

H. B. 3066

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2001 MAY -2 P 11: 54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

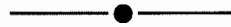


ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 3066

(By Delegates Manuel, Mahan, Coleman,
Craig, C. White and Smirl)



Passed April 14, 2001

In Effect September 1, 2001

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H. B. 3066

(BY DELEGATES MANUEL, MAHAN, COLEMAN,
CRAIG, C. WHITE AND SMIRL)

[Passed April 14, 2001; in effect September 1, 2001.]

AN ACT to amend and reenact sections five and twenty-one, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article two of said chapter; to amend and reenact sections one, two, two-a, two-b, three, four, five, five-a, five-b, five-c, seven, nine, ten, eleven and twelve, article three of said chapter; to amend and reenact sections one, two, six, nine, eleven, eleven-a, twelve, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section twenty-four-a; and to amend and reenact section twenty-three, article five of said chapter, all relating to election law reform; increasing authorized number of registered voters for certain precincts; removing limitations on the number of absentee paper

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ballots to be printed; expanding time period for voter registration; authorizing any registered voter to vote during in person absentee voting period; expanding absentee voting by mail and emergency absentee voting; transferring authority to conduct absentee voting from circuit clerks to county clerks and providing exceptions thereto; authorizing county commissions to designate area within county courthouse or annex for absentee voting; making certain technical revisions; expanding time period for absentee voting to Monday before election; clarifying time for absentee voting on Saturday before election; providing for contents of absentee ballots; providing for the acceptance of absentee ballots returned by mail or other express shipping service; providing for acceptance of absentee ballots received from certain uniform services and overseas voters; requiring that a set of emergency absentee ballot commissioners be persons of different registered party affiliations; prohibiting persons who have voted an absent voter's ballot from voting on election day; eliminating challenge to such ballot; clarifying authority to challenge certain ballots; prohibiting purchase of punch card voting system for any election subsequent to the general election in two thousand; providing for electronic voting systems by which votes may be recorded on a display screen by means of a stylus or by means of a touch; authorizing county commissions to share automatic tabulating equipment; and eliminating requirement that petition circulators be registered to vote in this state; clarifying requirement of both poll clerk signatures on absentee ballots.

Be it enacted by the Legislature of West Virginia:

That sections five and twenty-one, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article two of said chapter be amended and reenacted; that sections one, two, two-a, two-b, three, four, five, five-a, five-b, five-c, seven, nine, ten, eleven and twelve, article three of said chapter be amended and reenacted; that sections one, two, six, nine, eleven, eleven-a, twelve,

fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty, article four-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-four-a; and that section twenty-three, article five of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

10 Each precinct within any urban center shall contain not less
11 than three hundred nor more than one thousand five hundred
12 registered voters. Each precinct in a rural or less thickly settled
13 area shall contain not less than two hundred nor more than
14 seven hundred registered voters, unless upon a written finding
15 by the county commission that establishment of or retention of
16 a precinct of less than two hundred voters would prevent undue
17 hardship to the voters, the secretary of state determines that
18 such precinct be exempt from the two hundred voter minimum
19 limit. If, at any time the number of registered voters exceeds the
20 maximum number specified, the county commission shall
21 rearrange the precincts within the political division so that the
22 new precincts each contain a number of registered voters within
23 the designated limits. If a county commission fails to rearrange
24 the precincts as required, any qualified voter of the county may

25 apply for a writ of mandamus to compel the performance of this
26 duty: *Provided*, That when in the discretion of the county
27 commission, there is only one place convenient to vote within
28 the precinct and when there are more than seven hundred
29 registered voters within the existing precinct, the county
30 commission may designate two or more precincts with the same
31 geographic boundaries and which have voting places located
32 within the same building. The county commission shall
33 designate alphabetically the voters who will be eligible to vote
34 in each precinct so created. Each such precinct shall be operated
35 separately and independently with separate voting booths, ballot
36 boxes, election commissioners and clerks, and whenever
37 possible, in separate rooms. No two of such precincts may use
38 the same counting board.

39 In order to facilitate the conduct of local and special
40 elections and the use of election registration records therein,
41 precinct boundaries shall be established to coincide with the
42 boundaries of any municipality of the county and with the
43 wards or other geographical districts of the municipality except
44 in instances where found by the county commission to be
45 wholly impracticable so to do. Governing bodies of all munici-
46 palities shall provide accurate and current maps of their
47 boundaries to the clerk of any county commission of a county
48 in which any portion of the municipality is located.

49 The provisions of this section are subject to the provisions
50 of section twenty-eight, article four of this chapter relating to
51 the number of voters in precincts in which voting machines are
52 used.

53 The county commission shall keep available at all times
54 during business hours in the courthouse at a place convenient
55 for public inspection a map or maps of the county and munici-
56 palities with the current boundaries of all precincts.

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

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

5 (b) The persons who shall provide the ballots necessary for
6 the conduct of all other elections shall be:

7 (1) The secretary of state, for any statewide special election
8 ordered by the Legislature;

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

11 (3) The board of education, for any special levy or bond
12 election ordered by the board of education; or

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

20 (c) When paper ballots are used, the total number of regular
21 official ballots printed shall equal one and one-twentieth times
22 the number of registered voters eligible to vote that ballot. The
23 circuit clerk shall determine the number of absentee official
24 ballots.

25 (d) The number of regular official ballots packaged for each
26 precinct shall equal the number of registered voters of the
27 precinct. The remaining regular official ballots shall be pack-

28 aged and delivered to the circuit clerk, who shall retain them
29 unopened until they are required for an emergency. Each
30 package of ballots shall be wrapped and sealed in a manner
31 which will immediately make apparent any attempt to open,
32 alter or tamper with the ballots contained therein. Each package
33 of ballots for a precinct shall be clearly labeled, in a manner
34 which cannot be altered, with the county name, the precinct
35 number, and the number of ballots contained therein. If the
36 packaging material conceals the face of the ballot, a sample
37 ballot identical to the official ballots contained therein shall be
38 securely attached to the outside of the package, or, in the case
39 of ballot cards, the type of ballot shall be included in the label.

40 (e) All absentee ballots necessary for the conduct of
41 absentee voting in all voting systems shall be delivered to the
42 circuit clerk of the appropriate county not later than the forty-
43 second day before the election. All official ballots in paper
44 ballot systems shall be delivered to the circuit clerk of the
45 appropriate county not later than twenty-eight days before the
46 election.

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

ARTICLE 2. REGISTRATION OF VOTERS.

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

1 (a) Voter registration before an election shall close on the
2 twentieth day before the election, or on the first day thereafter
3 which is not a Saturday, Sunday or legal holiday.

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

9 (1) The application contains the required information as set
10 forth in subsection (c), section five of this article: *Provided*,
11 That incomplete applications for registration containing
12 information which are submitted within the required time may
13 be corrected within four days after the close of registration if
14 the applicant provides the required information; and

15 (2) The application is received by the appropriate clerk of
16 the county commission no later than the hour of the close of
17 registration or is otherwise submitted by the following dead-
18 lines:

19 (A) If mailed, the application shall be addressed to the
20 appropriate clerk of the county commission and postmarked by
21 the postal service no later than the date of the close of registra-
22 tion: *Provided*, That if the postmark is missing or illegible, the
23 application shall be presumed to have been mailed no later than
24 the close of registration if it is received by the appropriate clerk
25 of the county commission no later than the third day following
26 the close of registration;

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

30 (C) If accepted through a registration outreach program, the
31 application shall be received by the clerk, deputy clerk or
32 registrar no later than the close of registration; and

33 (3) The verification notice required by the provisions of
34 section sixteen of this article mailed to the voter at the residence
35 indicated on the application is not returned as undeliverable.

ARTICLE 3. VOTING BY ABSENTEES.

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

1 (a) Registered and other qualified voters of the county may
2 vote an absentee ballot pursuant to the provisions of this article.

3 (b) All registered and other qualified voters of the county
4 may vote an absentee ballot during the period of regular
5 absentee voting in person.

6 (c) Any registered voter or other qualified voter of the
7 county who will be absent from the county throughout the
8 regular period and available hours for voting in person because
9 of personal or business travel or employment and who will be
10 unable to receive an absentee ballot by mail at an address
11 outside the county during that absence may vote an absentee
12 ballot under special affidavit in person during the period of
13 special absentee voting in person.

14 (d) Registered voters and other qualified voters in the
15 county are authorized to vote an absentee ballot by mail in the
16 following circumstances:

17 (1) Any voter who is confined to a specific location and
18 prevented from voting in person throughout the period of voting
19 in person because of:

20 (A) Illness, injury or other medical reason;

21 (B) Physical disability or immobility due to extreme
22 advanced age; or

23 (C) Incarceration or home detention: *Provided*, That the
24 underlying conviction is not for a crime which is a felony or a
25 violation of section twelve, thirteen or sixteen, article nine of
26 this chapter, involving bribery in an election;

27 (2) Any voter who is absent from the county throughout the
28 period and available hours for voting in person because of:

29 (A) Personal or business travel;

30 (B) Attendance at a college, university or other place of
31 education or training; or

32 (C) Employment which because of hours worked and
33 distance from the county seat make voting in person impossi-
34 ble;

35 (3) Any voter absent from the county throughout the period
36 and available hours for voting in person and who is an absent
37 uniformed services voter or overseas voter, as defined by 42 U.
38 S. C. §1973, et seq., the Uniformed and Overseas Citizens
39 Absentee Voting Act of 1986, including members of the
40 uniformed services on active duty, members of the merchant
41 marine, spouses and dependents of those members on active
42 duty, and persons who reside outside the United States and are
43 qualified to vote in the last place in which the person was
44 domiciled before leaving the United States;

45 (4) Any voter who is required to dwell temporarily outside
46 the county and is absent from the county throughout the time
47 for voting in person because of:

48 (A) Serving as an elected or appointed federal or state
49 officer; or

50 (B) Serving in any other documented employment assign-
51 ment of specific duration of four years or less; and

52 (5) Any voter for whom the designated area for absentee
53 voting within the county courthouse or annex of the courthouse
54 and the voter's assigned polling place are inaccessible because
55 of his or her physical disability.

56 (e) Registered voters and other qualified voters in the
57 county may, in the following circumstances, vote an emergency
58 absentee ballot, subject to the availability of the services as
59 provided in this article:

60 (1) Any voter who is confined or expects to be confined in
61 a hospital or other duly licensed health care facility within the
62 county of residence or other authorized area, as provided in this
63 article, on the day of the election;

64 (2) Any voter who resides in a nursing home within the
65 county of residence and would be otherwise unable to vote in
66 person, providing the county commission has authorized the
67 services; and

68 (3) Any voter who is working as a replacement poll worker
69 and is assigned to a precinct out of his or her voting district, if
70 the assignment was made after the period for voting an absentee
71 ballot in person has expired.

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

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

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality, or
7 within a municipality when the municipal election is conducted
8 in conjunction with a county election, the clerk of the county
9 commission: *Provided*, That if the clerk of the county commis-
10 sion and the clerk of the circuit court jointly petition the county
11 commission setting forth their agreement that the clerk of the
12 circuit court should continue to supervise and conduct the
13 absentee voting, the county commission shall designate the

14 clerk of the circuit court to supervise and conduct the absentee
15 voting; or

16 (2) The municipal recorder or other officer authorized by
17 charter or ordinance provisions to conduct absentee voting, for
18 any election held entirely within the municipality, or in the case
19 of annexation elections, within the area affected. The terms
20 “clerk” or “circuit clerk” or “official designated to supervise
21 and conduct absentee voting” used elsewhere in this article
22 means municipal recorder or other officer in the case of
23 municipal elections.

24 (b) A person authorized and desiring to vote an absentee
25 ballot in any primary, general or special election is to make
26 application in writing in the proper form to the proper official
27 as follows:

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

42 (2) For any person authorized to vote an absentee ballot
43 under the provisions of 42 U. S. C. §1973, et seq., the Uni-
44 formed and Overseas Citizens Absentee Voting Act of 1986,
45 the completed application may be on the federal postcard

46 application for absentee ballot form issued under authority of
47 that act; or

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

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

1 Throughout the period of absentee voting in person, the
2 official designated to supervise and conduct absentee voting
3 shall make the following provisions for voting:

4 (1) The official shall provide a sufficient number of voting
5 booths or devices appropriate to the voting system at which
6 voters may prepare their ballots. The booths or devices are to be
7 in an area separate from but within clear view of the public
8 entrance area of the official's office or other area designated by
9 the county commission for absentee voting, and are to be
10 arranged to ensure the voter complete privacy in casting the
11 ballot.

12 (2) The official shall make the voting area secure from
13 interference with the voter and shall ensure that voted and
14 unvoted ballots are at all times secure from tampering. No
15 person, other than a person lawfully assisting the voter accord-
16 ing to the provisions of this chapter, may be permitted to come
17 within five feet of the voting booth while the voter is voting. No
18 person, other than the officials or employees of the official
19 designated to supervise and conduct absentee voting or mem-

20 bers of the board of ballot commissioners assigned to conduct
21 absentee voting, may enter the area or room set aside for voting.

22 (3) The official designated to supervise and conduct
23 absentee voting shall request the county commission designate
24 another area within the county courthouse or any annex of the
25 courthouse as a portion of the official's office for the purpose
26 of absentee voting in the following circumstances:

27 (A) If the voting area is not accessible to voters with
28 physical disabilities;

29 (B) If the voting area is not within clear view of the public
30 entrance of the office of the official designated to supervise and
31 conduct absentee voting;

32 (C) If the voting area is not accessible, except by way of a
33 metal detector; or

34 (D) If there is no suitable area for absentee voting within
35 the office.

36 Any designated area is subject to the same requirements as
37 the regular absentee voting area.

38 (4) No person may do any electioneering, nor may any
39 person display or distribute in any manner, or authorize the
40 display or distribution of, any literature, posters or material of
41 any kind which tends to influence the voting for or against any
42 candidate or any public question on the property of the county
43 courthouse or any annex facilities during the entire period of
44 regular in person absentee voting. The official designated to
45 supervise and conduct absentee voting is hereby authorized to
46 remove the material and to direct the sheriff of the county to
47 enforce the prohibition.

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

1 (a) Any person who is registered and otherwise qualified to
2 vote and who is permanently and totally physically disabled and
3 who is unable to vote in person at the polls in an election may
4 apply to the official designated to supervise and conduct
5 absentee voting for placement on the special absentee voting
6 list.

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

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

25 (d) The official designated to supervise and conduct
26 absentee voting shall mail an application for an absentee ballot
27 by mail to each person active on the special absentee voting list
28 not later than forty-two days before each election.

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

1 (a) Regular absentee voting in person is to be conducted
2 during regular business hours beginning on the fifteenth day

3 before the election and continuing through the Monday before
4 the election for any election held on a Tuesday, or continuing
5 through the day before the election for any election held on
6 another day. For any election held on a Tuesday, regular
7 absentee voting in person is to be available from nine a. m. to
8 five p. m. on the Saturday before the election.

9 (b) Special absentee voting in person for persons eligible to
10 vote an absentee ballot under the provisions of subsection (c),
11 section one of this article is to be conducted during regular
12 business hours in the office of the official designated to
13 supervise and conduct absentee voting beginning on the forty-
14 second day before the election and continuing until the first day
15 when regular absentee voting in person begins. Any person
16 seeking to vote absentee under this subsection is to first give an
17 affidavit, on a form prescribed by the secretary of state, stating
18 under oath the specific circumstances which prevent voting
19 absentee during the period for regular absentee voting in person
20 or by mail.

21 (c) Upon oral request, the official designated to supervise
22 and conduct absentee voting shall provide the voter with the
23 appropriate application for voting absentee in person, as
24 provided in this article. The voter shall complete and sign the
25 application in his or her own handwriting or, if the voter is
26 unable to complete the application because of illiteracy or
27 physical disability, the person assisting the voter and witnessing
28 the mark of the voter shall sign his or her name in the space
29 provided.

30 (d) Upon completion, the application is to be immediately
31 returned to the official designated to supervise and conduct
32 absentee voting, who shall determine:

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

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

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

42 (e) If the official designated to supervise and conduct
43 absentee voting determines the conditions provided in subsec-
44 tion (d) of this section have not been met, or has evidence that
45 any of the information contained in the application is not true,
46 the clerk shall challenge the voter's absentee ballot as provided
47 in this article.

48 (f) The official designated to supervise and conduct
49 absentee voting shall provide each person voting an absentee
50 ballot in person the following items to be printed as prescribed
51 by the secretary of state:

52 (1) One of each type of official absentee ballot the voter is
53 eligible to vote, prepared according to law;

54 (2) For all punch card and paper ballot voting and for
55 optical scan ballots voted after election supplies are delivered
56 to the election supply commissioner, one envelope, unsealed,
57 which may have no marks except the designation "Absent
58 Voter's Ballot Envelope No. 1" and printed instructions to the
59 voter;

60 (3) For all punch card and paper ballot voting and for
61 optical scan ballots voted after election supplies are delivered
62 to the election supply commissioner, one envelope, unsealed,
63 designated "Absent Voter's Ballot Envelope No. 2"; and

64 (4) For optical scan voting systems, ballots, a secrecy
65 sleeve and access to a ballot box secured by two locks with
66 keys kept by the president of the county commission and the
67 county clerk.

68 (g) The voter shall enter the voting booth alone and there
69 mark the ballot: *Provided*, That the voter may have assistance
70 in voting according to the provisions of section four of this
71 article. After the voter has voted the ballot or ballots, the punch
72 card and paper absentee voter shall: (1) Place the ballot or
73 ballots in envelope No. 1 and seal that envelope; (2) place the
74 sealed envelope No. 1 in envelope No. 2 and seal that envelope;
75 (3) complete and sign the forms on envelope No. 2; and (4)
76 return that envelope to the official designated to supervise and
77 conduct the absentee voting.

78 (h) Upon receipt of the sealed envelope, the official
79 designated to supervise and conduct the absentee voting shall:

80 (1) Enter onto the envelope any other required information;

81 (2) Enter the challenge, if any, to the ballot;

82 (3) Enter the required information into the permanent
83 record of persons applying for and voting an absentee ballot in
84 person; and

85 (4) Place the sealed envelope in a secure location in the
86 official's office, to remain until delivered to the polling place
87 or, in the case of a challenged ballot, to the board of canvassers.

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

1 (a) Any registered voter, who requires assistance to vote by
2 reason of blindness, disability, advanced age or inability to read
3 and write, may be given assistance by a person of the voter's
4 choice: *Provided*, That the assistance may not be given by the

5 voter's present or former employer or agent of that employer or
6 by the officer or agent of a labor union of which the voter is a
7 past or present member.

8 (b) Any voter who requests assistance in voting an absent
9 voter's ballot but who is determined by the official designated
10 to supervise and conduct absentee voting not to be qualified for
11 assistance under the provisions of this section and section
12 thirty-four, article one of this chapter may vote a challenged
13 absent voter's ballot with the assistance of any person autho-
14 rized to render assistance pursuant to this section. The official
15 designated to supervise and conduct absentee voting shall in
16 this case challenge the absent voter's ballot on the basis of his
17 or her determination that the voter is not qualified for assis-
18 tance.

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

30 (d) Before entering the voting booth or compartment, the
31 person who intends to provide a voter assistance in voting shall
32 make an affidavit, the form of which is to be prescribed by the
33 secretary of state, that he or she will not in any manner request,
34 or seek to persuade, or induce the voter to vote any particular
35 ticket or for any particular candidate or for or against any public
36 question, and that he or she will not keep or make any memo-
37 randum or entry of anything occurring within the voting booth

38 or compartment, and that he or she will not, directly or indi-
39 rectly, reveal to any person the name of any candidate voted for
40 by the voter, or which ticket he or she had voted, or how he or
41 she had voted on any public question, or anything occurring
42 within the voting booth or compartment or voting machine
43 booth, except when required pursuant to law to give testimony
44 as to the matter in a judicial proceeding.

45 (e) In accordance with instructions issued by the secretary
46 of state, the official designated to supervise and conduct
47 absentee voting shall provide a form entitled "List of Assisted
48 Voters", prescribed by the secretary of state, which list is to be
49 divided into two parts. Part A is to be entitled "Unchallenged
50 Assisted Voters" and Part B is to be entitled "Challenged
51 Assisted Voters." Under Part A the official designated to
52 supervise and conduct absentee voting shall enter the name of
53 each voter receiving unchallenged assistance in voting an
54 absent voter's ballot, the address of the voter assisted, the
55 nature of the disability which qualified the voter for assistance
56 in voting an absent voter's ballot, the name of the person
57 providing the voter with assistance in voting an absent voter's
58 ballot, the fact that the person rendering the assistance in voting
59 made and subscribed to the oath required by this section, and
60 the signature of the official designated to supervise and conduct
61 absentee voting certifying to the fact that he or she had deter-
62 mined that the voter who received assistance in voting an absent
63 voter's ballot was qualified to receive the assistance under the
64 provisions of this section. Under Part B the official designated
65 to supervise and conduct absentee voting shall enter the name
66 of each voter receiving challenged assistance in voting, the
67 address of the voter receiving challenged assistance, the reason
68 for the challenge, and the name of the person providing the
69 challenged voter with assistance in voting. At the close of the
70 period provided for voting an absent voter's ballot by personal
71 appearance, the official designated to supervise and conduct
72 absentee voting shall make and subscribe to an oath on the list

73 that the list is correct in all particulars; if no voter has been
74 assisted in voting an absent voter's ballot as provided in this
75 section, the official designated to supervise and conduct
76 absentee voting shall make and subscribe to an oath of that fact
77 on the list. The "List of Assisted Voters" is to be available for
78 public inspection in the office of the official designated to
79 supervise and conduct absentee voting during regular business
80 hours throughout the period provided for voting an absent
81 voter's ballot by personal appearance, and unless otherwise
82 directed by the secretary of state, the official shall transmit the
83 list, together with the affidavits, applications and absent voters'
84 ballots, to the precincts on election day.

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

94 (g) Any person making an affidavit required under the
95 provisions of this section who knowingly swears falsely in the
96 affidavit, or any person who counsels or advises, aids or abets
97 another in the commission of false swearing under this section,
98 is guilty of a misdemeanor and, upon conviction thereof, shall
99 be fined not more than one thousand dollars or confined in the
100 county or regional jail for a period of not more than one year,
101 or both .

102 (h) Any person who provides a voter assistance in voting an
103 absent voter's ballot in the office of the official designated to
104 supervise and conduct absentee voting who is not qualified or
105 permitted by this section to provide assistance is guilty of a

106 misdemeanor and, upon conviction thereof, shall be fined not
107 more than one thousand dollars or imprisoned in the county or
108 regional jail for a period of not more than one year, or both.

109 (i) Any official designated to supervise and conduct
110 absentee voting, election commissioner or poll clerk who
111 authorizes or allows a voter to receive or to have received
112 unchallenged assistance in voting an absent voter's ballot when
113 the voter is known to the official designated to supervise and
114 conduct absentee voting or election commissioner or poll clerk
115 not to be or have been authorized by the provisions of this
116 section to receive or to have received assistance in voting is
117 guilty of a misdemeanor and, upon conviction thereof, shall be
118 fined not more than one thousand dollars or imprisoned in the
119 county or regional jail for a period of not more than one year,
120 or both.

121 (j) The term "physical disability" as used in this section
122 means blindness or a degree of blindness as will prevent the
123 voter from seeing the names on the ballot, or amputation of
124 both hands, or a disability of both hands that neither can be
125 used to make cross marks on the absent voter's ballot.

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

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

11 (b) Completed applications for voting an absentee ballot by
12 mail is to be accepted when received by the official designated
13 to supervise and conduct absentee voting in person, by mail or
14 by facsimile, if the official has access to facsimile equipment,
15 within the following times:

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

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

28 (c) Upon acceptance of a completed application, the official
29 designated to supervise and conduct absentee voting shall
30 determine whether the following requirements have been met:

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

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

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

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

41 (5) The applicant is not making his or her first vote after
42 having registered by postcard registration or, if the applicant is
43 making his or her first vote after having registered by postcard
44 registration, the applicant is exempt from these requirements;
45 and

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

50 (d) If the official designated to supervise and conduct
51 absentee voting determines the required conditions have not
52 been met, or has evidence that any of the information contained
53 in the application is not true, the official shall give notice to the
54 voter that the voter's absentee ballot will be challenged as
55 provided in this article, and shall enter that challenge.

56 (e) Within one day after the official designated to supervise
57 and conduct absentee voting has both the completed application
58 and the ballot, the official shall mail to the voter at the address
59 given on the application the following items as prescribed by
60 the secretary of state:

61 (1) One of each type of official absentee ballot the voter is
62 eligible to vote, prepared according to law;

63 (2) One envelope, unsealed, which may have no marks
64 except the designation "Absent Voter's Ballot Envelope No. 1"
65 and printed instructions to the voter;

66 (3) One postage paid envelope, unsealed, designated
67 "Absent Voter's Ballot Envelope No. 2";

68 (4) Instructions for voting absentee by mail; and

69 (5) Any other supplies required for voting in the particular
70 voting system.

71 (f) The voter shall mark the ballot alone: *Provided*, That the
72 voter may have assistance in voting according to the provisions
73 of section six of this article. After the voter has voted the ballot
74 or ballots, the voter shall: (1) Place the ballot or ballots in
75 envelope no. 1 and seal that envelope; (2) place the sealed
76 envelope no. 1 in envelope no. 2 and seal that envelope; (3)
77 complete and sign the forms on envelope no. 2; and (4) return
78 that envelope to the official designated to supervise and conduct
79 absentee voting.

80 (g) Except as provided in subsection (h) of this section,
81 absentee ballots returned by United States mail or other express
82 shipping service are to be accepted if: (1) The ballot is received
83 by the official designated to supervise and conduct absentee
84 voting no later than the day after the election; or (2) the ballot
85 bears a postmark of the United States postal service dated no
86 later than election day and the ballot is received by the official
87 designated to supervise and conduct absentee voting no later
88 than the hour at which the board of canvassers convenes to
89 begin the canvass.

90 (h) Absentee ballots received through the United States
91 mail from persons eligible to vote an absentee ballot under the
92 provisions of subdivision (3), subsection (d), section one of this
93 article, relating to uniform services and overseas voters, are to
94 be accepted if the ballot is received by the official designated to
95 supervise and conduct absentee voting no later than the hour at
96 which the board of canvassers convenes to begin the canvas.

97 (i) Ballots received after the proper time which cannot be
98 accepted are to be placed unopened in an envelope marked for
99 the purpose and kept secure for twenty-two months following

100 the election, after which time they are to be destroyed without
101 being opened.

102 (j) Absentee ballots which are hand delivered are to be
103 accepted if they are received by the official designated to
104 supervise and conduct absentee voting no later than the day
105 preceding the election: *Provided*, That no person may hand
106 deliver more than two absentee ballots in any election, and any
107 person hand delivering an absentee ballot is required to certify
108 that he or she has not examined or altered the ballot. Any
109 person who makes a false certification violates the provisions
110 of article nine of this chapter and is subject to those provisions.

111 (k) Upon receipt of the sealed envelope, the official
112 designated to supervise and conduct absentee voting shall:

113 (1) Enter onto the envelope any other required information;

114 (2) Enter the challenge, if any, to the ballot;

115 (3) Enter the required information into the permanent
116 record of persons applying for and voting an absentee ballot in
117 person; and

118 (4) Place the sealed envelope in a secure location in the
119 official's office, to remain until delivered to the polling place
120 or, in the case of a challenged ballot, to the board of canvassers.

§3-3-5a. Processing federal postcard applications.

1 When a federal postcard registration and absentee ballot
2 request (FPCA), as defined in subdivision (2), subsection (b),
3 section two of this article, is received by the official designated
4 to supervise and conduct absentee voting, the official shall
5 examine the application and take the following steps:

6 (1) The official shall first enter the name of the applicant in
7 the permanent absentee voter's record for each election for

8 which a ballot is requested, make a photocopy of the applica-
9 tion for each election for which a ballot is requested and place
10 the separate copies in secure files to be maintained for use in
11 the various elections.

12 (2) The official designated to supervise and conduct
13 absentee voting shall determine if the applicant is registered to
14 vote at the residence address listed in the voting residence
15 section of the application. If the applicant is not registered, or
16 not registered at the address given, the official shall deliver the
17 original FPCA to the clerk of the county commission for
18 processing, and the clerk of the county commission shall
19 process the application as an application for registration and, if
20 the application is received after the close of voter registration
21 for the next succeeding election, the official shall challenge the
22 absentee ballot for that election.

23 (3) Except as provided in subdivision (2) of this section, the
24 federal application for an absentee ballot received from a
25 person qualified to use the application as provided in section
26 two of this article is to be processed as all other applications
27 and the ballot or ballots for each election for which ballots are
28 requested by the applicant is to be mailed to the voter on the
29 first day on which both the application and the ballot are
30 available.

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

1 (a) Notwithstanding any other provisions of this chapter, a
2 person qualified to vote an absentee ballot in accordance with
3 subdivision (3), subsection (d), section one of this article may
4 apply not earlier than the first day of January of an election year
5 for a special write-in absentee ballot for a primary or general
6 election, in conjunction with the application for a regular
7 absentee ballot or ballots. If the application is received after the

8 forty-ninth day preceding the election, the official designated to
9 supervise and conduct absentee voting shall honor only the
10 application for local, state and federal offices in general, special
11 and primary elections.

12 (b) The application for a special write-in absentee ballot
13 may be made on the federal postcard application form.

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

22 (d) Upon receipt of the application within the time required,
23 the official designated to supervise and conduct absentee voting
24 shall issue the special write-in absentee ballot which is to be the
25 same ballot issued under the provisions of 42 U. S. C. §1973, et
26 seq., the Uniformed and Overseas Citizens Absentee Voting
27 Act of 1986. The ballot is to permit the elector to vote in a
28 primary election by indicating his or her political party affilia-
29 tion and the names of the specific candidates for each office,
30 and in a general election by writing in a party preference for
31 each office, the names of specific candidates for each office, or
32 the name of the person whom the voter prefers for each office.

33 (e) When a special federal write-in ballot is received by the
34 official designated to supervise and conduct absentee voting
35 from a voter: (1) Who mailed the write-in ballot from any
36 location within the United States; (2) who did not apply for a
37 regular absentee ballot; (3) who did not apply for a regular
38 absentee ballot by mail; or (4) whose application for a regular

39 absentee ballot by mail was received less than thirty days before
40 the election, the write-in ballot may not be counted.

41 (f) Any write-in absentee ballot must be received by the
42 official designated to supervise and conduct absentee voting
43 prior to the close of the polls on election day or it may not be
44 counted.

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

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

13 (b) On or before the fifty-sixth day preceding the date on
14 which any election is to be held the official designated to
15 supervise and conduct absentee voting shall notify the county
16 commission of the number of sets of emergency absentee ballot
17 commissioners which he or she determines necessary to
18 perform the duties and functions pursuant to this section.

19 (c) A set of emergency absentee ballot commissioners at-
20 large shall consist of two persons with different political party
21 affiliations appointed by the county commission in accordance
22 with the procedure prescribed for the appointment of election
23 commissioners under the provisions of article one of this
24 chapter. Emergency absentee ballot commissioners have the

25 same qualifications and rights and take the same oath required
26 under the provisions of this chapter for commissioners of
27 elections. Emergency absentee ballot commissioners are to be
28 compensated for services and expenses in the same manner as
29 commissioners of election obtaining and delivering election
30 supplies under the provisions of section forty-four, article one
31 of this chapter.

32 (d) Upon request of the voter or a member of the voter's
33 immediate family or, when the county commission has adopted
34 a policy to provide emergency absentee voting services to
35 nursing home residents within the county, upon request of a
36 staff member of the nursing home, the official designated to
37 supervise and conduct absentee voting, upon receiving a proper
38 request for voting an emergency absentee ballot no earlier than
39 the seventh day next preceding the election and no later than
40 noon of election day, shall supply to the emergency absentee
41 ballot commissioners the application for voting an emergency
42 absentee ballot and the balloting materials. The emergency
43 absentee ballot application is to be prescribed by the secretary
44 of state and is to include the name, residence address and
45 political party affiliation of the voter, the date, location and
46 reason for confinement in the case of an emergency, and the
47 name of the attending physician.

48 (e) The application for an emergency absentee ballot is to
49 be signed by the person applying. If the person applying for an
50 emergency absentee ballot is unable to sign his or her applica-
51 tion because of illiteracy, he or she is to make his or her mark
52 on the signature line provided for an illiterate applicant which
53 mark is to be witnessed.

54 (f) A declaration is to be completed and signed by each of
55 the emergency absentee ballot commissioners, stating their
56 names, the date on which they appeared at the place of confine-

57 ment of the person applying for an emergency absentee ballot,
58 and the particulars of the confinement.

59 (g) At least one of the emergency absentee ballot commis-
60 sioners receiving the balloting materials shall sign a receipt
61 which is to be attached to the application form. Each of the
62 emergency absentee ballot commissioners shall deliver the
63 materials to the absent voter, await his or her completion of the
64 application and ballot and return the application and the ballot
65 to the official designated to supervise and conduct absentee
66 voting and, upon delivering the application and the voted ballot
67 to the official, sign an oath that no person other than the absent
68 voter voted the ballot. The application and the voted ballot are
69 to be returned to the official designated to supervise and
70 conduct absentee voting prior to the close of the polls on
71 election day. Any ballots received by the official after the time
72 that delivery may reasonably be made but before the closing of
73 the polls are to be delivered to the canvassing board along with
74 the absentee ballots challenged in accordance with the provi-
75 sions of section ten of this article.

76 (h) Upon receiving the application and emergency absentee
77 ballot, the official designated to supervise and conduct absentee
78 voting shall ascertain whether the application is complete,
79 whether the voter appears to be eligible to vote an emergency
80 absentee ballot, and whether the voter is properly registered to
81 vote with the office of the clerk of the county commission. If
82 the voter is found to be properly registered in the precinct
83 shown on the application, the ballot is to be delivered to the
84 precinct election commissioner pursuant to section seven of this
85 article. If the voter is found not to be registered or is otherwise
86 ineligible to vote an emergency ballot, then the ballot is to be
87 challenged for the appropriate reason provided for in section ten
88 of this article.

89 (i) If either or both of the emergency absentee ballot
90 commissioners should refuse to sign any application for voting
91 an emergency absentee ballot, then the voter may vote as an
92 emergency absentee and the ballot is to be challenged in
93 accordance with the provisions of section ten of this article, in
94 addition to those absentee ballots subject to challenge as
95 provided in that section.

96 (j) Any voter who receives assistance in voting an emer-
97 gency absentee ballot shall comply with the provisions of
98 section six of this article. Any other provisions of this chapter
99 relating to absentee ballots not altered by the provisions of this
100 section are to govern the treatment of emergency absentee
101 ballots.

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

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

10 (b) For optical scan voting systems, all ballots voted before
11 the precinct supplies are delivered to the precinct supply
12 commissioner are to be deposited in the ballot box. The ballots
13 deposited in the ballot box shall be counted and merged with
14 the election day ballots at the counting center on election night.

15 (c) Absentee ballots received after the election commis-
16 sioner has picked up the official ballots and other election
17 supplies for the precinct are to be delivered to the election
18 commissioner of the precinct who has been designated pursuant

19 to section twenty-four, article one of this chapter, by the official
20 designated to supervise and conduct absentee voting in person,
21 or by messenger, before the closing of the polls, provided the
22 ballots are received by the official in time to make the delivery.
23 Any ballots received by the official after the time that delivery
24 may reasonably be made but within the time required as
25 provided in subsection (g), section five of this article, are to be
26 delivered to the board of canvassers along with the challenged
27 ballots.

**§3-3-9. Voting in person after having received and after having
voted an absent voter's ballot.**

1 (a) Any person who has applied for and received an absent
2 voter's ballot but has not voted and returned the same to the
3 official designated to supervise and conduct absentee voting
4 may vote in person at the polls on election day provided he or
5 she returns the absent voter's ballot to the election commission-
6 ers at the polling place. Upon return of the absent voter's ballot
7 the election commissioners shall destroy the ballot in the
8 presence of the voter, and one of the poll clerks shall make a
9 notation of this fact as directed by instructions issued by the
10 secretary of state. In the event the person does not return the
11 absent voter's ballot, he or she will have his or her vote
12 challenged by one or more of the election commissioners or
13 poll clerks.

14 (b) No person who has voted an absent voter's ballot may
15 vote in person on the day of the election.

§3-3-10. Challenging of absent voters' ballots.

1 (a) The official designated to supervise and conduct
2 absentee voting may challenge an absent voter's ballot on any
3 of the following grounds:

4 (1) That the application for an absent voter's ballot has not
5 been completed as required by law;

6 (2) That any statement or declaration contained in the
7 application for an absent voter's ballot is not true;

8 (3) That the applicant for an absent voter's ballot is not
9 registered to vote in the precinct of his or her residence as
10 provided by law;

11 (4) That the person voting an absent voter's ballot by
12 personal appearance in his or her office had assistance in voting
13 the ballot when the person was not qualified for voting assis-
14 tance because: (A) The affidavit of the person who received
15 assistance does not indicate a legally sufficient reason for
16 assistance; or (B) the person who received assistance did not
17 make an affidavit as required by this article; or (C) the person
18 who received assistance is not so illiterate as to have been
19 unable to read the names on the ballot or that he is not so
20 physically disabled as to have been unable to see or mark the
21 absent voter's ballot;

22 (5) That the person who voted an absent voter's ballot by
23 mail and received assistance in voting the ballot was not
24 qualified under the provisions of this article for assistance; and

25 (6) That the person has voted absentee by mail as a result
26 of being out of the county more than four consecutive times:
27 *Provided*, That the determination as to whether the person has
28 voted more than four consecutive times does not apply if the
29 person is a citizen residing out of the United States; or a
30 member, spouse or dependent of a member serving in the
31 uniformed services; or a college student living outside of his or
32 her home county.

33 (b) Any one or more of the election commissioners or poll
34 clerks in a precinct may challenge an absent voter's ballot on
35 any of the following grounds:

36 (1) That the application for an absent voter's ballot was not
37 completed as required by law;

38 (2) That any statement or declaration contained in the
39 application for an absent voter's ballot is not true;

40 (3) That the person voting an absent voter's ballot is not
41 registered to vote in the precinct of his or her residence as
42 provided by law;

43 (4) That the signatures of the person voting an absent
44 voter's ballot as they appear on his or her registration record,
45 his or her application for an absent voter's ballot, and the absent
46 voter's ballot envelope are not in the same handwriting;

47 (5) That the absent voter's ballot does not have the official
48 seal of the clerk of the circuit court and all signatures of
49 members of the board of ballot commissioners on it;

50 (6) That the person voting an absent voter's ballot by
51 personal appearance had assistance in voting the ballot when
52 the person was not qualified for assistance because: (A) The
53 affidavit of the person who received assistance does not
54 indicate a legally sufficient reason for assistance; or (B) the
55 person who received assistance did not make an affidavit as
56 required by this article; or (C) the person who received assis-
57 tance is not so illiterate as to have been unable to read the
58 names on the ballot or that he or she was not so physically
59 disabled as to have been unable to see or mark the absent
60 voter's ballot;

61 (7) That the person voted an absent voter's ballot by mail
62 and received assistance in voting the ballot when not qualified
63 under the provisions of this article for assistance;

64 (8) That the person who voted the absent voter's ballot
65 voted in person at the polls on election day;

66 (9) That the person voted an absent voter's ballot under
67 authority of subdivision (3), subsection (d), section one of this
68 article and is or was present in the county in which he is
69 registered to vote between the opening and closing of the polls
70 on election day;

71 (10) That the person who voted an absent voter's ballot had
72 died before election day; and

73 (11) On any other ground or for any reason on which or for
74 which the ballot of a voter voting in person at the polls on
75 election day may be challenged.

76 No challenge may be made to any absent voter ballot if the
77 voter was registered and qualified to vote pursuant to the
78 provisions of subsection (b), section one of this article.

79 (c) Forms for, and the manner of, challenging an absent
80 voter's ballot under the provisions of this article are to be
81 prescribed by the secretary of state.

82 (d) Absent voters' ballots challenged by the official
83 designated to supervise and conduct absentee voting under the
84 provisions of this article are to be transmitted by the official
85 directly to the county commission sitting as a board of canvass-
86 ers. The absent voters' ballots challenged by the election
87 commissioners and poll clerks under the provisions of this
88 article may not be counted by the election officials but are to be
89 transmitted by them to the county commission sitting as a board
90 of canvassers. Action by the board of canvassers on challenged

91 absent voters' ballots is to be governed by the provisions of
92 section forty-one, article one of this chapter.

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

1 (a) Absent voters' ballots are to be in all respects like other
2 ballots. Not less than seventy days before the date on which any
3 primary, general or special election is to be held, unless a lesser
4 number of days is provided for in any specific election law in
5 which case the lesser number of days applies, the clerks of the
6 circuit courts of the several counties shall estimate and deter-
7 mine the number of absent voters' ballots of all kinds which
8 will be required in their respective counties for that election.
9 The ballots for the election of all officers, or the ratification,
10 acceptance or rejection of any measure, proposition or other
11 public question to be voted on by the voters, are to be prepared
12 and printed under the direction of the board of ballot commis-
13 sioners constituted as provided in article one of this chapter.
14 The several county boards of ballot commissioners shall
15 prepare and have printed, in the number they may determine,
16 absent voters' ballots that are to be printed under their direc-
17 tions as provided in this chapter, and those ballots are to be
18 delivered to the clerk of the circuit court of the county not less
19 than forty-two days before the day of the election at which they
20 are to be used. Before any ballot is mailed or delivered, the
21 clerk of the circuit court shall affix his or her official seal and
22 he or she and the other members of the board of ballot commis-
23 sioners shall place their signatures near the lower left-hand
24 corner on the back of the ballot. The clerks of the circuit courts
25 are authorized to have their signatures affixed by a facsimile
26 printed on the back of absentee ballots, by a facsimile signature
27 stamp, or by signing their original signatures. An absent voter's
28 ballot not containing the seal and signatures is invalid and is
29 subject to challenge by any election commissioner or poll clerk.

30 (b) The official designated to supervise and conduct
31 absentee voting shall be primarily responsible for the mailing,
32 receiving, delivering and otherwise handling of all absent
33 voters' ballots. He or she shall keep a record, as may be
34 prescribed by the secretary of state, of all ballots so delivered
35 for the purpose of absentee voting, as well as all ballots, if any,
36 marked before him or her, and shall deliver to the commissioner
37 of election to whom the ballots for the precinct are delivered
38 and at the time of the delivery of those ballots a certificate
39 stating the number of ballots delivered or mailed to absent
40 voters, and those marked before him or her, if any, and the
41 names of the voters to whom those ballots have been delivered
42 or mailed, or by whom they have been marked, if marked
43 before him or her.

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

1 (a) The secretary of state shall make, amend and rescind
2 rules, regulations, orders and instructions, and prescribe forms,
3 lists and records, and consolidation of forms, lists and records
4 as may be necessary to carry out the policy of the Legislature
5 as contained in this article and as may be necessary to provide
6 for an effective, efficient and orderly administration of the
7 absentee voter law of this state. In the case of West Virginia
8 voters residing outside the continental United States, the
9 secretary of state shall promulgate rules and regulations
10 necessary to implement procedures relating to absentee voters
11 contained in 42 U. S. C. §1973, et seq., the Uniformed and
12 Overseas Citizens Absentee Voting Act of 1986 and shall
13 forward a copy of the act to all officials designated to supervise
14 and conduct absentee voting before the first day of January of
15 each even-numbered year.

16 (b) The secretary of state may establish special procedures
17 to allow absentee voting for those categories of registered

18 voters who, because of special circumstances, would otherwise
19 be unable to vote in the election.

20 (c) It is the duty of all officials designated to supervise and
21 conduct absentee voting, other county officers, and all election
22 commissioners and poll clerks to abide by the rules, regulations,
23 orders and instructions and to use the forms, lists and records
24 which may include or relate to:

25 (1) The consolidation of the two application forms provided
26 for in this article into one form;

27 (2) The size and form of absent voter's ballot envelope nos.
28 1 and 2, and carrier envelopes;

29 (3) The information which is to be placed on absent voter's
30 ballot envelope no. 1 and the forms and information which are
31 to be placed on absent voter's ballot envelope no. 2;

32 (4) The forms and manner of making the challenges to
33 absentee ballots authorized by this article;

34 (5) The forms of, information to be contained in, and
35 consolidation of lists and records pertaining to applications for,
36 and voting of, absentee ballots and assistance to persons voting
37 absentee ballots;

38 (6) The supplying of application forms, envelopes, chal-
39 lenge forms, lists, records and other forms; and

40 (7) The keeping and security of voted absentee ballots in
41 the office of the official designated to supervise and conduct
42 absentee voting.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-1. Use of electronic voting systems authorized.

1 (a) Electronic voting systems may be used for the purpose
2 of registering or recording and computing votes cast in general,
3 special and primary elections: *Provided*, That the use thereof
4 shall be governed by the terms, conditions, restrictions and
5 limitations imposed by this article.

6 (b) Notwithstanding any other provision of this code, no
7 electronic voting system which utilizes a ballot or any vote
8 recording device by which votes are cast by means of perforat-
9 ing may be purchased for use in any election conducted
10 subsequent to the general election in the year two thousand.

§3-4A-2. Definitions.

1 As used in this article, unless otherwise specified:

2 (a) "Automatic tabulating equipment" means all apparatus
3 necessary to electronically count votes recorded on ballots and
4 tabulate the results;

5 (b) "Ballot" means a tabulating card or paper on which
6 votes may be recorded by means of perforating or marking with
7 electronically sensible ink or pencil or a screen upon which
8 votes may be recorded by means of a stylus or by means of
9 touch;

10 (c) "Ballot labels" means the cards, papers, booklet, pages
11 or other material showing the names of offices and candidates
12 and the statements of measures to be voted on, which are placed
13 on the vote recording device used for recording votes by means
14 of perforating, or which are displayed on a screen upon which
15 votes may be recorded by means of a stylus or by means of
16 touch;

17 (d) "Central counting center" means a facility equipped
18 with suitable and necessary automatic tabulating equipment,

19 selected by the county commission, for the electronic counting
20 of votes recorded on ballots;

21 (e) "Electronic voting system" is a means of conducting an
22 election whereby votes are recorded on ballots by means of an
23 electronically sensible marking ink, by perforating or are
24 recorded on equipment that registers votes on a computer disc,
25 or by touching a screen with a stylus or by means of touch, and
26 votes are subsequently counted by automatic tabulating
27 equipment at the central counting center;

28 (f) "Program deck" means the actual punch card deck or
29 decks, or a computer program disk, diskette, tape or other
30 programming media, containing the program for counting and
31 tabulating the votes, including the "application program deck";

32 (g) "Application program deck" means the punch card deck
33 or equivalent capacity in other program medias as provided,
34 containing specific options used and necessary to modify the
35 program of general application, to conduct and tabulate a
36 specific election according to applicable law;

37 (h) "Standard validation test deck" means a group of ballots
38 wherein all voting possibilities which can occur in an election
39 are represented; and

40 (i) "Vote recording device" means equipment in which
41 ballot labels and ballots are placed to allow a voter to record his
42 or her vote by perforating or equipment with a screen upon
43 which votes may be recorded by means of a stylus or by means
44 of touch.

**§3-4A-6. Acquisition of vote recording devices by purchase or
lease; acquisition of use of automatic tabulating
equipment; counting centers.**

1 (a) A county commission may acquire vote recording
2 devices by any one or any combination of the following
3 methods:

4 (1) By purchasing the same and paying the purchase price
5 in cash from funds available from the maximum general levy or
6 from any other lawful source; and

7 (2) By leasing the same under written contract of lease and
8 paying the rentals in cash from funds available from the
9 maximum general levy or any other lawful source.

10 (b) A county commission may acquire the use of automatic
11 tabulating equipment by leasing or renting the same under
12 written contract of lease or rental and paying the rentals
13 therefor in cash from funds available from the maximum
14 general levy or other lawful source.

15 (c) A county commission may enter into an agreement with
16 another county commission to share automatic tabulating
17 equipment if the automatic tabulating equipment may be
18 transported to the appropriate central counting centers. No
19 ballots may be transported for counting in any county other than
20 the county in which the votes were cast.

21 (d) A county commission is authorized to accept as a gift
22 the use of suitable automatic tabulating equipment.

23 (e) The county commission may also secure a counting
24 center.

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

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

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting, or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that no person, except in
8 instances of open voting, as provided for in this section, can see
9 or know for whom any voter has voted or is voting;

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

20 (4) It permits each voter to deposit, write in, affix upon a
21 ballot, card, envelope or other medium to be provided for that
22 purpose, ballots containing the names of persons for whom he
23 or she desires to vote whose names do not appear upon the
24 ballots or ballot labels;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots or
27 ballot labels up to the time when his or her ballot is deposited
28 in the ballot box or his or her ballot is cast by electronic means;

29 (6) It contains a program deck consisting of cards that are
30 sequentially numbered, or consisting of a computer program
31 disk, diskette, tape or other programming media containing
32 sequentially numbered program instructions and coded or
33 otherwise protected from tampering or substitution of the media
34 or program instructions by unauthorized persons, and capable
35 of tabulating all votes cast in each election;

36 (7) It contains two standard validation test decks approved
37 as to form and testing capabilities by the state election commis-
38 sion;

39 (8) It correctly records and counts accurately all votes cast
40 for each candidate and for and against each question appearing
41 upon the ballots or ballot labels;

42 (9) It permits each voter at any election other than primary
43 elections, by one mark or punch to vote a straight party ticket,
44 as provided in section five, article six of this chapter.

45 (10) It permits each voter in primary elections to vote only
46 for the candidates of the party for which he or she is legally
47 permitted to vote, and precludes him or her from voting for any
48 candidate seeking nomination by any other political party,
49 permits him or her to vote for the candidates, if any, for
50 nonpartisan nomination or election, and permits him or her to
51 vote on public questions;

52 (11) It, where applicable, is provided with means for
53 sealing or electronically securing the vote recording device to
54 prevent its use and to prevent tampering with ballot labels, both
55 before the polls are open or before the operation of the vote
56 recording device for an election is begun and immediately after
57 the polls are closed or after the operation of the vote recording
58 device for an election is completed;

59 (12) It has the capacity to contain the names of candidates
60 constituting the tickets of at least nine political parties, and
61 accommodates the wording of at least fifteen questions;

62 (13) Where vote recording devices are used, they:

63 (A) Are durably constructed of material of good quality and
64 in a workmanlike manner and in a form which makes it safely
65 transportable;

66 (B) Are so constructed with frames for the placing of ballot
67 labels that the labels upon which are printed the names of
68 candidates and their respective parties, titles of offices, and
69 wording of questions are reasonably protected from mutilation,
70 disfigurement or disarrangement, or are constructed to ensure
71 that the screens upon which appear the names of the candidates
72 and their respective parties, titles of offices, and wording of
73 questions are reasonably protected from any modification;

74 (C) Bear a number that will identify it or distinguish it from
75 any other machine;

76 (D) Are constructed to ensure that a voter may easily learn
77 the method of operating it and may expeditiously cast his or her
78 vote for all candidates of his or her choice, and upon any public
79 question;

80 (E) Are accompanied by a mechanically or electronically
81 operated instruction model which shows the arrangement of
82 ballot labels, party columns or rows, and questions;

83 (F) For electronic voting systems that utilize a screen upon
84 which votes may be recorded by means of a stylus or by means
85 of touch, are constructed to provide for the direct electronic
86 recording and tabulating of votes cast in a system specifically
87 designed and engineered for the election application;

88 (G) For electronic voting systems that utilize a screen upon
89 which votes may be recorded by means of a stylus or by means
90 of touch, are constructed to prevent any voter from voting for
91 more than the allowable number of candidates for any office, to
92 include an audible or visual signal, or both, warning any voter
93 who attempts to vote for more than the allowable number of
94 candidates for any office or who attempts to cast his or her
95 ballot prior to its completion, and are constructed to include a
96 visual or audible confirmation, or both, to the voter upon
97 completion and casting of the ballot;

98 (H) For electronic voting systems that utilize a screen upon
99 which votes may be recorded by means of a stylus or by means
100 of touch, are constructed to present the entire ballot to the voter,
101 in a series of sequential pages, and to ensure that the voter sees
102 all of the ballot options on all pages before completing his or
103 her vote and to allow the voter to review and change all ballot
104 choices prior to completing and casting his or her ballot;

105 (I) For electronic voting systems that utilize a screen upon
106 which votes may be recorded by means of a stylus or by means
107 of touch, are constructed to allow election commissioners to
108 spoil a ballot where a voter fails to properly cast his or her
109 ballot, has departed the polling place, and cannot be recalled by
110 a poll clerk to complete his or her ballot;

111 (J) For electronic voting systems that utilize a screen upon
112 which votes may be recorded by means of a stylus or by means
113 of touch, are constructed to allow election commissioners, poll
114 clerks, or both, to designate, mark or otherwise record chal-
115 lenged ballots;

116 (K) For electronic voting systems that utilize a screen upon
117 which votes may be recorded by means of a stylus or by means
118 of touch, consist of devices which are independent,
119 nonnetworked voting systems in which each vote is recorded
120 and retained within each device's internal nonvolatile electronic
121 memory, and contain an internal security, the absence of which
122 prevents substitution of any other device;

123 (L) For electronic voting systems that utilize a screen upon
124 which votes may be recorded by means of a stylus or by means
125 of touch, store each vote in no fewer than three separate,
126 independent, nonvolatile electronic memory components, and
127 that each device contains comprehensive diagnostics to ensure
128 that failures do not go undetected;

129 (M) For electronic voting systems that utilize a screen upon
130 which votes may be recorded by means of a stylus or by means
131 of touch, contain a unique, embedded internal serial number for
132 auditing purposes for each device used to activate, retain and
133 record votes;

134 (N) For electronic voting systems that utilize a screen upon
135 which votes may be recorded by means of a stylus or by means
136 of touch, are constructed to record all preelection, election and
137 postelection activities, including all ballot images and system
138 anomalies, in each device's internal electronic memory, and are
139 to be accessible in electronic or printed form;

140 (O) For electronic voting systems that utilize a screen upon
141 which votes may be recorded by means of a stylus or by means
142 of touch, are constructed with a battery backup system in each
143 device to, at a minimum, prevent the loss of any votes, as well
144 as all preelection, election and postelection activities, including
145 all ballot images and system anomalies, stored in the device's
146 internal electronic memory, and to allow voting to continue for
147 two hours of uninterrupted operation in case of an electrical
148 power failure; and

149 (P) For electronic voting systems that utilize a screen upon
150 which votes may be recorded by means of a stylus or by means
151 of touch, are constructed to prevent the loss of any votes, as
152 well as all preelection, election and postelection activities,
153 including all ballot images and system anomalies, stored in
154 each device's internal electronic memory, even in case of an
155 electrical and battery power failure.

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

1 (a) The ballot commissioners of any county in which an
2 electronic voting system utilizing voting devices for registering

3 the voter's choices is to be used in any election shall cause to be
4 printed for use in the election the ballot cards and ballot labels,
5 as appropriate, for the electronic voting system, or shall cause
6 to be printed a reasonable facsimile of the screens as they
7 appear to the voter for the electronic voting system.

8 (1) The ballot labels are to be clearly printed in black ink on
9 clear white material of a size as will fit the vote recording
10 devices or as will be displayed on the screens as they appear to
11 the voter for the electronic voting system. Arrows are to be
12 printed on the ballot labels to indicate the place to punch the
13 ballot card, which may be to the right or left of the name or
14 proposition, or boxes are to be printed as they appear to the
15 voter on the screens for the electronic voting system.

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

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

30 (4) For the general election, the heading of the ballot, the
31 straight ticket positions, the instructions to straight ticket voters,
32 the type faces, the names and arrangement of offices and the
33 printing of names and the arrangement of candidates within
34 each office are to conform as nearly as possible to the provi-

35 sions of section two, article six of this chapter, except as
36 otherwise provided in this article. Except for electronic voting
37 systems that utilize a screen upon which votes may be recorded
38 by stylus or by means of touch, the secretary of state shall
39 assign uniform numbers to be used by all counties using
40 electronic voting for all straight party tickets and for all
41 candidates running for offices to be voted upon by all of the
42 voters of the state. After taking into account the numbers so
43 assigned by the secretary of state, the clerk of the circuit court
44 shall arrange the offices and the candidates within each office
45 as prescribed by section two, article six of this chapter, and
46 shall assign the appropriate number for each candidate. When
47 one candidate is to be elected and only two parties are on the
48 ballot, the ballot label and the arrangement of the ballot are to
49 conform as nearly as practical to the following example:

50	-----	-----
51	Democratic Ticket	Republican Ticket
52	-----	-----
53	For Governor	For Governor
54	(Vote for One)	(Vote for One)
55	-----	-----
56	(candidate's name) 10 —	
57	(residence, county)	
58		— 11 (candidate's name)
59		(residence, county)

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

63	-----
64	For Governor
65	(Vote for One)
66	-----

67 Democrat (candidate's name) 10 —
 68 (residence, county)

69 Republican (candidate's name) 11 —
 70 (residence, county)

71 People's (candidate's name) 12 —
 72 (residence, county)

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

76	-----	-----
77	Democratic Ticket	Republican Ticket
78	-----	-----
79	For House of Delegates	For House of Delegates
80	First Delegate District	First Delegate District
81	(Vote For Not More Than Two)	(Vote For Not More Than Two)
82	[If you marked a straight	[If you marked a straight
83	ticket and you mark any	ticket and you mark any
84	candidate in a different	candidate in a different
85	party for this office, you	party for this office, you
86	must mark all your choices	must mark all your choices
87	because your straight ticket	because your straight ticket
88	vote will not be counted	vote will not be counted
89	for this office.]	for this office.]
90	-----	-----
91	(candidate's name) 69 —	
92	(residence, county)	
93		— 70 (candidate's name)
94		(residence, county)
95	(candidate's name) 71 —	
96	(residence, county)	
97		— 72 (candidate's name)
98		(residence, county)

99 (5) Any nonpartisan office, including board of education
100 and any question to be voted on is to be placed or displayed on
101 a separate page or otherwise separated from the partisan ballots,
102 constituting a separate ballot where required.

103 (6) In elections in which voters are authorized to vote for
104 official write-in candidates whose names do not appear on the
105 ballot label, there are to be provided, as described in this
106 section, a write-in position on the ballot label for the voter to
107 indicate his or her preference for a write-in candidate and a
108 form on the inside of the secrecy envelope to permit a voter to
109 enter the title of the office and the names of official write-in
110 candidates for whom he or she wishes to vote: *Provided*, That
111 if an electronic voting system that utilizes a screen upon which
112 votes may be recorded by means of a stylus or by means of
113 touch is used, the devices are to provide an alpha-numerical
114 screen which allows the voter to, by use of a stylus or by touch,
115 to enter the name of the write-in candidate for whom he or she
116 wishes to vote.

117 For an office to be filled by election in a primary, except
118 delegate to national convention, and for each office in a general
119 election, the ballot label is to include, following all candidates
120 for the office, a single numbered position with an arrow or box
121 indicating the location to punch the ballot card or touch the
122 screen to indicate a preference for a write-in candidate. The
123 following instructions are to be printed beside the arrow in at
124 least ten point type. "TO WRITE-IN FOR THIS OFFICE:
125 Punch here and put name of office and candidate on inside of
126 secrecy envelope. DO NOT put name here," or, if an electronic
127 voting system is used with screens upon which votes may be
128 recorded by means of a stylus or by means of touch, the word
129 "WRITE-IN" will appear beside a box indicating the location
130 for the voter to touch the screen and, when activated, another
131 screen is to appear allowing the voter to enter a write-in
132 candidate.

133 (7) In addition to all other equipment and supplies required
134 by the provisions of this article, the ballot commissioners shall
135 cause to be printed a supply of instruction cards, sample ballots,
136 facsimile diagrams of the vote recording device ballot and
137 official printed ballots or ballot cards adequate for the orderly
138 conduct of the election in each precinct in their county.

139 (b) The ballot commissioners shall provide all other
140 materials and equipment necessary to the conduct of the
141 election, including voting booths, appropriate facilities for the
142 reception and safekeeping of ballot cards, the ballots of
143 absentee and of challenged voters and of "independent" voters
144 who shall, in primary elections, cast their votes on nonpartisan
145 candidates and public questions submitted to the voters.

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

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

7 (b) (1) The heading of the ballot, the arrangement of offices
8 in columns, the spaces for marking votes, the printing of
9 offices, instructions and candidates names are to conform as
10 nearly as possible to that prescribed in this chapter for paper
11 ballots, except that the secretary of state may prescribe neces-
12 sary modifications to accommodate the tabulating system.
13 Nonpartisan elections for board of education and any question
14 to be voted upon are to be separated from the partisan ballot and
15 separately headed in display type with a title clearly identifying
16 the purpose of the election, and constituting a separate ballot

17 wherever a separate ballot is required under the provisions of
18 this chapter.

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

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

37 (c) Except for electronic voting systems that utilize screens
38 upon which votes may be recorded by means of a stylus or by
39 means of touch, the primary election ballots are to be printed in
40 the color of ink specified by the secretary of state for the
41 various political parties, and the general election ballot is to be
42 printed in black ink. For electronic voting systems that utilize
43 screens upon which votes may be recorded by means of a stylus
44 or by means of touch, the primary ballots and the general
45 election ballot are to be printed in black ink. All ballots are to
46 be printed, where applicable, on white paper suitable for
47 automatic tabulation and are to contain a perforated stub at the
48 top or bottom of the ballot which is to be numbered sequentially
49 in the same manner as provided in this article for ballots upon

50 which votes are recorded by means of perforating or is to be
51 displayed on the screens of the electronic voting system upon
52 which votes are recorded by means of a stylus or touch. The
53 number of ballots printed and the packaging of ballots for the
54 precincts are to conform to the requirements for paper ballots
55 as provided in this chapter.

56 (d) In addition to the official ballots, the ballot commission-
57 ers shall provide all other materials and equipment necessary to
58 the proper conduct of the election.

**§3-4A-12. Ballot label arrangement in vote recording devices;
sealing of devices; record of identifying numbers.**

1 In counties using electronic voting systems utilizing vote
2 recording devices:

3 (1) The number of ballot labels printed, where applicable,
4 are to equal one and one-half times the total number of corre-
5 sponding vote recording devices to be used in the election. All
6 labels are to be delivered to the clerk of the county commission
7 at least thirty-five days prior to the election. The circuit clerk
8 shall immediately examine the ballot labels for accuracy and
9 assure that the appropriate ballot labels are designated for each
10 voting precinct.

11 (2) The total number of ballot cards printed and the number
12 packaged for each precinct and the requirements for ballot
13 colors and packaging are to conform as nearly as possible to the
14 requirements for paper ballots. Official ballot cards printed and
15 packaged for the various precincts are to be delivered to the
16 clerk of the circuit court at least twenty-eight days prior to the
17 election.

18 (3) The necessary number of ballot cards, ballot labels,
19 sample ballots, and other supplies necessary for absentee voting
20 are to be delivered to the clerk of the circuit court at least

21 . forty-two days prior to the election. The clerk shall immediately
22 check the ballot labels to assure their accuracy and shall place
23 them in vote recording devices which are clearly designated for
24 the proper district or party, or both, for the purpose of absentee
25 voting.

26 (4) When the ballot labels are delivered to the clerk of the
27 county commission, the clerk shall place them in the vote
28 recording devices in the proper order. The clerk of the county
29 commission shall retain the remainder of the ballot labels for
30 each machine for use in an emergency.

31 (5) The clerk of the county commission shall then seal the
32 vote recording devices so as to prevent tampering with ballot
33 labels, and enter in an appropriate book, opposite the number of
34 each precinct, the identifying or distinguishing number of the
35 specific vote recording device or devices to be used in that
36 precinct.

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

1 (a) For the instruction of the voters on any election day in
2 counties utilizing an electronic voting system where votes are
3 to be recorded by means of perforating, there is to be provided
4 for each polling place one instruction model for each vote
5 recording device: *Provided*, That for electronic voting systems
6 that utilize a screen upon which votes may be recorded by
7 means of a stylus or by means of touch, there is to be provided
8 for each polling place a sample ballot with each screen as they
9 shall appear on the devices, together with written instructions
10 regarding the operation of the devices. Each instruction model
11 is to be constructed so as to provide a replica of a vote record-
12 ing device, and is to contain the arrangement of the ballot
13 labels, party columns or rows, office columns or rows, and
14 questions. Fictitious names are to be inserted in the ballot labels

15 of the models. The models are to be located on the election
16 officers' tables or in some other place in which the voter must
17 pass to reach the vote recording device. Upon request, the
18 election officers shall offer instruction to each voter, before
19 voting, in the operation of the vote recording device by use of
20 the instruction model, and shall give ample opportunity to
21 operate the model himself or herself.

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

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

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

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

1 The clerk of the county commission shall deliver or cause
2 to be delivered each vote recording device, where applicable,
3 and the package of ballots to the polling place where they are to
4 be employed. The delivery is to be made not less than one hour

5 prior to the opening of the polls and is to be made in the
6 presence of the precinct election commissioners. At the time of
7 the delivery of the vote recording device, where applicable, and
8 the ballots, the device is to be sealed to prevent its use prior to
9 the opening of the polls and any tampering with the ballot
10 labels; and the ballots are to be packaged and sealed to prevent
11 any tampering with the ballots. Immediately prior to the
12 opening of the polls on election day, the sealed packages of
13 ballots are to be opened, where applicable, and the seal of the
14 vote recording device is to be broken in the presence of the
15 precinct election commissioners, who shall certify in writing
16 signed by them to the clerk of the county commission, that the
17 devices, where applicable, and the ballots have been delivered
18 in their presence, that the devices and packages of ballots were
19 found to be sealed upon delivery, and that the seals have been
20 broken and the devices opened in their presence, as may be
21 appropriate. The election commissioners shall then cause the
22 vote recording device, where applicable, to be arranged in the
23 voting booth in a manner that the front of the vote recording
24 device on which the ballot labels appear will not be visible,
25 when the vote recording device is being operated, to any person
26 other than the voter if the voter elects to close the curtain,
27 screen or hood to the voting booth.

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

1 In counties utilizing an electronic voting system where
2 votes are to be recorded by means of perforating or by touching
3 a screen with a stylus or by means of touch before permitting
4 the first voter to vote, the election commissioners shall examine
5 the vote recording devices to ascertain whether the ballot labels
6 are arranged as specified on the facsimile diagram furnished to
7 the precinct. If the ballot labels are arranged incorrectly, the
8 commissioners shall immediately notify the clerk of the county
9 commission of the foregoing facts in writing, indicating the

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

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

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

5 (b) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner represent-
7 ing the party to which the voter belongs shall direct the voter to
8 the vote recording device or supply the voter with a ballot, as
9 may be appropriate, which will allow the voter to vote only for
10 the candidates who are seeking nomination on the ticket of the
11 party with which the voter is affiliated.

12 (c) The poll clerk shall issue to each voter when he or she
13 signs the pollbook a card or ticket numbered to correspond to

14 the number on the pollbook of the voter, and in the case of a
15 primary election, indicating the party affiliation of the voter,
16 which numbered card or ticket is to be presented to the election
17 commissioner in charge of the voting booth.

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

39 (e) Where applicable, each voter shall be instructed how to
40 operate the vote recording device before he or she enters the
41 voting booth.

42 (f) Where applicable, any voter who spoils, defaces or
43 mutilates the ballot delivered to him or her, on returning the
44 ballot to the poll clerks, shall receive another in its place. Every
45 person who does not vote any ballot delivered to him or her
46 shall, before leaving the election room, return the ballot to the

47 poll clerks. When a spoiled or defaced ballot is returned, the
48 poll clerks shall make a minute of the fact on the pollbooks, at
49 the time, write the word "spoiled" across the face of the ballot,
50 and place it in an envelope for spoiled ballots.

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

73 (g) Each commissioner who is a member of an election
74 board which fails to account for every ballot delivered to it is
75 guilty of a misdemeanor and, upon conviction thereof, shall be
76 fined not more than one thousand dollars or confined in the
77 county or regional jail for not more than one year, or both.

78 (h) The board of ballot commissioners of each county, or
79 the chair of the board, shall preserve the ballots that are left

80 over in their hands, after supplying the precincts as provided,
81 until the close of the polls on the day of election, and shall then
82 destroy the ballots, by fire or otherwise.

83 (i) Where ballots are used, the voter, after he or she has
84 marked his or her ballot shall, before leaving the voting booth,
85 place the ballot inside the envelope provided for this purpose,
86 with the stub extending outside the envelope, and return it to an
87 election commissioner who shall remove the stub and deposit
88 the envelope with the ballot inside in the ballot box. No ballot
89 from which the stub has been detached may be accepted by the
90 officer in charge of the ballot box, but the ballot shall be
91 marked "spoiled" and placed with the spoiled ballots. If an
92 electronic voting system is used that utilizes a screen on which
93 votes may be recorded by means of a stylus or by means of
94 touch, and the signal warning that a voter has attempted to cast
95 his or her ballot has failed to do so properly has been activated,
96 and the voter has departed the polling place, and cannot be
97 recalled by a poll clerk to complete his or her ballot while the
98 voter remains physically present in the polling place, then two
99 election commissioners of different registered party affiliations,
100 two poll clerks of different registered party affiliations, or an
101 election commissioner and a poll clerk of different registered
102 party affiliations, shall spoil the ballot.

103 (j) The precinct election commissioners shall prepare a
104 report in quadruplicate of the number of voters who have voted
105 and, where electronic voting systems are used that utilize a
106 screen on which votes may be recorded by means of a stylus or
107 by means of touch, the number of ballots that were spoiled, as
108 indicated by the pollbooks, and shall place two copies of this
109 report in the ballot box, or where electronic voting systems are
110 used that utilize a screen upon which votes may be recorded by
111 means of a stylus or by means of touch, shall place two copies
112 of this report and the electronic ballot devices in a container
113 provided by the clerk of the county commission, which there-

114 upon is to be sealed with a paper seal signed by the election
115 commissioners to ensure that no additional ballots may be
116 deposited or removed from the ballot box. Two election
117 commissioners of different registered party affiliations shall
118 forthwith deliver the ballot box or container to the clerk of the
119 county commission at the central counting center and receive a
120 signed numbered receipt therefor, which receipt carefully sets
121 forth in detail any and all irregularities pertaining to the ballot
122 boxes or containers and noted by the precinct election officers.

123 The receipt is to be prepared in duplicate, a copy of which
124 remains with the clerk of the county commission who shall
125 have any and all irregularities noted. The time of their departure
126 from the polling place is to be noted on the two remaining
127 copies of the report, which are to be immediately mailed to the
128 clerk of the county commission.

129 (k) The pollbooks, register of voters, unused ballots, spoiled
130 ballots and other records and supplies are to be delivered to the
131 clerk of the county commission, all in conformity with the
132 provisions of this section.

**§3-4A-19a. Form of ballots; requiring the signatures of poll
clerks; prohibiting the counting of votes cast on
ballots without signatures.**

1 (a) Where applicable, every ballot utilized during the course
2 of any electronic voting system election conducted under the
3 provisions of this article is to have two lines for the signatures
4 of the poll clerks. Both of the signature lines are to be printed
5 on a portion of the ballot where votes are not recorded by
6 perforation or marking, but which portion is an actual part of
7 the ballot deposited in the ballot box after the voter has perfo-
8 rated or marked his or her ballot and after the ballot stub has
9 been removed. Each of the two poll clerks shall sign his or her
10 name on one of the designated lines provided on each ballot

11 before any ballot is distributed to a voter. The requirement that
12 two poll clerks sign a ballot according to this subsection is a
13 mandatory duty and is not to be construed as merely directory.

14 (b) After a voter has signed the pollbook, as required in
15 section nineteen of this article, the two poll clerks shall deliver
16 a ballot to the voter, which ballot has been signed by each of the
17 two poll clerks as provided in this section: *Provided*, That
18 where an electronic voting system that utilizes screens upon
19 which votes may be recorded by means of a stylus or by means
20 of touch, an election commissioner shall accompany the voter
21 to the voting device and shall activate the device for voting.

22 (c) In the course of an election contest, if it is established
23 that a ballot does not contain the two signatures required by this
24 section, the ballot is null, void and of no effect, and may not be
25 counted. The requirement that a ballot not be counted if it does
26 not meet the requirements of this section is mandatory and not
27 to be construed as merely directory.

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

1 If at any primary elections, nonpartisan candidates for
2 office and public questions are submitted to the voters on which
3 persons registered as "independent" are entitled to vote, as
4 provided in section eighteen, article two of this chapter, the
5 election officers shall provide a vote recording device, where
6 applicable, or the appropriate ballot to be marked by an
7 electronically sensible pen or ink, or by means of a stylus or by
8 means of touch, so that "independent" voters may vote only
9 those portions of the ballot relating to the nonpartisan candi-
10 dates and the public questions submitted, or shall provide a
11 ballot containing only provisions for voting for those candidates
12 and upon those issues submitted common to the ballots pro-
13 vided to all voters regardless of political party affiliation, or
14 both.

15 In counties utilizing electronic voting systems in which
16 votes are recorded by perforating, if vote recording devices are
17 not available for the "independent" voters, provisions are to be
18 made for sealing the partisan section or sections of the ballot or
19 ballot labels on a vote recording device using temporary seals,
20 thus permitting the independent voter to vote for the nonparti-
21 san section or sections of the ballot or ballot labels. After the
22 "independent" voter has voted, the temporary seals may be
23 removed and the device may then be used by partisan voters.

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

1 (a) Absentee voters shall cast their votes on absent voter
2 ballots.

3 (b) If absentee voters are deemed eligible to vote in person
4 at the office of the official designated to supervise and conduct
5 absentee voting, in accordance with the provisions of article
6 three of this chapter, the official for each county shall provide
7 a vote recording device or other means, as may be appropriate
8 for votes recorded by electronically sensible ink or pencil, or by
9 means of a stylus or by means of touch, for the use of the
10 absentee voters. Notwithstanding any provision of article three
11 of this chapter to the contrary, any voter who desires to vote by
12 absentee ballot in a county using an electronic voting system
13 with a screen upon which votes are recorded by means of a
14 stylus or by means of touch shall complete an application
15 prescribed by the secretary of state which is to be processed in
16 the manner otherwise prescribed by law, except that the official
17 designated to supervise and conduct absentee voting shall
18 deliver a copy of the application to each polling place. No voter
19 who votes in person by absentee ballot may vote in person on
20 the date of the election.

21 (c) For all absentee voters considered eligible to vote an
22 absent voter's ballot by mail, in accordance with the provisions
23 of article three of this chapter, the official designated to
24 supervise and conduct absentee voting for each county shall
25 prepare and issue an absent voter ballot packet consisting of the
26 following:

27 (1) One official absent voter ballot;

28 (2) One punching tool for perforating or a device for
29 marking by electronically sensible pen or ink, as may be
30 appropriate;

31 (3) If a punching tool is to be utilized, one disposable
32 styrofoam block to be placed behind the ballot card for voting
33 purposes and to be discarded after use by the voter;

34 (4) One absent voter instruction ballot;

35 (5) One absent voter's ballot envelope No. 1, unsealed,
36 which may have no writing on it and which is to be identical to
37 the secrecy envelope used for placement of ballots at the polls;
38 and

39 (6) One absent voter's ballot envelope No. 2, marked with
40 the proper precinct number and providing a place on its seal for
41 the absent voter to affix his or her signature. The envelope is
42 also to contain the forms and instructions as provided in section
43 five, article three of this chapter, relating to the absentee voting
44 of proper ballots.

45 (d) Upon receipt of an absent voter's ballot by mail, the
46 voter shall mark the ballot with the punch tool or marking
47 device, whichever is appropriate, and the voter may receive
48 assistance in voting his or her absent voter's ballot in accor-
49 dance with the provisions of section six, article three of this
50 chapter.

51 (e) After the voter has voted his or her absent voter's ballot,
52 he or she shall: (1) Enclose the ballot in absent voter's ballot
53 envelope No. 1, and seal that envelope; (2) enclose sealed
54 absent voter's ballot envelope No. 1 in absent voter's ballot
55 envelope No. 2; (3) complete and sign the forms, if any, on
56 absent voter's ballot envelope No. 2 according to the instruc-
57 tions on the envelope; and (4) mail, postage prepaid, sealed
58 absent voter's ballot envelope No. 2 to the official designated
59 to supervise and conduct absentee voting for the county in
60 which he or she is registered to vote, unless the voter has
61 appeared in person, in which event he or she shall hand deliver
62 the sealed absent voter's ballot envelope No. 2 to the official.

63 (f) Upon receipt of the sealed envelope, the official
64 designated to supervise and conduct absentee voting shall (1)
65 enter onto the envelope any information as may be required of
66 him or her according to the instructions on the envelope; (2)
67 enter his or her challenge, if any, to the absent voter's ballot;
68 (3) enter the required information into a record of persons
69 making application for and voting an absent voter's ballot by
70 personal appearance or by mail on a form prescribed by the
71 secretary of state; and (4) place the sealed envelope in a secure
72 location in his or her office, there to remain until delivered to
73 the polling place in accordance with the provisions of this
74 article or, in case of a challenged ballot, to the county commis-
75 sion sitting as a board of canvassers.

76 (g) Notwithstanding any provision of article three of this
77 chapter to the contrary, no voter who has voted by absentee
78 ballot in accordance with the provisions of article three of this
79 chapter, or otherwise as provided by law, in a county using an
80 electronic voting system with screens upon which votes are
81 recorded by means of a stylus or by means of touch, may vote
82 in person on the date of the election.

83 (h) When absent voters' ballots have been delivered to the
84 election board of any precinct, the election commissioners
85 shall, at the close of the polls, proceed to determine the legality
86 of the ballots as prescribed in article three of this chapter. The
87 commissioners shall then open all of the absent voter's ballot
88 envelopes No. 2 which contain ballots not challenged and
89 remove from the envelopes the absent voter's ballot envelopes
90 No. 1. These ballot envelopes No. 1 are then to be shuffled and
91 intermingled. The election commissioners and poll clerks, in
92 the presence of each other, shall next open all of the absent
93 voter's ballot envelopes No. 1 and remove the ballots from the
94 envelopes. The poll clerks shall then affix their signatures to the
95 ballots as provided in section nineteen-a of this article. The
96 commissioners shall then insert each ballot into a secrecy
97 envelope identical to the secrecy envelopes used for the
98 placement of ballots of voters who are voting in person at the
99 polls and shall deposit the ballot in the ballot box. The require-
100 ment that two poll clerks sign a ballot according to this subsec-
101 tion is a mandatory duty and is not to be construed as merely
102 directory.

103 (i) In the course of an election contest, if it is established
104 that a ballot does not contain the two signatures required by this
105 section, the ballot is null, void and of no effect, and may not be
106 counted. The requirement that a ballot not be counted if it does
107 not meet the requirements of this section is mandatory and not
108 to be construed as merely directory.

§3-4A-24. Voting by challenged voter.

1 Except for electronic voting systems using screens on
2 which votes may be recorded by means of a stylus or by means
3 of touch, if the right of any person to vote be challenged in
4 accordance with the provisions of article one of this chapter,
5 relating to the challenging of voters, and a vote recording
6 device or ballot is used that tabulates the vote as an individual

7 vote, the person is to be permitted to cast his or her vote by use
8 of the vote recording device or ballot, as may be appropriate.
9 He or she is to be provided with a challenged ballot and ballot
10 envelopes for the insertion of the ballot after voting. There is to
11 be an inner envelope marked with the precinct number for the
12 challenged ballot. There is also to be another envelope for the
13 inner envelope and the challenged voter stub, which envelope
14 provides a place for the challenged voter to affix his or her
15 signature on the seal of the outer envelope.

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

**§3-4A-24a. Voting by challenged voter where touch-screen elec-
tronic voting systems are used.**

1 If the right of any person to vote is challenged in accor-
2 dance with the provisions of article one of this chapter, relating
3 to the challenging of voters, and a vote recording device or
4 ballot is used that tabulates the vote as an individual vote, the
5 person is to be permitted to cast his or her vote by use of the
6 vote recording device or ballot, as may be appropriate. An
7 election commissioner shall enter into the voting device a voter-
8 specific electronic code for any person voting a challenged
9 ballot. The devices are to retain challenged ballots in electronic
10 memory, and are not to be tabulated in accordance with the
11 provisions of this code, but are to be reviewed in accordance
12 with the provisions of this code.

13 After the county commission, as prescribed in article one of
14 this chapter, has determined that the challenges are unfounded,

15 the commissioners shall ensure that the ballots are included in
16 the tabulation.

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

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

11 The test is to be open to representatives of the political
12 parties, candidates, the press and the public. It is to be con-
13 ducted five times by processing two separate sets of a
14 preaudited group of ballots or ballot cards as appropriate,
15 punched or marked as to record a predetermined number of
16 valid votes for each candidate on each measure. It includes for
17 each multicandidate office one or more ballot cards which have
18 cross-over votes in order to test the ability of the automatic
19 tabulating equipment to record those votes in accordance with
20 the provisions of this article and applicable law, and it includes
21 for each office one or more ballot cards which have votes in
22 excess of the number allowed by law in order to test the ability
23 of the automatic tabulating equipment to reject votes. If, in the
24 process of any of the test counts, any error is detected, the cause
25 of the error is to be ascertained and corrective action promptly
26 taken. After the completion of the corrective action, the test
27 counts are to continue, including a retesting of those precincts
28 previously test counted. Prior to the continuation of the testing,
29 the county commission shall certify in writing, signed by them,
30 the nature of the error, the cause thereof and the type of

31 corrective action taken. The certification is to be recorded in the
32 office of the clerk of the county commission in the miscella-
33 neous record book. Immediately after conclusion of this
34 completed test, a certified duplicate copy of the program deck
35 is to be sent by certified mail to the offices of the state election
36 commission, where it is to be preserved and secured for one
37 year, and made available for comparison or analysis by order of
38 a circuit court or the supreme court of appeals.

39 The program deck to be used in the election is to immedi-
40 ately be certified by the county commission to be free from
41 error as determined by the test, is to be placed with the certifi-
42 cation in a sealed container and kept under individual multiple
43 locks with individual keys for each lock. The number of locks
44 and keys are the same as the number of county commissioners
45 together with the county clerk, with each commissioner and the
46 county clerk having a single key in his or her possession. The
47 sealed container is to be opened to conduct the test required to
48 be conducted immediately before the start of the official count.

49 The test is to be repeated immediately before the start of the
50 official count. The test is to also be conducted at the conclusion
51 of the official count before the count is approved as errorless
52 and before the election returns are approved as official.

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

61 The numbers of locks and keys are the same as the number
62 of county commissioners together with the county clerk, with

63 each commissioner and the county clerk having a single key in
64 his or her possession.

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

1 (a) All proceedings at the central counting center are to be
2 under the supervision of the clerk of the county commission,
3 and are to be conducted under circumstances which allow
4 observation from a designated area by all persons entitled to be
5 present. The proceedings shall take place in a room of sufficient
6 size and satisfactory arrangement to permit observation. Those
7 persons entitled to be present include all candidates whose
8 names appear on the ballots being counted, or if a candidate is
9 absent, a representative of the candidate who presents a written
10 authorization signed by the candidate for the purpose, and two
11 representatives of each political party on the ballot, who are
12 chosen by the county executive committee chairperson. A
13 reasonable number of the general public is also freely admitted
14 to the room. In the event all members of the general public
15 desiring admission to the room cannot be admitted at one time,
16 the county commission shall provide for a periodic and conve-
17 nient rotation of admission to the room for observation, to the
18 end that each member of the general public desiring admission,
19 during the proceedings at the central counting center, is to be
20 granted admission for reasonable periods of time for observa-
21 tion: *Provided*, That no person except those authorized for the
22 purpose may touch any ballot or ballot card or other official
23 records and papers utilized in the election during observation.

24 (b) All persons who are engaged in processing and counting
25 the ballots are to work in teams consisting of two persons of
26 opposite political parties, and are to be deputized in writing and
27 take an oath that they will faithfully perform their assigned
28 duties. These deputies are to be issued an official badge or
29 identification card which is assigned an identity control
30 number, and the deputies are to prominently wear on his or her

31 outer garments the issued badge or identification card. Upon
32 completion of the deputies' duties, the badges or identification
33 cards are to be returned to the county clerk.

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

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

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

58 (3) In systems using ballots in which votes are recorded
59 upon screens with a stylus or by means of touch, the personal-
60 ized electronic ballots are to be removed from the containers
61 and stacked for the tabulator. Systems using ballots in which
62 votes are recorded upon screens with a stylus or by means of

63 touch are to tally write-in ballots simultaneously with the other
64 ballots;

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

75 (5) Write-in votes for nomination for any office and write-
76 in votes for any person other than an official write-in candidate
77 are to be disregarded;

78 (6) When a voter casts a straight ticket vote and also
79 punches or marks the location for a write-in vote for an office,
80 the straight ticket vote for that office is to be rejected, whether
81 or not a vote can be counted for a write-in candidate; and

82 (7) Official write-in candidates are those who have filed a
83 write-in candidate's certificate of announcement and have been
84 certified according to the provisions of section four-a, article
85 six of this chapter.

86 (d) If any ballot card is damaged or defective so that it
87 cannot properly be counted by the automatic tabulating equip-
88 ment, a true duplicate copy is to be made of the damaged ballot
89 card in the presence of representatives of each political party on
90 the ballot and substituted for the damaged ballot card. All
91 duplicate ballot cards are to be clearly labeled "duplicate" and
92 are to bear a serial number which is recorded on the damaged
93 or defective ballot card and on the replacement ballot card.

94 (e) The returns printed by the automatic tabulating equip-
95 ment at the central counting center, to which have been added
96 write-in and other valid votes, are, when certified by the clerk
97 of the county commission, to constitute the official preliminary
98 returns of each precinct or election district. Further, all the
99 returns are to be printed on a precinct basis. Periodically
100 throughout and upon completion of the count, the returns are to
101 be open to the public by posting the returns as have been
102 tabulated precinct by precinct at the central counting center.
103 Upon completion of the canvass, the returns are to be posted in
104 the same manner.

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

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

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

1 (a) The vote recording devices, the ballot labels, ballot
2 cards, program decks and standard validation test decks are to
3 remain sealed during the canvass of the returns of the election
4 and for a period of seven days thereafter, except that the
5 equipment may be opened for the canvass and it is to be
6 resealed immediately thereafter. During that period any
7 candidate or the local chair of a political party may be permitted
8 to examine any of the materials sealed: *Provided*, That a notice
9 of the time and place of the examination is to be posted at the
10 central counting center before and on the hour of nine o'clock

11 in the morning on the day the examination is to occur, and all
12 persons entitled to be present at the central counting center
13 may, at their option, be present. Upon completion of the
14 canvass and after a seven-day period has expired, the vote
15 recording devices, the ballot labels, ballot cards, program decks
16 and standard validation test decks are to be sealed for one year:
17 *Provided, however,* That the vote recording devices and all
18 tabulating equipment may be released for use in any other
19 lawful election to be held more than ten days after the canvass
20 is completed, and any of the electronic voting equipment herein
21 discussed may be released for inspection or review by a request
22 of a circuit court or the supreme court of appeals.

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

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

37 (d) During the canvass and any requested recount, at least
38 five percent of the precincts are to be chosen at random and the
39 ballot cards cast therein counted manually. Where electronic
40 voting systems are used that utilize screens upon which votes
41 are recorded by means of a stylus or by means of touch, at least
42 five percent of the precincts are to be chosen at random, upon
43 any requested recount, and the ballot images are to be printed

44 from the internal electronic memory of the voting device and
45 are to be counted manually. The same random selection is also
46 to be counted by the automatic tabulating equipment. If the
47 variance between the random manual count and the automatic
48 tabulating equipment count of the same random ballots, is equal
49 to or greater than one percent, then a manual recount of all
50 ballot cards is required. In the course of any recount, if a
51 candidate for an office demands, or if the board of canvassers
52 elects to recount the votes cast for an office, the votes cast for
53 that office in any precinct are to be recounted by manual count.

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

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

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

**§3-5-23. Certificate nominations; requirements and control;
penalties.**

1 (a) Groups of citizens having no party organization may
2 nominate candidates for public office otherwise than by
3 conventions or primary elections. In such case, the candidate or
4 candidates, jointly or severally, shall file a declaration with the
5 secretary of state if the office is to be filled by the voters of
6 more than one county, or with the clerk of the circuit court of
7 the county if the office is to be filled by the voters of one
8 county or political subdivision thereof; such declaration to be
9 filed at least thirty days prior to the time of filing the certificate
10 provided by section twenty-four of this article: *Provided*, That
11 the deadline for filing the certificate for persons seeking ballot
12 access as a candidate for the office of president or vice presi-
13 dent shall be filed not later than the first day of August preced-
14 ing the general election. At the time of filing of such declara-
15 tion each candidate shall pay the filing fee required by law, and
16 if such declaration is not so filed or the filing fee so paid, the
17 certificate shall not be received by the secretary of state, or
18 clerk of the circuit court, as the case may be.

19 (b) The person or persons soliciting or canvassing signa-
20 tures of duly qualified voters on such certificate or certificates,
21 may solicit or canvass duly registered voters residing within the
22 county, district or other political division represented by the
23 office sought, but must first obtain from the clerk of the county
24 commission credentials which must be exhibited to each voter
25 canvassed or solicited, which credentials may be in the follow-
26 ing form or effect:

27 State of West Virginia, County of, ss:

28 This certifies that, whose post-office
29 address is, is hereby authorized to solicit and
30 canvass duly registered voters residing in (here
31 place the county, district or other political division represented
32 by the office sought) to sign a certificate purporting to nominate
33 (here place name of candidate heading list

34 on certificate) for the office of and others,
35 at the general election to be held on, 19.....

36 Given under my hand and the seal of my office this
37 day of, 19.....

38
39 Clerk, County Commission of County.

40 The clerk of each county commission, upon proper applica-
41 tion made as herein provided, shall issue such credentials and
42 shall keep a record thereof.

43 (c) The certificate shall be personally signed by duly
44 registered voters, in their own proper handwriting or by their
45 marks duly witnessed, who must be residents within the county,
46 district or other political division represented by the office
47 sought wherein such canvass or solicitation is made by the
48 person or persons duly authorized. Such signatures need not all
49 be on one certificate. The number of such signatures shall be
50 equal to not less than two percent of the entire vote cast at the
51 last preceding general election for the office in the state,
52 district, county or other political division for which the nomina-
53 tion is to be made, but in no event shall the number be less than
54 twenty-five. The number of such signatures shall be equal to
55 not less than two percent of the entire vote cast at the last
56 preceding general election for any statewide, congressional or
57 presidential candidate, but in no event shall the number be less
58 than twenty-five. Where two or more nominations may be made
59 for the same office, the total of the votes cast at the last
60 preceding general election for the candidates receiving the
61 highest number of votes on each ticket for such office shall
62 constitute the entire vote. No signature on such certificate shall
63 be counted unless it be that of a duly registered voter of the
64 county, district or other political division represented by the
65 office sought wherein such certificate was presented. It shall be

66 the duty of those soliciting signatures to read to each voter
67 whose signature is solicited the statement written on the
68 certificate which gives notice that no person signing such
69 certificate shall vote at any primary election to be held to
70 nominate candidates for office to be voted for at the election to
71 be held next after the date of signing such certificate.

72 (d) Such certificates shall state the name and residence of
73 each of such candidates; that he is legally qualified to hold such
74 office; that the subscribers are legally qualified and duly
75 registered as voters and desire to vote for such candidates; and
76 may designate, by not more than five words, a brief name of the
77 party which such candidates represent and may adopt a device
78 or emblem to be printed on the official ballot. All candidates
79 nominated by the signing of such certificates shall have their
80 names placed on the official ballot as candidates, as if otherwise
81 nominated under the provisions of this chapter.

82 The secretary of state shall prescribe the form and content
83 of the nomination certificates to be used for soliciting signa-
84 tures. The content shall include the language to be used in
85 giving written and oral notice to each voter that signing of the
86 nominating certificate forfeits that voter's right to vote in the
87 corresponding primary election.

88 Offices to be filled by the voters of more than one county
89 shall use separate petition forms for the signatures of qualified
90 voters for each county.

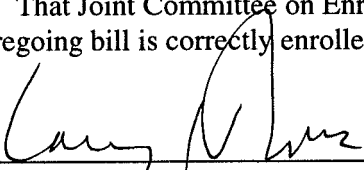
91 (e) The secretary of state, or the clerk of the circuit court,
92 as the case may be, may investigate the validity of such
93 certificates and the signatures thereon, and if upon such
94 investigation there may be doubt as to the legitimacy and the
95 validity of such certificate, he may request the attorney general
96 of the state, or the prosecuting attorney of the county, to
97 institute a quo warranto proceeding against the nominee or

98 nominees by certificate to determine his or their right to such
99 nomination to public office, and upon request being made, the
100 attorney general or prosecuting attorney shall institute such quo
101 warranto proceeding.

102 (f) Any person violating the provisions of this section, in
103 addition to penalties prescribed elsewhere for violation of this
104 chapter, is guilty of a misdemeanor and, upon conviction, shall
105 be fined not more than one thousand dollars, or confined in the
106 county or regional jail for not more than one year, or both, in
107 the discretion of the court: *Provided*, That no criminal penalty
108 may be imposed upon anyone who signs a nomination certifi-
109 cate and votes in the primary election held after the date the
110 certificate was signed.

Enr. Com. Sub. for H. B. 3066] 80

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



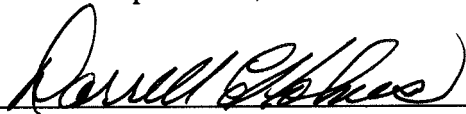
Chairman Senate Committee



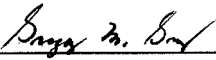
Chairman House Committee

Originating in the House.


In effect September 1, 2001.



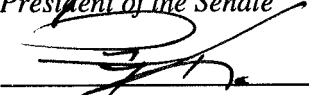
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within approved bill this the 2
day of May, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:40pm