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
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
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.

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

Each precinct within any urban center shall contain not less than three hundred nor more than one thousand five hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters, unless upon a written finding by the county commission that establishment of or retention of a precinct of less than two hundred voters would prevent undue hardship to the voters, the secretary of state determines that such precinct be exempt from the two hundred voter minimum limit. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits. If a county commission fails to rearrange the precincts as required, any qualified voter of the county may
apply for a writ of mandamus to compel the performance of this duty: Provided, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than seven hundred registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who will be eligible to vote in each precinct so created. Each such precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two of such precincts may use the same counting board.

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

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

The county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts.
§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.

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

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

1. The secretary of state, for any statewide special election ordered by the Legislature;

2. The board of ballot commissioners, for any countywide special election ordered by the county commission; or

3. The board of education, for any special levy or bond election ordered by the board of education; or

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

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

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

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

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

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

ARTICLE 2. REGISTRATION OF VOTERS.

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

(a) Voter registration before an election shall close on the twentieth day before the election, or on the first day thereafter which is not a Saturday, Sunday or legal holiday.
An application for voter registration, transfer of registration, change of name or change of political party affiliation submitted by an eligible voter by the close of voter registration shall be effective for any subsequent primary, general or special election if the following conditions are met:

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

2. The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:

   A. If mailed, the application shall be addressed to the appropriate clerk of the county commission and postmarked by the postal service no later than the date of the close of registration: *Provided, That if the postmark is missing or illegible, the application shall be presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;*

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

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

3. The verification notice required by the provisions of section sixteen of this article mailed to the voter at the residence indicated on the application is not returned as undeliverable.
ARTICLE 3. VOTING BY ABSENTEES.

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

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

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

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

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

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

(A) Illness, injury or other medical reason;

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

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter, involving bribery in an election;
(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

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

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

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

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

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

(B) Serving in any other documented employment assignment of specific duration of four years or less; and

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

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

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

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

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

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

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

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission: Provided, That if the clerk of the county commission and the clerk of the circuit court jointly petition the county commission setting forth their agreement that the clerk of the circuit court should continue to supervise and conduct the absentee voting, the county commission shall designate the
clerk of the circuit court to supervise and conduct the absentee voting; or

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

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

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

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

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

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

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

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

(2) The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct absentee voting or mem-
bers of the board of ballot commissioners assigned to conduct absentee voting, may enter the area or room set aside for voting.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Regular absentee voting in person is to be conducted during regular business hours beginning on the fifteenth day
before the election and continuing through the Monday before
the election for any election held on a Tuesday, or continuing
through the day before the election for any election held on
another day. For any election held on a Tuesday, regular
absentee voting in person is to be available from nine a. m. to
five p. m. on the Saturday before the election.

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

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

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

(1) Whether the application has been completed as required
by law;
(2) Whether the applicant is duly registered to vote in the precinct of his or her residence, and, in a primary election, is qualified to vote the ballot of the political party requested; and

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

(e) If the official designated to supervise and conduct absentee voting determines the conditions provided in subsection (d) of this section have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall challenge the voter’s absentee ballot as provided in this article.

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

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

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

(3) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”; and
(4) For optical scan voting systems, ballots, a secrecy sleeve and access to a ballot box secured by two locks with keys kept by the president of the county commission and the county clerk.

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

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

§3-3-4. Assistance to voter in voting an absentee voter’s ballot by personal appearance; penalties.

(a) Any registered voter, who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write, may be given assistance by a person of the voter’s choice: Provided, That the assistance may not be given by the
(b) Any voter who requests assistance in voting an absent voter's ballot but who is determined by the official designated to supervise and conduct absentee voting not to be qualified for assistance under the provisions of this section and section thirty-four, article one of this chapter may vote a challenged absent voter's ballot with the assistance of any person authorized to render assistance pursuant to this section. The official designated to supervise and conduct absentee voting shall in this case challenge the absent voter's ballot on the basis of his or her determination that the voter is not qualified for assistance.

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

(d) Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting shall make an affidavit, the form of which is to be prescribed by the secretary of state, that he or she will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth.
or compartment, and that he or she will not, directly or indi-
rectly, reveal to any person the name of any candidate voted for
by the voter, or which ticket he or she had voted, or how he or
she had voted on any public question, or anything occurring
within the voting booth or compartment or voting machine
booth, except when required pursuant to law to give testimony
as to the matter in a judicial proceeding.

(e) In accordance with instructions issued by the secretary
of state, the official designated to supervise and conduct
absentee voting shall provide a form entitled “List of Assisted
Voters”, prescribed by the secretary of state, which list is to be
divided into two parts. Part A is to be entitled “Unchallenged
Assisted Voters” and Part B is to be entitled “Challenged
Assisted Voters.” Under Part A the official designated to
supervise and conduct absentee voting shall enter the name of
each voter receiving unchallenged assistance in voting an
absent voter’s ballot, the address of the voter assisted, the
nature of the disability which qualified the voter for assistance
in voting an absent voter’s ballot, the name of the person
providing the voter with assistance in voting an absent voter’s
ballot, the fact that the person rendering the assistance in voting
made and subscribed to the oath required by this section, and
the signature of the official designated to supervise and conduct
absentee voting certifying to the fact that he or she had deter-
mined that the voter who received assistance in voting an absent
voter’s ballot was qualified to receive the assistance under the
provisions of this section. Under Part B the official designated
to supervise and conduct absentee voting shall enter the name
of each voter receiving challenged assistance in voting, the
address of the voter receiving challenged assistance, the reason
for the challenge, and the name of the person providing the
challenged voter with assistance in voting. At the close of the
period provided for voting an absent voter’s ballot by personal
appearance, the official designated to supervise and conduct
absentee voting shall make and subscribe to an oath on the list
that the list is correct in all particulars; if no voter has been
assisted in voting an absent voter's ballot as provided in this
section, the official designated to supervise and conduct
absentee voting shall make and subscribe to an oath of that fact
on the list. The "List of Assisted Voters" is to be available for
public inspection in the office of the official designated to
supervise and conduct absentee voting during regular business
hours throughout the period provided for voting an absent
voter's ballot by personal appearance, and unless otherwise
directed by the secretary of state, the official shall transmit the
list, together with the affidavits, applications and absent voters' 
ballets, to the precincts on election day.

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

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

(h) Any person who provides a voter assistance in voting an
absent voter's ballot in the office of the official designated to
supervise and conduct absentee voting who is not qualified or
permitted by this section to provide assistance is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
more than one thousand dollars or imprisoned in the county or
regional jail for a period of not more than one year, or both.

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

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

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

(a) Upon oral or written request, the official designated to
supervise and conduct absentee voting shall provide to any
voter of the county, in person, by mail or by facsimile, if the
official has access to facsimile equipment, the appropriate
application for voting absentee by mail, as provided in this
article. The voter shall complete and sign the application in his
or her own handwriting or, if the voter is unable to complete the
application because of illiteracy or physical disability, the
person assisting the voter and witnessing the mark of the voter
shall sign his or her name in the space provided.
(b) Completed applications for voting an absentee ballot by mail is to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail or by facsimile, if the official has access to facsimile equipment, within the following times:

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

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

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

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

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

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

(4) The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of subdivision (2)(A), (2)(B), (3) or (4), subsection (d), section one of this article;
(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements; and

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

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

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

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

(2) One envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(3) One postage paid envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”; and

(4) Instructions for voting absentee by mail; and
(5) Any other supplies required for voting in the particular voting system.

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

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

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

(i) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following
the election, after which time they are to be destroyed without
being opened.

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

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

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

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

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

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

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

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

(1) The official shall first enter the name of the applicant in
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
(b) The application for a special write-in absentee ballot may be made on the federal postcard application form.

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

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

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

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

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

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

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

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

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

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

(f) A declaration is to be completed and signed by each of
the emergency absentee ballot commissioners, stating their
names, the date on which they appeared at the place of confine-
ment of the person applying for an emergency absentee ballot, and the particulars of the confinement.

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

(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, then the ballot is to be challenged for the appropriate reason provided for in section ten of this article.
(i) If either or both of the emergency absentee ballot commissioners should refuse to sign any application for voting an emergency absentee ballot, then the voter may vote as an emergency absentee and the ballot is to be challenged in accordance with the provisions of section ten of this article, in addition to those absentee ballots subject to challenge as provided in that section.

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

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

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

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

(c) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election 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 commis-
6 sioners 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:
(1) That the application for an absent voter's ballot has not been completed as required by law;

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

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

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

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

(6) That the person has voted absentee by mail as a result of being out of the county more than four consecutive times: Provided, That the determination as to whether the person has voted more than four consecutive times does not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.
(b) Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter’s ballot on any of the following grounds:

1. That the application for an absent voter’s ballot was not completed as required by law;

2. That any statement or declaration contained in the application for an absent voter’s ballot is not true;

3. That the person voting an absent voter’s ballot is not registered to vote in the precinct of his or her residence as provided by law;

4. That the signatures of the person voting an absent voter’s ballot as they appear on his or her registration record, his or her application for an absent voter’s ballot, and the absent voter’s ballot envelope are not in the same handwriting;

5. That the absent voter’s ballot does not have the official seal of the clerk of the circuit court and all signatures of members of the board of ballot commissioners on it;

6. That the person voting an absent voter’s ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the absent voter’s ballot;
(7) That the person voted an absent voter’s ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this article for assistance;

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

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

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

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

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

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

(d) Absent voters’ ballots challenged by the official designated to supervise and conduct absentee voting under the provisions of this article are to be transmitted by the official directly to the county commission sitting as a board of canvassers. The absent voters’ ballots challenged by the election commissioners and poll clerks under the provisions of this article may not be counted by the election officials but are to be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on challenged
§3-3-11. Preparation, number and handling of absent voters’ ballots.

(a) Absent voters’ ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any specific election law in which case the lesser number of days applies, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters’ ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters’ ballots that are to be printed under their directions as provided in this chapter, and those ballots are to be delivered to the clerk of the circuit court of the county not less than forty-two days before the day of the election at which they are to be used. Before any ballot is mailed or delivered, the clerk of the circuit court shall affix his or her official seal and he or she and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back of the ballot. The clerks of the circuit courts are authorized to have their signatures affixed by a facsimile printed on the back of absentee ballots, by a facsimile signature stamp, or by signing their original signatures. An absent voter’s ballot not containing the seal and signatures is invalid and is subject to challenge by any election commissioner or poll clerk.
(b) The official designated to supervise and conduct absentee voting shall be primarily responsible for the mailing, receiving, delivering and otherwise handling of all absent voters' ballots. He or she shall keep a record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of the delivery of those ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered or mailed, or by whom they have been marked, if marked before him or her.

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

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

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

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

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

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

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

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

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

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

(6) The supplying of application forms, envelopes, challenge forms, lists, records and other forms; and

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

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

§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

(a) “Automatic tabulating equipment” means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

(b) “Ballot” means a tabulating card or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil or a screen upon which votes may be recorded by means of a stylus or by means of touch;

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

(d) “Central counting center” means a facility equipped with suitable and necessary automatic tabulating equipment,
selected by the county commission, for the electronic counting
of votes recorded on ballots;

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

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

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

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

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

§3-4A-6. Acquisition of vote recording devices by purchase or
lease; acquisition of use of automatic tabulating
equipment; counting centers.
(a) A county commission may acquire vote recording devices by any one or any combination of the following methods:

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

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

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

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

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

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

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

An electronic voting system of particular make and design may not be approved by the state election commission or be purchased, leased or used, by any county commission unless it meets the following requirements:
(1) It secures or ensures the voter absolute secrecy in the act of voting, or, at the voter's election, provides for open voting;

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

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

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

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

(6) It contains a program deck consisting of cards that are sequentially numbered, or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons, and capable of tabulating all votes cast in each election;
(7) It contains two standard validation test decks approved as to form and testing capabilities by the state election commission;  

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

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

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

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

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

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

(A) Are durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;
(B) Are so constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices, and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement, or are constructed to ensure that the screens upon which appear the names of the candidates and their respective parties, titles of offices, and wording of questions are reasonably protected from any modification;

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

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

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

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

(G) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion, and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;
(H) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

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

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

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

(L) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, store each vote in no fewer than three separate, independent, nonvolatile electronic memory components, and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;
(M) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

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

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

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

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

(a) The ballot commissioners of any county in which an electronic voting system utilizing voting devices for registering
the voter’s choices is to be used in any election shall cause to be
printed for use in the election the ballot cards and ballot labels,
as appropriate, for the electronic voting system, or shall cause
to be printed a reasonable facsimile of the screens as they
appear to the voter for the electronic voting system.

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

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

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

(4) For the general election, the heading of the ballot, the
straight ticket positions, the instructions to straight ticket voters,
the type faces, the names and arrangement of offices and the
printing of names and the arrangement of candidates within
each office are to conform as nearly as possible to the provi-
sections of section two, article six of this chapter, except as
er otherwise provided in this article. Except for electronic voting
systems that utilize a screen upon which votes may be recorded
by stylus or by means of touch, the secretary of state shall
assign uniform numbers to be used by all counties using
electronic voting for all straight party tickets and for all
candidates running for offices to be voted upon by all of the
voters of the state. After taking into account the numbers so
assigned by the secretary of state, the clerk of the circuit court
shall arrange the offices and the candidates within each office
as prescribed by section two, article six of this chapter, and
shall assign the appropriate number for each candidate. When
one candidate is to be elected and only two parties are on the
ballot, the ballot label and the arrangement of the ballot are to
conform as nearly as practical to the following example:

Democratic Ticket --------------------------- Republican Ticket ---------------------------
For Governor --------------------------- For Governor ---------------------------
(Vote for One) --------------------------- (Vote for One) ---------------------------

(candidate’s name) 10 — — 11 (candidate’s name)
(residence, county) (residence, county)

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

---------------------------
For Governor
(Vote for One)
The ballot label and the arrangement of the ballot for multi-candidate offices are to conform as nearly as practical to the following example:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
</tr>
<tr>
<td>First Delegate District</td>
<td>First Delegate District</td>
</tr>
<tr>
<td>(Vote For Not More Than Two)</td>
<td>(Vote For Not More Than Two)</td>
</tr>
</tbody>
</table>

[If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices because your straight ticket vote will not be counted for this office.]

| (candidate’s name) 69 — | — 70 (candidate’s name) |
| (residence, county) | (residence, county) |
| (candidate’s name) 71 — | — 72 (candidate’s name) |
| (residence, county) | (residence, county) |
(5) Any nonpartisan office, including board of education and any question to be voted on is to be placed or displayed on a separate page or otherwise separated from the partisan ballots, constituting a separate ballot where required.

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

For an office to be filled by election in a primary, except delegate to national convention, and for each office in a general election, the ballot label is to include, following all candidates for the office, a single numbered position with an arrow or box indicating the location to punch the ballot card or touch the screen to indicate a preference for a write-in candidate. The following instructions are to be printed beside the arrow in at least ten point type. “TO WRITE-IN FOR THIS OFFICE: Punch here and put name of office and candidate on inside of secrecy envelope. DO NOT put name here,” or, if an electronic voting system is used with screens upon which votes may be recorded by means of a stylus or by means of touch, the word “WRITE-IN” will appear beside a box indicating the location for the voter to touch the screen and, when activated, another screen is to appear allowing the voter to enter a write-in candidate.
(7) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots, facsimile diagrams of the vote recording device ballot and official printed ballots or ballot cards adequate for the orderly conduct of the election in each precinct in their county.

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

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

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

(b)(1) The heading of the ballot, the arrangement of offices in columns, the spaces for marking votes, the printing of offices, instructions and candidates names are to conform as nearly as possible to that prescribed in this chapter for paper ballots, except that the secretary of state may prescribe necessary modifications to accommodate the tabulating system. Nonpartisan elections for board of education and any question to be voted upon are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and constituting a separate ballot.
(2) Both the face and the reverse side of the ballot may contain the names of candidates, only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

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

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the secretary of state for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot which is to be numbered sequentially in the same manner as provided in this article for ballots upon
which votes are recorded by means of perforating or is to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots as provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

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

In counties using electronic voting systems utilizing vote recording devices:

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

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

(3) The necessary number of ballot cards, ballot labels, sample ballots, and other supplies necessary for absentee voting are to be delivered to the clerk of the circuit court at least
forty-two days prior to the election. The clerk shall immediately
check the ballot labels to assure their accuracy and shall place
them in vote recording devices which are clearly designated for
the proper district or party, or both, for the purpose of absentee
voting.

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

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

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

(a) For the instruction of the voters on any election day in
counties utilizing an electronic voting system where votes are
to be recorded by means of perforating, there is to be provided
for each polling place one instruction model for each vote
recording device: Provided, That for electronic voting systems
that utilize a screen upon which votes may be recorded by
means of a stylus or by means of touch, there is to be provided
for each polling place a sample ballot with each screen as they
shall appear on the devices, together with written instructions
regarding the operation of the devices. Each instruction model
is to be constructed so as to provide a replica of a vote record-
ing device, and is to contain the arrangement of the ballot
labels, party columns or rows, office columns or rows, and
questions. Fictitious names are to be inserted in the ballot labels
of the models. The models are to be located on the election
officers’ tables or in some other place in which the voter must
pass to reach the vote recording device. Upon request, the
election officers shall offer instruction to each voter, before
voting, in the operation of the vote recording device by use of
the instruction model, and shall give ample opportunity to
operate the model himself or herself.

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

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

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

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

The clerk of the county commission shall deliver or cause
to be delivered each vote recording device, where applicable,
and the package of ballots to the polling place where they are to
be employed. The delivery is to be made not less than one hour
prior to the opening of the polls and is to be made in the presence of the precinct election commissioners. At the time of the delivery of the vote recording device, where applicable, and the ballots, the device is to be sealed to prevent its use prior to the opening of the polls and any tampering with the ballot labels; and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote recording device is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission, that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed upon delivery, and that the seals have been broken and the devices opened in their presence, as may be appropriate. The election commissioners shall then cause the vote recording device, where applicable, to be arranged in the voting booth in a manner that the front of the vote recording device on which the ballot labels appear will not be visible, when the vote recording device is being operated, to any person other than the voter if the voter elects to close the curtain, screen or hood to the voting booth.

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

In counties utilizing an electronic voting system where votes are to be recorded by means of perforating or by touching a screen with a stylus or by means of touch before permitting the first voter to vote, the election commissioners shall examine the vote recording devices to ascertain whether the ballot labels are arranged as specified on the facsimile diagram furnished to the precinct. If the ballot labels are arranged incorrectly, the commissioners shall immediately notify the clerk of the county commission of the foregoing facts in writing, indicating the
number of the device, and obtain from the clerk a reserve vote recording device, and thereafter proceed to conduct the election. Any reserve vote recording device so used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote recording device is to be prepared, inspected and sealed, and delivered to the polling place wherein the seal is to be broken and the device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place. The vote recording device found to have been with incorrect ballot labels is to be returned immediately to the custody of the clerk who shall then promptly cause the vote recording device to be repaired, prepared and resealed in order that it may be used as a reserve vote recording device if needed.

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

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

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

(c) The poll clerk shall issue to each voter when he or she signs the pollbook a card or ticket numbered to correspond to
the number on the pollbook of the voter, and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

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

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

(f) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the
poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, write the word "spoiled" across the face of the ballot, and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the pollbooks the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. If there is no discrepancy, the clerk of the county commission or a duly designated deputy clerk shall destroy the unused ballots forthwith by fire or otherwise, before a representative of each party on the ballot. If there is a discrepancy, the unused ballots are to be impounded and secured under double locks until the discrepancy is resolved. The county clerk and the president or president pro tempore of the county commission are each to have a key. Upon resolution of the discrepancy, the clerk of the county commission or a duly designated deputy clerk, shall destroy the unused ballots forthwith, by fire or otherwise, before a representative of each party on the ballot.

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

(h) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left
over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election, and shall then destroy the ballots, by fire or otherwise.

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

(j) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the pollbooks, and shall place two copies of this report in the ballot box, or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which there-
upon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor, which receipt carefully sets forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

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

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

(a) Where applicable, every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article is to have two lines for the signatures of the poll clerks. Both of the signature lines are to be printed on a portion of the ballot where votes are not recorded by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his or her ballot and after the ballot stub has been removed. Each of the two poll clerks shall sign his or her name on one of the designated lines provided on each ballot
before any ballot is distributed to a voter. The requirement that
two poll clerks sign a ballot according to this subsection is a
mandatory duty and is not to be construed as merely directory.

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

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


If at any primary elections, nonpartisan candidates for
office and public questions are submitted to the voters on which
persons registered as “independent” are entitled to vote, as
provided in section eighteen, article two of this chapter, the
election officers shall provide a vote recording device, where
applicable, or the appropriate ballot to be marked by an
electronically sensible pen or ink, or by means of a stylus or by
means of touch, so that “independent” voters may vote only
those portions of the ballot relating to the nonpartisan candi-
dates and the public questions submitted, or shall provide a
ballot containing only provisions for voting for those candidates
and upon those issues submitted common to the ballots pro-
vided to all voters regardless of political party affiliation, or
both.
In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the "independent" voters, provisions are to be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the independent voter to vote for the nonpartisan section or sections of the ballot or ballot labels. After the "independent" voter has voted, the temporary seals may be removed and the device may then be used by partisan voters.

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

(a) Absentee voters shall cast their votes on absentee ballots.

(b) If absentee voters are deemed eligible to vote in person at the office of the official designated to supervise and conduct absentee voting, in accordance with the provisions of article three of this chapter, the official for each county shall provide a vote recording device or other means, as may be appropriate for votes recorded by electronically sensible ink or pencil, or by means of a stylus or by means of touch, for the use of the absentee voters. Notwithstanding any provision of article three of this chapter to the contrary, any voter who desires to vote by absentee ballot in a county using an electronic voting system with a screen upon which votes are recorded by means of a stylus or by means of touch shall complete an application prescribed by the secretary of state which is to be processed in the manner otherwise prescribed by law, except that the official designated to supervise and conduct absentee voting shall deliver a copy of the application to each polling place. No voter who votes in person by absentee ballot may vote in person on the date of the election.
(c) For all absentee voters considered eligible to vote an absent voter’s ballot by mail, in accordance with the provisions of article three of this chapter, the official designated to supervise and conduct absentee voting for each county shall prepare and issue an absent voter ballot packet consisting of the following:

(1) One official absent voter ballot;

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

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

(4) One absent voter instruction ballot;

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

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

(d) Upon receipt of an absent voter’s ballot by mail, the voter shall mark the ballot with the punch tool or marking device, whichever is appropriate, and the voter may receive assistance in voting his or her absent voter’s ballot in accordance with the provisions of section six, article three of this chapter.
After the voter has voted his or her absent voter’s ballot, he or she shall: (1) Enclose the ballot in absent voter’s ballot envelope No. 1, and seal that envelope; (2) enclose sealed absent voter’s ballot envelope No. 1 in absent voter’s ballot envelope No. 2; (3) complete and sign the forms, if any, on absent voter’s ballot envelope No. 2 according to the instructions on the envelope; and (4) mail, postage prepaid, sealed absent voter’s ballot envelope No. 2 to the official designated to supervise and conduct absentee voting for the county in which he or she is registered to vote, unless the voter has appeared in person, in which event he or she shall hand deliver the sealed absent voter’s ballot envelope No. 2 to the official.

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

Notwithstanding any provision of article three of this chapter to the contrary, no voter who has voted by absentee ballot in accordance with the provisions of article three of this chapter, or otherwise as provided by law, in a county using an electronic voting system with screens upon which votes are recorded by means of a stylus or by means of touch, may vote in person on the date of the election.
(h) When absent voters' ballots have been delivered to the election board of any precinct, the election commissioners shall, at the close of the polls, proceed to determine the legality of the ballots as prescribed in article three of this chapter. The commissioners shall then open all of the absent voter's ballot envelopes No. 2 which contain ballots not challenged and remove from the envelopes the absent voter's ballot envelopes No. 1. These ballot envelopes No. 1 are then to be shuffled and intermingled. The election commissioners and poll clerks, in the presence of each other, shall next open all of the absent voter's ballot envelopes No. 1 and remove the ballots from the envelopes. The poll clerks shall then affix their signatures to the ballots as provided in section nineteen-a of this article. The commissioners shall then insert each ballot into a secrecy envelope identical to the secrecy envelopes used for the placement of ballots of voters who are voting in person at the polls and shall deposit the ballot in the ballot box. The requirement that two poll clerks sign a ballot according to this subsection is a mandatory duty and is not to be construed as merely directory.

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


Except for electronic voting systems using screens on which votes may be recorded by means of a stylus or by means of touch, if the right of any person to vote be challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual
vote, the person is to be permitted to cast his or her vote by use
of the vote recording device or ballot, as may be appropriate.
He or she is to be provided with a challenged ballot and ballot
envelopes for the insertion of the ballot after voting. There is to
be an inner envelope marked with the precinct number for the
challenged ballot. There is also to be another envelope for the
inner envelope and the challenged voter stub, which envelope
provides a place for the challenged voter to affix his or her
signature on the seal of the outer envelope.

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

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

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

After the county commission, as prescribed in article one of
this chapter, has determined that the challenges are unfounded,
§3-4A-26. Test of automatic tabulating equipment.

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

The test is to be open to representatives of the political parties, candidates, the press and the public. It is to be conducted five times by processing two separate sets of a preaudited group of ballots or ballot cards as appropriate, punched or marked as to record a predetermined number of valid votes for each candidate on each measure. It includes for each multicandidate office one or more ballot cards which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and applicable law, and it includes for each office one or more ballot cards which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by them, the nature of the error, the cause thereof and the type of
corrective action taken. The certification is to be recorded in the
office of the clerk of the county commission in the miscellaneous record book. Immediately after conclusion of this
completed test, a certified duplicate copy of the program deck
is to be sent by certified mail to the offices of the state election
commission, where it is to be preserved and secured for one
year, and made available for comparison or analysis by order of
a circuit court or the supreme court of appeals.

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

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

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

The numbers of locks and keys are the same as the number
of county commissioners together with the county clerk, with
§3-4A-27. Proceedings at the central counting center.

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

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

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

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

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

(3) In systems using ballots in which votes are recorded
upon screens with a stylus or by means of touch, the personal-
ized electronic ballots are to be removed from the containers
and stacked for the tabulator. Systems using ballots in which
votes are recorded upon screens with a stylus or by means of
touch are to tally write-in ballots simultaneously with the other ballots;

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

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

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

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

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

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

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

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

(a) The vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to remain sealed during the canvass of the returns of the election and for a period of seven days thereafter, except that the equipment may be opened for the canvass and it is to be resealed immediately thereafter. During that period any candidate or the local chair of a political party may be permitted to examine any of the materials sealed: Provided, That a notice of the time and place of the examination is to be posted at the central counting center before and on the hour of nine o'clock
in the morning on the day the examination is to occur, and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after a seven-day period has expired, the vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to be sealed for one year: Provided, however, That the vote recording devices and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed, and any of the electronic voting equipment herein discussed may be released for inspection or review by a request of a circuit court or the supreme court of appeals.

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

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

(d) During the canvass and any requested recount, at least five percent of the precincts are to be chosen at random and the ballot cards cast therein counted manually. Where electronic voting systems are used that utilize screens upon which votes are recorded by means of a stylus or by means of touch, at least five percent of the precincts are to be chosen at random, upon any requested recount, and the ballot images are to be printed
from the internal electronic memory of the voting device and
are to be counted manually. The same random selection is also
to be counted by the automatic tabulating equipment. If the
variance between the random manual count and the automatic
tabulating equipment count of the same random ballots, is equal
to or greater than one percent, then a manual recount of all
ballot cards is required. In the course of any recount, if a
candidate for an office demands, or if the board of canvassers
elects to recount the votes cast for an office, the votes cast for
that office in any precinct are to be recounted by manual count.

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

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

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control;
penalties.
(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In such case, the candidate or candidates, jointly or severally, shall file a declaration with the secretary of state if the office is to be filled by the voters of more than one county, or with the clerk of the circuit court of the county if the office is to be filled by the voters of one county or political subdivision thereof; such declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot access as a candidate for the office of president or vice president shall be filed not later than the first day of August preceding the general election. At the time of filing of such declaration each candidate shall pay the filing fee required by law, and if such declaration is not so filed or the filing fee so paid, the certificate shall not be received by the secretary of state, or clerk of the circuit court, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on such certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ..................., ss:

This certifies that .........................., whose post-office address is ......................, is hereby authorized to solicit and canvass duly registered voters residing in .................. (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate .......................... (here place name of candidate heading list
on certificate) for the office of .................................... and others, at the general election to be held on ........................., 19......

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

........................................................................................................

.......................................................... Clerk, County Commission of ......... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein such canvass or solicitation is made by the person or persons duly authorized. Such signatures need not all be on one certificate. The number of such signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of such signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for such office shall constitute the entire vote. No signature on such certificate shall be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein such certificate was presented. It shall be
the duty of those soliciting signatures to read to each voter
whose signature is solicited the statement written on the
certificate which gives notice that no person signing such
certificate shall vote at any primary election to be held to
nominate candidates for office to be voted for at the election to
be held next after the date of signing such certificate.

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

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

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

(e) The secretary of state, or the clerk of the circuit court,
as the case may be, may investigate the validity of such
certificates and the signatures thereon, and if upon such
investigation there may be doubt as to the legitimacy and the
validity of such certificate, he may request the attorney general
of the state, or the prosecuting attorney of the county, to
institute a quo warranto proceeding against the nominee or
nominees by certificate to determine his or their right to such
nomination to public office, and upon request being made, the
attorney general or prosecuting attorney shall institute such quo
warranto proceeding.

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