalties for perjury.

84

85 Signature of applicant

86 Subscribed and sworn (or affirmed) to before me,
87 this day of, 19.....
88"

89 which oath or affirmation shall be administered by a person
90 authorized to perform notarial acts under the provisions of
91 article one or one-a, chapter thirty-nine of this code. The
92 person administering the oath or affirmation shall not
93 charge a fee for such act, and the uniform statewide
94 application shall inform the person administering such
95 oath or affirmation that no fee is to be charged.

96 (e) Any person who has registered or reregistered
97 pursuant to this section shall be required to make his first
98 vote in person at the poll or appear in person at the office of

99 the clerk of the circuit court to vote an absentee ballot
100 during a period covering two statewide primary elections
101 and two general elections in order to make such registration
102 valid: *Provided*, That any person who has registered or
103 reregistered pursuant to this section and who has qualified
104 for placement on the special absentee voting list pursuant to
105 section two-b, article three of this chapter, or who has
106 qualified to vote an absent voter's ballot by mail pursuant
107 to paragraph one, two, three or six of the application for
108 voting an absent voter's ballot by mail provided in section
109 five, article three of this chapter, shall not be required to
110 make his first vote in person but shall be required to vote
111 during a period covering two statewide primary elections
112 and two general elections next following his registration in
113 order to make such registration valid.

114 Any such person required by this section to make his first
115 vote in person in order to make his registration valid shall
116 present valid identification and proof of age to the clerks at
117 the poll or the clerk in the office of the circuit clerk of the
118 county in which he is registered before casting his first
119 ballot.

120 (f) The uniform statewide application prescribed by this
121 section may refer to various public officials by title or
122 official position (e.g., clerk of the county commission,
123 secretary of state), but in no case may the actual name of the
124 officeholder be printed or otherwise appear on such form:
125 *Provided*, That nothing contained in this subsection shall
126 prohibit a public official, otherwise qualified, from
127 administering the oath or affirmation in accordance with
128 the provisions of subdivision (12), subsection (d) of this
129 section, and affixing his signature thereto.

130 (g) It shall be the duty of the secretary of state to create
131 and commence distribution of the forms for the uniform
132 statewide application within six months following the
133 effective date of this section.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3. Voting absent voter's ballot by personal appearance.

1 A person desiring to vote an absent voter's ballot by
2 personal appearance may appear during regular business
3 hours at the office of the clerk of the circuit court of the

4 county in which he is registered to vote not more than
5 fifteen days before the election and on any day thereafter up
6 to and including the Saturday next preceding the date of the
7 primary or general election or, in the case of special
8 elections, up to and including the third day next preceding
9 the day of any such special election (in computing such
10 third day, the day of conducting the special election shall be
11 excluded), and upon oral request receive an application for
12 an official absent voter's ballot or ballots to be voted at such
13 election, which application shall be prescribed by the
14 secretary of state and shall be in substantially the following
15 form:

16 APPLICATION FOR VOTING AN ABSENT
17 VOTER'S BALLOT BY PERSONAL APPEARANCE

18 KNOWING THAT I CAN BE FINED NOT MORE THAN
19 ONE THOUSAND DOLLARS OR IMPRISONED IN THE
20 COUNTY JAIL FOR A PERIOD OF NOT MORE THAN
21 ONE YEAR OR BOTH SUCH FINE AND
22 IMPRISONMENT FOR KNOWINGLY MAKING A
23 FALSE STATEMENT OR REPRESENTATION HEREIN,
24 I,, hereby declare that I am now,
25 or will have been a resident of the State of West Virginia for
26 twelve months, and of the county of
27 for sixty days, next preceding the date the ensuing election
28 to be held on the
29 day of, 19 ; that I now reside at
30, in the magisterial
31 (give full address) district of, in
32 said county; that I am a duly qualified voter entitled to vote
33 in such election; that I am registered in the precinct of my
34 residence as provided by law; that I am registered as a
35; (state political party if
36 ballot is for primary election) and that (strike out numbered
37 paragraphs not applicable and complete the numbered
38 paragraph which is applicable):

39 (1) I expect to be absent from the aforementioned
40 county in which I am registered to vote during the entire
41 time the polls are open in such election, and I am (check one
42 applicable):

- 43 A member of the armed forces in the active service.
- 44 A spouse or dependent of a member of the armed
- 45 forces in the active service.

46 A member of the merchant marine of the United
47 States.

48 A spouse or dependent of a member of the merchant
49 marine of the United States.

50 A citizen of the United States temporarily residing
51 outside the territorial limits of the United States and the
52 District of Columbia.

53 A spouse or dependent residing with or accompanying
54 a citizen of the United States temporarily residing outside
55 the territorial limits of the United States and the District of
56 Columbia.

57 (2) I am required to be absent from the aforementioned
58 county in which I am registered during the entire time the
59 polls are open in such election for the reason or reasons
60 hereafter stated, and I am not in any of the categories
61 referred to in paragraph (1) above:

62
63 (here state specific reason or reasons for required absence)

64 (3) I anticipate commitment to a hospital, institution or
65 other confinement on or about the, 19...., for the
66 day of, 19...., for the
67 following medical reasons,
68 as evidenced below by the statement of a duly licensed
69 physician or chiropractor, and by reason thereof will not be
70 able to vote in person at the polls in such election.

71 (4) I have been appointed
72
73 (specify whether an election commissioner or poll clerk) in
74 precinct No. in said election, which precinct is not the
75 precinct in which I am registered to vote.

76 (5) My regular polling place is precinct No. is
77 inaccessible to me because of the following disability or
78 disabilities

79 In consideration of the foregoing qualifications, I hereby
80 make application for an official absent voter's ballot (or
81 ballots if more than one are to be used) to be voted by me at
82 such election.

83 I hereby declare, under the penalties for false swearing as
84 provided in section three, article nine, chapter three of the
85 code of West Virginia, one thousand nine hundred thirty-
86 one, as amended, that the statements and declarations

87 contained in this application are true and correct to the best
88 of my knowledge and belief.

89

90 Signature of Applicant

91 (or in case the applicant is illiterate he
92 shall make his mark and have it witnessed
93 on the following lines):

94

95 Mark of Applicant

96

97 Signature of Witness

98 If the person applying for an absent voter's ballot by
99 personal appearance be unable to sign his application
100 because of illiteracy, he shall make his mark on the
101 signature line above provided for an illiterate applicant
102 which mark shall be witnessed.

103 The following declaration must be completed and signed
104 if the reason specified in the above application for being
105 unable to vote in person at such election is anticipated
106 commitment to a hospital, institution or other confinement
107 for medical reasons.

108 DECLARATION OF PHYSICIAN (CHIROPRACTOR)

109 I,, hereby declare
110 that I am a physician (chiropractor), duly licensed to
111 practice in the State of; that I last
112 examined, the applicant whose signature
113 appears on the application above on the
114 day of, 19....; and that
115 in my opinion said applicant will, because of

116

117 (state medical reasons)

118 be committed to

119 (state hospital, institution
120 or other confinement)

121 on or about the day of, 19....,
122 and will because of such reasons not be able to go to the
123 polls on the day of, 19....,
124 the date of the election.

125

126 Signature of Physician (Chiropractor)

127 The application shall be completed by the applicant in his
128 own handwriting, or in the handwriting of the witness to his

129 mark in the event of illiteracy, in the office of the clerk of the
130 circuit court, in no event shall the applicant remove an
131 application for voting an absent voter's ballot by personal
132 appearance from said office except when such is necessary
133 to have a physician or chiropractor to complete and sign the
134 declaration of a physician or chiropractor when such is
135 required.

136 Immediately upon receipt of a completed application for
137 voting an absent voter's ballot by personal appearance, the
138 clerk of the circuit court shall determine (1) whether such
139 application has been completed as required by law; (2)
140 whether he has evidence that any of the statements or
141 declarations contained in the application are not true; (3)
142 whether the applicant is in fact duly registered in the
143 precinct of his residence as provided by law and insofar as
144 registration is concerned would be permitted to vote at the
145 polls in such election. If the determination of the clerk of the
146 circuit court as to (1) or (3) is in the negative or as to (2) is in
147 the affirmative, the clerk shall, if the applicant insists,
148 permit the applicant to vote an absent voter's ballot by
149 personal appearance, but the clerk shall challenge the
150 absent voter's ballot on the basis of such determination.

151 Upon determination by the clerk of the circuit court that
152 the applicant is entitled to vote an absent voter's ballot by
153 personal appearance or in case the applicant determines to
154 vote an absent voter's ballot challenged by the clerk of the
155 circuit court as provided in the immediately preceding
156 paragraph, the clerk of the circuit court shall hand to him
157 the following absentee voting supplies:

158 (a) One official absent voter's ballot (or ballots if more
159 than one are to be used) which has been prepared in
160 accordance with law for use in such election; such ballot in
161 the case of a primary election shall be of the party of
162 applicant's affiliation as indicated on his registration
163 record or in case the applicant is not found to be registered
164 by the clerk but insists upon voting a challenged ballot, the
165 ballot shall be of the party designated by the applicant in
166 his application.

167 (b) One Absent Voter's Ballot Envelope No. 1, unsealed,
168 which shall have no writing thereon except the designation
169 "Absent Voter's Ballot Envelope No. 1."

170 (c) One Absent Voter's Ballot Envelope No. 2, unsealed.

171 The voter shall thereupon retire alone to the booth or
172 compartment provided in said clerk's office for voting
173 absent voters' ballots and there mark his ballot: *Provided*,
174 That the voter may have assistance in voting his absent
175 voter's ballot in accordance with the provisions of the next
176 succeeding section of this article. After the voter has voted
177 his absent voter's ballot, he shall (1) enclose the same in
178 Absent Voter's Ballot Envelope No. 1, and seal that
179 envelope; (2) enclose sealed Absent Voter's Ballot Envelope
180 No. 1 in Absent Voter's Ballot Envelope No. 2 and seal that
181 envelope; (3) complete and sign the forms, if any, on Absent
182 Voter's Ballot Envelope No. 2 according to the instructions
183 thereon, and (4) transmit possession of sealed Absent
184 Voter's Ballot Envelope No. 2 to the clerk of the circuit
185 court.

186 Upon receipt of such sealed envelope, the clerk shall (1)
187 enter onto the envelope such information as may be
188 required of him according to the instructions thereon; (2)
189 enter his challenge, if any, to the absent voter's ballot; (3)
190 enter the required information into a record of persons
191 making an application for and voting an absent voter's
192 ballot by personal appearance or by mail (the form of which
193 record and the information to be entered therein shall be
194 prescribed by the secretary of state); and (4) place such
195 sealed envelope in a secure location in his office, there to
196 remain until delivered to the polling place in accordance
197 with the provisions of this article or in case of a challenged
198 ballot to the county court sitting as a board of canvassers.

**§3-3-4. Assistance to voter in voting an absent voter's ballot by
personal appearance.**

1 Any duly registered voter, who requires assistance to vote
2 by reason of blindness, disability, advanced age, or inability
3 to read and write, may be given assistance by a person of the
4 voter's choice: *Provided*, That such assistance may not be
5 given by the voter's present or former employer or agent of
6 that employer or by the officer or agent of a labor union of
7 which the voter is a part or present member.

8 Any voter who requests assistance in voting an absent
9 voter's ballot but who is determined by the clerk of the
10 circuit court not to be qualified for such assistance under
11 the provisions of this section and section thirty-four, article

12 one, shall nevertheless be permitted to vote a challenged
13 absent voter's ballot with the assistance of any person
14 herein authorized to render assistance. The clerk of the
15 circuit court shall in such case challenge the absent voter's
16 ballot on the basis of such determination.

17 Any one or more of the election commissioners or poll
18 clerks in the precinct to which an absent voter's ballot has
19 been sent may challenge such ballot on the ground that the
20 voter thereof received assistance in voting it when in his or
21 their opinion (1) of the person who received the assistance in
22 voting the absent voter's ballot did not require such
23 assistance, or (2) the person who provided the assistance in
24 voting did not make an affidavit as required by this section.
25 The election commissioner or poll clerk or commissioners or
26 poll clerks making such challenge shall enter the challenge
27 and reason therefor on the form and in the manner
28 prescribed or authorized by this article.

29 Before entering the voting booth or compartment, the
30 person who intends to provide a voter assistance in voting
31 shall make an affidavit, the form of which shall be
32 prescribed by the secretary of state, that he or she will not in
33 any manner request, or seek to persuade, or induce the voter
34 to vote any particular ticket or for any particular candidate
35 or for or against any public question, and that he or she will
36 not keep or make any memorandum or entry of anything
37 occurring within the voting booth or compartment, and that
38 he or she will not, directly or indirectly, reveal to any person
39 the name of any candidate voted for by the voter, or which
40 ticket he had voted, or how he had voted on any public
41 question, or anything occurring within the voting booth or
42 compartment or voting machine booth, except when
43 required pursuant to law to give testimony as to such matter
44 in a judicial proceeding.

45 In accordance with instructions issued by the secretary of
46 state, the clerk of the circuit court shall provide a form
47 entitled "List of Assisted Voters," the form of which list
48 shall likewise be prescribed by the secretary of state, which
49 list shall be divided into two parts. Part A shall be entitled
50 "Unchallenged Assisted Voters" and Part B shall be
51 entitled "Challenged Assisted Voters." Under Part A the
52 clerk shall enter the name of each voter receiving
53 unchallenged assistance in voting an absent voter's ballot,

54 the address of the voter assisted, the nature of the disability
55 which qualified the voter for assistance in voting an absent
56 voter's ballot, the name of the person providing the voter
57 with assistance in voting an absent voter's ballot, the fact
58 that the person rendering the assistance in voting made and
59 subscribed to the oath required by this section, and the
60 signature of the clerk of the circuit court certifying to the
61 fact that he had determined that the voter who received
62 assistance in voting an absent voter's ballot was qualified to
63 receive such assistance under the provisions of this section.
64 Under Part B the clerk shall enter the name of each voter
65 receiving challenged assistance in voting, the address of the
66 voter receiving such challenged assistance, the reason for
67 the challenge, and the name of the person providing the
68 challenged voter with assistance in voting. At the close of
69 the period provided for voting an absent voter's ballot by
70 personal appearance, the clerk of the circuit court shall
71 make and subscribe to an oath on such list that the list is
72 correct in all particulars; if no voter shall have been assisted
73 in voting an absent voter's ballot as herein provided, the
74 clerk of the circuit court shall likewise make and subscribe
75 to an oath of that fact on such list. The "List of Assisted
76 Voters" shall be available for public inspection in the office
77 of the clerk of the circuit court during regular business
78 hours throughout the period provided for voting an absent
79 voter's ballot by personal appearance, and unless otherwise
80 directed by the secretary of state, the clerk of the circuit
81 court shall transmit such list, together with the affidavits,
82 applications and absent voters' ballots to the precincts on
83 election day.

84 Following the election, the affidavits required by this
85 section from persons providing assistance in voting,
86 together with the "List of Assisted Voters," shall be
87 returned by the election commissioners to the clerk of the
88 county court along with the election supplies, records and
89 returns, who shall make such oaths and list available for
90 public inspection and who shall preserve the same for
91 twenty-two months or, if under order of the court, until
92 their destruction or other disposition is authorized or
93 directed by the court.

94 Any person making an affidavit required under the
95 provisions of this section who shall therein knowingly

96 swear falsely, or any person who shall counsel, or advise,
97 aid or abet another in the commission of false swearing
98 under this section, shall be guilty of a misdemeanor, and,
99 upon conviction thereof, shall be fined not more than one
100 thousand dollars or imprisoned in the county jail for a
101 period of not more than one year, or both such fine and
102 imprisonment.

103 Any person who provides a voter assistance in voting an
104 absent voter's ballot in the office of the clerk of the circuit
105 court who is not qualified or permitted by this section to
106 provide such assistance shall be guilty of a misdemeanor,
107 and, upon conviction thereof, shall be fined not more than
108 one thousand dollars or imprisoned in the county jail for a
109 period of not more than one year, or both such fine and
110 imprisonment.

111 Any clerk of the circuit court, election commissioner or
112 poll clerk who authorizes or allows a voter to receive or to
113 have received unchallenged assistance in voting an absent
114 voter's ballot when such voter is known to the clerk of the
115 circuit court or election commissioner or poll clerk not to be
116 or have been authorized by the provisions of this section to
117 receive or to have received assistance in voting shall be
118 guilty of a misdemeanor, and, upon conviction thereof, shall
119 be fined not more than one thousand dollars or imprisoned
120 in the county jail for a period of not more than one year, or
121 both such fine and imprisonment, ~~voter's ballot.~~

122 The term "physical disability" as used in this section shall
123 mean only blindness or such degree of blindness as will
124 prevent the voter from seeing the names on the ballot, or
125 amputation of both hands, or such disability of both hands
126 that neither can be used to make cross marks on the absent
127 voter's ballot.

§3-3-5. Voting an absent voter's ballot by mail.

1 A person desiring to vote an absent voter's ballot by mail
2 may, not earlier than the first day of January prior to the
3 date of any primary, general or special election in the case of
4 any person outside the continental limits of the United
5 States and not more than eighty-four days prior to the date
6 of any primary, general or special election in the case of any
7 other person, make application by mail to the clerk of the
8 circuit court of the county in which he is registered to vote

9 for an official absent voter's ballot or ballots to be voted at
10 such election, except that the clerk of the circuit court shall
11 not honor any such application for an absent voter's ballot
12 received by him after the fourth day next preceding the date
13 of the election. In computing such fourth day, the day of
14 conducting the election shall be excluded. The application
15 to be used by persons who wish to vote an absent voter's
16 ballot by mail shall be prescribed by the secretary of state
17 and shall be in substantially the following form:

18 APPLICATION FOR VOTING AN ABSENT
19 VOTER'S BALLOT BY MAIL

20 KNOWING THAT I CAN BE FINED NOT MORE THAN
21 ONE THOUSAND DOLLARS OR IMPRISONED IN THE
22 COUNTY JAIL FOR A PERIOD OF NOT MORE THAN
23 ONE YEAR OR BOTH SUCH FINE AND
24 IMPRISONMENT FOR KNOWINGLY MAKING A
25 FALSE STATEMENT OR REPRESENTATION HEREIN,
26 I, , hereby declare that I am
27 now, or will have been a resident of the state of West
28 Virginia for twelve months, and of the county of ,
29 for sixty days, next preceeding the date of the ensuing
30 election to be held on the
31 day of , 19....; that I now reside at
32

33 (give full address)

34 in the magisterial district of , in
35 said county; that I am a duly qualified voter entitled to vote
36 in such election; that I am registered in the precinct of my
37 residence as provided by law; that I am registered as a
38 ; (state political party if
39 ballot is for primary election) and that (strike out the
40 numbered paragraphs not applicable and complete the
41 numbered paragraph which is applicable):

42 (1) I will be unable to vote in person at the polls on
43 election day because of ,
44 (state particulars of physical disability, illness or injury) as
45 evidenced below by the statement of a duly licensed
46 physician or chiropractor.

47 (2) I anticipate commitment to a hospital, institution or
48 other confinement on or about the day of
49 , 19...., for the following
50 medical reasons , as evidenced

51 below by the statement of a duly licensed physician or
52 chiropractor, and by reason thereof will not be able to vote
53 in person at the polls in such election.

54 (3) I expect to be absent from the aforementioned
55 county in which I am registered to vote during the entire
56 time the polls are open in such election, and I am (check one
57 applicable):

58 A member of the armed forces in the active service.

59 A spouse or dependent of a member of the armed
60 forces in active service.

61 A member of the merchant marine of the United
62 States.

63 A spouse or dependent of a member of the merchant
64 marine of the United States.

65 A citizen of the United States temporarily residing
66 outside the territorial limits of the United States and the
67 District of Columbia.

68 A spouse or dependent residing with or accompanying
69 a citizen of ^{the} United States temporarily residing outside the
70 territorial ^limits of the United States and the District of
71 Columbia.

72 (4) I am required to be absent from the aforementioned
73 county in which I am registered during the entire time the
74 polls are open in such election the reason or reasons
75 hereafter stated; I am not in any of the categories referred to
76 in paragraph three above; I am required to be absent from
77 said county during regular business hours of the clerk of the
78 circuit court of said county throughout the period or
79 throughout the remainder of the period of voting absent
80 voter's ballot by personal appearance at said office

81
82

83 (state reason or reasons for required
84 absence from county on election.)

85 (5) I have been appointed
86 (state whether an election
87 commissioner or poll clerk)

88 in precinct No. in said election,
89 which precinct is not the precinct in which I am registered
90 to vote.

91 (6) I will be incarcerated in the county or city jail or
92 other detention facility located in this county on election

93 day but am not under sentence of treason, bribery or a
94 felony, as evidenced below by the statement of the county
95 sheriff, chief of police, or authorized deputy.

96 In consideration of the foregoing qualifications, I hereby
97 make application for an official absent voter's ballot (or
98 ballots if more than one are to be used) to be voted by me at
99 such election, and request that such ballot or ballots be
100 mailed to me at the following address:

101
102 (give full address for mailing purposes)

103 (Complete the following paragraph only if assistance will
104 be needed in voting absent voter's ballot):

105 I further declare that I will need assistance in voting an
106 absent voter's ballot for the following reasons

107
108 (specify illiteracy or exact nature of physical
109 disability, illness or injury)

110 I hereby declare under the penalties for false swearing as
111 provided in section three, article nine, chapter three of the
112 code of West Virginia, one thousand nine hundred thirty-
113 one, as amended, that the statements and declarations
114 contained in this application are true and correct to the best
115 of my knowledge and belief.

116
117 Signature of Applicant
118 (or in case the applicant is illiterate he
119 shall make his mark and have it witnessed
120 on the following lines):

121
122 Mark of Applicant

123
124 Signature of Witness

125 If the person applying for an absent voter's ballot by mail
126 be unable to sign his application because of illiteracy, he
127 shall make his mark on the signature line above provided
128 for an illiterate applicant which mark shall be witnessed.

129 The following declaration must be completed and signed
130 if the reason specified in the above application for being
131 unable to vote in person at such election is physical
132 disability, illness or injury, or is anticipated confinement in
133 a hospital, institution or other place for medical reasons.

134 STATEMENT OF PHYSICIAN (CHIROPRACTOR)

135 I,, hereby declare
136 that I am a physician (chiropractor) duly licensed to
137 practice in the state of ;
138 that I last examined ,
139 the applicant whose signature appears on the application
140 above on the day of , 19.... ;
141 and that in my opinion (strike out numbered paragraph not
142 applicable and complete the numbered paragraph which is
143 applicable).

144 (1) The applicant will, because of
145 ,
146 (state particulars of physical disability,
147 illness or injury)
148 be unable to go to the polls on the
149 day of , 19.... , the date of the election.

150 (2) The applicant will, because of
151 (state for what
152 , be confined in
153 medical reasons) (specify hospital,
154 , on or about the
155 institution or other place)
156 day of , 19.... , and will because of such
157 reasons not be able to go to the polls on the
158 day of , 19.... , the date of the election.

159 (Complete the following paragraph if applicant for
160 absent voter's ballot will need assistance in voting such
161 ballot, based upon physical disability, illness or injury.)

162 I am of the further opinion that applicant.....
163 (will)
164 , because of the aforementioned physical
165 (will not)
166 disability, illness or injury need assistance in voting an
167 absent voter's ballot.

168
169 Signature of Physician (Chiropractor)

170 The following declaration must be completed and signed
171 if the reason specified in the above application for being
172 unable to vote in person at the election is incarceration in a
173 facility within the county for other than conviction of
174 treason, bribery or a felony.

175 STATEMENT OF SHERIFF, CHIEF OF POLICE
176 OR AUTHORIZED DEPUTY

177 I,, hereby declare that the
178 applicant whose signature appears on the application
179 above will be confined in the county or city jail or other
180 detention facility on the
181 day of, 19...., the date of the election,
182 and is not under conviction of treason, bribery or a felony.

183

184 SIGNATURE

185

186 TITLE

187

188 COUNTY

189 In lieu of the application for an absent voter's ballot
190 provided above, those persons specified in subdivision (2) of
191 section one of this article may use the application for
192 absentee ballot form recommended by and issued under
193 authority of The Federal Voting Assistance Act of 1955, as
194 amended, and any such federal postcard application does
195 not have to be executed pursuant to oath or attestation in
196 the case of a voter outside the continental limits of the
197 United States. Upon receipt of a properly completed copy of
198 such form, the clerk of the circuit court shall process it the
199 same as he would any other application for an absent voter's
200 ballot by mail. Any such properly completed copy may be
201 returned only to the clerk of the circuit court of the county
202 in which the applicant is a registered voter.

203 Immediately upon receipt of a completed application for
204 voting an absent voter's ballot by mail, the clerk of the
205 circuit court shall determine (1) whether the application for
206 voting such ballot has been completed as required by law;
207 (2) whether he has evidence that any of the statements
208 contained in the application are not true; and (3) whether
209 the applicant is in fact duly registered in the precinct of his
210 residence as provided by law and insofar as registration is
211 concerned would be permitted to vote at the polls in such
212 election. If the determination of the clerk of the circuit court
213 as to (1) or (3) is in the negative or as to (2) is in the
214 affirmative, the clerk shall notify the applicant at the time
215 he mails the absent voter's ballot to him that he will
216 challenge the applicant's privilege to vote an absent voter's

217 ballot by mail for reasons which he shall indicate and, upon
218 receipt of the applicant's absent voter's ballot, the clerk
219 shall challenge such ballot.

220 Upon determination by the clerk of the circuit court that
221 the applicant is entitled to vote an absent voter's ballot by
222 mail or that the applicant will be permitted to vote an
223 absent voter's ballot by mail with such ballot to be
224 challenged by the clerk, the clerk shall between the forty-
225 second day and the fourth day next prior to the election in
226 which the absent voter's ballot is to be used mail to the
227 applicant the following absentee voting supplies: *Provided*,
228 That the clerk mail such voting supplies to an applicant
229 whose address is shown to be outside the continental limits
230 of the United States by priority airmail on the same day the
231 application is received in the clerk's office or on the next
232 day thereafter that he has both an application and a ballot:

233 (a) One official absent voter's ballot (or ballots if more
234 than one are to be used) which has been prepared in
235 accordance with law for use in such election; such ballot in
236 the case of a primary election shall be of the party of the
237 applicant's affiliation as indicated on his registration card
238 or, in the case the applicant is not found to be registered by
239 the clerk but votes a ballot challenged by the clerk, the clerk
240 shall send to the applicant an absent voter's ballot of the
241 party designated by the applicant in his application;

242 (b) One Absent Voter's Ballot Envelope No. 1, unsealed,
243 which shall have no writing thereon except the designation
244 "Absent Voter's Ballot Envelope No. 1";

245 (c) One Absent Voter's Ballot Envelope No. 2, unsealed;

246 (d) Notice that an absent voter's ballot returned from
247 outside the continental limits of the United States must be
248 mailed priority airmail; and

249 (e) Notice that absent voters' ballots must be received in
250 the office of the clerk not later than the time of closing of the
251 polls.

252 Upon receipt of an absent voter's ballot by mail, the voter
253 shall mark the ballot and the voter may have assistance in
254 voting his absent voter's ballot in accordance with the
255 provisions of section six of this article.

256 After the voter has voted his absent voter's ballot, he shall
257 (1) enclose the same in Absent Voter's Ballot Envelope No.
258 1, and seal that envelope, (2) enclose sealed Absent Voter's

259 Ballot Envelope No. 1 in Absent Voter's Ballot Envelope No.
 260 2 and seal that envelope, (3) complete and sign the forms, if
 261 any, on Absent Voter's Ballot Envelope No. 2 according to
 262 the instructions thereon, and (4) mail, postage prepaid and,
 263 if from outside the continental limits of the United States,
 264 by priority airmail, the sealed Absent Voter's Ballot
 265 Envelope No. 2 to the clerk of the circuit court of the county
 266 in which he is registered to vote.

267 Upon receipt of such sealed envelope, the clerk shall (1)
 268 enter onto the envelope such information as may be
 269 required of him according to the instructions thereon; (2)
 270 enter his challenge, if any, to the absent voter's ballot; (3)
 271 enter the required information into a record of persons
 272 making application for and voting an absent voter's ballot
 273 by personal appearance or by mail (the form of which
 274 record and the information to be entered therein shall be
 275 prescribed by the secretary of state); and (4) place such
 276 sealed envelope in a secure location in his office, there to
 277 remain until delivered to the polling place in accordance
 278 with the provisions of this article or, in case of a challenged
 279 ballot, to the county comomission sitting as a body of
 280 canvassers.

§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.

1 No voter shall receive any assistance in voting an absent
 2 voter's ballot by mail unless he or she shall make a
 3 declaration at the time he or she makes application for an
 4 absent voter's ballot that because of blindness, disability,
 5 advanced age or inability to read or write he or she requires
 6 assistance in voting an absent voter's ballot.

7 Upon receipt of an absent voter's ballot by mail, the voter
 8 who requires assistance in voting such ballot and who has
 9 indicated he or she requires such assistance and the reasons
 10 therefor on the application may select any eligible person to
 11 assist him or her in voting.

12 The person providing assistance in voting an absent
 13 voter's ballot by mail shall make an affidavit on a form as
 14 may be prescribed by the secretary of state, that he will not
 15 in any manner request, or seek to persuade, or induce the
 16 voter to vote any particular ticket or for any particular
 17 candidate or for or against any public question, and that he

18 will not keep or make any memorandum or entry of
19 anything occurring within the voting booth or
20 compartment, and that he will not, directly or indirectly,
21 reveal to any person the name of any candidate voted for by
22 the voter, or which ticket he had voted, or how he had voted
23 on any public question, or anything occurring within the
24 voting booth or compartment or voting machine booth,
25 except when required pursuant to law to give testimony as
26 to such matter in a judicial proceeding.

27 The term "assistance in voting" as used in this section
28 shall mean assistance in physically marking the official
29 absent voter's ballot for a voter, or reading or directing the
30 voter's attention to any part of the official absent voter's
31 ballot.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 Absent voters' ballots shall be in all respects like other
2 ballots. Not less than seventy days prior to the date on
3 which any primary, general or special election is to be held,
4 the clerks of the circuit courts of the several counties shall
5 estimate and determine the number of absent voters' ballots
6 of all kinds which will be required in their respective
7 counties for any such election. The ballots for the election of
8 all officers, or the ratification, acceptance or rejection of
9 any measure, proposition or other public question to be
10 voted on by the voters, shall be prepared and printed under
11 the direction of the board of ballot commissioners
12 constituted as provided in article one of this chapter. The
13 several county boards of ballot commissioners shall prepare
14 and have printed, in such number as they shall determine,
15 such absent voters' ballots as are to be printed under their
16 directions as hereinbefore provided, and such ballots shall
17 be delivered to the clerk of the circuit court of the county
18 not less than forty-two days prior to the day of the election
19 at which they are to be used. Before any ballot is mailed or
20 delivered, the clerk of the circuit court shall affix his
21 official seal and he and the other members of the board of
22 ballot commissioners shall place their signatures near the
23 lower left-hand corner on the back thereof. An absent
24 voter's ballot not containing such seal and signatures shall

25 be invalid and shall be subject to challenge by any election
26 commissioner or poll clerk.

27 The clerk of the circuit court shall be primarily
28 responsible for the preparation, mailing, receiving,
29 delivering and otherwise handling of all absent voters'
30 ballots. He shall keep such record, as may be prescribed by
31 the secretary of state, of all ballots so delivered for the
32 purpose of absentee voting, as well as all ballots, if any,
33 marked before him, and shall deliver to the commissioner of
34 election to whom the ballots for the precinct are delivered
35 and at the time of the delivery of such ballots a certificate
36 stating the number of ballots delivered or mailed to absent
37 voters, and those marked before him, if any, and the names
38 of the voters to whom such ballots have been delivered or
39 mailed, or by whom they have been marked, if marked
40 before him.

ARTICLE 4. VOTING MACHINES.

§3-4-12. **Inspection of machines; duties of county court, ballot commissioners and election commissioners; keys and records relating to machines.**

1 When the clerk of the county commission has completed
2 the preparation of the voting machines, as provided in the
3 next preceding section, and not later than seven days before
4 the day of the election, he shall notify the members of the
5 county court and the ballot commissioners that the
6 machines are ready for use. Thereupon the members of the
7 county court and the ballot commissioners shall convene at
8 the office of the clerk, or at such other place wherein the
9 voting machines are stored, not later than five days before
10 the day of the election, and shall examine the machines to
11 determine whether the requirements of this article have
12 been met. Any candidate, and one representative of each
13 political party having candidates to be voted on at the
14 election, may be present during such examination. If the
15 machines are found to be in proper order, the members of
16 the county commission and the ballot commissioners shall
17 endorse their approval in the book in which the clerk
18 entered the numbers of the machines opposite the numbers
19 of the precincts. The clerk shall then deliver the keys to the
20 voting machines to the ballot commissioners who shall give

21 a receipt for the keys, which receipt shall contain
22 identification of such keys. Not later than one day before
23 the election the election commissioner of each precinct who
24 shall have been previously designated by the ballot
25 commissioners, shall attend at the office of the clerks of the
26 circuit court and county commission of such county to
27 receive the key or keys to the device covering the registering
28 counters and such other keys as may be necessary for the
29 operation of the machine in registering votes, and to receive
30 the other necessary election records, books, and supplies
31 required by law. Such election commissioners shall receive
32 the per diem mileage rate prescribed by law for this service.
33 Such election commissioners shall give the ballot
34 commissioners a receipt for such keys, records, books and
35 supplies, and such receipt shall contain identification of
36 such keys. The master key and all other keys shall remain in
37 the possession of the clerk of the county court.

38 The term "assistance in voting," as used in this section,
39 means assistance in physically marking the official ballot
40 for a voter, or reading or directing the voter's attention to
41 any part of the official ballot, or physically operating the
42 voting machine.

§3-4-21. Assistance to illiterate and disabled voters.

1 (a) Any duly registered voter, who requires assistance to
2 vote by reason of blindness, disability, advanced age, or
3 inability to read and write, may be given assistance by one
4 of the following means:

5 (1) By a person of the voter's choice: *Provided*, That
6 such assistance may not be given by the voter's present or
7 former employer or agent of that employer or by the officer
8 or agent of a labor union of which the voter is a part or
9 present member; or

10 (2) If no person of the voter's choice be present at the
11 polling place, the voter may request such assistance from
12 the poll clerks or ballot commissioners present at the
13 polling place, whereupon such assistance may be given by
14 any two of such election officers of opposite political party
15 affiliation to whom such voter shall thereupon declare his
16 choice of candidates and his or her position on public
17 questions appearing on the ballot labels. Such election
18 officers, in the presence of the voter and in the presence of

19 each other, shall thereupon cause such voter's declared
20 choices to be registered by the voting machine as votes.

21 (b) A person other than an election officer who assists a
22 voter in voting under the provisions of this section shall sign
23 a written oath or affirmation before assisting such voter,
24 stating that he or she will not override the actual preference
25 of the voter being assisted or mislead the voter into voting
26 for someone other than the candidate of the voter's choice.
27 Such person assisting the voter shall also swear or affirm
28 that he or she believes that the voter is voting free of
29 intimidation or manipulation.

§3-4-22. Persons prohibited about voting machines; penalties.

1 Excepting the election officials acting under authority of
2 sections eighteen, nineteen, twenty and twenty-one of this
3 article in the conduct of the election, and qualified persons
4 assisting voters pursuant to the provisions of section
5 twenty-one of this article no person other than the voter
6 alone may be in, about or within five feet of the voting
7 machine during the time such voter is in the process of
8 voting at any election, and, during such time, no person may
9 communicate in any manner with the voter and the voter
10 may not communicate with any other person or persons.
11 Any conduct or action of an election official about or
12 around the voting machine while the voter is in the process
13 of voting, in excess of the authority vested in such official by
14 provisions of this article, shall constitute a violation of the
15 provisions hereof. Any person violating any provision or
16 provisions of this section shall be guilty of a misdemeanor
17 and, upon conviction thereof, shall be fined not exceeding
18 one thousand dollars or be sentenced to imprisonment in
19 the county jail for a period not exceeding twelve months, or,
20 in the discretion of the court, shall be subject to both such
21 fine and imprisonment.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

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

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

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

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

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

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

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

34 (7) It shall contain two standard validation test decks
35 approved as to form and testing capabilities by the state
36 election commission;

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

40 (9) It shall permit each voter at any election other than
41 primary elections, by one mark or punch to vote a straight
42 party ticket, and by one mark or punch to vote for all
43 candidates of one party for presidential electors; and to vote
44 a mixed ticket selected from the candidates of any and all
45 parties and from independent candidates; and it shall
46 permit the proper counting, to the fullest extent possible, of
47 all votes cast for all candidates: *Provided, That, in the event*

48 of cross-over voting from a straight party ticket, the system
49 shall not discard any vote on the straight ticket, unless (i) a
50 candidate in a single selection contest opposite the
51 discarded vote on the straight ticket has been clearly chosen
52 by the voter, or (ii) the voter, by mark or punch has clearly
53 indicated which choices on each ticket, not in excess of the
54 total number permitted, the voter has made, or (iii) the
55 choices made by the voter are so contradictory that the
56 voter's choice is indiscernible, in which event, all votes for
57 the candidates for such office shall be discarded;

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

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

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

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

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

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

88 (16) It shall be so constructed that a voter may easily
89 learn the method of operating it and may expeditiously cast

90 his vote for all candidates of his choice, and upon any public
91 question; and

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

§3-4A-10a. Proportional distribution of voting recording devices.

1 The county commission of each county shall, upon the
2 close of registration, review the total number of registered
3 voters and the number of registered voters of each party in
4 each precinct. Prior to each election, the commission shall
5 determine the number of voting devices needed to
6 accommodate voters without long delays and shall assign
7 an appropriate number to each precinct. For the purposes of
8 the primary election, the commission shall assign the
9 number of vote recording devices in each precinct to be
10 prepared for each party based as nearly as practicable on
11 the proportion of registered voters of each party to the total:
12 *Provided*, That a minimum of one vote recording device per
13 party be provided, except for "independent" voters, which
14 shall be determined under section twenty of this article.

§3-4A-11. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 The ballot commissioners of any county in which an
2 electronic voting system is to be used in any election shall
3 cause to be printed for use in such election the ballots or
4 ballot labels, as appropriate, for the electronic voting
5 system. The ballot labels so printed shall total in number
6 one and one-half times the total number of vote recording
7 devices to be used in the several precincts of the county in
8 such election. All such labels shall be delivered to the clerk
9 of the county commission at least forty-two days prior to
10 the day of the election in which such labels are to be used.
11 The labels shall contain the name of each candidate, but in
12 no case shall the ballot contain any title, position, rank,
13 degree, or such, including but not limited to "doctor,"
14 "reverend," "PhD.," or the equivalent, and each question to
15 be voted upon and shall be clearly printed or typed in black
16 ink on clear white material of such size as will fit the vote
17 recording devices. Arrows may be printed on the ballot

18 labels to indicate the place to punch the ballot card, which
 19 may be to the right or left of the name or proposition.

20 The titles of offices may be arranged on the ballot in
 21 vertical columns or in a series of separate pages, and shall
 22 be printed above or at the side of the names of candidates so
 23 as to indicate clearly the candidates for each office and the
 24 number to be elected. In case there are more candidates for
 25 an office than can be printed in one column or on one ballot
 26 label page, the ballot label shall be clearly marked that the
 27 list of candidates is continued on the following column or
 28 page, and so far as possible, the same number of names shall
 29 be printed on each column or page. The names of candidates
 30 for each office shall be printed in vertical columns or on
 31 separate pages, grouped by the offices which they seek.

32 In elections in which voters are authorized to vote for
 33 persons whose names do not appear on the ballot card, a
 34 separate write-in ballot, which may be in the form of a paper
 35 ballot or card, shall be provided if required to permit voters
 36 to write in the title of the office and the names of persons
 37 whose names are not on the ballot, for whom he wishes to
 38 vote. The manner of voting for write-in candidates upon
 39 electronic voting devices shall be as prescribed by rules and
 40 regulations of the secretary of state.

41 One set of ballot labels shall be inserted in the vote
 42 recording device prior to the delivery of such device to the
 43 polling place. The remainder of such ballot labels for each
 44 device shall be retained by the clerk of the county
 45 commission for use in the event the set so inserted in such
 46 device becomes lost, mutilated or damaged.

47 In addition to all other equipment and supplies required
 48 by the provisions of this article, the ballot commissioners
 49 shall cause to be printed a supply of instruction cards,
 50 sample ballots, facsimile diagrams of the vote recording
 51 device ballot and official printed ballots or ballot cards
 52 adequate for the orderly conduct of the election in each
 53 precinct in their county. In addition they shall provide all
 54 other materials and equipment necessary to the conduct of
 55 the election, including voting booths, appropriate facilities
 56 for the reception and safekeeping of ballot cards, the ballots
 57 of absent voters and of challenged voters and of such
 58 "independent" voters who shall, in primary elections cast
 59 their votes on nonpartisan candidates and public questions
 60 submitted to the voters.

§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
 2 clerk of the county commission, he shall place them in the
 3 vote recording devices in such manner as will most nearly
 4 conform to the arrangement prescribed for paper ballots,
 5 and as will clearly indicate the party designation or emblem
 6 of 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. The
 11 ballot label and the arrangement of the ballot shall conform
 12 as nearly as practicable to the plan herein given:

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 number so designated by the secretary of state shall be used
18 by all counties using electronic voting systems irrespective
19 of 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. After taking into account
22 the numbers so assigned by the secretary of state to straight
23 party tickets and all candidates for offices to be voted upon
24 by all the voters of the state, the clerk of the circuit court
25 shall appoint a time at which all candidates whose ballot
26 positions are to be determined by drawing by lot are to
27 appear before the clerk for such drawing. Candidates whose
28 ballot positions are to be determined by drawing by lot are
29 those candidates for an office for which the voters will elect
30 more than one person to represent the electoral districts,
31 including but not limited to House of Delegates contests in
32 multi-delegate districts, judges in multi-judge circuits,
33 contests for the office of county board of education,
34 magistrate and delegate to a political party national
35 convention. The clerk shall give due notice of such time to
36 each candidate by United States mail, directed to the
37 address given by the candidate in his announcement of
38 candidacy. It shall be the duty of the secretary of state to
39 provide to each circuit clerk with a list of names and
40 addresses of candidates running for office in such clerk's
41 county who have filed their announcement of candidacy
42 with the secretary of state, and who are candidates whose
43 ballot positions are to be determined by drawing by lot. At
44 the time appointed, all such candidates whose ballot
45 positions are to be determined by lot shall assemble in the
46 office of such clerk and such candidates shall then proceed
47 to draw by lot to determine where their names shall appear
48 on the ballots or ballot labels. The number so drawn by each
49 such candidate shall determine where his or her name shall
50 appear on the ballots or ballot labels. In the event any
51 candidate or candidates fail to appear at the time
52 appointed, the clerk shall draw for such absent candidate or
53 candidates in the presence of those candidates assembled, if
54 any, and the number so drawn by the clerk shall determine
55 where the name of any absent candidate or candidates shall
56 appear on the ballots or ballot labels. The circuit clerk shall

57 record the number drawn by each candidate and his name
58 in an appropriate book. The ballot commissioners shall
59 proceed to have the ballot labels printed according to the
60 provisions of this article. After receiving the printed ballot
61 labels, the clerk of the circuit court shall ascertain their
62 accuracy and the clerk of the county commission shall
63 proceed to have the ballot labels placed in the vote
64 recording devices. The clerk of the county commission shall
65 then seal the vote recording devices so as to prevent
66 tampering with ballot labels, and enter in an appropriate
67 book, opposite the number of each precinct, the identifying
68 or distinguishing number of the specific vote recording
69 device or devices to be used in that precinct.

**§3-4A-13. Inspection of vote recording devices and ballot
cards; 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 section twelve of this article and the ballot cards as
4 provided in section twenty-one, article one of this chapter,
5 and not later than seven days before the day of the election,
6 he shall notify the members of the county commission and
7 the ballot commissioners that the devices are ready for use.
8 Thereupon the members of the county commission and the
9 ballot commissioners shall convene at the office of the clerk
10 or at such other place wherein the vote recording devices
11 and ballot cards are stored, not later than five days before
12 the day of the election, and shall inspect the devices and the
13 ballot cards to determine whether the requirements of this
14 article have been met. Notice of the place and time of such
15 inspection shall be published, no less than three days prior
16 thereto, as a Class I-0 legal advertisement in compliance
17 with the provisions of article three, chapter fifty-nine of
18 this code, and the publication area for such publication
19 shall be the county involved. Any candidate, and one
20 representative of each political party on the ballot may be
21 present during such examination. If the devices and ballot
22 cards are found to be in proper order, the members of the
23 county commission and the ballot commissioners shall
24 endorse their approval in the book in which the clerk

25 entered the numbers of the devices opposite the numbers of
26 precincts. The devices and the ballot cards shall then be
27 secured in double lock rooms. The county clerk and the
28 president or president pro tempore of the county
29 commission shall each have a key. The rooms shall be
30 unlocked only in their presence and only for the removal of
31 the devices and the ballot cards for transportation to the
32 polls. Upon such removal of the devices, the county clerk
33 and president or president pro tempore of the county
34 commission shall certify in writing signed by them that the
35 devices were found to be sealed when removed for
36 transportation to the polls.

37 Not later than one day before the election the election
38 commissioner of each precinct, who shall have been
39 previously designated by the ballot commissioners, shall
40 attend at the office of the clerks of the circuit court and
41 county commission of such county to receive the necessary
42 election records, books and supplies required by law. Such
43 election commissioners shall receive the per diem mileage
44 rate prescribed by law for this service. Such election
45 commissioners shall give the ballot commissioners a
46 sequentially numbered written receipt, on a printed form,
47 provided by the clerk of the county commission, for such
48 records, books and supplies. Such receipt shall be prepared
49 in duplicate. One copy of the receipt shall remain with the
50 clerk of the county commission and one copy shall be
51 delivered to the president or president pro tempore of the
52 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
2 to be delivered each vote recording device and the package
3 of ballot cards to the polling place where they are to be
4 employed. Such delivery shall be made not less than one
5 hour prior to the opening of the polls and shall be made in
6 the presence of the precinct election commissioners. At the
7 time of the delivery of the vote recording device and the
8 ballot cards, the device shall be sealed in such a way to
9 prevent its use prior to the opening of the polls and any
10 tampering with the ballot labels and the ballot cards shall
11 be packaged and sealed in such a way to prevent any

12 tampering with the ballots. Immediately prior to the
13 opening of the polls on election day, the sealed packages of
14 ballot cards shall be opened, and the seal of the vote
15 recording device shall be broken in the presence of the
16 precinct election commissioners, who shall certify in
17 writing signed by them to the clerk of the county
18 commission, that the devices and the ballot cards have been
19 delivered in their presence, that the devices and packages of
20 ballot cards were found to be sealed upon such delivery, and
21 that the seals have been broken and the devices opened in
22 their presence. The election commissioners shall then cause
23 the vote recording device to be arranged in the voting booth
24 in such manner that the front of the vote recording device on
25 which the ballot labels appear will not be visible when the
26 vote recording device is being operated to any person other
27 than the voter if the voter shall elect to close the curtain,
28 screen or hood to the voting booth.

§3-4A-22. Assistance to illiterate and disabled voters.

1 (a) Any duly registered voter, who requires assistance to
2 vote by reason of blindness, disability, advanced age, or
3 inability to read and write, may be given assistance by one
4 of the following means:

5 (1) By a person of the voter's choice: *Provided*, That
6 such assistance may not be given by the voter's present or
7 former employer or agent of that employer or by an officer
8 or agent of a labor union of which the voter is a past or
9 present member; or

10 (2) If no person of the voter's choice be present at the
11 polling place, the voter may request such assistance from
12 the poll clerks or ballot commissioners present at the
13 polling place, whereupon such assistance may be given by
14 any two of such election officers of opposite political party
15 affiliation to whom such voter shall thereupon declare his
16 or her choice of candidates and his or her position on public
17 questions appearing on the ballot or ballot labels. Such
18 election officers, in the presence of the voter and in the
19 presence of each other, shall thereupon cause such voter's
20 declared choices to be recorded on the vote recording device
21 as votes.

22 (b) A person other than an election officer who assists a
23 voter in voting under the provisions of this section shall sign

24 a written oath or affirmation before assisting such voter,
25 stating that he or she will not override the actual preference
26 of the voter being assisted or mislead the voter into voting
27 for someone other than the candidate of voter's choice. Such
28 person assisting the voter shall also swear or affirm that he
29 or she believes that the voter is voting free of intimidation or
30 manipulation.

§3-4A-23. Persons prohibited about voting booths; penalties.

1 Excepting the election officials acting under authority of
2 sections nineteen, twenty, twenty-one and twenty-two of
3 this article in the conduct of the election, and qualified
4 persons assisting voters pursuant to section twenty-two of
5 this article, no person other than the voter alone may be in,
6 about or within five feet of the voting booth during the time
7 such voter is in the process of voting at any election, and,
8 during such time, no person may communicate in any
9 manner with the voter and the voter may not communicate
10 with any other person or persons. Any conduct or action of
11 an election official about or around the voting booth while
12 the voter is in the process of voting, in excess of the
13 authority vested in such official by provisions of this article,
14 shall constitute a violation of the provisions hereof. Any
15 person violating any provision or provisions of this section
16 shall be guilty of a misdemeanor, and, upon conviction
17 thereof, shall be fined not exceeding one thousand dollars
18 or be sentenced to imprisonment in the county jail for a
19 period not exceeding twelve months, or, in the discretion of
20 the court, shall be subject to both such fine and
21 imprisonment.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

1 The provisions of section five, article one of this chapter,
2 relating to the number of registered voters in each precinct,
3 shall apply to and control in precincts in counties in which
4 electronic voting systems have been adopted, except that
5 the maximum number of registered voters shall be one
6 thousand per precinct. The county commissions of such
7 counties, subject to other provisions of this chapter with
8 respect to the altering or changing of the boundaries of
9 voting precincts, may change the boundaries of precincts or

10 consolidate precincts as practicable, to achieve the
11 maximum advantage from the use of electronic voting
12 systems.

13 The county commission may in the urban centers of any
14 county adopting an electronic voting system, designate a
15 voting place without the limits of a precinct, provided such
16 voting place is in a public building, and in an adjoining
17 precinct. In such event more than one precinct may vote in
18 any such public building.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

**§3-5-1. Time and place of holding primary elections in the year
one thousand nine hundred eighty and thereafter,
hours polls open.**

1 Primary elections shall be held at the voting place in each
2 of the voting precincts in the state, for the purposes set forth
3 in this article, on the second Tuesday in May in the year one
4 thousand nine hundred eighty-six and in each second year
5 thereafter.

6 At such election the polls shall be opened and closed at
7 the hours provided for opening and closing the polls in a
8 general election.

§3-5-5. Candidates for county board of education.

1 Any person who is eligible to hold office as a member of a
2 county board of education may file a certificate with the
3 clerk of the circuit court of the county, declaring himself a
4 candidate for election to such office. Such certificate shall
5 be substantially in the following form:

6 I,, hereby certify
7 that I am a candidate for nonpartisan election to
8 membership on the
9 County Board of Education, and desire my name printed on
10 the ballot to be voted at the primary election to be held on
11 the day of, 19....; that I am a
12 legally qualified voter of the County of,
13 State of West Virginia; that the address of my residence in
14 County is; that I am
15 eligible to hold the office; and that I am a candidate therefor
16 in good faith.

17
18 Candidate

19 Signed and acknowledged before me this
20 day of, 19....

21

22 Signature and official title

23 of certifying officer.

24 Such announcement shall be signed and acknowledged
25 by the candidate before some officer qualified to administer
26 oaths, who shall certify the same.

27 In the year one thousand nine hundred eighty-six and
28 each two years thereafter, such certificate shall be filed
29 with the clerk of the circuit court not earlier than the second
30 Monday in January next preceding the primary election
31 day, and not later than the first Saturday of February next
32 preceding the primary election day and must be received by
33 the clerk before midnight, eastern standard time, of that
34 day, or, if mailed, shall be postmarked before that hour.

**§3-5-7. Filing announcements of candidacies; requirements;
when section applicable.**

1 Any person who is eligible to hold and seeks to hold an
2 office (including that of member of any political party
3 executive committee) shall file with the secretary of state, if
4 it be an office to be filled by the voters of more than one
5 county, or with the clerk of the circuit court, if it be for an
6 office to be filled by the voters of a county or subdivision
7 less than a county, a certificate declaring himself a
8 candidate for the nomination for such office, which
9 certificate shall be in form or effect as follows:

10 I,, hereby certify that I am a
11 candidate for the nomination for the office of
12 to represent the Party, and desire my name
13 printed on the official ballot of said party to be voted at the
14 primary election to be held on the
15 day of, 19....; that I am
16 a legally qualified voter of the County of,
17 State of West Virginia; that my residence is number
18 of Street in the City (or Town) of
19 in County in said State;
20 that I am eligible to hold the said office; that I am a member
21 of and affiliated with said political party; that I am a
22 candidate for said office in good faith.

23

24 Candidate

25 Signed and acknowledged before me this
26 day of, 19.....
27
28 Signature and official title of
29 person before whom signed.

30 Any candidate for delegate to the national convention of
31 any political party shall provide, on a form prescribed by
32 the secretary of state, the information required in the
33 certificate hereinbefore described and shall also provide
34 the name of the person he prefers as the presidential
35 nominee of his party upon the first convention ballot, or if
36 he has no preference, a statement that he is uncommitted:
37 *Provided*, That any candidate for delegate may change his
38 statement of presidential preference by notifying the
39 secretary of state by registered letter, at least seventy-seven
40 days prior to the day fixed for the primary election.

41 Such announcement shall be signed and acknowledged
42 by the candidate before some officer qualified to administer
43 oaths, who shall certify the same. Any person who
44 knowingly provides false information on said certificate
45 shall be guilty of an offense and shall be punished as set
46 forth in section twenty-three, article nine of this chapter.

47 Such certificate shall be filed with the secretary of state
48 or the clerk of the circuit court, as the case may be, not
49 earlier than the second Monday in January next preceding
50 the primary election day, and not later than the first
51 Saturday of February next preceding the primary election
52 day, and must be received before midnight, eastern
53 standard time, of that day or, if mailed, shall be postmarked
54 before that hour.

55 The provisions of this section shall apply to the primary
56 election held in the year one thousand nine hundred eighty-
57 six and every primary election held thereafter.

§3-5-9. Certification and posting of candidacies.

1 By the eighty-fourth day next preceding the day fixed for
2 the primary election, the secretary of state shall arrange the
3 names of all candidates, who have filed announcements
4 with him, as provided in this article, and who are entitled to
5 have their names printed on any political party ballot, in
6 accordance with the provisions of this chapter, and shall
7 forthwith certify the same under his name and the lesser
8 seal of the state, and file the same in his office.

9 Such certificate of candidates shall show (1) the name and
10 residence of each candidate, (2) the office for which he is a
11 candidate, (3) the name of the political party of which he is a
12 candidate, (4) upon what ballot his name is to be printed,
13 and (5) in the case of a candidate for delegate to the national
14 convention of any political party, the name of the person the
15 candidate prefers as the presidential nominee of his party,
16 or if he has no preference, the word "uncommitted."

17 The secretary of state shall post a duplicate of such
18 certificate in a conspicuous place in his office and keep
19 same posted until after the primary election.

20 Immediately upon completion of such certification, the
21 secretary of state shall ascertain therefrom the candidates
22 whose names are to appear on the primary election ballots
23 in the several counties of the state and shall certify to the
24 clerk of the circuit court in each county the certificate
25 information relating to each of the candidates whose names
26 are to appear on the ballot in such county. He shall transmit
27 such certificate to the several clerks by registered or
28 certified mail, but, in emergency cases, he may resort to
29 other reliable and speedy means of transmission which may
30 be available so that such certificates shall reach the several
31 clerks by the seventieth day next preceding such primary
32 election day.

33 The provisions of this section shall apply to the primary
34 election held in the year one thousand nine hundred eighty-
35 six and every primary election held thereafter.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 All ballots prepared under the provisions of this article
2 shall be printed in black ink on number two white book
3 paper sufficiently thick so that the printing cannot be
4 distinguished from the back, and shall contain the names of
5 every candidate whose nomination for any office to be voted
6 for at the election has been certified and filed according to
7 law, and no others, except that if it shall appear to the
8 satisfaction of the ballot commissioners that a person has
9 been legally nominated as a candidate for an office and is
10 lawfully entitled to have his name upon the ballot and no
11 certificate of the nomination has been received by the clerk

12 of the circuit court, they shall print the name of such
13 candidate upon the ballot in its proper place.

14 The tickets, except the heading, which shall be in display
15 type, shall be printed in eight point type; the name or
16 designation of the office and the residence and county of
17 residence of the candidate in lower case letters, and the
18 name of the candidate in capital letters. The name and
19 residence of the candidate may be printed in the same line.
20 The name of each candidate shall be printed in a space
21 defined by ruled lines, and with a black square on its left
22 enclosed by heavy dark lines. If, upon any ticket, there be no
23 candidate or candidates for a designated office, a blank
24 space equal to the space that would be occupied by such
25 name or names, if they were printed thereon, with the blank
26 space herein provided for, shall be left. The heading of each
27 party ticket including the name of the party and the device
28 or emblem above and the large circle between the device or
29 emblem and such name, shall be separated from the rest of
30 the ticket by heavy lines and the circle above the names of
31 the party in which the voter is to place the cross mark, if he
32 desires to vote the straight ticket, shall be defined by
33 heavier lines than the lines defining the blank spaces before
34 the name of candidates, and such circle shall be surrounded
35 by the following words printed in heavy face six point type:
36 "For a straight ticket mark within this circle." Once,
37 immediately below the circles for straight ticket voting, the
38 following instructions shall be printed in eight point type:
39 "STRAIGHT TICKET VOTERS: If you decide to split your
40 straight party vote, remember — (1) For offices where you
41 are asked to choose one candidate, if you vote for a
42 candidate in another party, the candidate for that office in
43 this party will NOT receive a vote. (2) For offices where you
44 are asked to choose more than one, if you vote for any
45 candidate in another party YOU MUST MARK EACH OF
46 YOUR CHOICES for that office, EVEN THOSE IN YOUR
47 STRAIGHT TICKET PARTY. "Each party ticket shall be
48 separated from other party tickets and bordered on either
49 side by a heavy border, or a broad solid line, at least one-
50 sixteenth of an inch wide, and the edges of the ballot on
51 either side trimmed off to within one-half inch of the border
52 or solid line described.

53 The names of the candidates shall be arranged on the

54 ballot in tickets or lists, in separate columns under the
 55 respective party or political or other designation certified,
 56 each column or ticket containing the names of candidates
 57 nominated by the same political party and no others. In
 58 elections for presidential electors, the names of candidates
 59 for electors of any political party or group of petitioners,
 60 shall not be placed on the ballot, but shall, after
 61 nomination, be filed with the secretary of state. In place of
 62 their names, there shall be printed first on the ballots the
 63 names of the candidates for president and vice president,
 64 respectively, of each such party or group of petitioners, and
 65 they shall be arranged under the title of the office. Before
 66 the names of such candidates for president and vice
 67 president of each party, or group, a single square shall be
 68 printed, in front of a brace in which the voter shall place the
 69 cross mark for the candidate of his choice for such offices. A
 70 vote for any of such candidates shall be a vote for the
 71 electors of the party by which such candidates were named,
 72 and whose names have been filed with the secretary of state.
 73 The names of the candidates on each ticket shall be
 74 arranged in groups, with a heading over each group printed
 75 in heavy faced eight point type to indicate the political
 76 divisions in which such group is to be voted for. The
 77 arrangement of the ballot shall conform as nearly as
 78 practicable to the plan here given:

Device	Device	Device
		
Republican Ticket	Democratic Ticket	Prohibition Ticket

79 STRAIGHT TICKET VOTERS: If you decide to split your
 80 straight party vote, remember — (1) For offices where you
 81 are asked to choose one candidate, if you vote for a
 82 candidate in another party, the candidate for that office in
 83 this party will NOT receive a vote. (2) For offices where you
 84 are asked to choose more than one, if you vote for any

85 candidate in another party YOU MUST MARK EACH OF
 86 YOUR CHOICES for that office, EVEN THOSE IN YOUR
 87 STRAIGHT TICKET PARTY.

For Governor	For Governor	For Governor
Name	Name	Name
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

88 *Provided*, That the arrangement of the portion of the ballot
 89 for offices for which more than one seat is to be filled shall
 90 conform as nearly as practicable to the following plan:

For House of Delegates (Choose two)	For House of Delegates (Choose two)	For House of Delegates (Choose two)
Name	Name	Name
<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____

91 The tickets of the several political parties shall be printed
 92 on the ballot in parallel columns, each ticket in a separate
 93 column headed by the chosen device, and the tickets in such
 94 order on the ballot and the names of the office in such order
 95 on the ticket as the secretary of state shall direct,
 96 preference, however, being given to the political party
 97 which cast the highest number of votes for the head of the
 98 ticket at the last preceding presidential election, and so on.
 99 No ticket or list of candidates shall be printed under the
 100 name of any party containing more candidates for any
 101 office than are to be elected.

102 In those delegate districts set forth in subsection (d),
 103 section two, article two, chapter one of this code which
 104 embrace more than one county and in which there is a
 105 prohibition regarding the number of delegates to be elected
 106 or appointed who are residents of any single county within
 107 the district, there shall be printed on the ballot, including,
 108 but not limited to, voting machines and electronic voting
 109 system ballots, in bold type, immediately preceding the
 110 names of candidates for the House of Delegates, a clear
 111 explanation of such prohibition. In those delegate districts
 112 which embrace more than one county, the county of

113 residence of each candidate for the House of Delegates shall
 114 be printed beneath the name of each such candidate on the
 115 ballot, including, but not limited to, voting machines and
 116 electronic voting system ballots.

117 The ballot shall be so printed as to give each voter a clear
 118 opportunity to designate by a cross mark in a large, blank,
 119 circular space, three-quarters of an inch in diameter, below
 120 the device and above the name of the party at the head of the
 121 ticket or list of candidates, his choice of a party ticket and
 122 desire to vote for each and every candidate thereon; and by
 123 a cross mark, in a blank, enclosed space on the left side and
 124 before the name of each candidate, his choice of particular
 125 candidates.

126 For any office or offices for which there is to be more than
 127 one candidate elected, that section of the ballot relating to
 128 said office shall be printed in such a manner so as to provide
 129 for the rotation of names in order to assure that each
 130 candidate from each party for said office occupies a given
 131 position in the order of the candidates an equal number of
 132 times. If any party fails to nominate or to fill a ballot
 133 vacancy for as many candidates as there are persons to be
 134 elected to said office, then the ballot shall be printed in such
 135 a manner so as to provide that the space created by the
 136 vacancy shall be rotated in the same manner as the names of
 137 each of the candidates for said office.

138 On the back of the ballot shall be printed or stamped in
 139 black ink the words "Official Ballot," with the date of the
 140 election, and underneath shall be two blank lines, followed
 141 by the words "Poll Clerks."

§3-6-6. Ballot counting procedures.

1 When the polls are closed in an election precinct where
 2 two election boards have served, both the receiving and
 3 counting boards shall conclude the counting of the votes
 4 cast, the tabulating and summarizing of the number of the
 5 votes cast, unite in certifying and attesting to the returns of
 6 the election, and join in making out the certificates of the
 7 result of the election provided for in this article. They shall
 8 not adjourn until the work shall be completed.

9 In all election precincts wherein the election shall be
 10 conducted by a single election board, immediately on
 11 closing the polls the commissioners and clerks shall proceed

12 to ascertain the result of the election in the following
13 manner: The ballot box shall then be opened, and one of the
14 commissioners taking therefrom one ballot at a time, in the
15 presence of all the other officers, shall read therefrom the
16 designations of the offices to be filled, and the names of the
17 persons voted for, for each office, and hand the ballot to
18 another of such commissioners, differing in politics from
19 himself, who, if satisfied that it was correctly read, shall
20 string it on a thread. The contents of the ballots, as they are
21 read, shall be entered by the poll clerks, under the
22 supervision of the commissioners, on tally sheets for the
23 purpose, by suitable marks, in ink, made opposite to or
24 under the name of each person voted for, so as to show the
25 number of votes received by every person, for any office to
26 be filled. The ballots shall be counted as they are strung
27 upon the thread and whenever the number counted shall be
28 equal to the number of votes entered upon the poll books,
29 the excess, if any, remaining in the ballot box shall, without
30 unfolding or unrolling the same, or allowing anyone to
31 examine or know the contents thereof, be counted and
32 strung on a second thread along with a card marked "excess
33 ballots." The number, if any, of excess ballots found in the
34 ballot box and not included in the tally of votes shall be
35 reported on the tally sheets.

36 They shall not adjourn until all of the votes are counted
37 and certificates of the result made and signed by them. In
38 precincts wherein there are double boards, the counting
39 boards, in counting the ballots, shall proceed in the manner
40 prescribed in this section.

**§3-6-9. Canvass of returns; declaration of results; recounts;
record keeping.**

1 The commissioners of the county commission shall be ex
2 officio a board of canvassers, and, as such, shall keep in a
3 well-bound book, marked "election record," a complete
4 record of all their proceedings in ascertaining and declaring
5 the results of every election in their respective counties.
6 They shall convene as the canvassing board at the
7 courthouse on the fifth day (Sundays excepted) after every
8 election held in their county, or in any district thereof, and
9 the officers in whose custody the ballots, pollbooks,
10 registration records, tally sheets and certificates have been

11 placed shall lay them before the board for examination.
 12 They may, if considered necessary, require the attendance
 13 of any of the commissioners, poll clerks or other persons
 14 present at the election, to appear and testify respecting the
 15 same, and make such other orders as shall seem proper, to
 16 procure correct returns and ascertain the true results of the
 17 election in their county; but in this case all the questions to
 18 the witnesses and all the answers thereto, and evidence,
 19 shall be taken down in writing and filed and preserved. All
 20 orders made shall be entered upon the record. They may
 21 adjourn from time to time, but no longer than absolutely
 22 necessary, and, when a majority of the commissioners are
 23 not present, their meeting shall stand adjourned until the
 24 next day, and so from day to day, until a quorum is present.
 25 All meetings of the commissioners sitting as a board of
 26 canvassers shall be open to the public. The board shall
 27 proceed to open each sealed package of ballots so laid
 28 before them, and, without unfolding them, count the
 29 number in each package and enter the number upon their
 30 record. The ballots shall then be again sealed up carefully in
 31 a new envelope, and each member of the board shall write
 32 his name across the place where the envelope is sealed.
 33 After canvassing the returns of the election, the board shall
 34 publicly declare the results of the election; however, they
 35 shall not enter an order certifying the election results for a
 36 period of forty-eight hours after the declaration.

37 (a) Within the forty-eight-hour period, a candidate
 38 voted for at the election may demand the board to open and
 39 examine any of the sealed packages of ballots, and recount
 40 them; but in such case they shall seal the ballots again,
 41 along with the envelope above named, and the clerk of the
 42 county commission and each member of the board shall
 43 write his name across the places where it is sealed, and
 44 endorse in ink, on the outside: "Ballots of the election held
 45 at precinct No. , in the district of ,
 46 and county of ,
 47 on the day of"

48 In computing the forty-eight-hour period as used in this
 49 section, Saturdays, Sundays and legal holidays shall be
 50 excluded: *Provided*, That at the end of the forty-eight-hour
 51 period, an order shall be entered certifying all election

52 results except for those offices in which a recount has been
53 demanded.

54 (b) If a recount has been demanded, the board shall have
55 an additional twenty-four hours after the end of the forty-
56 eight-hour period, in which to send notice to all candidates
57 who filed for the office in which a recount has been
58 demanded, of the date, time and place where the board will
59 convene to commence the recount. The notice shall be
60 served under the provisions of subdivision (c) of this
61 section. The recount shall be set for no sooner than three
62 days after the serving of the notice: *Provided*, That after the
63 notice is served, candidates so served shall have an
64 additional twenty-four hours in which to notify the board,
65 in writing, of their intention to preserve their right to
66 demand a recount of precincts not requested to be
67 recounted by the candidate originally requesting a recount
68 of ballots cast: *Provided, however*, That there shall be only
69 one recount of each precinct, regardless of the number of
70 requests for a recount of any precinct. A demand for the
71 recount of ballots cast at any precinct may be made during
72 the recount proceedings only by the candidate originally
73 requesting the recount and those candidates who notify the
74 board, pursuant to this subdivision, of their intention to
75 preserve their right to demand a recount of additional
76 precincts.

77 (c) Any sheriff of the county in which the recount is to
78 occur shall deliver a copy thereof in writing to the candidate
79 in person; or if the candidate is not found, by delivering the
80 copy at the usual place of abode of the candidate, and giving
81 information of its purport, to the spouse of the candidate or
82 any other person found there who is a member of his family
83 and above the age of sixteen years; or if neither the spouse of
84 the candidate nor any other person be found there, and the
85 candidate is not found, by leaving the copy posted at the
86 front door of the place of abode. Any sheriff, thereto
87 required, shall serve a notice within his county and make
88 return of the manner and time of service; for a failure so to
89 do, he shall forfeit twenty dollars. The return shall be
90 evidence of the manner and time of service.

91 (d) Every candidate who demands a recount shall be
92 required to furnish bond in a reasonable amount with good
93 sufficient surety to guarantee payment of the costs and the

94 expenses of such recount in the event the result of the
 95 election is not changed by the recount; but the amount of
 96 the bond shall in no case exceed three hundred dollars.

97 When they have made their certificates and declared the
 98 results as hereinafter provided, they shall deposit the sealed
 99 packages of ballots, absent voter ballots, registration
 100 records, pollbooks, tally sheets and precinct certificates
 101 with the clerks of the county commissions and circuit courts
 102 from whom they were received, who shall carefully preserve
 103 them for twenty-two months, and if there is no contest
 104 pending as to any election, and their further preservation is
 105 not required by any order of a court, the ballots, pollbooks,
 106 tally sheets and certificates shall be destroyed by fire or
 107 otherwise, without opening the sealed packages of ballots;
 108 and if there is a contest pending, then they shall be so
 109 destroyed as soon as the contest is ended.

110 If the result of the election is not changed by the recount,
 111 the costs and expenses thereof shall be paid by the party at
 112 whose instance the recount was made.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

1 Every candidate, financial agent, person and association
 2 of persons, organization of any kind, including every
 3 corporation, directly or indirectly, supporting a political
 4 committee established pursuant to paragraph (C),
 5 subdivision (1), subsection (b), section eight of this article or
 6 engaging in other activities permitted by said section eight
 7 of this article and also including the treasurer or equivalent
 8 officer of such association or organization; advocating or
 9 opposing the nomination, election or defeat of any
 10 candidate, or the passage or defeat of any issue, thing or
 11 item to be voted upon, and the treasurer of every political
 12 party committee shall keep detailed accounts of every sum
 13 of money or other thing of value received by him, including
 14 all loans of money or things of value, and of all expenditures
 15 and disbursements made, liabilities incurred, by such
 16 candidate, financial agent, person, association or
 17 organization or committee, for political purposes, or by any
 18 of the officers or members of such committee, or any person
 19 acting under its authority or on its behalf.

20 Every person or association of persons required to keep
21 detailed accounts under this section shall file with the
22 officers hereinafter prescribed a detailed itemized
23 statement, subscribed and sworn to before an officer
24 authorized to administer oaths, according to the following
25 provisions and times:

26 (a) On the last Saturday in March or within fifteen days
27 thereafter next preceding the primary election day
28 whenever the total of all financial transactions relating to
29 an election exceed five hundred dollars a statement which
30 shall include all financial transactions which have taken
31 place by the date of that statement, subsequent to any
32 previous statement filed within the previous five years
33 under this section, or if no previous statement was filed, all
34 financial transactions made within the preceding five
35 years; and

36 (b) Not less than seven nor more than ten days preceding
37 each primary or other election, a statement which shall
38 include all financial transactions which have taken place by
39 the date of such statement, subsequent to the previous
40 statement, if any; and

41 (c) Not less than twenty-five nor more than thirty days
42 after each primary or other election, a statement which
43 shall include all financial transactions which have taken
44 place by the date of such statement, subsequent to the
45 previous statement; and

46 (d) On the first day of July, one thousand nine hundred
47 eighty-five, and thereafter on the last Saturday in March or
48 within fifteen days thereafter annually, whenever
49 contributions or expenditures relating to an election exceed
50 five hundred dollars or whenever any loans are
51 outstanding, a statement which shall include all financial
52 transactions which have taken place by the date of such
53 report, subsequent to any previous report.

54 Financial transactions shall include all contributions or
55 loans received and all repayments of loans or expenditures
56 made to promote the candidacy of any person by any
57 candidate or any organization advocating or opposing the
58 nomination, election or defeat of any candidate or to
59 promote the passage or defeat of any issue, thing or item to
60 be voted on.

61 Every person who shall announce as a write-in candidate

62 for any elective office and his financial agent or election
63 organization of any kind, shall comply with all of the
64 requirements of this section after public announcement of
65 such person's candidacy has been made.

§3-8-5a. Information required in financial statement.

1 Each financial statement as required by this article shall
2 show the following information:

3 (a) The first name, middle initial, if any, and last name,
4 residence and mailing address and telephone number of
5 each candidate, financial agent, treasurer or person, and
6 the full name, address and telephone number of each
7 association, organization or committee filing a financial
8 statement.

9 (b) The balance of cash and any other sum of money on
10 hand at the beginning and the end of the period covered by
11 the financial statement.

12 (c) The first name, middle initial, if any, and the last
13 name in the case of an individual, and the full name of each
14 firm, association or committee, and the amount of such
15 contribution of such individual, firm, association or
16 committee, and, if the aggregate of the sum or sums
17 contributed by any one such individual, firm, association or
18 committee exceeds two hundred fifty dollars there shall
19 also be reported the residence and mailing address and, in
20 the case of an individual, the major business affiliation and
21 occupation. A contribution totaling more than fifty dollars
22 by any one contributor is prohibited unless it is by money
23 order or by check, and a violation of this provision is subject
24 to section five-d of this article. As used herein, the term
25 "check" shall have the meaning ascribed to that term in
26 section one hundred four, article three, chapter forty-six of
27 this code.

28 (d) The total amount of contributions received during
29 the period covered by the financial statement.

30 (e) The first name, middle initial, if any, and the last
31 name, residence and mailing address in the case of an
32 individual or the full name and mailing address of each
33 firm, association or committee making or cosigning a loan
34 and the amount of any loan received, the date and terms of
35 the loan, including interest and repayment schedule, along
36 with a copy of the loan agreement.

37 (f) The first name, middle initial, if any, and the last
38 name, residence and mailing address in the case of an
39 individual or the full name and mailing address of each
40 firm, association or committee having previously made or
41 cosigned a loan for which payment is made or a balance is
42 outstanding at the end of the period, together with the
43 amount of repayment on the loan made during the period
44 and the balance at the end of the period.

45 (g) The total outstanding balance of all loans at the end
46 of the period.

47 (h) The first name, middle initial, if any, and the last
48 name, residence and mailing address in the case of an
49 individual, or the full name and mailing address of each
50 firm, association or committee to whom each expenditure
51 was made or liability incurred, together with the amount
52 and purpose of each expenditure or liability incurred and
53 the date of each transaction.

54 When any lump sum payment is made to any advertising
55 agency or other disbursing person who does not file a report
56 of detailed accounts and verified financial statements as
57 required herein, such lump sum expenditures shall be
58 accounted for in the same manner as provided herein.

59 (i) The total expenditure for the nomination, election or
60 defeat of a candidate or any person or organization
61 advocating or opposing the nomination, election or defeat
62 of any candidate, or the passage or defeat of any issue, thing
63 or item to be voted upon, in whose behalf an expenditure
64 was made or a contribution was given for the primary or
65 other election.

66 (j) The total amount of expenditures made during the
67 period covered by the financial statement.

68 (k) Any unexpended balance at the time of making the
69 financial statements herein provided for, shall be properly
70 accounted for in that financial statement and shall appear
71 as a balance in the next following financial statement.

72 (l) Each financial statement required by this section
73 shall contain a separate section setting forth the following
74 information for each fund-raising event held during the
75 period covered by the financial statement:

76 (1) The type of event, date held, and address and name,
77 if any, of the place where the event was held.

78 (2) All of the information required by subdivision (c) of
79 this section.

80 (3) The total of all moneys received at the fund-raising
81 event.

82 (4) The expenditures incident to the fund-raising event.

83 (5) The net receipts of the fund-raising event.

84 For the purpose of this section the term "fund-raising
85 event" means an event such as a dinner, reception,
86 testimonial, cocktail party, auction or similar affair
87 through which contributions are solicited or received by
88 such means as purchase of a ticket, payment of an
89 attendance fee or through purchase of goods or services.

90 (m) Any contribution or expenditure made by or on
91 behalf of a candidate for public office, to any other
92 candidate, or committee for a candidate for any public
93 office in the same election shall comply with the provisions
94 of this article.

95 (n) No person, firm, association or committee shall
96 make any contribution except from his own funds, unless
97 such person, firm, association or committee discloses in
98 writing to the person required to report under this section
99 the first name, middle initial, if any, and the last name in the
100 case of an individual, or the full name in case of a firm,
101 association or committee, residence and mailing address;
102 the major business affiliation and occupation of the person,
103 firm, association or committee which furnished the funds to
104 such contributor. All such disclosures shall be included in
105 the statement required by this section.

106 (o) Any firm, association, committee or fund permitted
107 by section eight of this article to be a political committee
108 shall disclose on the financial statement its corporate or
109 other affiliation.

110 (p) No contribution may be made, directly or indirectly,
111 in a fictitious name, anonymously or by one person through
112 an agent, relative or other person so as to conceal the
113 identity of the source of the contribution or in any other
114 manner so as to effect concealment of the contributor's
115 identity.

116 (q) No person, association or committee may accept any
117 contribution for the purpose of influencing the nomination,
118 election or defeat of a candidate or for the passage or defeat

119 of any issue or thing to be voted upon unless the identity of
120 the donor and the amount of the contribution is known and
121 reported.

122 (r) When any candidate, organization, committee or
123 person receives any anonymous contribution which cannot
124 be returned because the donor cannot be identified, that
125 contribution shall be donated to the general revenue fund of
126 the state. Any anonymous contribution shall be recorded as
127 such on the candidate's financial statement, but may not be
128 expended for election expenses. At the time of filing, the
129 financial statement shall include a statement of
130 distribution of anonymous contributions, which total
131 amount shall equal the total of all anonymous contributions
132 received during the period.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

1 Every candidate, financial agent, person or association of
2 persons or organization advocating or opposing the
3 nomination or election of any candidate or the passage or
4 defeat of any issue or item to be voted upon who receives
5 money or any other thing of value as a loan toward election
6 expenses shall execute, in writing, an agreement with the
7 individual, lending institution or organization making the
8 loan. Such agreement shall state the date and amount of the
9 loan, the terms, including interest and repayment schedule,
10 and a description of the collateral, if any, and the full names
11 and addresses of all parties to the agreement. A copy of the
12 agreement shall be filed with the financial statement next
13 required after the loan is executed.

§3-8-7. Failure to file statement; penalty.

1 Any candidate, financial agent, or treasurer of a political
2 party committee, who fails to file a sworn, itemized
3 statement as in this article provided, within the time
4 required, or who willfully files a grossly incomplete or
5 inaccurate statement, shall be guilty of a misdemeanor,
6 and, upon conviction, shall be fined not less than five
7 hundred dollars, or imprisoned in the county jail for not
8 more than one year, or both, in the discretion of the court.
9 Forty days after any such primary or other election, the
10 secretary of state, or county clerk, as the case may be, shall
11 give notice of any failure to file such statement by any

12 candidate, financial agent or treasurer of such committee,
 13 to the prosecuting attorney of the county where such
 14 delinquent resides. No candidate nominated at a primary
 15 election, who has failed to make a sworn statement as
 16 required by this article, shall have his name placed on the
 17 official ballot for the ensuing election, unless there has been
 18 filed by or on behalf of such candidate, or by his financial
 19 agent, if any, the financial statement relating to
 20 nominations required by this article. It shall be unlawful to
 21 issue a commission or certificate of election, or to
 22 administer the oath of office, to any person elected to any
 23 public office who has failed to file a sworn statement as
 24 required by this article, and no such person shall enter upon
 25 the duties of his office until he has filed such statement, nor
 26 shall he receive any salary or emolument for any period
 27 prior to the filing of such statement.

§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.

1 (a) No person shall publish, issue or circulate, or cause
 2 to be published, issued or circulated, any anonymous letter,
 3 circular, placard, or other publication tending to influence
 4 voting at any election;

5 (b) No owner, publisher, editor or employee of a
 6 newspaper or other periodical shall insert, either in its
 7 advertising or reading columns, any matter, paid for or to be
 8 paid for, which tends to influence the voting at any election
 9 whatever, unless directly designating it as a paid
 10 advertisement and stating the name of the person
 11 authorizing its publication and the candidate in whose
 12 behalf it is published;

13 (c) No person shall, in any room or building occupied for
 14 the discharge of official duties by any officer or employee of
 15 the state or a political subdivision thereof, solicit orally or
 16 by written communication delivered therein, or in any other
 17 manner, any contribution of money or other thing of value
 18 for any party or political purpose whatever, from any
 19 postmaster or any other officer or employee of the federal

20 government, or officer or employee of the state, or political
21 subdivision thereof. No officer, agent, clerk or employee of
22 the federal government, or of this state, or any political
23 subdivision thereof, who may have charge or control of any
24 building, office or room, occupied for any official purpose,
25 shall knowingly permit any person to enter the same for the
26 purpose of therein soliciting or receiving any political
27 assessments from, or delivering or giving written
28 solicitations for, or any notice of, any political assessments
29 to, any officer or employee of the state, or a political
30 subdivision thereof;

31 (d) Except as provided in section eight of this article no
32 person entering into any contract with the state or its
33 subdivisions, or any department or agency thereof, either
34 for rendition of personal services or furnishing any
35 material, supplies or equipment or selling any land or
36 building to the state, or its subdivisions, or any department
37 or agency thereof, if payment for the performance of such
38 contract or payment for such material, supplies, equipment,
39 land or building is to be made in whole or in part from
40 public funds shall, during the period of negotiation for or
41 performance under such contract or furnishing of
42 materials, supplies, equipment, land or buildings, directly
43 or indirectly make any contribution to any political party,
44 committee or candidate for public office or to any person for
45 political purposes or use; nor shall any person or firm solicit
46 any contributions for any such purpose during any such
47 period;

48 (e) No person shall, directly or indirectly, promise any
49 employment, position, work, compensation or other benefit
50 provided for, or made possible, in whole or in part by act of
51 the Legislature, to any person as consideration, favor or
52 reward for any political activity for the support of or
53 opposition to any candidate, or any political party in any
54 election;

55 (f) No person shall, directly or indirectly, make any
56 contribution in excess of the value of one thousand dollars
57 in connection with any campaign for nomination or election
58 to or on behalf of any statewide or national elective office,
59 or in excess of the value of one thousand dollars, in
60 connection with any other campaign for nomination or
61 election to or on behalf of any other elective office in the

62 state or any of its subdivisions, or in connection with or on
63 behalf of any committee or other organization or person
64 engaged in furthering, advancing or advocating the
65 nomination or election of any candidate for any such office;
66 and

67 (g) No person shall solicit any contribution from any
68 nonelective salaried employee of the state government or of
69 any of its subdivisions or coerce or intimidate any such
70 employee into making such contribution. No person shall
71 coerce or intimidate any nonsalaried employee of the state
72 government or any of its subdivisions into engaging in any
73 form of political activity. The provisions hereof shall not be
74 construed to prevent any such employee from making such
75 a contribution or from engaging in political activity
76 voluntarily, without coercion, intimidation or solicitation;
77 and

78 (h) No person shall solicit a contribution from any other
79 person without informing such other person at the time of
80 such solicitation of the amount of any commission,
81 remuneration or other compensation that the solicitor or
82 any other person will receive or expect to receive as a direct
83 result of such contribution being successfully collected.
84 Nothing in this subsection shall be construed to apply to
85 solicitations of contributions made by any person serving as
86 an unpaid volunteer.

87 Any person violating any provision of this section shall be
88 guilty of a misdemeanor, and, upon conviction thereof, shall
89 be fined not more than one thousand dollars, or confined in
90 jail for not more than one year, or, in the discretion of the
91 court, be subject to both such fine and imprisonment.

[Handwritten signatures and notes at the bottom of the page]

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

Harold E. Parks
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Hulls
.....
Clerk of the Senate

Donald L. Glogg
.....
Clerk of the House of Delegates

Don Tonkovich
.....
President of the Senate

Joseph P. Albright
.....
Speaker House of Delegates

The within *approved* this the *2nd*
day of *May* 1985.

Arthur Shaughnessy
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/85

Time 6:16 p.m.