SENATE BILL NO. ___ (By Senator ___)

PASSED April 9, 1993
In Effect 90 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 I. 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 election official in any state, county or municipal election held in West Virginia, a person:

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

3 (2) Must be registered as affiliated with the political party for which appointed; except that, persons registered without party affiliation or as adherents to a political group other than the two majority political parties then recognized are eligible to serve in nonpartisan elections;

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

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

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

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

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

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

(b) The county commission may, upon majority vote, suspend the eligibility to serve as election official in any election for four years, for the following reasons:
(1) Failure to appear at the polling place at the
designated time without proper notice and just cause;
(2) Failure to perform the duties of an election
official as required by law;
(3) Improper interference with a voter casting a
ballot, or violating the secrecy of the voter’s ballot;
(4) Being under the influence of alcohol or drugs
while serving as election official; or
(5) Having anything wagered or bet on an election.

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

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

(a) For the purpose of this article:

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

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

(3) The term “counting board” means those election
officials charged with counting the ballots at the
precinct in counties using paper ballots and includes
one team of poll clerks, one team of election commis-
The term "team of poll clerks" or "team of election commissioners" means two persons of opposite political parties appointed to perform the specific functions of the office.

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

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

(2) In presidential primary and presidential general elections, each election precinct shall have one receiving board, as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board;

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

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

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

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

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

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body for any precinct of more
than two hundred registered voters.

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

(d) For each municipal election, the governing body of the municipality shall perform the duties of the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of West Virginia

________________________ County

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

________________________

Subscribed and sworn to before me this ______ day of _______________, 19__

________________________

Signature and official title of person before whom sworn

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

State of West Virginia

_______________ County

I, ________________, a qualified and registered voter of the county affiliated with the __________________________ Party, do solemnly swear that I will faithfully and honestly discharge my duties as __________________________ (poll clerk or election commissioner) of the counting board according to the requirements of law in this election; that I will carefully and accurately read and record the votes cast on each ballot voted in the election which contains the signatures of both poll clerks; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I will not disclose the votes cast for any candidate or any other information about the result of the election prior to the posting of the precinct returns on the door of the polling place; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

__________________________

Subscribed and sworn to before me this ________ day of ____________, 19____

__________________________

Signature and official title of person before whom sworn

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

(b) When any election official is unable to perform the duties for which he or she was appointed, a substitution may be made, as follows:
An eligible person of the same political party shall assume the duties after taking the oath. One of the election commissioners shall make an entry in the space provided on the oath form, indicating the name of the official being replaced, the reason for the change, the name of the person assuming the duties, the time at which the change occurred and the poll slip number of the last voter who signed a poll slip before the change occurred;

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

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

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

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

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

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

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

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

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

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

(g) No elected official shall appear in such program 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.

An employee of the secretary of state, who has attended a course of instruction at the state police academy or its equivalent, has all the lawful powers delegated to members of the department of public safety to enforce the provisions of this chapter and the criminal laws of the state in any county or municipality of this state. An employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his or her duties, as such, and such bond shall be approved as to form by the attorney general, and the bond shall be filed with the secretary of state and preserved in his or her office. The department of public safety, and any county sheriff or deputy sheriff or any municipal police officer, upon request by the secretary of state or his or her appointee, is authorized to assist the secretary of state or his or her appointee in enforcing the provisions of this chapter and the criminal laws of the state.

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 available by clerk; form of application and information required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A space for the applicant to indicate his or her
social security number; and
(12) A place for the applicant to execute the application on a line which is clearly labeled "signature of applicant" and contained in the following specific form of oath or affirmation: "I do solemnly swear or affirm that the information provided in the preceding uniform statewide application is true to the best of my knowledge, information and belief, and I understand that if I willingly provide false information concerning a material matter or thing therein, I shall be deemed guilty of the felony offense of perjury and shall be subject to the penalties for perjury.

________________________
Signature of Applicant

Subscribed and sworn (or affirmed) to before me, this _____ day of _______________, 19 __," which oath or affirmation shall be administered by a person authorized to perform notarial acts under the provisions of article one or one-a, chapter thirty-nine of this code. The person administering the oath or affirmation shall not charge a fee for such act and the uniform statewide application shall inform the person administering such oath or affirmation that no fee is to be charged.

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

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

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

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

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

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

ARTICLE 3. VOTING BY ABSENTEES.

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

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

(1) Any voter who is within the county and physically able to vote in person during regular business hours of the clerk’s office during the prescribed period for absentee voting but is unable to vote in person on election day because of: (A) Anticipated or scheduled commitment to a hospital, institution or other confinement for medical reasons; (B) absence from the county during the entire time the polls are open; (C) appointment as an election official in a precinct other than the one in which the voter is registered; or (D) the inaccessibility of the polling place to the voter because of his or her physical disability; and

(2) Any voter who is a member of a religious denomination with an established history of observing Saturday as the Sabbath, when the election is scheduled to be held on Saturday.

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

(1) Any voter who will be absent from the county throughout the regular period and available hours for voting in person at the polls or at the clerk's office because of personal or business travel or employment, who will be unable to receive an absentee ballot by mail at an address outside the county during that absence, and who will be present within the county
between the forty-second day before the election and
the fifteenth day before the election.

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

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

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

(3) Any voter absent from the county throughout the
period and available hours for voting in person and
who is an absent uniformed services voter or overseas
voter, as defined by the Uniformed and Overseas
Citizens Absentee Voting Act of 1986, (Public Law 99-
services on active duty, members of the merchant
marine, spouses and dependents of those members on
active duty, and persons who reside outside the United
States and are qualified to vote in the last place in
which the person was domiciled before leaving the
United States are included in the above definition; and

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

(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
The completed application shall be on a form prescribed by the secretary of state, and shall contain the name, date of birth and political affiliation of the voter, his or her residence address within the county, the address to which the ballot is to be mailed, the authorized reason for which the absentee ballot is requested, and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required, and an indication as to whether it is an application for voting in person or by mail; or

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

(3) For any person unable to obtain the official form for absentee balloting at a reasonable time before the deadline for an application for an absentee ballot by mail to be received by the proper official, the completed application may be in a form set out by the voter, provided all information required to meet the provisions of this article is set forth and the application is 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 in the clerk's office as provided in this article, the circuit clerk shall make the following provisions for voting:
(a) The clerk shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices shall be in an area separate from but within clear view of the public entrance area of the clerk's office, and shall be arranged to insure the voter complete privacy in casting the ballot.

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

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

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

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

(a) Any person who is registered and otherwise qualified to vote and who is permanently and totally physically disabled and who is unable to vote in person
at the polls in an election, may apply to the clerk of
the circuit court for placement on the special absentee
voting list.

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

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

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

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

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

(b) Special absentee voting in person for persons
eligible to vote an absentee ballot under the provisions
of subsection (c), section one of this article shall be
conducted during regular business hours in the office of the clerk of the circuit court beginning on the forty-second day before the election and continuing until the first day when regular absentee voting in person begins. Any person seeking to vote absentee under this subsection shall first give an affidavit, on a form prescribed by the secretary of state, stating under oath the specific circumstances which prevent voting absentee during the period for regular absentee voting in person or by mail.

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

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

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

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

If the clerk determines the above conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall challenge the voter's absentee ballot as provided in this article.

(d) The clerk shall provide each person voting an absentee ballot in person the following: (1) One of each type of official absentee ballot the voter is eligible to
vote, prepared according to law; (2) one envelope, unsealed, which shall have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter; and (3) one envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2” and printed as prescribed by the secretary of state.

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

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

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

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

(b) Completed applications for voting an absentee ballot by mail shall be accepted when received by the clerk within the following times:
(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (d), section one of this article, relating to absent uniformed services and overseas voters, not earlier than the first day of January of an election year, or eighty-four days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application shall, upon the voter’s request, be accepted as an application for the ballots for all elections in the calendar year;

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

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

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

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

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

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

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

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being
out of the county during the entire period of voting in
person exists to suggest that the applicant is no longer
a resident of the county.

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

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

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

(f) Absentee ballots returned by United States mail
or other express shipping service shall be accepted if:
(1) The ballot is received by the clerk no later than the
close of the polls on election day; or (2) the ballot bears
a postmark of the United States postal service dated no
later than election day and the ballot is received by
the clerk no later than the hour at which the board of
canvassers convenes to begin the canvass.
Ballots received after the proper time which cannot be accepted shall be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they shall be destroyed without being opened.

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

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

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

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

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

(2) The clerk shall then determine if the applicant is
registered to vote at the residence address listed in the
ing the residence section of the application. If the
applicant is properly registered, the clerk shall main-
tain the original application. If the applicant is not
registered, or not registered at the address given, the
clerk shall deliver the original FPCA to the clerk of
the county commission for processing as an application
for registration and, if such application is received
after the close of voter registration for the next
succeeding election, the clerk of the circuit court shall
challenge the absentee ballot for that election.

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

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

(1) The clerk shall determine if the applicant is
registered to vote at the residence address listed in the
voting residence section of the application. If the
applicant is properly registered, the clerk shall deliver
the original FPCA to the clerk of the circuit court for
processing as an application for absentee voting. If the
applicant is not registered, or not registered at the
address given, the clerk of the county commission
shall make a photocopy of such application and deliver
the photocopy to the clerk of the circuit court for
processing as an application for absentee voting, and
shall register the voter and maintain the original copy
in the registration files. If the application for registra-
tion is received after the close of registration for the
next succeeding election, the clerk of the county
commission shall hold the application to be entered
into the registration records after that election and
shall forward a copy of the application to the clerk of
the circuit court, along with a notice that the absentee
ballot for that election shall be challenged.

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

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

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

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

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

(d) Upon receipt of said application within the time
required, the clerk shall issue the special write-in
absentee ballot which shall be the same ballot issued
under the provisions of the Uniformed and Overseas
Citizens Absentee Voting Act of 1986, (Public Law 99-
410, 42 U.S.C. 1973, et seq.). Such ballot shall permit
the elector to vote in a primary election by indicating
his or her political party affiliation and the names of
the specific candidates for each office, and in a general
election by writing in a party preference for each
office, the names of specific candidates for each office,
or the name of the person whom the voter prefers for
each office.

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

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

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

(a) Notwithstanding any other provision of this
chapter, a person qualified to vote an emergency
absentee ballot, as provided in subsection (e), section
one of this article may vote an emergency absentee
ballot under the procedures established in this section.
The county commission may adopt a policy extending
the emergency absentee voting procedures to: (1)
Hospitals or other duly licensed health care facilities
within an adjacent county or within thirty-five miles
of the county seat; or (2) nursing homes within the
county: Provided, That the policy shall be adopted by
the county commission at least ninety days prior to the
election that will be affected and a copy of such policy
shall be filed with the secretary of state.
(b) On or before the fifty-sixth day preceding the date on which any election is to be held the clerk of the circuit court of each county shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she deems necessary to perform the duties and functions hereinafter set forth.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons, appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of article one of this chapter. Emergency absentee ballot commissioners shall have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Such commissioners shall be compensated for services and expenses in the same manner as commissioners of election obtaining and delivering election supplies under the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter’s immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the clerk of the circuit court, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day, shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application shall be prescribed by the secretary of state and shall include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

If the person applying for an emergency absentee ballot is unable to sign his or her application because
of illiteracy, he or she shall make his or her mark on
the signature line above provided for an illiterate
applicant which mark shall be witnessed.

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

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

(f) Upon receiving the application and emergency
absentee ballot, the clerk of the circuit court shall
ascertain whether the application is complete, whether
the voter appears to be eligible to vote an emergency
absentee ballot, and whether the voter is properly
registered to vote with the office of the clerk of the
county commission. If the voter is found to be proper-
ly registered in the precinct shown on the application,
the ballot shall be delivered to the precinct election
commissioner pursuant to section seven of this article.
If the voter is found not to be registered or is other-
wise ineligible to vote an emergency ballot, then the
ballot shall be challenged for the appropriate reason
provided for in section ten of this article.
(g) If either or both of the emergency absentee ballot commissioners should refuse to sign any application for voting an emergency absentee ballot, then the voter shall be permitted to vote as an emergency absentee and any such ballot shall be challenged in accordance with the provisions of section ten of this article, in addition to those absentee ballots subject to challenge as enumerated therein.

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

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

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

(b) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct shall be delivered to the election commissioner of the precinct who has been so designated pursuant to section twenty-four, article one of this chapter, by the clerk in person, or by messenger, before the closing of the polls, provided such ballots are received by the clerk in time to make such delivery. Any ballots received by the clerk after the time that delivery may reasonably be made but within the time required as provided in the subsection (f), section five of this article, shall be delivered to the board of canvassers along with the challenged ballots.
§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

The secretary of state shall make, amend and rescind such rules, regulations, orders and instructions, and prescribe such forms, lists and records, and consolidation of such forms, lists and records as may be necessary to carry out the policy of the Legislature as contained in this article and as may be necessary to provide for an effective, efficient and orderly administration of the absentee voter law of this state. In the case of West Virginia voters residing outside the continental United States, the secretary of state shall promulgate rules and regulations necessary to implement procedures relating to absentee voters contained in the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (P.L. 99-410, 42 U.S.C. 1973, et seq.) and shall forward a copy of the act to all clerks of the circuit courts and clerks of the county commissions before the first day of January of each even-numbered year.

The secretary of state may establish special procedures to allow absentee voting for those categories of registered voters who, because of special circumstances, would otherwise be unable to vote in the election.

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

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

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

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

(d) The forms and manner of making the challenges 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
1 models; facsimile diagrams; sample ballots;
2 legal ballot advertisements.
3 For the instruction of the voters on any election day
4 there shall be provided for each polling place one
5 instruction model for each voting machine. Each such
6 instruction model shall be constructed so as to provide
7 a replica of a portion of the face of the voting machine,
8 and shall contain the arrangement of the ballot labels,
9 party columns or rows, office columns or rows and
10 questions. Fictitious names shall be inserted in the
11 ballot labels of the models. Such models shall be
12 located on the election officers' tables or in some other
13 place in which the voter must pass to reach the voting
14 machine. Each voter, upon request, before voting,
15 shall be offered instruction by the election officers in
16 the operation of the voting machine by use of the
17 instruction model and each voter shall be given ample
18 opportunity to operate the model himself.
19 The ballot commissioners shall also provide facsimile
20 diagrams, at least two of which shall be posted on the
walls of each polling place. The facsimile diagrams shall be exact diagrams of the face of the voting machines to the end that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the voting machine to be used in his precinct. Ballot labels may be affixed to the diagrams to insure that the position of the names of the candidates in each office division shall appear accurately on the diagrams of each precinct.

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

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

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

(a) As soon as the polls are closed, and the last voter has voted, the election officers shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been entered on the voting machine, the election officers shall immediately lock and seal the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation, and shall then compare the number of voters, as shown by the public counter of the machine, with the number of those who have voted, as shown by the protective or accumulative counter or device. The election officers of each precinct shall then sign a certificate stating: (1) That the machine has been locked against voting and sealed; (2) the number of voters, as shown by the public
counters; (3) the number registered on the protective
or accumulative counter or device, if any; and (4) the
number or other designation of the voting machine;
and such certificate shall be returned by the precinct
election officers to the ballot commissioners.

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

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

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

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

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

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

(2) The election officers shall also open the doors
covering the paper roll and shall proceed to read and
record the votes entered thereon for any official write-
in candidate for election to the office represented by
the position on the paper roll, except delegate to
national convention. Official write-in candidates are
those who have filed a write-in candidate's certificate
of announcement and have been certified according to
the provisions of section four-a, article six of this
chapter. Write-in votes for nomination to any office or
for any person other than an official write-in candi-
date shall be disregarded.

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

(d) The proclamation of the results of the votes cast
shall be announced distinctly and audibly by one of
the election officers, who shall read the name of and
votes cast for each candidate, and the votes cast for
and against each question submitted. During such
proclamation, ample opportunity shall be given to any
person lawfully present to compare the results so
announced with the counter dials of the machine, and
any necessary corrections shall then and there be
made by election officers, after which the doors or
other cover of the voting machine shall be closed and
locked and the return sheets shall be signed by each
of the election officers. If any election officer shall
decline to sign such return, he or she shall state the
reason in writing, and enclose the statement with the return. Each of the return sheets shall be enclosed in a separate envelope, which shall be securely sealed, and each of the election officers shall write his or her name across the fold of the envelope. One of the sealed envelopes containing the returns shall be delivered to the clerk of the circuit court and two shall be delivered to the clerk of the county commission who shall within forty-eight hours mail one of the sealed returns for each precinct by certified mail to the secretary of state. The general return sheet and statement shall be directed and immediately delivered to the clerk of the county commission. The envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number of the seal and the number registered on the protective counter at the close of the polls.

(e) As soon as possible after the completion of the count, the election officers shall return to the county commission and the ballot commissioners the keys to the voting machine received and receipted for by them, and the clerk of the county commission shall have the voting machine properly boxed or securely covered and removed from the polling place to a 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 electronic voting system utilizing voting devices for registering the voter's choices is to be used in any election shall cause to be printed for use in such election the ballot cards and ballot labels, as appropriate, for the electronic voting system.

(a) The ballot labels shall be clearly printed in black ink on clear white material of such size as will fit the vote recording devices. Arrows shall be printed on the ballot labels to indicate the place to punch the ballot card, which may be to the right or left of the name or
propo5ition.

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

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

(d) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office shall conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article. The secretary of state shall assign uniform numbers which shall be used by all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. After taking into account the numbers so assigned by the secretary of state, the clerk of the circuit court shall arrange the offices and the candidates within each office as prescribed by said section, and shall assign the appropriate number for each candidate. When one candidate is to be elected and only two parties are on the ballot, the ballot label and the arrangement of the ballot shall conform as nearly as practical to the following example:
<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For Governor</strong></td>
<td><strong>For Governor</strong></td>
</tr>
<tr>
<td><em>(Vote for One)</em></td>
<td><em>(Vote for One)</em></td>
</tr>
<tr>
<td><em>(candidate's name)</em> 10</td>
<td><em>(candidate's name)</em> 11</td>
</tr>
<tr>
<td><em>(residence, county)</em></td>
<td><em>(residence, county)</em></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For Governor</strong></td>
<td><em>(Vote for One)</em></td>
<td></td>
</tr>
<tr>
<td><em>(candidate's name)</em></td>
<td><em>(candidate's name)</em></td>
<td></td>
</tr>
<tr>
<td><em>(residence, county)</em></td>
<td><em>(residence, county)</em></td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For House of Delegates</strong></td>
<td><strong>For House of Delegates</strong></td>
</tr>
<tr>
<td><strong>First Delegate District</strong></td>
<td><strong>First Delegate District</strong></td>
</tr>
</tbody>
</table>
(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.

(candidate's name) 69 --+
(residence, county)

(candidate's name) 70 --+
(residence, county)

(candidate's name) 71 --+
(residence, county)

Any nonpartisan office such as board of education and any question to be voted on shall be placed on a separate page or otherwise separated from the partisan ballots, which separate page shall constitute a separate ballot where required.

In elections in which voters are authorized to vote for official write-in candidates whose names do not appear on the ballot label, there shall be provided, as described herein, a write-in position on the ballot label for the voter to indicate his or her preference for a write-in candidate and a form on the inside of the secrecy envelope to permit a voter to enter the title of the office and the names of official write-in candidates, for whom he or she wishes to vote.
For an office to be filled by election in a primary, except delegate to national convention, and for each office in a general election, the ballot label shall include, following all candidates for the office, a single numbered position with an arrow indicating the location to punch the ballot card to indicate a preference for a write-in candidate. The following instructions shall be printed beside the arrow in at least ten-point type. "TO WRITE-IN FOR THIS OFFICE: Punch here and put name of office and candidate on inside of secrecy envelope. DO NOT put name here."

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

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

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

(b) (1) The heading of the ballot, the arrangement of offices in columns, the spaces for marking votes, the printing of offices, instructions and candidates names shall conform as nearly as possible to that prescribed in this chapter for paper ballots, except that the secretary of state may prescribe necessary modifications to accommodate the tabulating system. Nonpar-
tisan elections for board of education and any question to be voted upon shall be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and such separate section shall constitute a separate ballot wherever a separate ballot is required under the provisions of this chapter.

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

(3) The arrangement of candidates within each office shall be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes shall be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” shall be printed directly under each line for write-ins. Such lines shall be opposite a position to mark the vote.

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

(d) In addition to the official ballots, the ballot commissioners shall provide all other material and
§3-4A-14. Election boards where electronic voting systems used.

One receiving board, as defined in article one of this chapter, shall conduct the election in each precinct in which electronic voting systems are used. The provisions of article one of this chapter relating to the qualifications, appointment, substitution, training and compensation of election officers and to the procedure for filling vacancies, shall apply.

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

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system where votes are to be recorded by means of perforating, there shall be provided for each polling place one instruction model for each vote recording device. Each such instruction model shall be constructed so as to provide a replica of a vote recording device, and shall contain the arrangement of the ballot labels, party columns or rows, office columns or rows, and questions. Fictitious names shall be inserted in the ballot labels of the models. Such models shall be located on the election officers' tables or in some other place in which the voter must pass to reach the vote recording device. Each voter, upon request, before voting, shall be offered instruction by the election officers in the operation of the vote recording device by use of the instruction model, and each voter shall be given ample opportunity to operate the model himself.

(b) The ballot commissioners shall also provide facsimile ballots or ballot labels, as may be appropriate, at least two of which, or complete sets of which, shall be posted on the walls of each polling place. The facsimile diagrams shall be exact diagrams of the ballots or ballot labels or paper ballots to the end that the voter may become familiar with the location of the parties, offices, candidates and questions as they
appear on the ballot to be used in his or her precinct.

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

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

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

(a) All proceedings at the central counting center shall be under the supervision of the clerk of the county commission, and shall be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit such observation. Those persons entitled to be present shall include all candidates whose names appear on the ballots being counted, or if such candidate be absent, a representative of such candidate who presents a written authorization signed by the candidate for the purpose, and two representatives of each political party on such ballot, who shall be chosen by the county executive committee chairperson. A reasonable number of the general public shall also be freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission shall, during the proceedings at the central counting center, be granted such admission for reasonable
periods of time for observation: Provided, That no person except those authorized for the purpose shall touch any ballot or ballot card or other official records and papers utilized in the election during such observation.

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

(c) Ballots shall be handled and tabulated and the write-in votes tallied according to procedures established by the secretary of state, subject to the following requirements:

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

(2) In systems using ballots marked with electronically sensible ink, ballots shall be removed from the boxes and stacked for the tabulator, which shall separate ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes shall be tallied. No write-in vote shall be
counted for an office unless the voter has marked the write-in voting position for that office and entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, a single punch or mark, as appropriate for the voting system, in the write-in location for that office shall be sufficient for all write-in choices. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot shall be duplicated or hand counted, with all votes for that office rejected;

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

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

(6) Official write-in candidates are those who have filed a write-in candidate’s certificate of announcement and have been certified according to the provisions of section four-a, article six.

(d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards shall be clearly labeled “duplicate” and shall bear a serial number which shall be recorded on the damaged or defective ballot card and on the replacement ballot card.
(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, shall, when certified by the clerk of the county commission, constitute the official preliminary return of each precinct or election district. Further, all such returns shall be printed on a precinct basis. Periodically throughout and upon completion of the count, the returns shall be open to the public by posting such returns as have been tabulated precinct by precinct at the central counting center. Upon completion of the canvass, the returns shall be posted in the same manner.

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

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

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

(a) The ballot commissioners of each county shall prepare a sample official primary ballot for each party, and, as the case may be, for the nonpartisan candidates to be voted for at the primary election, according to the provisions of articles four, four-a and five, chapter three, as appropriate to the voting system. If any ballot issue is to be voted on in the primary election, the ballot commissioners shall likewise prepare a sample official ballot for that issue according to the provisions of law authorizing such election.

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

(1) For counties in which two or more qualified
newspapers publish a daily newspaper, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish each sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

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

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages, and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and candi-
dates for each office which will appear on the primary
election ballot for each party, and, as the case may be,
for the nonpartisan candidates to be voted for at such
primary election. All information which appears on
the ballot, including instructions as to the number of
candidates for whom votes may be cast for the office,
any additional language which will appear on the
ballot below the name of the office, any identifying
information relating to the candidates, such as resi-
dence, magisterial district or presidential preference
and the ballot numbers of the candidates for punch
card systems, shall be included in the list, in the same
order in which it appears on the ballot. Following the
names of all candidates, the list shall include the full
title, text and voting positions of any issue to appear
on the ballot.

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

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

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

(3) The publication of the official list of candidates
for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "Official List of Candidates", the name of the county, the words "Primary Election", the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than fourteen point; (B) the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than ten point, and the residence information shall be printed in type no smaller than ten point; and

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

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

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election, and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is
completed.

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

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

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

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all challenged ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

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

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

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

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall
be placed in an envelope for the purpose, without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is, and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

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

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

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

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign four certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the secretary of state, giving the complete returns of the election at the polling place, which form shall include the following oath:
We, the undersigned commissioners and poll clerks of the primary election held at precinct No. _______ of _______ district of _______ County, W.Va., on the ________ day of __________, 19____, do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the _______________ party, and the same is as follows:

The election officers shall enter the name of each office and the full name of each candidate on the ballot, and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Three of such certificates of result of election, for each party, shall then be sealed in separately addressed envelopes, furnished for the purpose, and shall be disposed of by the precinct commissioners as follows: One of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the circuit court and two shall be delivered to the clerk of the county commission, who shall within forty-eight hours mail one of the sealed returns for each precinct by certified mail to the secretary of state. The one not sealed up shall be posted on the outside of the front door of the polling place.

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

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

Immediately after completion of the count, tabulation and the posting of the certificate of result of the primary election in each precinct, one of the commissioners or poll clerks of each party at such precinct, designated for that purpose, shall return to the clerk of the county commission the ballot boxes, registration
books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns, except they shall deliver to the clerk of the circuit court, at the same time, packages containing one tally sheet and one certificate of result of each political party prepared and sealed as provided in the next preceding section.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

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

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

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

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

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chap-
(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages, and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and nominees for each office which will appear on the general election ballot for each political party, or as independent nominees, and, as the case may be, for the nonpartisan candidates to be voted for at the general election.

(1) All information which appears on the ballot, including the names of parties for which a straight ticket may be cast, instructions relating to straight ticket voting, instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district, or presidential preference, and the ballot numbers of the candidates for punch card systems, shall be included in the list, in the order specified in subdivision (2) of this subsection. Following the names of all candidates, the list shall include
(2) The order of the straight ticket positions, offices and candidates for each office, and the manner of designating the parties, shall be as follows: (A) The straight ticket positions shall be designated “Straight (Party Name) Ticket”, with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be; (B) the offices shall be listed in the same order in which they appear on the ballot; (C) the candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be indicated by the one or two letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and (D) the candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot, and the candidate's affiliation shall be indicated as provided in paragraph (C) of this subdivision.

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

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the
general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words “Official List of Nominees and Issues”, the name of the county, the words “General Election” and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point; (B) the designation of the straight ticket party positions shall be printed in all capital letters in bold type no smaller than twelve point, and the title of the office shall be printed in bold type no smaller than twelve point, and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates and the initial within parenthesis designating the candidate’s affiliation shall be printed in all capital letters in bold type no smaller than ten point, and the residence information shall be printed in type no smaller than ten point; and

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

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

Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter shall file a write-in candidate’s certificate of
announcement and pay a filing fee as provided in this section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a political party nomination for any office or for election as delegate to national convention.

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

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

(2) The legal name of the candidate, and the first and last name by which the candidate may be identified in seeking the office;

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

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

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

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

The provisions of section eight-a, article five of this chapter relating to the waiver of filing fees shall apply, and the petition for waiver of the fee shall be due no later than the time of filing the certificate of announcement. The filing fees shall be distributed to the counties as provided in section eight, article five of this chapter.
(c) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

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

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

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

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

(e) Any eligible person who files a completed write-in candidate's certificate of announcement and the required filing fee with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate.
(1) The secretary of state shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate to the clerks of the circuit court of the appropriate counties.

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

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

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

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

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

(2) Mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system.

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

(1) Omit marking any straight ticket voting position and mark, in the manner appropriate to the voting system, the name of each candidate for whom he or
she desires to vote on whatever ticket the name may be; or

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

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

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

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

(e) The secretary of state may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or
any portion thereof, but the secretary of state shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

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

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

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

1 When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election, and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

14 In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall
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
section, any other ballot found in the ballot box shall 
be placed in the same envelope with unsigned ballots 
not counted, without unfolding the same, or allowing 
anyone to examine or know the contents thereof, and 
the number of excess ballots shall be recorded on the 
envelope;

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

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

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

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

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

17 Immediately after the completion of the tabulation 
and the posting of the certificate of result of the 
general election in each precinct, the ballots, registra-
tion books, poll books, tally sheets and other election 
supplies shall be sealed up and delivered to the clerks 
of the county commission and the circuit court as 
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

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

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 3:15 pm