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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Com. Sub. for
SENATE BILL NO. 315

(By Senator *Minard, et al*)

PASSED *April 9,* 1993
In Effect *90 days from* Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 315

(SENATORS MINARD, BAILEY, SHARPE, CLAYPOLE
AND WAGNER, *original sponsors*)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections twenty-eight, twenty-nine, thirty and forty-six, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section thirty-a; to amend article one-a of said chapter by adding thereto a new section, designated section eight; to amend and reenact section forty-one, article two of said chapter; to amend and reenact sections one, two, two-a, two-b, three, five, five-a, five-b, five-c, seven and twelve, article three of said chapter; to amend and reenact sections thirteen, fourteen and twenty-four, article four of said chapter; to amend and reenact sections eleven, eleven-a, fourteen, fifteen and twenty-seven, article four-a of said chapter; to amend and reenact sections ten, fifteen and sixteen, article five of said chapter; to amend and reenact sections three, five, six and eight, article six of said chapter; and to further amend said article by adding thereto a new

section, designated section four-a, all relating to elections generally; providing for the eligibility requirements of election officials; clarifying certain qualifications and setting forth prohibitions; establishing grounds and procedures for suspension of election officials; refining definitions of various election officials; providing for an expanded receiving board; when such expanded receiving board to serve; reducing size of paper ballot precincts where optional counting board may serve; requiring county commissions to designate number and types of boards and to notify executive committees of number of officials needed to serve; clarifying nomination procedure for election officials; prescribing method and time periods in which executive committees may file nominations; providing procedure for notice of appointment of election officials; how vacancies filled on election day; eliminating certain archaic provisions; prescribing oath to be taken by election officials; establishing procedure for substitution, exchange or removal of election officials; modifying training program requirements; authorizing qualified employees of the secretary of state to conduct investigations and to enforce election and criminal laws; modifying procedure for postcard registration; clarifying exemptions for absentee voting identification requirements; authorizing special early absentee voting; empowering county commissions to adopt policies for absentee voting at nursing homes; rewriting certain code provisions for stylistic purposes; removing certain forms from statutory provisions and authorizing the secretary of state to prescribe certain forms; modifying form of absentee envelopes; eliminating requirement for physician's affidavit; establishing distances for access to absentee voting booths and prohibiting campaign literature from within three hundred feet therefrom; providing for absentee voting by physically disabled persons; modifying requirements for special absentee voting list; modifying procedures for voting absentee ballots in person and by mail; establishing a procedure for federal postcard registration; modifying provisions for voting by special write-in absentee ballots; changing certain terminology; establishing

procedure for absentee voting in nursing homes; modifying procedure for delivery of absentee ballots at polling places; requiring secretary of state to supply county and circuit clerks with provisions of overseas voting act; authorizing secretary of state to establish procedures for special absentee voting; codifying changes in law governing precincts using voting machines, consistent with other modifications; modifying requirements for the publication of ballots for all voting systems; clarifying the identification of persons who may observe the counting of votes; authorizing a representative of a group supporting or opposing an issue to be present; modifying the procedure for the counting of write-in votes for all voting systems; clarifying the requirements of ballot labels used in electronic voting systems to accommodate write-in voting; prescribing and clarifying procedures for the counting of write-in and other votes; revising procedure for the return of election supplies following primary elections; providing for the filing requirements of official write-in candidates; limiting the counting of write-in votes to only official candidates; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

three, five, six and eight, article six of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

4 (1) Must be a registered voter of the county for
5 elections held throughout the county, and a registered
6 voter of the municipality for elections held within the
7 municipality;

8 (2) Must be registered as affiliated with the political
9 party for which appointed; except that, persons regis-
10 tered without party affiliation or as adherents to a
11 political group other than the two majority political
12 parties then recognized are eligible to serve in nonpar-
13 tisan elections;

14 (3) Must be able to read and write the English
15 language;

16 (4) May not be a candidate on the ballot in the
17 election;

18 (5) May not be the parent, child, sibling or spouse of
19 a candidate on the ballot in the precinct where the
20 official serves;

21 (6) May not be a person prohibited from serving as
22 an election official pursuant to any other federal or
23 state statute;

24 (7) May not have been previously convicted of a
25 violation of any election law; and

26 (8) May not be a person who has served as deputy
27 sheriff within six months prior to the election.

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

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

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

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

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

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

40 (c) The county commission may, upon majority vote,
41 suspend the eligibility to serve as an election official in
42 any election for two years, upon petition of twenty-
43 five registered voters of the precinct where the official
44 last served and upon presentation of evidence of any
45 of the grounds set forth in subsection (b) hereof,
46 providing the petition requesting the suspension of the
47 election official is filed with the county commission at
48 least ninety days prior to an election date. The names
49 of those persons signing such petition shall be kept
50 confidential.

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

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means
3 those election officials charged with conducting the
4 process of voting within a precinct and consists of five
5 persons, including one team of poll clerks, one team of
6 election commissioners for the ballot box and one
7 additional election commissioner;

8 (2) The term "expanded receiving board" means a
9 standard receiving board as defined in subdivision (1)
10 hereof and one additional team of poll clerks;

11 (3) The term "counting board" means those election
12 officials charged with counting the ballots at the
13 precinct in counties using paper ballots and includes
14 one team of poll clerks, one team of election commis-

15 sioners and one additional commissioner; and

16 (4) The term "team of poll clerks" or "team of
17 election commissioners" means two persons of oppo-
18 site political parties appointed to perform the specific
19 functions of the office.

20 (b) The composition of boards of election officials
21 shall be as follows:

22 (1) In any primary, general or special election other
23 than a presidential primary or presidential general
24 election, each election precinct shall have one standard
25 receiving board;

26 (2) In presidential primary and presidential general
27 elections, each election precinct shall have one receiv-
28 ing board, as follows:

29 (A) For precincts of less than five hundred regis-
30 tered voters, one standard receiving board;

31 (B) For precincts of five hundred to seven hundred
32 registered voters, one standard receiving board or, at
33 the discretion of the county commission, one expanded
34 receiving board; and

35 (C) For precincts of more than seven hundred
36 registered voters, one expanded receiving board;

37 (3) In any election conducted using paper ballots,
38 counting boards may be allowed, disallowed or
39 required as follows:

40 (A) For any state, county or municipal special
41 election, no counting board may be allowed;

42 (B) In a statewide primary or general election, one
43 counting board shall be required for any precinct of
44 more than four hundred registered voters, and one
45 counting board may be allowed, at the discretion of
46 the county commission for any precinct of at least two
47 hundred but no more than four hundred registered
48 voters; and

49 (C) In a municipal primary or general election, one
50 counting board may be allowed, at the discretion of
51 the municipal governing body for any precinct of more

52 than two hundred registered voters.

53 (c) For each primary and general election in the
54 county, the county commission shall designate the
55 number and type of election boards for the various
56 precincts according to the provisions of this section. At
57 least eighty-four days before such election, the county
58 commission shall notify the county executive commit-
59 tees of the two major political parties in writing of the
60 number of nominations which may be made for poll
61 clerks and election commissioners.

62 (d) For each municipal election, the governing body
63 of the municipality shall perform the duties of the
64 county commission as provided in this section.

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

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commis-
3 sioners may be nominated as follows:

4 (1) The county executive committee for each of the
5 two major political parties may, by a majority vote of
6 the committee at a duly called meeting, nominate one
7 qualified person for each team of poll clerks and one
8 qualified person for each team of election commission-
9 ers to be appointed for the election;

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

13 (3) Each county executive committee may also
14 nominate as many qualified persons as alternates as
15 there are precincts in the county, which alternates
16 may be called upon to serve in the event any of the
17 persons originally appointed fail to accept appointment
18 or fail to appear for the required training or for the
19 preparation or execution of their duties;

20 (4) When an executive committee nominates quali-
21 fied persons as poll clerks, election commissioners or

22 alternates, the committee, or its chairman or secretary
23 on their behalf, shall file in writing with the appoint-
24 ing body, no later than the fifty-sixth day before the
25 election, a list of those persons nominated and the
26 positions for which they are designated.

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

30 (1) In municipalities which have municipal execu-
31 tive committees for the two major political parties in
32 the municipality, each such committee may nominate
33 election officials in the manner provided for the
34 nomination of election officials by county executive
35 committees in subsection (a) of this section;

36 (2) In municipalities which do not have executive
37 committees, the governing body shall provide by
38 ordinance for a method of nominating election offi-
39 cials; or shall nominate as many eligible persons as are
40 required, giving due consideration to any recommen-
41 dations made by voters of the municipality or by
42 candidates on the ballot.

43 (c) The governing body responsible for appointing
44 election officials shall be:

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

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

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

54 (d) The appropriate governing body shall appoint the
55 election officials for each designated election board no
56 later than the forty-ninth day before the election as
57 follows:

58 (1) Those eligible persons whose nominations for poll
59 clerk and election commissioner were timely filed by

60 the executive committees and those additional persons
61 selected to serve as an election commissioner shall be
62 appointed;

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

65 (e) At the same time as the appointment of election
66 officials, or at a subsequent meeting, the governing
67 body shall appoint persons as alternates: *Provided*,
68 That no alternate may be eligible for compensation for
69 election training unless the alternate is subsequently
70 appointed as an election official, or is instructed to
71 attend and actually attends training as an alternate
72 and, if called to do so, also serves at the polls on
73 election day. Alternates shall be appointed and serve
74 as follows:

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

77 (2) The governing body may appoint additional
78 alternates, who may be called upon to fill vacancies
79 after all alternates designated by the executive com-
80 mittees have been assigned, have declined to serve or
81 have failed to attend training; and

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

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

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

97 (h) The position of any person so notified of appoint-

98 ment who fails to return the response notice or
99 otherwise confirm to the clerk of the county commis-
100 sion his or her agreement to serve within fourteen
101 days following the date of appointment shall be
102 considered vacant and the clerk shall proceed to fill
103 the vacancies according to the provisions of this
104 section.

105 (i) If an appointed election official fails to appear at
106 the polling place by forty-five minutes past five o'clock
107 a. m. on election day, the election officials present
108 shall contact the office of the clerk of the county
109 commission for assistance in filling the vacancy and
110 the clerk shall proceed as follows:

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

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

121 (3) If two teams of election officials, as defined in
122 section twenty-nine of this article, are present at the
123 polling place, the person appointed to fill a vacancy in
124 the position of the additional commissioner may be of
125 either political party.

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

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

1 (a) Each commissioner of election and poll clerk, as
2 defined in this article, before entering upon his or her
3 duties, shall take orally and subscribe to the appropri-
4 ate oath, as prescribed herein. Such oath may be taken

5 before and administered by one of the election com-
6 missioners or poll clerks, who in turn may take the
7 same before another election commissioner or poll
8 clerk. For the purposes of this article, all election
9 commissioners and poll clerks, having first been
10 sworn, are authorized to administer oaths.

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

13 State of West Virginia

14 _____ County

15 I, _____, a qualified and registered
16 voter of the county affiliated with the _____
17 Party, do solemnly swear that I will faithfully and
18 honestly discharge my duties as _____
19 (poll clerk or election commissioner) of the receiving
20 board according to the requirements of law in this
21 election; that I will not knowingly permit any person
22 to vote an unchallenged ballot who is not a resident of
23 the precinct and a properly registered voter qualified
24 to vote the ballot provided; that I will not challenge a
25 ballot without just cause; that I will not cause any
26 unnecessary delay in voting; that I will not disclose to
27 any person how any voter has voted, nor how any
28 ballot has been folded, marked, printed or stamped;
29 that I do not have any agreement, understanding or
30 arrangement that I will receive any money, position or
31 other benefit for service in the election apart from my
32 official pay; that I do not have any agreement, under-
33 standing or arrangement that I will perform any act
34 for the benefit of any candidate in the election; and
35 that I have nothing wagered or bet on the result of
36 this election.

37 _____

38 Subscribed and sworn to before me this _____ day
39 of _____, 19_____

40 _____

41 Signature and official title of
42 person before whom sworn

43 (2) The oath for the members of the counting board

44 shall be as follows:

45 State of West Virginia

46 _____ County

47 I, _____, a qualified and registered voter
48 of the county affiliated with the _____
49 Party, do solemnly swear that I will faithfully and
50 honestly discharge my duties as _____
51 (poll clerk or election commissioner) of the counting
52 board according to the requirements of law in this
53 election; that I will carefully and accurately read and
54 record the votes cast on each ballot voted in the
55 election which contains the signatures of both poll
56 clerks; that I will not disclose to any person how any
57 voter has voted, nor how any ballot has been folded,
58 marked, printed or stamped; that I will not disclose
59 the votes cast for any candidate or any other informa-
60 tion about the result of the election prior to the
61 posting of the precinct returns on the door of the
62 polling place; that I do not have any agreement,
63 understanding or arrangement that I will receive any
64 money, position or other benefit for service in the
65 election apart from my official pay; that I do not have
66 any agreement, understanding or arrangement that I
67 will perform any act for the benefit of any candidate
68 in the election; and that I have nothing wagered or bet
69 on the result of this election.

70 _____

71 Subscribed and sworn to before me this _____ day
72 of _____, 19 _____

73 _____

74 Signature and official title
75 of person before whom sworn

76 (3) The secretary of state may prescribe the form of
77 such oaths.

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

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

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

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

103 (c) In a municipal election, the recorder or other
104 official designated by charter or ordinance to perform
105 election responsibilities shall perform the duties of the
106 clerk of the county commission specified in this
107 section.

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

1 (a) The secretary of state in conjunction with the
2 state election commission shall produce one or more
3 audio-visual programs which shall explain and illus-
4 trate the procedures for conducting elections, the
5 duties of the various election officials and the methods
6 of voting on each voting system in use in the state.

7 (b) One copy of the appropriate training program
8 shall be distributed to and kept and preserved by the
9 clerk of the county commission of each county. The
10 program shall be shown to all election officials before

11 each election as part of their instructional program.
12 The clerk of the county commission shall conduct an
13 adequate number of sessions to train all election
14 officials and shall schedule the regular sessions not less
15 than seven days before each election and shall notify
16 all election officials of the exact date, time and place
17 such instructional program will be conducted.

18 (c) No person shall serve as an election commission-
19 er or poll clerk in any election unless he or she has
20 attended such instructional program. A person to
21 replace any election official who fails to attend the
22 instructional program shall be appointed in the same
23 manner as persons are appointed under the provisions
24 of section thirty of this article to replace election
25 officials refusing to serve, and the clerk of the county
26 commission shall conduct an additional instructional
27 program within the seven days prior to the election
28 for any such person or persons so appointed: *Provided,*
29 That in cases of emergency when no person who has
30 attended the instructional program for that election is
31 available to fill a vacancy on the election board, the
32 clerk of the county commission may appoint such
33 person as a commissioner or poll clerk notwithstand-
34 ing that such person has not received the instruction.

35 (d) The requirements of this section shall apply to all
36 elections conducted by municipalities, except that the
37 recorder or municipal clerk responsible for the elec-
38 tion shall perform the duties of the clerk of the county
39 commission defined herein. The clerk of the county
40 commission may assist the recorder or municipal clerk
41 in conducting the instructional program.

42 (e) While such program is not being used by the
43 clerk for instructional purposes, it shall be available to
44 any duly organized civic, religious, educational or
45 charitable group without charge, except that the clerk
46 shall require a cash deposit on such use in an amount
47 to be determined by the secretary of state.

48 (f) The secretary of state shall cause such program
49 to be amended, edited or reproduced whenever he or
50 she is of the opinion such revision is necessary in light

51 of changes in the election laws of this state.

52 (g) No elected official shall appear in such program
53 either in person or by visual image or by name.

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF
STATE.**

§3-1A-8. Investigators for the secretary of state.

1 An employee of the secretary of state, who has
2 attended a course of instruction at the state police
3 academy or its equivalent, has all the lawful powers
4 delegated to members of the department of public
5 safety to enforce the provisions of this chapter and the
6 criminal laws of the state in any county or municipal-
7 ity of this state. An employee shall, before entering
8 upon the discharge of his or her duties, execute a bond
9 with security in the sum of three thousand five
10 hundred dollars, payable to the state of West Virginia,
11 conditioned for the faithful performance of his or her
12 duties, as such, and such bond shall be approved as to
13 form by the attorney general, and the bond shall be
14 filed with the secretary of state and preserved in his
15 or her office. The department of public safety, and any
16 county sheriff or deputy sheriff or any municipal
17 police officer, upon request by the secretary of state or
18 his or her appointee, is authorized to assist the
19 secretary of state or his or her appointee in enforcing
20 the provisions of this chapter and the criminal laws of
21 the state.

ARTICLE 2. REGISTRATION OF VOTERS.

**§3-2-41. Registration and transfer of registration by mail;
form to be required and distribution thereof;
receipt by 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 avail-
able by clerk; form of application and infor-
mation required.**

1 (a) In addition to any procedures which may be used
2 in effecting the biennial checkup as provided under

3 section twenty-one of this article, central registration
4 and transfer as provided under sections twenty-two
5 and twenty-seven of this article, and the provision
6 with respect to registration of absentee voters under
7 section twenty-three of this article, any qualified
8 person may register or transfer his or her registration
9 by mail.

10 (b) Completed applications, when received by any
11 clerk of the county commission not later than thirty-
12 five days and by the appropriate clerk of the county
13 commission not later than thirty days before the
14 following primary, general or special election, entitle
15 the applicant to vote in such election if he or she is
16 otherwise qualified. Any clerk receiving an application
17 from a person who does not reside in his or her county
18 but who does reside elsewhere in the state shall
19 forthwith forward such application to the proper clerk.
20 Each clerk shall make an entry on such application of
21 the date it is received by such clerk, and the applica-
22 tion shall remain on file in the office of the clerk for
23 at least two years from the date it was received.

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

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

42 (1) Notice that those currently registered do not

43 need to reregister unless they have moved or failed to
44 vote at least once during a period covering two
45 statewide primary and two general elections as indi-
46 cated by their registration records;

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

51 (3) Notice that registration or transfer is not com-
52 plete until the form is received by the appropriate
53 clerk of the county commission;

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

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

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

62 (7) Notice that the applicant must be a citizen of the
63 United States, at least seventeen years old and will be
64 eighteen years old on or before the next general
65 election, and a resident of the county to which appli-
66 cation is made;

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

70 (9) A space for the applicant to indicate whether or
71 not he or she has ever been registered before and, if
72 so, his or her name and address at the time of prior
73 registration;

74 (10) A space for the applicant to indicate his or her
75 choice of party, if any, in which space the names of all
76 parties are provided so that the applicant can check
77 one with a clear alternative provided for an applicant
78 to decline to affiliate with any party;

79 (11) A space for the applicant to indicate his or her

80 social security number; and

81 (12) A place for the applicant to execute the applica-
82 tion on a line which is clearly labeled "signature of
83 applicant" and contained in the following specific form
84 of oath or affirmation: "I do solemnly swear or affirm
85 that the information provided in the preceding uni-
86 form statewide application is true to the best of my
87 knowledge, information and belief, and I understand
88 that if I willingly provide false information concerning
89 a material matter or thing therein, I shall be deemed
90 guilty of the felony offense of perjury and shall be
91 subject to the penalties for perjury.

92
93

Signature of Applicant

94 Subscribed and sworn (or affirmed) to before me,
95 this _____ day of _____, 19 ____" which
96 oath or affirmation shall be administered by a person
97 authorized to perform notarial acts under the provi-
98 sions of article one or one-a, chapter thirty-nine of this
99 code. The person administering the oath or affirmation
100 shall not charge a fee for such act and the uniform
101 statewide application shall inform the person adminis-
102 tering such oath or affirmation that no fee is to be
103 charged.

104 (e) Any person who has registered or reregistered
105 pursuant to this section shall be required to make his
106 or her first vote in person at the poll or appear in
107 person at the office of the clerk of the circuit court to
108 vote an absentee ballot during a period covering two
109 statewide primary elections and two general elections
110 in order to make such registration valid: *Provided,*
111 That any person who has registered or reregistered
112 pursuant to this section and who has qualified for
113 placement on the special absentee voting list pursuant
114 to section two-b, article three of this chapter, who has
115 qualified to vote an absentee ballot by mail pursuant
116 to subdivision (1), paragraph (B) of subdivision (2), or
117 subdivision (3), subsection (d), or subsection (e),
118 section one, article three of this chapter, shall not have
119 his or her ballot in that election challenged for failure

120 to present identification.

121 Any such person required by this section to make
122 his or her first vote in person in order to make the
123 registration valid shall present valid identification and
124 proof of age to the clerks at the poll or the clerk in the
125 office of the circuit clerk of the county in which he or
126 she is registered before casting his or her first ballot.

127 (f) The uniform statewide application prescribed in
128 this section may refer to various public officials by
129 title or official position (e.g., clerk of the county
130 commission, secretary of state), but in no case may the
131 actual name of the officeholder be printed or other-
132 wise appear on such form: *Provided*, That nothing
133 contained in this subsection shall prohibit a public
134 official, otherwise qualified, from administering the
135 oath or affirmation in accordance with the provisions
136 of subdivision (12), subsection (d) of this section, and
137 affixing his or her signature thereto.

138 (g) It shall be the duty of the secretary of state to
139 create and commence distribution of the forms for the
140 uniform statewide application within six months
141 following the effective date of this section.

142 (h) Notwithstanding any other provision of this
143 section, persons specified in subdivision (2), subsection
144 (d), section one, article three of this chapter may
145 register by mail using the federal post card application
146 issued pursuant to the authority of the Uniformed and
147 Overseas Citizens Absentee Voting Act of 1986, (Public
148 Law 99-410, 42 U.S.C. 1973, et seq.).

149 The oath of the applicant using the federal post card
150 application shall not be required to be administered by
151 a person authorized to perform notarial acts. Any
152 federal post card application received by the county
153 clerk or circuit clerk which has been designated by the
154 applicant as both an application for registration and a
155 request for an absentee ballot shall be accepted for
156 both purposes if all legal requirements are met.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) Duly registered and otherwise qualified voters of
2 the county who for authorized reasons as provided in
3 this article are unable to vote in person at the polling
4 place on the day of a primary, general or special
5 election day may vote an absentee ballot according to
6 the provisions of this article.

7 (b) Voters in the following circumstances shall be
8 authorized to vote an absentee ballot and shall be
9 required to vote that absentee ballot in person in the
10 office of the clerk of the circuit court during the
11 period of regular absentee voting in person:

12 (1) Any voter who is within the county and physical-
13 ly able to vote in person during regular business hours
14 of the clerk's office during the prescribed period for
15 absentee voting but is unable to vote in person on
16 election day because of: (A) Anticipated or scheduled
17 commitment to a hospital, institution or other confine-
18 ment for medical reasons; (B) absence from the county
19 during the entire time the polls are open; (C) appoint-
20 ment as an election official in a precinct other than
21 the one in which the voter is registered; or (D) the
22 inaccessibility of the polling place to the voter because
23 of his or her physical disability; and

24 (2) Any voter who is a member of a religious
25 denomination with an established history of observing
26 Saturday as the Sabbath, when the election is sche-
27 duled to be held on Saturday.

28 (c) Voters in the following circumstances shall be
29 authorized to vote an absentee ballot under special
30 affidavit and shall be required to vote that absentee
31 ballot in person in the office of the clerk of the circuit
32 court during the period of special absentee voting in
33 person:

34 (1) Any voter who will be absent from the county
35 throughout the regular period and available hours for
36 voting in person at the polls or at the clerk's office
37 because of personal or business travel or employment,
38 who will be unable to receive an absentee ballot by
39 mail at an address outside the county during that
40 absence, and who will be present within the county

41 between the forty-second day before the election and
42 the fifteenth day before the election.

43 (d) Voters in the following circumstances shall be
44 authorized to vote an absentee ballot by mail:

45 (1) Any voter who is confined to a specific location
46 and prevented from voting in person throughout the
47 period of voting in person because of: (A) Illness,
48 injury or other medical reason; (B) physical disability
49 or immobility due to extreme advanced age; or (C)
50 incarceration or home detention when not under
51 conviction of a felony, treason or bribery in an
52 election; and

53 (2) Any voter who is absent from the county
54 throughout the period and available hours for voting
55 in person because of: (A) Personal or business travel;
56 (B) attendance at a college, university or other place of
57 education or training; or (C) employment which
58 because of hours worked and distance from the county
59 seat make voting in person impossible; and

60 (3) Any voter absent from the county throughout the
61 period and available hours for voting in person and
62 who is an absent uniformed services voter or overseas
63 voter, as defined by the Uniformed and Overseas
64 Citizens Absentee Voting Act of 1986, (Public Law 99-
65 410, 42 U.S.C. 1973, et seq.). Members of the uniformed
66 services on active duty, members of the merchant
67 marine, spouses and dependents of those members on
68 active duty, and persons who reside outside the United
69 States and are qualified to vote in the last place in
70 which the person was domiciled before leaving the
71 United States are included in the above definition; and

72 (4) Any voter who is required to dwell temporarily
73 outside the county and is absent from the county
74 throughout the time for voting in person because of:
75 (A) Serving as an elected or appointed federal or state
76 officer; or (B) serving in any other documented
77 employment assignment of specific duration of four
78 years or less; and

79 (5) Any voter for whom both the office of the circuit

80 clerk and the polling place are inaccessible to the voter
81 because of his or her physical disability.

82 (e) Voters in the following circumstances shall be
83 authorized to vote an emergency absentee ballot,
84 subject to the availability of the services as provided in
85 this article:

86 (1) Any voter who is admitted for emergency med-
87 ical treatment on or after the seventh day next
88 preceding the election and who anticipates continued
89 confinement in a hospital or other duly licensed health
90 care within the county of residence or other autho-
91 rized area, as provided in this article; and

92 (2) Any voter who resides in a nursing home within
93 the county of residence and would be otherwise
94 unable to vote in person, providing the county com-
95 mission has authorized such services.

**§3-3-2. Authority to conduct absentee voting; absentee
voting application; form.**

1 (a) Absentee voting shall be supervised and conduct-
2 ed by the proper official for the political division in
3 which the election is held, in conjunction with the
4 ballot commissioners appointed from each political
5 party, as follows:

6 (1) The clerk of the circuit court, for any election
7 held throughout the county, within a political subdivi-
8 sion or territory other than a municipality, or within
9 a municipality when the municipal election is conduct-
10 ed in conjunction with a county election; or

11 (2) The municipal recorder or other officer autho-
12 rized by charter or ordinance provisions to conduct
13 absentee voting, for any election held entirely within
14 the municipality, or in the case of annexation elec-
15 tions, within the area affected. The terms "clerk" or
16 "circuit clerk" used elsewhere in this article shall be
17 taken to refer to such recorder or other officer in the
18 case of municipal elections.

19 (b) A person authorized and desiring to vote an
20 absentee ballot in any primary, general or special

21 election shall make application in writing in the
22 proper form to the proper official.

23 (1) The completed application shall be on a form
24 prescribed by the secretary of state, and shall contain
25 the name, date of birth and political affiliation of the
26 voter, his or her residence address within the county,
27 the address to which the ballot is to be mailed, the
28 authorized reason for which the absentee ballot is
29 requested, and, if the reason is illness or hospitaliza-
30 tion, the name and telephone number of the attending
31 physician, the signature of the voter to a declaration
32 made under the penalties for false swearing as provid-
33 ed in section three, article nine of this chapter that the
34 statements and declarations contained in the applica-
35 tion are true, any additional information which the
36 voter is required to supply, any affidavit which may
37 be required, and an indication as to whether it is an
38 application for voting in person or by mail; or

39 (2) For any person authorized to vote an absentee
40 ballot under the provisions of the Uniformed and
41 Overseas Citizens Absentee Voting Act of 1986, (Public
42 Law 99-410, 42 U.S.C. 1973, et seq.), the completed
43 application may be on the federal post card application
44 for absentee ballot form issued under authority of that
45 act; or

46 (3) For any person unable to obtain the official form
47 for absentee balloting at a reasonable time before the
48 deadline for an application for an absentee ballot by
49 mail to be received by the proper official, the complet-
50 ed application may be in a form set out by the voter,
51 provided all information required to meet the provi-
52 sions of this article is set forth and the application is
53 signed by the voter requesting the ballot.

**§3-3-2a. Voting booths within public view to be provided by
clerk; prohibition against display of campaign
material.**

1 Throughout the period of absentee voting in person
2 in the clerk's office as provided in this article, the
3 circuit clerk shall make the following provisions for
4 voting:

5 (a) The clerk shall provide a sufficient number of
6 voting booths or devices appropriate to the voting
7 system at which voters may prepare their ballots. The
8 booths or devices shall be in an area separate from but
9 within clear view of the public entrance area of the
10 clerk's office, and shall be arranged to insure the voter
11 complete privacy in casting the ballot.

12 (b) The clerk shall make the voting area secure from
13 interference with the voter and shall insure that voted
14 and unvoted ballots are at all times secure from
15 tampering. No person, other than a person lawfully
16 assisting the voter according to the provisions of this
17 chapter, may be permitted to come within five feet of
18 the voting booth while the voter is voting. No person,
19 other than the clerk or deputy clerks or members of
20 the board of ballot commissioners assigned to conduct
21 absentee voting shall enter the area or room set aside
22 for voting.

23 (c) When the voting area of the office of the clerk is
24 not fully accessible to voters with physical disabilities,
25 the clerk shall request the county commission to
26 designate an accessible room within the same building
27 as a portion of the clerk's office for the purpose of
28 absentee voting only by persons unable to use the
29 regular area. The area shall be subject to the same
30 requirements as the regular voting area.

31 (d) No person may do any electioneering, nor may
32 any person display or distribute in any manner, or
33 authorize the display or distribution of, any literature,
34 posters or material of any kind which tends to influ-
35 ence the voting for or against any candidate or any
36 public question within the whole area of the clerk's
37 office or within three hundred feet thereof during the
38 entire period of absentee voting. The clerk is hereby
39 authorized to remove such material and to direct the
40 sheriff of the county to enforce the prohibition.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise
2 qualified to vote and who is permanently and totally
3 physically disabled and who is unable to vote in person

4 at the polls in an election, may apply to the clerk of
5 the circuit court for placement on the special absentee
6 voting list.

7 (b) The application shall be on a form prescribed by
8 the secretary of state which shall include the voter's
9 name and signature, residence address, a statement
10 that the voter is permanently and totally physically
11 disabled and would be unable to vote in person at the
12 polls in any election, a description of the nature of that
13 disability, and a statement signed by a physician to
14 that effect.

15 (c) Upon receipt of a properly completed application,
16 the circuit clerk shall enter the name on the special
17 absentee voting list, which shall be maintained in a
18 secure and permanent record. The person's name shall
19 remain active on such list until: (1) The person
20 requests in writing that his or her name be removed;
21 (2) the person removes his or her residence from the
22 county, is purged from the voter registration books or
23 otherwise becomes ineligible to vote; (3) a ballot
24 mailed to the address provided on the application is
25 returned undeliverable by the United States postal
26 service; or (4) the death of the person.

27 (d) The clerk shall mail an application for an
28 absentee ballot by mail to each person active on the
29 special absentee voting list not later than forty-two
30 days before each election.

§3-3-3. Voting an absentee ballot in person.

1 (a) Regular absentee voting in person shall be
2 conducted during regular business hours in the office
3 of the clerk of the circuit court beginning on the
4 fifteenth day before the election and continuing
5 through the Saturday before the election for any
6 election held on a Tuesday, or continuing through the
7 third day before the election for any election held on
8 another day.

9 (b) Special absentee voting in person for persons
10 eligible to vote an absentee ballot under the provisions
11 of subsection (c), section one of this article shall be

12 conducted during regular business hours in the office
13 of the clerk of the circuit court beginning on the forty-
14 second day before the election and continuing until
15 the first day when regular absentee voting in person
16 begins. Any person seeking to vote absentee under this
17 subsection shall first give an affidavit, on a form
18 prescribed by the secretary of state, stating under oath
19 the specific circumstances which prevent voting
20 absentee during the period for regular absentee voting
21 in person or by mail.

22 (c) Upon oral request, the clerk of the circuit court
23 shall provide the voter with the appropriate applica-
24 tion for voting absentee in person, as provided in this
25 article. The voter shall complete and sign the applica-
26 tion in his or her own handwriting or, if the voter is
27 unable to complete the application because of illiteracy
28 or physical disability, the person assisting the voter
29 and witnessing the mark of the voter shall sign his or
30 her name in the space provided. Upon completion, the
31 application shall be immediately returned to the clerk,
32 who shall determine:

33 (1) Whether the application has been completed as
34 required by law;

35 (2) Whether the applicant is duly registered to vote
36 in the precinct of his or her residence, and, in a
37 primary election, is qualified to vote the ballot of the
38 political party requested; and

39 (3) Whether the applicant is authorized for the
40 reasons given in the application to vote an absentee
41 ballot by personal appearance at the time of the
42 application.

43 If the clerk determines the above conditions have
44 not been met, or has evidence that any of the informa-
45 tion contained in the application is not true, the clerk
46 shall challenge the voter's absentee ballot as provided
47 in this article.

48 (d) The clerk shall provide each person voting an
49 absentee ballot in person the following: (1) One of each
50 type of official absentee ballot the voter is eligible to

51 vote, prepared according to law; (2) one envelope,
52 unsealed, which shall have no marks except the
53 designation "Absent Voter's Ballot Envelope No. 1"
54 and printed instructions to the voter; and (3) one
55 envelope, unsealed, designated "Absent Voter's Ballot
56 Envelope No. 2" and printed as prescribed by the
57 secretary of state.

58 (e) The voter shall enter the voting booth alone and
59 there mark the ballot: *Provided*, That the voter may
60 have assistance in voting according to the provisions of
61 section four of this article. After the voter has voted
62 the ballot or ballots, the voter shall: (1) Place the ballot
63 or ballots in envelope No. 1 and seal that envelope; (2)
64 place the sealed envelope No. 1 in envelope No. 2 and
65 seal that envelope; (3) complete and sign the forms on
66 envelope No. 2; and (4) return that envelope to the
67 circuit clerk.

68 (f) Upon receipt of the sealed envelope, the circuit
69 clerk shall: (1) Enter onto the envelope any other
70 required information; (2) enter the challenge, if any, to
71 the ballot; (3) enter the required information into the
72 permanent record of persons applying for and voting
73 an absentee ballot in person; and (4) place the sealed
74 envelope in a secure location in the clerk's office, to
75 remain until delivered to the polling place or, in the
76 case of a challenged ballot, to the board of canvassers.

§3-3-5. Voting an absentee ballot by mail; penalties.

1 (a) Upon oral or written request, the clerk of the
2 circuit court shall provide to any voter of the county,
3 in person or by mail, the appropriate application for
4 voting absentee by mail, as provided in this article.
5 The voter shall complete and sign the application in
6 his or her own handwriting or, if the voter is unable
7 to complete the application because of illiteracy or
8 physical disability, the person assisting the voter and
9 witnessing the mark of the voter shall sign his or her
10 name in the space provided.

11 (b) Completed applications for voting an absentee
12 ballot by mail shall be accepted when received by the
13 clerk within the following times:

14 (1) For persons eligible to vote an absentee ballot
15 under the provisions of subdivision (3), subsection (d),
16 section one of this article, relating to absent uniformed
17 services and overseas voters, not earlier than the first
18 day of January of an election year, or eighty-four days
19 preceding the election, whichever is earlier, and not
20 later than the sixth day preceding the election, which
21 application shall, upon the voter's request, be accepted
22 as an application for the ballots for all elections in the
23 calendar year;

24 (2) For all other persons eligible to vote an absentee
25 ballot by mail, not earlier than eighty-four days
26 preceding the election and not later than the sixth day
27 preceding the election.

28 (c) Upon acceptance of a completed application, the
29 circuit clerk shall determine whether the following
30 requirements have been met:

31 (1) The application has been completed as required
32 by law;

33 (2) The applicant is duly registered to vote in the
34 precinct of his or her residence and, in a primary
35 election, is qualified to vote the ballot of the political
36 party requested;

37 (3) The applicant is authorized for the reasons given
38 in the application to vote an absentee ballot by mail;

39 (4) The address to which the ballot is to be mailed
40 is an address outside the county if the voter is
41 applying to vote by mail under the provisions of
42 subdivision (2), (3) or (4), subsection (d), section one of
43 this article;

44 (5) The applicant is not making his or her first vote
45 after having registered by post card registration under
46 the provisions of section forty-one, article two of this
47 chapter or, if the applicant is making the first vote
48 under these provisions, the applicant is exempt from
49 these requirements;

50 (6) No regular and repeated pattern of applications
51 for an absentee ballot by mail for the reason of being

52 out of the county during the entire period of voting in
53 person exists to suggest that the applicant is no longer
54 a resident of the county.

55 If the clerk determines the required conditions have
56 not been met, or has evidence that any of the informa-
57 tion contained in the application is not true, the clerk
58 shall give notice to the voter that the voter's absentee
59 ballot will be challenged as provided in this article,
60 and shall enter that challenge.

61 (d) Within one day after the clerk has both the
62 completed application and the ballot, the clerk shall
63 mail to the voter at the address given on the applica-
64 tion the following: (1) One of each type of official
65 absentee ballot the voter is eligible to vote, prepared
66 according to law; (2) one envelope, unsealed, which
67 shall have no marks except the designation "Absent
68 Voter's Ballot Envelope No. 1" and printed instruc-
69 tions to the voter; (3) one postage paid envelope,
70 unsealed, designated "Absent Voter's Ballot Envelope
71 No. 2" and printed as prescribed by the secretary of
72 state; (4) instructions for voting absentee by mail; and
73 (5) any other supplies required for voting in the
74 particular voting system.

75 (e) The voter shall mark the ballot alone: *Provided*,
76 That the voter may have assistance in voting according
77 to the provisions of section six of this article. After the
78 voter has voted the ballot or ballots, the voter shall: (1)
79 Place the ballot or ballots in envelope No. 1 and seal
80 that envelope; (2) place the sealed envelope No. 1 in
81 envelope No. 2 and seal that envelope; (3) complete
82 and sign the forms on envelope No. 2; and (4) return
83 that envelope to the clerk.

84 (f) Absentee ballots returned by United States mail
85 or other express shipping service shall be accepted if:
86 (1) The ballot is received by the clerk no later than the
87 close of the polls on election day; or (2) the ballot bears
88 a postmark of the United States postal service dated no
89 later than election day and the ballot is received by
90 the clerk no later than the hour at which the board of
91 canvassers convenes to begin the canvass.

92 Ballots received after the proper time which cannot
93 be accepted shall be placed unopened in an envelope
94 marked for the purpose and kept secure for twenty-
95 two months following the election, after which time
96 they shall be destroyed without being opened.

97 (g) Absentee ballots which are hand delivered to the
98 clerk shall be accepted if they are received by the
99 circuit clerk no later than the day preceding the
100 election: *Provided*, That no person may hand deliver
101 more than two absentee ballots in any election, and
102 any person hand delivering an absentee ballot shall be
103 required to certify that he or she has not examined or
104 altered the ballot. Any person who makes a false
105 certification shall be in violation of the penalty
106 provisions of article nine of this chapter and subject to
107 those provisions.

108 (h) Upon receipt of the sealed envelope, the clerk
109 shall: (1) Enter onto the envelope any other required
110 information; (2) enter the challenge, if any, to the
111 ballot; (3) enter the required information into the
112 permanent record of persons applying for and voting
113 an absentee ballot in person; and (4) place the sealed
114 envelope in a secure location in the clerk's office, to
115 remain until delivered to the polling place or, in the
116 case of a challenged ballot, to the board of canvassers.

§3-3-5a. Processing federal post card applications.

1 (a) When a federal post card registration and absen-
2 tee ballot request (FPCA), as defined in subdivision
3 (2), subsection (b), section two of this article, is
4 received by the clerk of the circuit court, the clerk
5 shall examine the application and take the following
6 steps:

7 (1) The clerk shall first enter the name of the
8 applicant in the permanent absentee voter's record for
9 each election for which a ballot is requested, make a
10 photocopy of the application for each such election and
11 place the separate copies in secure files to be main-
12 tained for use in the various elections.

13 (2) The clerk shall then determine if the applicant is

14 registered to vote at the residence address listed in the
15 voting residence section of the application. If the
16 applicant is properly registered, the clerk shall main-
17 tain the original application. If the applicant is not
18 registered, or not registered at the address given, the
19 clerk shall deliver the original FPCA to the clerk of
20 the county commission for processing as an application
21 for registration and, if such application is received
22 after the close of voter registration for the next
23 succeeding election, the clerk of the circuit court shall
24 challenge the absentee ballot for that election.

25 (3) Except as provided herein, the federal application
26 for an absentee ballot received from a person qualified
27 to use the application as provided in section two of this
28 article shall be processed as all other applications and
29 the ballot or ballots for each election for which ballots
30 are requested by the applicant shall be mailed to the
31 voter on the first day on which both the application
32 and the ballot are available.

33 (b) When a federal post card registration and absen-
34 tee ballot request (FPCA) is received by the clerk of
35 the county commission, the clerk of the county com-
36 mission shall examine the application and take the
37 following steps:

38 (1) The clerk shall determine if the applicant is
39 registered to vote at the residence address listed in the
40 voting residence section of the application. If the
41 applicant is properly registered, the clerk shall deliver
42 the original FPCA to the clerk of the circuit court for
43 processing as an application for absentee voting. If the
44 applicant is not registered, or not registered at the
45 address given, the clerk of the county commission
46 shall make a photocopy of such application and deliver
47 the photocopy to the clerk of the circuit court for
48 processing as an application for absentee voting, and
49 shall register the voter and maintain the original copy
50 in the registration files. If the application for registra-
51 tion is received after the close of registration for the
52 next succeeding election, the clerk of the county
53 commission shall hold the application to be entered
54 into the registration records after that election and

55 shall forward a copy of the application to the clerk of
56 the circuit court, along with a notice that the absentee
57 ballot for that election shall be challenged.

58 (2) Upon receiving the original or the photocopy of
59 the application from the clerk of the county commis-
60 sion, the clerk of the circuit court shall process the
61 application as prescribed in subsection (a) of this
62 section.

**§3-3-5b. Procedures for voting a special write-in absentee
ballot by qualified persons.**

1 (a) Notwithstanding any other provisions of this
2 chapter, a person qualified to vote an absentee ballot
3 in accordance with subdivision (3), subsection (d),
4 section one of this article, may apply not earlier than
5 the first day of January of an election year for a
6 special write-in absentee ballot for a primary or
7 general election, in conjunction with the application
8 for a regular absentee ballot or ballots. If the applica-
9 tion is received after the forty-ninth day preceding the
10 election, the clerk of the circuit court shall honor only
11 the application for the regular ballot. The special
12 write-in ballot shall be for presidential preference or
13 nomination of members of Congress in a primary
14 election and for the election of presidential electors,
15 United States senator and representative in Congress
16 in a general election.

17 (b) The application for a special write-in absentee
18 ballot may be made on the federal post card applica-
19 tion form.

20 (c) In order to qualify for a special write-in absentee
21 ballot, the voter must state that he or she is unable to
22 vote by regular absentee ballot or in person due to
23 requirements of military service or due to living in
24 isolated areas or extremely remote areas of the world.
25 This statement may be made on the federal post card
26 application or on a form prepared by the secretary of
27 state and supplied and returned with the special write-
28 in absentee ballot.

29 (d) Upon receipt of said application within the time

30 required, the clerk shall issue the special write-in
31 absentee ballot which shall be the same ballot issued
32 under the provisions of the Uniformed and Overseas
33 Citizens Absentee Voting Act of 1986, (Public Law 99-
34 410, 42 U.S.C. 1973, et seq.). Such ballot shall permit
35 the elector to vote in a primary election by indicating
36 his or her political party affiliation and the names of
37 the specific candidates for each office, and in a general
38 election by writing in a party preference for each
39 office, the names of specific candidates for each office,
40 or the name of the person whom the voter prefers for
41 each office.

42 (e) When a special federal write-in ballot is received
43 by the clerk from a voter: (1) Who mailed the write-
44 in ballot from any location within the United States;
45 (2) who did not apply for a regular absentee ballot; (3)
46 who did not apply for a regular absentee ballot by
47 mail; or (4) whose application for a regular absentee
48 ballot by mail was received less than thirty days
49 before the election, the write-in ballot shall not be
50 counted.

51 (f) Any write-in absentee ballot must be received by
52 the clerk prior to the close of the polls on election day
53 or it may not be counted.

**§3-3-5c. Procedures for voting an emergency absentee ballot
by qualified voters.**

1 (a) Notwithstanding any other provision of this
2 chapter, a person qualified to vote an emergency
3 absentee ballot, as provided in subsection (e), section
4 one of this article may vote an emergency absentee
5 ballot under the procedures established in this section.
6 The county commission may adopt a policy extending
7 the emergency absentee voting procedures to: (1)
8 Hospitals or other duly licensed health care facilities
9 within an adjacent county or within thirty-five miles
10 of the county seat; or (2) nursing homes within the
11 county: *Provided*, That the policy shall be adopted by
12 the county commission at least ninety days prior to the
13 election that will be affected and a copy of such policy
14 shall be filed with the secretary of state.

15 (b) On or before the fifty-sixth day preceding the
16 date on which any election is to be held the clerk of
17 the circuit court of each county shall notify the county
18 commission of the number of sets of emergency
19 absentee ballot commissioners which he or she deems
20 necessary to perform the duties and functions herein-
21 after set forth.

22 (c) A set of emergency absentee ballot commission-
23 ers at-large shall consist of two persons, appointed by
24 the county commission in accordance with the proce-
25 dure prescribed for the appointment of election
26 commissioners under the provisions of article one of
27 this chapter. Emergency absentee ballot commission-
28 ers shall have the same qualifications and rights and
29 take the same oath required under the provisions of
30 this chapter for commissioners of elections. Such
31 commissioners shall be compensated for services and
32 expenses in the same manner as commissioners of
33 election obtaining and delivering election supplies
34 under the provisions of section forty-four, article one
35 of this chapter.

36 (d) Upon request of the voter or a member of the
37 voter's immediate family or, when the county com-
38 mission has adopted a policy to provide emergency
39 absentee voting services to nursing home residents
40 within the county, upon request of a staff member of
41 the nursing home, the clerk of the circuit court, upon
42 receiving a proper request for voting an emergency
43 absentee ballot no earlier than the seventh day next
44 preceding the election and no later than noon of
45 election day, shall supply to the emergency absentee
46 ballot commissioners the application for voting an
47 emergency absentee ballot and the balloting materials.
48 The emergency absentee ballot application shall be
49 prescribed by the secretary of state and shall include
50 the name, residence address and political party affili-
51 ation of the voter, the date, location and reason for
52 confinement in the case of an emergency, and the
53 name of the attending physician.

54 If the person applying for an emergency absentee
55 ballot is unable to sign his or her application because

56 of illiteracy, he or she shall make his or her mark on
57 the signature line above provided for an illiterate
58 applicant which mark shall be witnessed.

59 A declaration is to be completed and signed by each
60 of the emergency absentee ballot commissioners,
61 stating their names, the date on which they appeared
62 at the place of confinement, and the particulars of the
63 confinement.

64 (e) At least one of the emergency absentee ballot
65 commissioners receiving the balloting materials shall
66 sign a receipt which shall be attached to the applica-
67 tion form. Each of the emergency absentee ballot
68 commissioners shall deliver the materials to the absent
69 voter, await his or her completion of the application
70 and then the ballot and return the same to the circuit
71 clerk and, upon delivering the application and the
72 voted ballot to the clerk of the court, sign an oath that
73 no person other than the absent voter voted the ballot.
74 The application and the voted ballot shall be returned
75 to the clerk of the circuit court prior to the close of the
76 polls on election day. Any ballots received by the clerk
77 after the time that delivery may reasonably be made
78 but before the closing of the polls shall be delivered to
79 the canvassing board along with the absentee ballots
80 challenged in accordance with the provisions of section
81 ten of this article.

82 (f) Upon receiving the application and emergency
83 absentee ballot, the clerk of the circuit court shall
84 ascertain whether the application is complete, whether
85 the voter appears to be eligible to vote an emergency
86 absentee ballot, and whether the voter is properly
87 registered to vote with the office of the clerk of the
88 county commission. If the voter is found to be proper-
89 ly registered in the precinct shown on the application,
90 the ballot shall be delivered to the precinct election
91 commissioner pursuant to section seven of this article.
92 If the voter is found not to be registered or is other-
93 wise ineligible to vote an emergency ballot, then the
94 ballot shall be challenged for the appropriate reason
95 provided for in section ten of this article.

96 (g) If either or both of the emergency absentee
97 ballot commissioners should refuse to sign any appli-
98 cation for voting an emergency absentee ballot, then
99 the voter shall be permitted to vote as an emergency
100 absentee and any such ballot shall be challenged in
101 accordance with the provisions of section ten of this
102 article, in addition to those absentee ballots subject to
103 challenge as enumerated therein.

104 (h) Any voter who receives assistance in voting an
105 emergency absentee ballot shall comply with the
106 provisions of section six of this article. Any other
107 provisions of this chapter relating to absentee ballots
108 not altered by the provisions of this section shall
109 govern the treatment of emergency absentee ballots.

§3-3-7. Delivery of absentee ballots to polling places.

1 (a) Except as otherwise provided in this article, the
2 absentee ballots of each precinct, together with the
3 applications therefor, the affidavits made in connec-
4 tion with assistance in voting, and such forms, lists and
5 records as may be designated by the secretary of state,
6 shall be delivered in a sealed carrier envelope to the
7 election commissioner of the precinct at the time he
8 picks up the official ballots and other election supplies
9 as provided in section twenty-four, article one of this
10 chapter.

11 (b) Absentee ballots received after the election
12 commissioner has picked up the official ballots and
13 other election supplies for the precinct shall be
14 delivered to the election commissioner of the precinct
15 who has been so designated pursuant to section
16 twenty-four, article one of this chapter, by the clerk in
17 person, or by messenger, before the closing of the
18 polls, provided such ballots are received by the clerk
19 in time to make such delivery. Any ballots received by
20 the clerk after the time that delivery may reasonably
21 be made but within the time required as provided in
22 the subsection (f), section five of this article, shall be
23 delivered to the board of canvassers along with the
24 challenged ballots.

§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

1 The secretary of state shall make, amend and
2 rescind such rules, regulations, orders and instruc-
3 tions, and prescribe such forms, lists and records, and
4 consolidation of such forms, lists and records as may
5 be necessary to carry out the policy of the Legislature
6 as contained in this article and as may be necessary to
7 provide for an effective, efficient and orderly admin-
8 istration of the absentee voter law of this state. In the
9 case of West Virginia voters residing outside the
10 continental United States, the secretary of state shall
11 promulgate rules and regulations necessary to imple-
12 ment procedures relating to absentee voters contained
13 in the Uniformed and Overseas Citizens Absentee
14 Voting Act of 1986 (P.L. 99-410, 42 U.S.C. 1973, et seq.)
15 and shall forward a copy of the act to all clerks of the
16 circuit courts and clerks of the county commissions
17 before the first day of January of each even-numbered
18 year.

19 The secretary of state may establish special proce-
20 dures to allow absentee voting for those categories of
21 registered voters who, because of special circumstan-
22 ces, would otherwise be unable to vote in the election.

23 It shall be the duty of all clerks of the circuit court,
24 other county officers, and all election commissioners
25 and poll clerks to abide by such rules, regulations,
26 orders and instructions and to use such forms, lists and
27 records which, without limiting the foregoing, may
28 include or relate to:

29 (a) The consolidation of the two application forms
30 provided for herein into one form;

31 (b) The size and form of Absent Voter's Ballot
32 Envelope Nos. 1 and 2, and carrier envelopes;

33 (c) The information which shall be placed on Absent
34 Voter's Ballot Envelope No. 1 and the forms and
35 information which shall be placed on Absent Voter's
36 Ballot Envelope No. 2;

37 (d) The forms and manner of making the challenges
38 to absentee ballots authorized by this article;

39 (e) The forms of, information to be contained in, and
40 consolidation of lists and records pertaining to applica-
41 tions for, and voting of, absentee ballots and assistance
42 to persons voting absentee ballots;

43 (f) The supplying of application forms, envelopes,
44 challenge forms, lists, records and other forms;

45 (g) The keeping and security of voted absentee
46 ballots in the office of the clerk of the circuit court.

ARTICLE 4. VOTING MACHINES.

§3-4-13. Election boards where voting machines used.

1 One receiving board, as defined in article one of this
2 chapter, shall conduct the election in each precinct in
3 which voting machines are used. The provisions of
4 article one of this chapter relating to the qualifications,
5 appointment, substitution, training and compensation
6 of election officers, and to the procedure for filling
7 vacancies, shall apply.

§3-4-14. Instructions and help to voters; voting machine models; facsimile diagrams; sample ballots; legal ballot advertisements.

1 For the instruction of the voters on any election day
2 there shall be provided for each polling place one
3 instruction model for each voting machine. Each such
4 instruction model shall be constructed so as to provide
5 a replica of a portion of the face of the voting machine,
6 and shall contain the arrangement of the ballot labels,
7 party columns or rows, office columns or rows and
8 questions. Fictitious names shall be inserted in the
9 ballot labels of the models. Such models shall be
10 located on the election officers' tables or in some other
11 place in which the voter must pass to reach the voting
12 machine. Each voter, upon request, before voting,
13 shall be offered instruction by the election officers in
14 the operation of the voting machine by use of the
15 instruction model and each voter shall be given ample
16 opportunity to operate the model himself.

17 The ballot commissioners shall also provide facsimile
18 diagrams, at least two of which shall be posted on the

19 walls of each polling place. The facsimile diagrams
20 shall be exact diagrams of the face of the voting
21 machines to the end that the voter may become
22 familiar with the location of the parties, offices,
23 candidates and questions as they appear on the voting
24 machine to be used in his precinct. Ballot labels may
25 be affixed to the diagrams to insure that the position
26 of the names of the candidates in each office division
27 shall appear accurately on the diagrams of each
28 precinct.

29 The ballot commissioners may, with the consent of
30 the county commission, or the county commission may
31 prepare and mail to each qualified voter at his or her
32 address as shown on the registration books a facsimile
33 sample of the ballot for his or her precinct.

34 In counties where voting machines have been
35 adopted, the legal ballot advertisements required by
36 articles five and six of this chapter which specify the
37 publication of a facsimile sample ballot, shall consist of
38 a facsimile of the face of the voting machine with the
39 names of the candidates and the offices for which they
40 are running shown in their proper positions.

**§3-4-24. Closing polls; counting and reporting returns; duties
and procedures.**

1 (a) As soon as the polls are closed, and the last voter
2 has voted, the election officers shall first process the
3 absentee ballots according to the provisions of section
4 eight, article three of this chapter. After the absentee
5 ballots to be counted have been entered on the voting
6 machine, the election officers shall immediately lock
7 and seal the operating lever or mechanism of the
8 machine so that the voting and counting mechanism
9 will be prevented from operation, and shall then
10 compare the number of voters, as shown by the public
11 counter of the machine, with the number of those who
12 have voted, as shown by the protective or accumula-
13 tive counter or device. The election officers of each
14 precinct shall then sign a certificate stating: (1) That
15 the machine has been locked against voting and sealed;
16 (2) the number of voters, as shown by the public

17 counters; (3) the number registered on the protective
18 or accumulative counter or device, if any; and (4) the
19 number or other designation of the voting machine;
20 and such certificate shall be returned by the precinct
21 election officers to the ballot commissioners.

22 (b) Before proceeding, the election officers shall
23 admit the following persons who may witness and
24 check the recording of the votes shown on the counters:

25 (1) Any candidate, or any one person representing a
26 candidate who presents a written authorization signed
27 by the candidate for the purpose;

28 (2) Any one person representing a registered politi-
29 cal committee formed for the purpose of advocating or
30 opposing an issue on the ballot who presents a written
31 authorization signed by the committee treasurer; and

32 (3) Any one member of the county executive com-
33 mittee of an established political party.

34 (c) The election officers shall then make visible the
35 registering counters, and for that purpose shall unlock
36 and open the doors or other covering concealing the
37 same, giving full view to all witnesses of all the
38 counter numbers.

39 (1) The election officers shall, under the scrutiny of
40 such representatives, if any, and in the order of the
41 offices as their titles are arranged on the machine,
42 read and announce, in distinct tones, the results as
43 shown by the counter numbers for each candidate and
44 for and against each question voted on. The counters
45 shall not be read consecutively along the party rows or
46 columns but shall always be read along the office
47 columns or rows, completing the canvass for each
48 office or question before proceeding to the next.

49 (2) The election officers shall also open the doors
50 covering the paper roll and shall proceed to read and
51 record the votes entered thereon for any official write-
52 in candidate for election to the office represented by
53 the position on the paper roll, except delegate to
54 national convention. Official write-in candidates are
55 those who have filed a write-in candidate's certificate

56 of announcement and have been certified according to
57 the provisions of section four-a, article six of this
58 chapter. Write-in votes for nomination to any office or
59 for any person other than an official write-in candi-
60 date shall be disregarded.

61 (3) The vote as registered shall be entered by the
62 election officers, in ink, on triplicate return sheets, and
63 also on a general return sheet and statement, all of
64 which, after the count is completed, shall be signed by
65 the election officers. The total vote cast for each
66 candidate, and for and against each question, shall
67 then be computed and entered on the general and
68 triplicate return sheets and statement. There shall also
69 be entered on the general return sheet and statement
70 the number of voters who have voted, as shown by the
71 poll books, and the number who have voted on each
72 machine, as shown by the public counters, and also the
73 number registered on the protective counter on each
74 machine immediately prior to the opening of the polls
75 and immediately after the closing thereof and sealing
76 of the machine. The number or other designation of
77 each machine used shall also be entered thereon. In
78 the case of primary elections, triplicate return sheets
79 shall be prepared for each party. The registering
80 counters of the voting machine shall remain exposed
81 to view until the returns and all other reports have
82 been fully completed.

83 (d) The proclamation of the results of the votes cast
84 shall be announced distinctly and audibly by one of
85 the election officers, who shall read the name of and
86 votes cast for each candidate, and the votes cast for
87 and against each question submitted. During such
88 proclamation, ample opportunity shall be given to any
89 person lawfully present to compare the results so
90 announced with the counter dials of the machine, and
91 any necessary corrections shall then and there be
92 made by election officers, after which the doors or
93 other cover of the voting machine shall be closed and
94 locked and the return sheets shall be signed by each
95 of the election officers. If any election officer shall
96 decline to sign such return, he or she shall state the

97 reason in writing, and enclose the statement with the
98 return. Each of the return sheets shall be enclosed in
99 a separate envelope, which shall be securely sealed,
100 and each of the election officers shall write his or her
101 name across the fold of the envelope. One of the sealed
102 envelopes containing the returns shall be delivered to
103 the clerk of the circuit court and two shall be deli-
104 vered to the clerk of the county commission who shall
105 within forty-eight hours mail one of the sealed returns
106 for each precinct by certified mail to the secretary of
107 state. The general return sheet and statement shall be
108 directed and immediately delivered to the clerk of the
109 county commission. The envelope shall have endorsed
110 thereon a certificate of the election officers, stating the
111 number of the machine, the precinct where it has
112 been used, the number of the seal and the number
113 registered on the protective counter at the close of the
114 polls.

115 (e) As soon as possible after the completion of the
116 count, the election officers shall return to the county
117 commission and the ballot commissioners the keys to
118 the voting machine received and receipted for by
119 them, and the clerk of the county commission shall
120 have the voting machine properly boxed or securely
121 covered and removed from the polling place to a
122 proper and secure place of storage.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

1 The ballot commissioners of any county in which an
2 electronic voting system utilizing voting devices for
3 registering the voter's choices is to be used in any
4 election shall cause to be printed for use in such
5 election the ballot cards and ballot labels, as appropri-
6 ate, for the electronic voting system.

7 (a) The ballot labels shall be clearly printed in black
8 ink on clear white material of such size as will fit the
9 vote recording devices. Arrows shall be printed on the
10 ballot labels to indicate the place to punch the ballot
11 card, which may be to the right or left of the name or

12 proposition.

13 (b) The ballot labels shall contain the party emblem
14 and shall clearly indicate the party designation of each
15 candidate. The titles of offices may be arranged on the
16 ballot labels in vertical columns or in a series of
17 separate pages, and shall be printed above or at the
18 side of the names of candidates so as to indicate clearly
19 the candidates for each office and the number to be
20 elected. The names of candidates for each office shall
21 be printed in vertical columns or on separate pages,
22 grouped by the offices which they seek.

23 (c) For the primary election, the heading of the
24 ballot, the type faces, the names and arrangement of
25 offices and the printing of names and arrangement of
26 candidates within each office shall conform as nearly
27 as possible to the provisions of sections thirteen and
28 thirteen-a, article five of this chapter.

29 (d) For the general election, the heading of the
30 ballot, the straight ticket positions, the instructions to
31 straight ticket voters, the type faces, the names and
32 arrangement of offices and the printing of names and
33 the arrangement of candidates within each office shall
34 conform as nearly as possible to the provisions of
35 section two, article six of this chapter, except as
36 otherwise provided in this article. The secretary of
37 state shall assign uniform numbers which shall be
38 used by all counties using electronic voting for all
39 straight party tickets and for all candidates running
40 for offices to be voted upon by all of the voters of the
41 state. After taking into account the numbers so
42 assigned by the secretary of state, the clerk of the
43 circuit court shall arrange the offices and the candi-
44 dates within each office as prescribed by said section,
45 and shall assign the appropriate number for each
46 candidate. When one candidate is to be elected and
47 only two parties are on the ballot, the ballot label and
48 the arrangement of the ballot shall conform as nearly
49 as practical to the following example:

50	Democratic Ticket	Republican Ticket
51	For Governor	For Governor
52	(Vote for One)	(Vote for One)
53	(candidate's name) 10 →	
54	(residence, county)	
55		← 11 (candidate's name)
56		(residence, county)

57 When more than two parties are on the ballot for an
 58 office, the arrangement of the ballot shall be specified
 59 by the secretary of state, and may conform to the
 60 following example if practical:

61	For Governor		
62	(Vote for One)		
63	Democrat	(candidate's name)	10 →
64		(residence, county)	
65	Republican	(candidate's name)	11 →
66		(residence, county)	
67	People's	(candidate's name)	12 →
68		(residence, county)	

69 The ballot label and the arrangement of the ballot
 70 for multi-candidate offices shall conform as nearly as
 71 practical to the following example:

72	Democratic Ticket	Republican Ticket
73	For House of Delegates	For House of Delegates
74	First Delegate District	First Delegate District

75 (Vote For Not More
 76 Than Two)
 77 [If you marked a straight
 78 ticket and you mark any
 79 candidate in a different
 80 party for this office, you
 81 must mark all your
 82 choices because your
 83 straight ticket vote
 84 will not be counted
 85 for this office.]

(Vote For Not More
 Than Two)
 [If you marked a straight
 ticket and you mark any
 candidate in a different
 party for this office, you
 must mark all your
 choices because your
 straight ticket vote
 will not be counted
 for this office.]

86 (candidate's name) 69 →
 87 (residence, county)

88
 89

← 70 (candidate's name)
 (residence, county)

90 (candidate's name) 71 →
 91 (residence, county)

92
 93

← 72 (candidate's name)
 (residence, county)

94 (e) Any nonpartisan office such as board of educa-
 95 tion and any question to be voted on shall be placed on
 96 a separate page or otherwise separated from the
 97 partisan ballots, which separate page shall constitute a
 98 separate ballot where required.

99 (f) In elections in which voters are authorized to
 100 vote for official write-in candidates whose names do
 101 not appear on the ballot label, there shall be provided,
 102 as described herein, a write-in position on the ballot
 103 label for the voter to indicate his or her preference for
 104 a write-in candidate and a form on the inside of the
 105 secrecy envelope to permit a voter to enter the title of
 106 the office and the names of official write-in candidates,
 107 for whom he or she wishes to vote.

108 For an office to be filled by election in a primary,
109 except delegate to national convention, and for each
110 office in a general election, the ballot label shall
111 include, following all candidates for the office, a single
112 numbered position with an arrow indicating the
113 location to punch the ballot card to indicate a prefer-
114 ence for a write-in candidate. The following instruc-
115 tions shall be printed beside the arrow in at least ten-
116 point type. "TO WRITE-IN FOR THIS OFFICE: Punch
117 here and put name of office and candidate on inside of
118 secrecy envelope. DO NOT put name here."

119 (g) In addition to all other equipment and supplies
120 required by the provisions of this article, the ballot
121 commissioners shall cause to be printed a supply of
122 instruction cards, sample ballots, facsimile diagrams of
123 the vote recording device ballot and official printed
124 ballots or ballot cards adequate for the orderly conduct
125 of the election in each precinct in their county. In
126 addition they shall provide all other materials and
127 equipment necessary to the conduct of the election,
128 including voting booths, appropriate facilities for the
129 reception and safekeeping of ballot cards, the ballots of
130 absentee and of challenged voters and of such "inde-
131 pendent" voters who shall, in primary elections cast
132 their votes on nonpartisan candidates and public
133 questions submitted to the voters.

**§3-4A-11a. Ballots tabulated electronically; arrangement,
quantity to be printed, ballot stub numbers.**

1 (a) The board of ballot commissioners in counties
2 using ballots upon which votes may be recorded by
3 means of marking with electronically sensible ink or
4 pencil and which marks are tabulated electronically
5 shall cause the ballots to be printed for use in elections.

6 (b) (1) The heading of the ballot, the arrangement of
7 offices in columns, the spaces for marking votes, the
8 printing of offices, instructions and candidates names
9 shall conform as nearly as possible to that prescribed
10 in this chapter for paper ballots, except that the
11 secretary of state may prescribe necessary modifica-
12 tions to accommodate the tabulating system. Nonpar-

13 tisan elections for board of education and any question
14 to be voted upon shall be separated from the partisan
15 ballot and separately headed in display type with a
16 title clearly identifying the purpose of the election,
17 and such separate section shall constitute a separate
18 ballot wherever a separate ballot is required under the
19 provisions of this chapter.

20 (2) Both the face and the reverse side of the ballot
21 may contain the names of candidates, only if means to
22 ensure the secrecy of the ballot are provided and lines
23 for the signatures of the poll clerks on the ballot are
24 printed on a portion of the ballot which is deposited in
25 the ballot box and upon which marks do not interfere
26 with the proper tabulation of the votes.

27 (3) The arrangement of candidates within each office
28 shall be determined in the same manner as for other
29 electronic voting systems, as prescribed in this chap-
30 ter. On the general election ballot for all offices, and
31 on the primary election ballot only for those offices to
32 be filled by election, except delegate to national
33 convention, lines for entering write-in votes shall be
34 provided below the names of candidates for each
35 office, and the number of lines provided for any office
36 shall equal the number of persons to be elected, or
37 three, whichever is fewer. The words "WRITE-IN, IF
38 ANY" shall be printed directly under each line for
39 write-ins. Such lines shall be opposite a position to
40 mark the vote.

41 (c) The ballot shall be printed in black ink on paper
42 suitable for automatic tabulation and in the color
43 specified by the secretary of state, and shall contain a
44 perforated stub at the top or bottom of the ballot
45 which shall be numbered sequentially in the same
46 manner as provided in this article for ballots upon
47 which votes are recorded by means of perforating. The
48 number of ballots printed and the packaging of ballots
49 for the precincts shall conform to the requirements for
50 paper ballots as provided in this chapter.

51 (d) In addition to the official ballots, the ballot
52 commissioners shall provide all other material and

53 equipment necessary to the proper conduct of the
54 election.

§3-4A-14. Election boards where electronic voting systems used.

1 One receiving board, as defined in article one of this
2 chapter, shall conduct the election in each precinct in
3 which electronic voting systems are used. The provi-
4 sions of article one of this chapter relating to the
5 qualifications, appointment, substitution, training and
6 compensation of election officers and to the procedure
7 for filling vacancies, shall apply.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

1 (a) For the instruction of the voters on any election
2 day in counties utilizing an electronic voting system
3 where votes are to be recorded by means of perforat-
4 ing, there shall be provided for each polling place one
5 instruction model for each vote recording device. Each
6 such instruction model shall be constructed so as to
7 provide a replica of a vote recording device, and shall
8 contain the arrangement of the ballot labels, party
9 columns or rows, office columns or rows, and ques-
10 tions. Fictitious names shall be inserted in the ballot
11 labels of the models. Such models shall be located on
12 the election officers' tables or in some other place in
13 which the voter must pass to reach the vote recording
14 device. Each voter, upon request, before voting, shall
15 be offered instruction by the election officers in the
16 operation of the vote recording device by use of the
17 instruction model, and each voter shall be given ample
18 opportunity to operate the model himself.

19 (b) The ballot commissioners shall also provide
20 facsimile ballots or ballot labels, as may be appropri-
21 ate, at least two of which, or complete sets of which,
22 shall be posted on the walls of each polling place. The
23 facsimile diagrams shall be exact diagrams of the
24 ballots or ballot labels or paper ballots to the end that
25 the voter may become familiar with the location of the
26 parties, offices, candidates and questions as they

27 appear on the ballot to be used in his or her precinct.

28 (c) The ballot commissioners may, with the consent
29 of the county commission, or the county commission
30 may, prepare and mail to each qualified voter at the
31 address shown on the registration books a facsimile
32 sample of the ballot or ballot labels for his or her
33 precinct.

34 (d) In counties where an electronic voting system
35 has been adopted, the legal ballot advertisements
36 required by articles five and six of this chapter which
37 specify the publication of a facsimile sample ballot,
38 shall consist of a facsimile of the ballot or ballot labels
39 with the names of the candidates and the offices for
40 which they are running shown in their proper
41 positions.

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

1 (a) All proceedings at the central counting center
2 shall be under the supervision of the clerk of the
3 county commission, and shall be conducted under
4 circumstances which allow observation from a desig-
5 nated area by all persons entitled to be present. The
6 proceedings shall take place in a room of sufficient size
7 and satisfactory arrangement to permit such observa-
8 tion. Those persons entitled to be present shall include
9 all candidates whose names appear on the ballots
10 being counted, or if such candidate be absent, a
11 representative of such candidate who presents a
12 written authorization signed by the candidate for the
13 purpose, and two representatives of each political
14 party on such ballot, who shall be chosen by the
15 county executive committee chairperson. A reasonable
16 number of the general public shall also be freely
17 admitted to the room. In the event all members of the
18 general public desiring admission to the room cannot
19 be admitted at one time, the county commission shall
20 provide for a periodic and convenient rotation of
21 admission to the room for observation, to the end that
22 each member of the general public desiring admission
23 shall, during the proceedings at the central counting
24 center, be granted such admission for reasonable

25 periods of time for observation: *Provided*, That no
26 person except those authorized for the purpose shall
27 touch any ballot or ballot card or other official records
28 and papers utilized in the election during such
29 observation.

30 (b) All persons who are engaged in processing and
31 counting of the ballots shall work in teams consisting
32 of two persons of opposite political parties, and shall be
33 deputized in writing and take an oath that they will
34 faithfully perform their assigned duties. Such deputies
35 shall be issued an official badge or identification card
36 which shall be assigned an identity control number,
37 and such deputies shall prominently wear on his or
38 her outer garments the issued badge or identification
39 card. Upon completion of the deputies' duties, the
40 badges or identification cards shall be returned to the
41 county clerk.

42 (c) Ballots shall be handled and tabulated and the
43 write-in votes tallied according to procedures estab-
44 lished by the secretary of state, subject to the follow-
45 ing requirements:

46 (1) In systems using punch card ballots, the ballot
47 cards and secrecy envelopes for a precinct shall be
48 removed from the box and examined for write-in
49 votes before being separated and stacked for delivery
50 to the tabulator. Immediately after valid write-in votes
51 are tallied, the ballot cards shall be delivered to the
52 tabulator. No write-in vote shall be counted for an
53 office unless the voter has punched the write-in voting
54 position for that office and entered the name of that
55 office and the name of an official write-in candidate
56 for that office on the inside of the secrecy envelope,
57 either by writing, affixing a sticker or label or placing
58 an ink-stamped impression thereon;

59 (2) In systems using ballots marked with electroni-
60 cally sensible ink, ballots shall be removed from the
61 boxes and stacked for the tabulator, which shall
62 separate ballots containing marks for a write-in
63 position. Immediately after tabulation, the valid write-
64 in votes shall be tallied. No write-in vote shall be

65 counted for an office unless the voter has marked the
66 write-in voting position for that office and entered the
67 name of an official write-in candidate for that office on
68 the line provided, either by writing, affixing a sticker
69 or placing an ink-stamped impression thereon;

70 (3) When more than one person is to be elected to an
71 office and the voter desires to cast write-in votes for
72 more than one official write-in candidate for that
73 office, a single punch or mark, as appropriate for the
74 voting system, in the write-in location for that office
75 shall be sufficient for all write-in choices. When there
76 are multiple write-in votes for the same office and the
77 combination of choices for candidates on the ballot and
78 write-in choices for the same office exceed the num-
79 ber of candidates to be elected, the ballot shall be
80 duplicated or hand counted, with all votes for that
81 office rejected;

82 (4) Write-in votes for nomination for any office and
83 write-in votes for any person other than an official
84 write-in candidate shall be disregarded;

85 (5) When a voter casts a straight ticket vote and also
86 punches or marks the location for a write-in vote for
87 an office, the straight ticket vote for that office shall be
88 rejected, whether or not a vote can be counted for a
89 write-in candidate; and

90 (6) Official write-in candidates are those who have
91 filed a write-in candidate's certificate of announce-
92 ment and have been certified according to the provi-
93 sions of section four-a, article six.

94 (d) If any ballot card is damaged or defective so that
95 it cannot properly be counted by the automatic
96 tabulating equipment, a true duplicate copy shall be
97 made of the damaged ballot card in the presence of
98 representatives of each political party on the ballot
99 and substituted for the damaged ballot card. All
100 duplicate ballot cards shall be clearly labeled "dupli-
101 cate" and shall bear a serial number which shall be
102 recorded on the damaged or defective ballot card and
103 on the replacement ballot card.

104 (e) The returns printed by the automatic tabulating
105 equipment at the central counting center, to which
106 have been added write-in and other valid votes, shall,
107 when certified by the clerk of the county commission,
108 constitute the official preliminary return of each
109 precinct or election district. Further, all such returns
110 shall be printed on a precinct basis. Periodically
111 throughout and upon completion of the count, the
112 returns shall be open to the public by posting such
113 returns as have been tabulated precinct by precinct at
114 the central counting center. Upon completion of the
115 canvass, the returns shall be posted in the same
116 manner.

117 (f) If for any reason it becomes impracticable to
118 count all or a part of the ballots with tabulating
119 equipment, the county commission may direct that
120 they be counted manually, following as far as practi-
121 cable the provisions governing the counting of paper
122 ballots.

123 (g) As soon as possible after the completion of the
124 count, the clerk of the county commission shall have
125 the vote recording devices properly boxed or securely
126 covered and removed to a proper and secure place of
127 storage.

§3-5-10. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official primary ballot for each party,
3 and, as the case may be, for the nonpartisan candi-
4 dates to be voted for at the primary election, according
5 to the provisions of articles four, four-a and five,
6 chapter three, as appropriate to the voting system. If
7 any ballot issue is to be voted on in the primary
8 election, the ballot commissioners shall likewise
9 prepare a sample official ballot for that issue according
10 to the provisions of law authorizing such election.

11 (b) The facsimile sample ballot for each political
12 party and for nonpartisan candidates or ballot issues
13 shall be published as follows:

14 (1) For counties in which two or more qualified

15 newspapers publish a daily newspaper, not more than
16 fourteen nor less than eight days preceding the
17 primary election, the ballot commissioners shall
18 publish each sample official primary election ballot as
19 a Class I-0 legal advertisement in the two qualified
20 daily newspapers of different political parties within
21 the county having the largest circulation in com-
22 pliance with the provisions of article three, chapter
23 fifty-nine of this code;

24 (2) For counties having no more than one daily
25 newspaper, or having only one or more qualified
26 newspapers which publish weekly, not more than
27 fourteen nor less than eight days preceding the
28 primary election, the ballot commissioners shall
29 publish the sample official primary election ballot as a
30 Class I legal advertisement in the qualified newspaper
31 within the county having the largest circulation in
32 compliance with the provisions of article three, chap-
33 ter fifty-nine of this code;

34 (3) Each facsimile sample ballot shall be a photo-
35 graphic reproduction of the official sample ballot or
36 ballot pages, and shall be printed in a size no less than
37 eighty percent of the actual size of the ballot, at the
38 discretion of the ballot commissioners: *Provided*, That
39 when the ballots for the precincts within the county
40 contain different senatorial, delegate, magisterial or
41 executive committee districts or when the ballots for
42 precincts within a city contain different municipal
43 wards, the facsimile shall be altered to include each of
44 the various districts in the appropriate order. If, in
45 order to accommodate the size of each ballot, the ballot
46 or ballot pages must be divided onto more than one
47 page, the arrangement and order shall be made to
48 conform as nearly as possible to the arrangement of
49 the ballot. The publisher of the newspaper shall
50 submit a proof of the ballot and the arrangement to
51 the ballot commissioners for approval prior to
52 publication.

53 (c) The ballot commissioners of each county shall
54 prepare, in the form and manner prescribed by the
55 secretary of state, an official list of offices and candi-

56 dates for each office which will appear on the primary
57 election ballot for each party, and, as the case may be,
58 for the nonpartisan candidates to be voted for at such
59 primary election. All information which appears on
60 the ballot, including instructions as to the number of
61 candidates for whom votes may be cast for the office,
62 any additional language which will appear on the
63 ballot below the name of the office, any identifying
64 information relating to the candidates, such as resi-
65 dence, magisterial district or presidential preference
66 and the ballot numbers of the candidates for punch
67 card systems, shall be included in the list, in the same
68 order in which it appears on the ballot. Following the
69 names of all candidates, the list shall include the full
70 title, text and voting positions of any issue to appear
71 on the ballot.

72 (d) The official list of candidates and issues as
73 provided in subsection (c) of this section shall be
74 published as follows:

75 (1) For counties in which two or more qualified
76 newspapers publish a daily newspaper, on the last day
77 on which a newspaper is published immediately
78 preceding the primary election, the ballot commis-
79 sioners shall publish the official list of candidates and
80 issues as a Class I-0 legal advertisement in the two
81 qualified daily newspapers of different political parties
82 within the county having the largest circulation in
83 compliance with the provisions of article three, chap-
84 ter fifty-nine of this code;

85 (2) For counties having no more than one daily
86 newspaper, or having only one or more qualified
87 newspapers which publish weekly, on the last day on
88 which a newspaper is published immediately preced-
89 ing the primary election, the ballot commissioners
90 shall publish the sample official ~~list of nominees and~~
91 ~~issues~~ as a Class I legal advertisement in the qualified
92 newspaper within the county having the largest
93 circulation in compliance with the provisions of article
94 three, chapter fifty-nine of this code;

95 (3) The publication of the official list of candidates

OK
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primary election
ballot:

96 for each party and for nonpartisan candidates shall be
 97 in single or double columns, as required to accommo-
 98 date the type size requirements as follows: (A) The
 99 words "Official List of Candidates", the name of the
 100 county, the words "Primary Election", the date of the
 101 election, the name of the political party or the desig-
 102 nation of nonpartisan candidates shall be printed in all
 103 capital letters and in bold type no smaller than
 104 fourteen point. The designation of the national, state,
 105 district or other tickets shall be printed in all capital
 106 letters in type no smaller than fourteen point; (B) the
 107 title of the office shall be printed in bold type no
 108 smaller than twelve point and any voting instructions
 109 or other language printed below the title shall be
 110 printed in bold type no smaller than ten point; and (C)
 111 the names of the candidates shall be printed in all
 112 capital letters in bold type no smaller than ten point,
 113 and the residence information shall be printed in type
 114 no smaller than ten point; and

115 (4) When any ballot issue is to appear on the ballot,
 116 the title of that ballot shall be printed in all capital
 117 letters in bold type no smaller than fourteen point.
 118 The text of the ballot issue shall appear in no smaller
 119 than ten point type. The ballot commissioners may
 120 require the publication of the ballot issue under this
 121 subsection in the facsimile sample ballot format in lieu
 122 of the alternate format.

§3-5-15. Ascertaining and certifying primary election results.

1 When the polls are closed in an election precinct
 2 where only a single election board has served, the
 3 receiving board shall perform all of the duties pre-
 4 scribed in this section. When the polls are closed in an
 5 election precinct where two election boards have
 6 served, both the receiving and counting boards shall
 7 together conclude the counting of the votes cast, the
 8 tabulating and summarizing of the number of the
 9 votes cast, unite in certifying and attesting to the
 10 returns of the election, and join in making out the
 11 certificates of the result of the election provided for in
 12 this article. They shall not adjourn until the work is

13 completed.

14 In all election precincts, as soon as the polls are
15 closed and the last voter has voted, the receiving board
16 shall first process the absentee ballots according to the
17 provisions of section eight, article three of the chapter.
18 After the absentee ballots to be counted have been
19 deposited in the ballot box, the election officers shall
20 proceed to ascertain the result of the election in the
21 following manner:

22 (a) The receiving board shall ascertain from the poll
23 books and record separately on the proper from the
24 total number of voters of each party and nonpartisan
25 voters who have voted.

26 (1) The number of challenged ballots of each party
27 shall be counted and subtracted from the number of
28 voters of the same party, which result should equal
29 the number of ballots of that party deposited in the
30 ballot box.

31 (2) The total of all voters, including both partisan
32 and nonpartisan voters, minus the total of all chal-
33 lenged ballots, should equal the number of nonparti-
34 san ballots deposited in the ballot box.

35 (3) The commissioners and clerks shall also report,
36 over their signatures, the number of each type of
37 ballots spoiled and the number of each type of ballot
38 not voted.

39 (b) The procedure for counting ballots, whether
40 performed throughout the day by the counting board,
41 as provided in section thirty-three, article one of this
42 chapter, or after the close of the polls by the receiving
43 board or by the two boards together, shall be as
44 follows:

45 (1) The ballot box shall be opened and all votes shall
46 be tallied in the presence of the entire election board;

47 (2) One of the commissioners shall take one ballot
48 from the box at a time and shall determine if the
49 ballot is properly signed by the two poll clerks of the
50 receiving board. If not properly signed, the ballot shall

51 be placed in an envelope for the purpose, without
52 unfolding it. If properly signed, the commissioner shall
53 announce which type of ballot it is, and hand the
54 ballot to a team of commissioners of opposite politics,
55 who shall together read the votes marked on the ballot
56 for each office. Write-in votes for nomination for any
57 office and write-in votes for election for any person
58 other than an official write-in candidate shall be
59 disregarded;

60 (3) The commissioner responsible for removing the
61 ballots from the box shall keep a tally of the number
62 of ballots of each party and any nonpartisan ballot as
63 they are removed, and whenever the number of
64 ballots of a particular party shall equal the number of
65 voters entered on the poll book for that party minus
66 the number of challenged ballots of that party, as
67 determined according to subsection (a) of this section,
68 any other ballot found in the ballot box shall be placed
69 in the same envelope with unsigned ballots not
70 counted, without unfolding the same, or allowing
71 anyone to examine or know the contents thereof, and
72 the number of excess ballots of each party shall be
73 recorded on the envelope;

74 (4) Each poll clerk shall keep an accurate tally of the
75 votes cast by marking in ink on tally sheets, which
76 shall be provided for the purpose, so as to show the
77 number of votes received by each candidate for each
78 office;

79 (5) When the votes have been read from a ballot, the
80 ballot shall be immediately strung on a thread, with
81 separate threads for each party's ballots and for
82 nonpartisan ballots.

83 (c) As soon as the results at the precinct are ascer-
84 tained, the commissioners and clerks shall make out
85 and sign four certificates of result, for each party
86 represented, of the vote for all candidates of each
87 party represented, on a form prescribed by the secre-
88 tary of state, giving the complete returns of the
89 election at the polling place, which form shall include
90 the following oath:

91 We, the undersigned commissioners and poll clerks
92 of the primary election held at precinct No. _____ of
93 _____ district of _____ County, W.Va., on
94 the _____ day of _____, 19 _____, do
95 hereby certify that having been first duly sworn, we
96 have carefully and impartially ascertained the result
97 of said election at said precinct for the candidates on
98 the official ballot of the _____
99 party, and the same is as follows:

100 The election officers shall enter the name of each
101 office and the full name of each candidate on the
102 ballot, and the number of votes, in words and
103 numbers, received by each. The election officers shall
104 also enter the full name of every official write-in
105 candidate for election to offices to be filled in the
106 primary, except delegate to national convention, and
107 the number of votes for each. Three of such certifi-
108 cates of result of election, for each party, shall then be
109 sealed in separately addressed envelopes, furnished for
110 the purpose, and shall be disposed of by the precinct
111 commissioners as follows: One of the sealed envelopes
112 containing the returns of each party shall be delivered
113 to the clerk of the circuit court and two shall be
114 delivered to the clerk of the county commission, who
115 shall within forty-eight hours mail one of the sealed
116 returns for each precinct by certified mail to the
117 secretary of state. The one not sealed up shall be
118 posted on the outside of the front door of the polling
119 place.

120 (d) All ballots voted for candidates of each party
121 shall be sealed up in separate envelopes and the
122 commissioners and clerks shall each sign across the
123 seal.

§3-5-16. Return of supplies and certificates.

1 Immediately after completion of the count, tabu-
2 lation and the posting of the certificate of result of the
3 primary election in each precinct, one of the commis-
4 sioners or poll clerks of each party at such precinct,
5 designated for that purpose, shall return to the clerk
6 of the county commission the ballot boxes, registration

7 books and the several packages of ballots, poll books,
8 tally sheets, certificates and all other election supplies
9 and returns, except they shall deliver to the clerk of
10 the circuit court, at the same time, packages contain-
11 ing one tally sheet and one certificate of result of each
12 political party prepared and sealed as provided in the
13 next preceding section.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official general election ballot for all
3 political party or independent nominees, nonpartisan
4 candidates for election, if any, and all ballot issues to
5 be voted for at the general election, according to the
6 provisions of articles four, four-a and six of this
7 chapter, as appropriate to the voting system, and for
8 any ballot issue, according to the provisions of law
9 authorizing such election.

10 (b) The facsimile sample general election ballot shall
11 be published as follows:

12 (1) For counties in which two or more qualified
13 newspapers publish a daily newspaper, not more than
14 fourteen nor less than eight days preceding the
15 general election, the ballot commissioners shall pub-
16 lish the sample official general election ballot as a
17 Class I-0 legal advertisement in the two qualified daily
18 newspapers of different political parties within the
19 county having the largest circulation in compliance
20 with the provisions of article three, chapter fifty-nine
21 of this code;

22 (2) For counties having no more than one daily
23 newspaper, or having only one or more qualified
24 newspapers which publish weekly, not more than
25 fourteen nor less than eight days preceding the
26 primary election, the ballot commissioners shall
27 publish the sample official general election ballot as a
28 Class I legal advertisement in the qualified newspaper
29 within the county having the largest circulation in
30 compliance with the provisions of article three, chap-

31 ter fifty-nine of this code; and

32 (3) Each facsimile sample ballot shall be a photo-
33 graphic reproduction of the official sample ballot or
34 ballot pages, and shall be printed in a size no less than
35 eighty percent of the actual size of the ballot, at the
36 discretion of the ballot commissioners: *Provided*, That
37 when the ballots for the precincts within the county
38 contain different senatorial, delegate, magisterial or
39 executive committee districts or when the ballots for
40 precincts within a city contain different municipal
41 wards, the facsimile shall be altered to include each of
42 the various districts in the appropriate order. If, in
43 order to accommodate the size of each ballot, the ballot
44 or ballot pages must be divided onto more than one
45 page, the arrangement and order shall be made to
46 conform as nearly as possible to the arrangement of
47 the ballot. The publisher of the newspaper shall
48 submit a proof of the ballot and the arrangement to
49 the ballot commissioners for approval prior to
50 publication.

51 (c) The ballot commissioners of each county shall
52 prepare, in the form and manner prescribed by the
53 secretary of state, an official list of offices and nomi-
54 nees for each office which will appear on the general
55 election ballot for each political party, or as indepen-
56 dent nominees, and, as the case may be, for the
57 nonpartisan candidates to be voted for at the general
58 election.

59 (1) All information which appears on the ballot,
60 including the names of parties for which a straight
61 ticket may be cast, instructions relating to straight
62 ticket voting, instructions as to the number of candi-
63 dates for whom votes may be cast for the office, any
64 additional language which will appear on the ballot
65 below the name of the office, any identifying informa-
66 tion relating to the candidates, such as residence,
67 magisterial district, or presidential preference, and the
68 ballot numbers of the candidates for punch card
69 systems, shall be included in the list, in the order
70 specified in subdivision (2) of this subsection. Follow-
71 ing the names of all candidates, the list shall include

72 the full title, text and voting positions of any issue to
73 appear on the ballot.

74 (2) The order of the straight ticket positions, offices
75 and candidates for each office, and the manner of
76 designating the parties, shall be as follows: (A) The
77 straight ticket positions shall be designated "Straight
78 (Party Name) Ticket", with the parties listed in the
79 order in which they appear on the ballot, from left to
80 right or from top to bottom, as the case may be; (B)
81 the offices shall be listed in the same order in which
82 they appear on the ballot; (C) the candidates within
83 each office for which one is to be elected shall be listed
84 in the order they appear on the ballot, from left to
85 right or from top to bottom, as the case may be, and
86 the candidate's political party affiliation or indepen-
87 dent status shall be indicated by the one or two letter
88 initial specifying the affiliation, placed in parenthesis
89 to the right of the candidate's name; and (D) the
90 candidates within each office for which more than one
91 is to be elected shall be arranged by political party
92 groups in the order they appear on the ballot, and the
93 candidate's affiliation shall be indicated as provided in
94 paragraph (C) of this subdivision.

95 (d) The official list of candidates and issues as
96 provided in subsection (c) of this section shall be
97 published as follows:

98 (1) For counties in which two or more qualified
99 newspapers publish a daily newspaper, on the last day
100 on which a newspaper is published immediately
101 preceding the general election, the ballot commission-
102 ers shall publish the official list of nominees and issues
103 as a Class I-0 legal advertisement in the two qualified
104 daily newspapers of different political parties within
105 the county having the largest circulation in com-
106 pliance with the provisions of article three, chapter
107 fifty-nine of this code;

108 (2) For counties having no more than one daily
109 paper, or having only one or more qualified news-
110 papers which publish weekly, on the last day on which
111 a newspaper is published immediately preceding the

112 general election, the ballot commissioners shall pub-
113 lish the sample official list of nominees and issues as
114 a Class I legal advertisement in the qualified newspa-
115 per within the county having the largest circulation in
116 compliance with the provisions of article three, chap-
117 ter fifty-nine of this code;

118 (3) The publication of the official list of nominees for
119 each party and for nonpartisan candidates shall be in
120 single or double columns, as required to accommodate
121 the type size requirements as follows: (A) The words
122 "Official List of Nominees and Issues", the name of
123 the county, the words "General Election" and the date
124 of the election shall be printed in all capital letters and
125 in bold type no smaller than fourteen point; (B) the
126 designation of the straight ticket party positions shall
127 be printed in all capital letters in bold type no smaller
128 than twelve point, and the title of the office shall be
129 printed in bold type no smaller than twelve point, and
130 any voting instructions or other language printed
131 below the title shall be printed in bold type no smaller
132 than ten point; and (C) the names of the candidates
133 and the initial within parenthesis designating the
134 candidate's affiliation shall be printed in all capital
135 letters in bold type no smaller than ten point, and the
136 residence information shall be printed in type no
137 smaller than ten point; and

138 (4) When any ballot issue is to appear on the ballot,
139 the title of that ballot shall be printed in all capital
140 letters in bold type no smaller than twelve point. The
141 text of the ballot issue shall appear in no smaller than
142 ten point type. The ballot commissioners may require
143 the publication of the ballot issue under this subsec-
144 tion in the facsimile sample ballot format in lieu of the
145 alternate format.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by
2 write-in votes to an office, except delegate to national
3 convention, which is to be filled in a primary, general
4 or special election held under the provisions of this
5 chapter shall file a write-in candidate's certificate of

6 announcement and pay a filing fee as provided in this
7 section. No certificate of announcement may be
8 accepted and no person may be certified as a write-in
9 candidate for a political party nomination for any
10 office or for election as delegate to national convention.

11 (a) The write-in candidate's certificate of announce-
12 ment shall be in a form prescribed by the secretary of
13 state on which the candidate shall make a sworn
14 statement before a notary public or other officer
15 authorized to give oaths, containing the following
16 information:

17 (1) The name of the office sought and the district
18 and division, if any;

19 (2) The legal name of the candidate, and the first
20 and last name by which the candidate may be identi-
21 fied in seeking the office;

22 (3) The specific address designating the location at
23 which the candidate resides at the time of filing,
24 including number and street or rural route and box
25 number, and city, state and zip code;

26 (4) A statement that the person filing the certificate
27 of announcement is a candidate for the office in good
28 faith; and

29 (5) The words "subscribed and sworn to before me
30 this _____ day of _____,
31 _____" and a space for the signature of the officer
32 giving the oath.

33 (b) Any person who seeks to become an official
34 write-in candidate shall pay a filing fee, which shall be
35 the fee prescribed for the office in section eight, article
36 five, or other section of code, as the case may be.

37 The provisions of section eight-a, article five of this
38 chapter relating to the waiver of filing fees shall apply,
39 and the petition for waiver of the fee shall be due no
40 later than the time of filing the certificate of
41 announcement. The filing fees shall be distributed to
42 the counties as provided in section eight, article five of
43 this chapter.

44 (c) The certificate of announcement shall be filed
45 with the filing officer for the political division of the
46 office as prescribed in section seven, article five of this
47 chapter.

48 (d) The certificate of announcement shall be filed
49 with and received by the proper filing officer as
50 follows:

51 (1) Except as provided in subdivisions (2) and (3) of
52 this subsection, the certificate of announcement for
53 any office shall be received no later than the close of
54 business on the fourteenth day before the election at
55 which the office is to be filled;

56 (2) When a vacancy occurs in the nomination of
57 candidates for an office on the ballot resulting from
58 the death of the nominee or from the disqualification
59 or removal of a nominee from the ballot by a court of
60 competent jurisdiction not earlier than the twenty-
61 first day nor later than the fifth day before the general
62 election, the certificate shall be received no later than
63 the close of business on the fifth day before the
64 election, or the close of business on the day following
65 the occurrence of the vacancy, whichever is later;

66 (3) When a vacancy occurs in an elective office
67 which would not otherwise appear on the ballot in the
68 election, but which creates an unexpired term of one
69 or more years which, according to the provisions of
70 this chapter, is to be filled by election in the next
71 ensuing election, and such vacancy occurs no earlier
72 than the twenty-first day and no later than the fifth
73 day before the general election, the certificate shall be
74 received no later than the close of business on the fifth
75 day before the election, or the close of business on the
76 day following the occurrence of the vacancy, whichev-
77 er is later.

78 (e) Any eligible person who files a completed write-
79 in candidate's certificate of announcement and the
80 required filing fee with the proper filing officer within
81 the required time shall be certified by that filing
82 officer as an official write-in candidate.

83 (1) The secretary of state shall, immediately follow-
84 ing the filing deadline, post the names of all official
85 write-in candidates for offices on the ballot in more
86 than one county and certify the name of each official
87 write-in candidate to the clerks of the circuit court of
88 the appropriate counties.

89 (2) The clerk of the circuit court shall, immediately
90 following the filing deadline, post the names of all
91 official write-in candidates for offices on the ballot in
92 one county, and certify and deliver to the election
93 officials of the appropriate precincts the names of all
94 official write-in candidates and the office sought by
95 each for statewide, district and county offices on the
96 ballot in the precinct for which valid write-in votes
97 will be counted.

**§3-6-5. Rules and procedures in election other than
primaries.**

1 The provisions of article one of this chapter relating
2 to elections generally shall govern and control
3 arrangements and election officials for the conduct of
4 elections under this article. The following rules and
5 procedures shall govern the voting for candidates in
6 general and special elections:

7 (a) If the voter desires to vote a straight ticket, or in
8 other words, for each and every candidate for one
9 party for whatever office nominated, the voter shall
10 either:

11 (1) Mark the position designated for a straight ticket
12 in the manner appropriate to the voting system; or

13 (2) Mark the voting position for each and every
14 candidate of the chosen party in the manner appropri-
15 ate to the voting system.

16 (b) If the voter desires to vote a mixed ticket, or in
17 other words, for candidates of different parties, the
18 voter shall either:

19 (1) Omit marking any straight ticket voting position
20 and mark, in the manner appropriate to the voting
21 system, the name of each candidate for whom he or

22 she desires to vote on whatever ticket the name may
23 be; or

24 (2) Mark the position designated for a straight ticket
25 for the party for some of whose candidates he or she
26 desires to vote, and then mark the name of any
27 candidate of any other party for whom he or she may
28 desire to vote, in which case the cross mark in the
29 circular space above the name of the party straight
30 ticket mark will cast his vote for every candidate on
31 the ticket of such party except for offices for which
32 candidates are marked on other party tickets, and the
33 marks for such candidates will cast a vote for them; or

34 (3) Write with ink or other means or affix a sticker
35 or label or place an ink-stamped impression of the
36 name of an official write-in candidate for an office for
37 whom he or she desires to vote in the space designated
38 for write-in votes for the particular voting system and
39 mark that voting position as required in this chapter;
40 or for paper ballot systems, write or place the name
41 and office designation in any position on the face of
42 the ballot which makes the intention of the voter clear
43 as to both the office and the candidate chosen.

44 (c) If in marking either a straight or mixed ticket as
45 above defined, a straight ticket voting position is
46 marked, and also one or more marks are made for
47 candidates on the same ticket for offices for which
48 candidates on other party tickets are not individually
49 marked, such marks before the name of candidate on
50 the ticket so marked shall be treated as surplusage and
51 ignored.

52 (d) When a voter casts a straight ticket vote and also
53 writes in any name for an office and, in electronic
54 voting systems, punches or marks the voting position
55 for that write-in, the straight ticket vote for that office
56 shall be rejected, whether or not a vote can be counted
57 for a write-in candidate.

58 (e) The secretary of state may proscribe devices for
59 casting write-in votes which would cause mechanical
60 difficulty with voting machines or electronic devices
61 or which would obliterate or deface a paper ballot or

62 any portion thereof, but the secretary of state shall
63 preserve the right to vote by a write-in vote for those
64 candidates who have filed and have been certified as
65 official write-in candidates under the provisions of
66 section four-a of this article.

67 (f) If the voter marks more names than there are
68 persons to be elected to an office, or if, for any reason,
69 it is impossible to determine the voter's choice, for an
70 office to be filled, the ballot shall not be counted for
71 such office. The intention of the voter shall be deemed
72 to be clear if the write-in vote cast for an office
73 contains both the first and last name of an official
74 write-in candidate for that office; and, if no two official
75 write-in candidates for that office share a first or last
76 name, either the first name or last name alone shall be
77 deemed to express the clear intention of the voter.

78 (g) Except as otherwise specifically provided in this
79 chapter, no ballot shall be rejected for any technical
80 error which does not make it impossible to determine
81 the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct
2 where only a single election board has served, the
3 receiving board shall perform all of the duties pre-
4 scribed in this section. When the polls are closed in an
5 election precinct where two election boards have
6 served, both the receiving and counting boards shall
7 together conclude the counting of the votes cast, the
8 tabulating and summarizing of the number of the
9 votes cast, unite in certifying and attesting to the
10 returns of the election, and join in making out the
11 certificates of the result of the election provided for in
12 this article. They shall not adjourn until the work is
13 completed.

14 In all election precincts, as soon as the polls are
15 closed and the last voter has voted, the receiving board
16 shall first process the absentee ballots according to the
17 provisions of section eight, article three of this chapter.
18 After the absentee ballots to be counted have been
19 deposited in the ballot box, the election officers shall

20 proceed to ascertain the result of the election in the
21 following manner:

22 (a) The receiving board shall ascertain from the poll
23 books and record on the proper form the total number
24 of voters who have voted. The number of ballots
25 challenged shall be counted and subtracted from the
26 total, which result should equal the number of ballots
27 deposited in the ballot box. The commissioners and
28 clerks shall also report, over their signatures, the
29 number of ballots spoiled and the number of ballots
30 not voted.

31 (b) The procedure for counting ballots, whether
32 performed throughout the day by the counting board
33 as provided in section thirty-three, article one of this
34 chapter, or after the close of the polls by the receiving
35 board or by the two boards together, shall be as
36 follows:

37 (1) The ballot box shall be opened and all votes shall
38 be tallied in the presence of the entire election board;

39 (2) One of the commissioners shall take one ballot
40 from the box at a time and shall determine if the
41 ballot is properly signed by the two poll clerks of the
42 receiving board. If not properly signed, the ballot shall
43 be placed in an envelope for the purpose, without
44 unfolding it. If properly signed, the commissioner shall
45 hand the ballot to a team of commissioners of opposite
46 politics, who shall together read the votes marked on
47 the ballot for each office. Write-in votes for election
48 for any person other than an official write-in candi-
49 date shall be disregarded. When a voter casts a straight
50 ticket vote and also casts a write-in vote for an office,
51 the straight ticket vote for that office shall be rejected,
52 whether or not a vote can be counted for a write-in
53 candidate;

54 (3) The commissioner responsible for removing the
55 ballots from the box shall keep a tally of the number
56 of ballots as they are removed, and whenever the
57 number shall equal the number of voters entered on
58 the poll book minus the number of challenged ballots,
59 as determined according to subsection (a) of this

60 section, any other ballot found in the ballot box shall
61 be placed in the same envelope with unsigned ballots
62 not counted, without unfolding the same, or allowing
63 anyone to examine or know the contents thereof, and
64 the number of excess ballots shall be recorded on the
65 envelope;

66 (4) Each poll clerk shall keep an accurate tally of the
67 votes cast by marking in ink on tally sheets, which
68 shall be provided for the purpose, so as to show the
69 number of votes received by each candidate for each
70 office and for and against each issue on the ballot; and

71 (5) When the reading of the votes is completed, the
72 ballot shall be immediately strung on a thread.

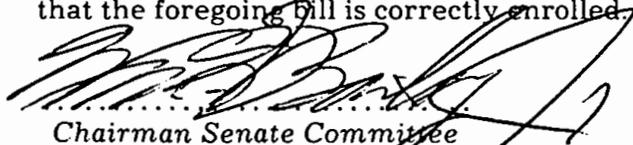
§3-6-8. Precinct returns; certificates; procedures.

1 As soon as the results are ascertained, the election
2 officials shall make out and sign, under oath as
3 provided in section fifteen, article five of this chapter,
4 four certificates of result on a form prescribed by the
5 secretary of state, giving the complete returns of the
6 election at the polling place, including the name of
7 each office and the full name of every candidate on
8 the ballot and the full name of every official write-in
9 candidate for each office, and the number of votes, in
10 words and numbers, received by each, and the desig-
11 nation of each issue on the ballot and the number of
12 votes, in words and numbers, for and against such
13 issue.

14 The certificates shall be sealed up and disposed of as
15 provided in section fifteen, article five of this chapter
16 for certificates of result of a primary election.

17 Immediately after the completion of the tabulation
18 and the posting of the certificate of result of the
19 general election in each precinct, the ballots, registra-
20 tion books, poll books, tally sheets and other election
21 supplies shall be sealed up and delivered to the clerks
22 of the county commission and the circuit court as
23 provided in section sixteen, article five of this chapter.

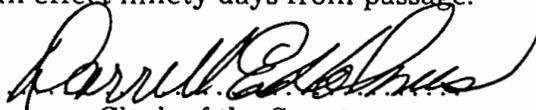
The Joint Committee on Enrolled Bills hereby certifies that the foregoing Bill is correctly enrolled.


.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

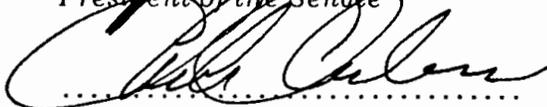
Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate

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


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 5th
day of May, 1993.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 7/27/93

Time 3:43 pm