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**1991 SUPPLEMENT**  
**TO THE**  
**ELECTION LAWS OF WEST VIRGINIA**



**CONTAINING ALL**  
**LEGISLATIVE REVISIONS**  
**FROM 1986-1991**

**PUBLISHED BY**  
**KEN HECHLER**  
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## CHAPTER 3: ELECTIONS

### **§ 3-1-3. Persons entitled to vote.**

Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively reside. But no person who has not been registered as a voter as required by law, or who is a minor, or of unsound mind, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state, county or municipality in which he offers to vote, shall be permitted to vote [at] such election while such disability continues. Subject to the qualification[s] otherwise prescribed in this section, however, a minor shall be permitted to vote only in a primary election if he will have reached the age of eighteen years on the date of the general election next to be held after such primary election. (1986)

### **§ 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 eight 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 [§ 3-4-28], 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. (1986, 1987)

### ***§ 3-1-7. Precinct changes; procedure; precinct record.***

Subject to the provisions and limitations of section five [§ 3-1-5] of this article, the county commission of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it. No order effecting such change, division, or consolidation shall be made by the county commission within ninety days next preceding an election nor without giving notice thereof at least one month before such change, division or consolidation, by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three [§ 59-1-3 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, cause a copy to be published as aforesaid. The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts.

The county commission shall keep in a well-bound book, marked

"election precinct record," a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. Such "election precinct record" shall be kept by the county commission clerk in his office, and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.

When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place.

If for any reason the election cannot be held at the designated polling place in a precinct, and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make such precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the secretary of state. Such change, if made however, shall not cause any voter to be moved to a different district. (1986)

### ***§ 3-1-9. Political party committees; how composed; organization.***

At the primary election in the year one thousand nine hundred ninety-four, and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms, and appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

At such primary election, the voters of each political party in each county

shall elect one male and one female member of the party's executive committee of the congressional district, of the senatorial district and of the delegate district in which such county is situated, if such county be situated in a multicounty senatorial or delegate district. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county to a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multi-county district until the expiration of their terms: Provided, That the county executive committee of the political party shall determine which previously elected members shall represent the county if the number of multi-county senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of such districts is increased.

At the same time such voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party's county executive committee, except that in counties having three executive committee districts there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district.

For the purpose of complying with the provisions of this section, the county commission shall create such executive committee districts as they shall determine, which such districts shall not be fewer than the number of magisterial districts in such counties, nor shall they exceed in number the following: Forty for counties having a population of one hundred thousand persons or more; thirty for counties having a population of fifty thousand to one hundred thousand; twenty for counties having a population of twenty thousand to fifty thousand; and such districts in counties having a population of less than twenty thousand persons shall be coextensive with the magisterial districts.

The executive committee districts shall be as nearly equal in population as practicable, and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of such districts as required by the increase or decrease in the population of such districts as determined by a decennial census. Such changes must be made within two years following such census.

All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year one thousand nine hundred ninety-four, shall begin on the first day of July, following said primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, senatorial district, delegate

district or county shall be filled by the party's executive committee of the county in which such vacancy exists, and shall be for the unexpired term.

As soon as possible after the certification of the election of the new executive committees, as herein provided, they shall convene an organizational meeting within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees, or by any member of the new executive committee in the event there is no corresponding outgoing executive committee and proceed to select a chairman, a treasurer and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices. The organizational meeting may be conducted prior to the beginning of the term, but no official action other than the election of officers and the appointment to fill vacancies on the committee may be made before the first day of July.

Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with such party. Meetings shall be conducted according to party rules, all official actions shall be made by voice vote, and minutes shall be maintained and shall be open to inspection by members affiliated with such party. (1991)

***§ 3-1-17. Election of circuit judges; county and district officers; magistrates.***

There shall be elected, at the general election to be held in the year one thousand nine hundred ninety-two, and in every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to but one judge, and one judge for each numbered division of the judicial circuit and [in] those judicial circuits entitled to two or more circuit judges; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county, and the number of magistrates prescribed by law for the county; and at the general election to be held in the year one thousand nine hundred ninety, and in every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every sixth year thereafter, a clerk of the county commission and clerk of the circuit court for each county.

***§ 3-1-20. Cards of instructions to voters; sample ballots; posting.***

The board of ballot commissioners of each county shall provide cards



of general information and cards of instruction for voters in preparing their ballots, as prescribed by the secretary of state. They shall furnish a sufficient number of cards to the commissioners of election at the same time they deliver the ballots for the precinct.

The commissioners of election shall post one instruction card in each voting booth giving instructions to the voters on how to prepare the ballots for deposit in the ballot boxes and how to obtain a new ballot in place of one accidentally spoiled.

The commissioners of election shall post one or more other cards of general information at places inside and outside of the voting place where voters pass or wait to vote.

The ballot commissioners shall also cause to be printed, on a different color paper than the official ballot, ten or more copies of the ballots provided for each voting place, at each election therein, which shall be designated sample ballots, and shall be furnished and posted with the cards of general information at each voting place. (1986)

**§ 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 county-wide 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, which number shall be not more than one-tenth of the number of registered voters eligible to vote the ballot.

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

regular officials ballots shall be packaged 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. (1991)

***§ 3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.***

(a) The printing of ballots for any election to be held pursuant to the provisions of this chapter shall be contracted for with a vendor authorized in accordance with the provisions of this section.

(b) Any vendor authorized to do business in West Virginia and in good standing may apply for a certificate of authorization to print ballots for elections in this state: Provided, That any individual, partnership, association or corporation who does not qualify as a resident vendor pursuant to the provisions of section thirty-seven-a [§5A-3-37a], article three, chapter five-a of this code or who prints the ballots in a state which prohibits that state or any of its political subdivisions from contracting with West Virginia resident vendors for the printing of ballots or which prohibits the printing of ballots outside of such state, is not eligible to obtain a certificate of authorization.

(c) (1) Every vendor desiring to print ballots for elections held pursuant to the provisions of this chapter shall, prior to the execution of any contract for the printing of ballots with any state, county, or municipal government,

obtain a certificate of authorization to print ballots.

(2) A certificate of authorization may be obtained by application to the secretary of state, upon a form prescribed by the secretary of state, which form shall include a statement that all printing, packaging and delivery specifications for ballots set forth in this chapter will be substantially met, and that the vendor applying for certification is eligible in accordance with the provisions of this section.

(3) Upon receipt of the completed application, the secretary of state shall issue a certificate of authorization to print ballots, which certificate shall remain in effect for two years from the date of issuance and may be renewed upon application therefor: Provided, That the secretary of state may deny the application to issue or renew the certificate of authorization, or may suspend or revoke the certificate of authorization upon a determination that the vendor has not substantially complied with the printing, packaging and delivery specifications in the printing of ballots for any state, county or municipal election, or that the vendor is not eligible or is no longer eligible to print ballots pursuant to the provisions of this section. The secretary of state shall give written notice of any such determination by certified mail, return receipt requested, to the vendor setting forth the reason for the suspension, revocation or the denial of the application or the denial of the renewal thereof. The applicant may, within sixty days of the receipt of such denial, file a written appeal with the state election commission. The state election commission shall promulgate rules establishing a hearing process for such appeals.

(d) On or before the second Monday of January of each year, the secretary of state shall provide a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each circuit court of this state. (1991)

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

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

(b) The clerk of the county commission is authorized, upon verification

that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer such person's registration to the nearest polling place in the county which is handicap accessible. Requests by such persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a challenged ballot, at a handicap accessible polling place in the county of his or her registration, and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of such transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "challenged ballot/handicapped voter." After validation of the ballot at the canvas, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved challenged ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him then without leaving the election room. If he returns the ballot spoiled to the clerks, they shall immediately mark such ballot "spoiled" and the same shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side as before done. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his ballot, using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five [§ 3-6-5], article six of this chapter.

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

(e) (1) No voter shall receive any assistance in voting unless, by reason

of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to such voter the names of candidates on the ballot as so prepared; or

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his ballot in the manner hereinbefore provided; or

(C) Be assisted by any person of the voter's choice: Provided, That such assistance may not be given by the voter's present or former employer or agent of that employer or by the officer or agent of a labor union of which the voter is a past or present member.

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

(3) Any one or more of the election commissioners or poll clerks in the precinct may challenge such ballot on the ground that the voter thereof received assistance in voting if, when in his or their opinion, the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making such a challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three [§ 3-3-1 et seq.] of this chapter.

(4) An election commissioner or other person who assists a voter in voting:

(A) Shall 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 shall not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and shall not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he 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 such matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting such voter on a form prescribed by the secretary of state stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. Such person assisting the voter

shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.

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

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

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

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

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when such voter is known to such election commissioner or poll clerk not to require assistance in voting, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the penitentiary for a period of not less than one year nor more than five years, or both fined and imprisoned. (1988)

**§ 3-1-37. Restrictions on presence and conduct at polls.**

No person, except the election officers and voters while going to the election room to vote and returning therefrom, may be or remain within three hundred feet of the outside entrance to the building housing the polling place while the polls are open; but this section does not apply to persons living or carrying on business within that distance of the election room, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within three hundred feet of such entrance.

A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within three hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within three hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within three hundred feet of the entrance until such time as the voter is to be transported from the polling place.

The election commissioners shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four [§ 3-1-34] of this article shall have additional time up to ten additional minutes to prepare his ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room. The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article. (1986)

**§ 3-1-44. Compensation of election officials; expenses.**

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the county commission, not exceeding fifty dollars for each day he or she shall serve as such, but, in no case shall a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the county commission, not exceeding fifty dollars for one day's services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day's service during an election and a sum not exceeding one hundred dollars for his or her services at any one election: Provided, That each commissioner of election and poll clerk shall be paid and allowed a sum not exceeding one hundred dollars for his or her services at any of the three special elections hereinafter specified and described. The commissioners of election obtaining and delivering the election supplies, as provided in section twenty-four [§ 3-1-24] of this article, and returning them as provided in articles five and six [§ 3-5-1 et seq. and § 3-6-1 et seq.] of this chapter, shall be allowed and paid an additional sum, likewise fixed by the county commission, not exceeding fifty dollars for all such services at any one election and, in addition, shall be allowed and paid mileage at the rate of twenty-five cents per mile necessarily traveled in the performance of such services. The compensation of election officers, cost of printing ballots, and all other expenses incurred in holding and making the return of elections, other than the three special elections hereinafter specified and described, shall be audited by the county commission and paid out of the county treasury.

The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts and ordinances of a constitutional convention shall be obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state, and all such expenses shall be audited by the secretary of state. The secretary of state shall prepare and transmit to the county commissions forms on which the county commissions shall certify all such expenses of such special elections to the secretary of state. If satisfied that such expenses as certified by the county commissions are reasonable and were necessarily incurred, the secretary of state shall requisition the necessary warrants from the auditor of the state to be drawn on the state treasurer, and shall mail such warrants directly to the vendors of such special election services, supplies and facilities. (1991)

**§ 3-1-47. Repealed. (1991)**



**§ 3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.**

The secretary of state shall be the chief election official of the state. He shall have authority, after consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the Legislature, as contained in this chapter. In order to avoid conflicting provisions between regulations promulgated by the secretary of state and the state commission on ethics, the rules and regulations promulgated under this section shall be legislative rules and shall be promulgated pursuant to the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of the code of West Virginia. All regulations adopted prior to the first day of January, one thousand nine hundred eighty-nine, shall be submitted on or before the first day of August, one thousand nine hundred eighty-nine, to the Legislature for review by the legislative rule-making review committee and approval by the Legislature.

It shall be the duty of all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks to abide by such rules, regulations and orders, which shall include:

(a) Uniform rules of procedure for registrars and other registration officials in the performance of their duties, as to time and manner of performance;

(b) Uniform rules for the purging of registration records;

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations or directions necessary to standardize and make effective the administration of the provisions of this chapter.

The secretary of state also shall have authority to require collection and report of statistical information and to require other reports by county commissions, clerks of county commissions and clerks of circuit courts.

It shall be his further duty to advise with election officials; to furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules and regulations issued or promulgated thereunder; to investigate the administration of election laws, frauds and irregularities in any registration or election; to report violations of election laws to the appropriate prosecuting officials; and to prepare an annual report.

The secretary of state shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of this chapter, or the rules, regulations and directions promulgated or issued hereunder by the secretary of state as the chief election official of the state.

In case of disobedience to a subpoena or subpoena duces tecum, he may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production of papers, books, records, registration records and other evidence.

All powers and duties vested in the secretary of state under this article may be exercised by appointees of the secretary of state at his discretion, but the secretary of state shall be responsible for their acts. (1989)

### ***§ 3-1A-7. Candidate's financial disclosure statement.***

Candidates for election to any state, county or municipal office, county school board, district school board, or to the position of county or district school board superintendent, shall file a financial disclosure statement with the ethics commission as may be required under subsection (a), section six [§ 6B-2-6(a)], article two, chapter six-b of this code. (1989)

### ***§ 3-2-3. Registration, cancellation and reinstatement; and criminal penalty.***

A permanent registration system shall hereby be established which shall be uniform throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or, having moved from such address, is properly transferred according to the provisions of section twenty-seven or forty-one [§ 3-2-27 or 3-2-41] of this article, unless his registration is canceled as provided in this article.

Within one hundred twenty days following any election, the clerk of the county commission shall, as evidenced by the presence or absence of signatures on the pollbooks for such election, correct any errors or omissions on the voter registration records pertaining to the election resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four [§ 3-1-34], article one of this chapter.

Within one hundred twenty days following the general election, the clerk shall cancel the registration of each person who has failed to vote at least once in any statewide, special or municipal election held after the statewide general election held four years previously as indicated by his or her registration record. Any clerk failing to perform such duty is guilty of a misdemeanor as provided in section thirty-six [§ 3-2-36] of this article. The clerk of the county commission shall notify by mail each person whose registration is canceled for failure to vote. The notice shall inform the voter that:

- (a) In order to be reinstated he or she must:

(1) Register again, either in person at the county clerk's office or by mail, according to the provisions of section three or forty-one [§ 3-2-3 or 3-2-41] of this article; or

(2) Execute and file an affidavit of reinstatement of registration at the same residence address not later than thirty days before the next primary or general election, except that reinstatement by affidavit shall not be permitted if the voter registration in question was canceled because the voter failed to make his first vote in person as required by the provisions of subsection (e), section forty-one [§ 3-2-41(e)] of this article; and

(b) That the last day to register to vote in any election is thirty days before that election.

A blank copy of the affidavit form shall be included with the notice to the voter.

The clerk shall replace the registration card of any voter who files a completed affidavit of reinstatement in the registration records. (1986, 1989)

**§ 3-2-10. County commission's duties and powers; hours during registration period.**

Subject to the authority of the secretary of state, the county commission shall be chief registration authority in each respective county and all subdivisions therein, and shall supervise the county clerk and registrars in the performance of their respective duties.

The county commission shall have power on its own motion to summon and to interrogate any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers, and to conduct hearings on any matters relating to registration of voters.

Notwithstanding any provision of any other section of this code, the office of the clerk of the county commission shall remain open from 9:00 a.m. until 8:00 p.m. on the Friday and Monday, and from 9:00 a.m. until 5:00 p.m. on the Saturday prior to the close of the registration periods for statewide primary and general elections. (1989)

**§ 3-2-11. Appointment of registrars; qualifications and duties.**

The county commission of each county may appoint registrars to make a biennial checkup or to conduct other authorized registration activities allowed by this article. Two persons of opposite political parties shall together serve as registrars for from one to ten precincts:

No person is eligible to be appointed a registrar, or in any way act as such, if he or she has been convicted of a felony; or if he or she holds, or is a candidate for, any elective or appointive office; or is a public employee,

under the laws of this state or of the United States; or cannot read or write the English language. If any registrar fails or refuses to serve or is properly dismissed, the vacancy shall be filled either by the county commission or by the clerk thereof in vacation, in the manner provided for the appointment of registrars. Each registrar, before entering upon the discharge of his or her duties, shall take an oath that he or she will perform the duties of the office to the best of his or her ability, which oath shall be filed in the office of the clerk of the county commission.

An equal number of such registrars shall be selected from the two major political parties. The county commission shall, at least four weeks prior to making such appointment, request the county executive committee of each of the two political parties to submit a list of names, equal to one half of the total number to be appointed, of persons qualified to act as registrars; and the county commission shall, if such lists are submitted, appoint the qualified persons recommended and shall notify each registrar of his or her appointment. Every list so presented shall be filed and preserved for one year by the clerk of the county commission. Any and every act performed by any registrar under the provisions of this article is void unless performed in conjunction with a registrar of the opposite political party at the same time and place.

Before acting, all such registrars shall attend a session, or sessions, of instruction by the clerk of the county commission, or some person designated by him or her, concerning the performance of their duties.

Immediately following such instruction the clerk of the county commission shall give to the registrars a copy of the laws and regulations relating to registration of voters, written instructions for performing their duties, and all necessary forms and other supplies, including maps with municipal precincts superimposed over county precincts in cases where boundaries differ, and a certified list of all registered voters within the precinct or precincts for which such registrars were appointed, upon such form as may be prescribed by the secretary of state. Registrars appointed for the purpose of conducting a biennial checkup shall proceed together to make a house-to-house canvass in their precincts as allowed by section twenty-one [§ 3-2-21] of this article. Each biennial checkup shall be completed at least sixty days before the statewide primary election following the appointment of the registrars. In making the checkup the registrars shall not reregister any person who is already registered in such precinct, but shall determine whether or not such person is duly registered and qualified to vote therein. Registrars may be appointed under the provisions of this article to conduct registration at temporary registration offices established throughout the county.

The registrars shall require valid identification and proof of age of each registrant, and shall inquire and attempt to establish whether the registrant resides within a municipality. The registrars shall have the registrant complete the voter registration form for county-state permanent registration

and if the person resides within the limits of a municipality for which a separate registration file is kept, the registrars shall also have the registrant complete the form for municipal registration. (1986, 1989)

**§ 3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.**

The clerk or any deputy clerk of the county commission shall register any qualified person as a voter. The clerk or deputy shall first require valid identification and proof of age, and inquire and attempt to establish whether the voter resides within the limits of a municipality using the map provided by the municipality in accordance with section five [§ 3-1-5], article one of this chapter. The clerk or deputy clerk shall have the person registering fill in and complete the prescribed voter registration form for county-state permanent registration. If the person resides within the limits of a municipality for which a separate registration file is kept, the clerk or deputy shall also have the person complete the form for municipal registration. The registrant shall sign the form or forms under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year.

During the biennial checkup period of every even-numbered year, the clerk or deputy clerk shall visit every public or private institution, excluding hospitals, in which reside aged, infirm, disabled or chronically ill persons, and every high school to register qualified voters. The clerk may establish temporary registration offices, to register qualified persons or to alter, amend, correct or cancel such registration records. The clerk of the county commission shall also solicit public service advertising of such registration offices and times on radio, television and newspapers serving that county.

Within fifteen days following receipt of a death certificate from the state or local registrar of vital statistics or the publication in a newspaper of the county an obituary clearly identifying a deceased person by name, residence and age, the clerk of the county commission shall cancel the voter registration, if any, of the person shown to be deceased by such certificate or obituary.

Sixty days prior to a general election, the clerk of the county commission shall review each death certificate received by him and shall cancel the voter registration, if any, of each deceased person whose voter registration has not previously been canceled. By the forty-fifth day prior to a general election each clerk of a county commission shall certify to the secretary of state that he has performed the duty required by this paragraph.

If found necessary, the county commission may order and direct the clerk of the county commission to maintain additional office hours in the evening or at other proper times and places for accommodation of voter

registration. (1986, 1989)

**§ 3-2-22a. Registration at driver's license facilities.**

(a) Commencing on the first day of July, one thousand nine hundred ninety-one, the division of motor vehicles and the department of public safety shall provide each qualified elector who applies in person for the issuance, renewal or correction of any type of driver's license or identification, in accordance with the provisions of article two [§ 17B-2-1 et seq.], chapter seventeen-b of this code, the opportunity to complete a voter registration form regardless of that person's voting precinct or county of residence in the state.

(b) For purposes of this section, each employee authorized by the division of motor vehicles or department of public safety to provide voter registration forms is hereby authorized to administer the oath prescribed on the form.

(c) Completed voter registration forms received by the division of motor vehicles or by the department of public safety shall be forwarded to the secretary of state on a weekly basis, and the secretary of state shall then forward the registrations to the appropriate county clerk's office on a weekly basis. Upon receipt of a voter registration form, the county clerk shall determine if the form meets the requirements for registration. If the county clerk finds that the form meets the requirements for registration, the registration shall be deemed to be effective on the date that it was made at the division of motor vehicles or department of public safety. If it does not meet the requirements, the county clerk shall immediately notify the applicant of the information required and the registration shall be deemed to be effective on the date that the additional information is received by the county clerk.

(d) Fifty cents of each license fee collected pursuant to the provisions of section one [§ 17-3-1], article three, chapter seventeen of this code shall be paid into the state treasury to the credit of a special revenue fund to be known as the "combined voter registration and driver's licensing fund", which is hereby created. The moneys so credited to such fund may be used by the secretary of state solely for:

(1) Printing and distribution of combined driver's license application and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver's license applications.

(2) Postage and mailing costs of returning completed voter registrations to the appropriate state or county election official.

(3) Postage and mailing costs incurred by the clerk of the county commission for sending a receipt of voter registration to each person who registers to vote using the combined licensing and voter registration

procedure.

(4) Employment of personnel solely for the purpose of issuing driver's licenses and offering voter registration services or the payment of the portion of such personnel costs apportioned to such duties.

(5) Start-up costs associated with preparing the computer programming relating to increased licensing fees and the collection thereof. The secretary of state is authorized to expend or distribute funds to the respective agencies and counties for the reimbursement of actual costs incurred for the purposes set forth in this subsection.

(e) The secretary of state may promulgate rules pursuant to the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code to provide for the administration of this registration program. (1991)

### ***§ 3-2-26. Registration of naturalized citizens.***

Any naturalized citizen, claiming the right to initially register in this state shall establish his or her right by producing either a certification of naturalization or a certificate of citizenship or a verification of naturalization or citizenship from the Immigration and Naturalization Service.

Should a naturalized citizen, who has previously registered in a county of this state move to another county of this state, at which time they claim the right to register in the new county of residence, they shall not be required to again produce a certificate of naturalization or certificate of citizenship or a verification of naturalization or citizenship if they can produce a valid voter registration card from the county of last residence. (1988)

### ***§ 3-2-30. Time of registration prior to election; changes.***

No person may vote in an election when he has registered or his voter registration has been altered, amended or corrected within a period of thirty days next preceding such election: Provided, That postcard registrations containing incomplete information which are received by the county clerk no later than the close of registration may be corrected within four days after the close of registration if such information is available. This inhibition shall not prevent, during such period of thirty days, additional registrations and changes in voter registrations with reference to future elections. If, during such period of thirty days preceding an election, a voter is registered or his voter registration is altered, amended or corrected, he shall not be permitted or qualified to vote at such election. (1989)

### ***§ 3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt by county clerk thirty***

**days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.**

(a) In addition to any procedures which may be used in effecting the biennial checkup as provided under section twenty-one [§ 3-2-21] of this article, central registration and transfer as provided under sections twenty-two and twenty-seven [§§ 3-2-22 and 3-2-27] of this article, and the provision with respect to registration of absentee voters under section twenty-three [§ 3-2-23] of this article, any qualified person may register or transfer his registration by mail.

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

(c) Applications for use pursuant to this section shall be made available by the county clerk to every adult person of the county, not registered, and to any registered voter of the county upon request. The application for use pursuant to this section shall be a uniform statewide application in a form to be prescribed by the secretary of state and shall include the information required under the form provisions of section nineteen [§ 3-2-19] of this article. The form, which shall be self-addressed, is to be as widely and freely distributed as possible and shall be a bifold self-mailer which shall be compatible with local systems of voter registration data collection and storage.

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

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

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

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



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

(5) A warning to the voter that it is a crime to procure a false registration and notice of the felony offenses provided for in section forty-two [§ 3-2-42] of this article;

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

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

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

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

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

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

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

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

---

Signature of Applicant

Subscribed and sworn (or affirmed) to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_ " which oath or affirmation shall be administered by a person authorized to perform notarial acts under the provisions of article one or one-a [§§ 39-1-1 et seq. or 39-1A-1 et seq.], chapter thirty-nine of this code. The person administering the oath or affirmation shall not charge a fee for such act, and the uniform statewide application shall inform the person administering such oath or affirmation that no fee is to be charged.

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

in person at the office of the clerk of the circuit court to vote an absentee ballot during a period covering two statewide primary elections and two general elections in order to make such registration valid: Provided, That any person who has registered or reregistered pursuant to this section and who has qualified for placement on the special absentee voting list pursuant to section two-b [§ 3-3-2b], article three of this chapter, who has qualified to vote an absent voter's ballot by mail pursuant to paragraphs one, two, three or six of the application for voting an absent voter's ballot by mail provided in section five [§ 3-3-5], article three of this chapter, who has qualified to vote through the use of a federal postcard registration, or who has qualified to vote an absent voter's ballot under the provisions of section five-b or five-c [§ 3-3-5b or 3-3-5c], article three of this chapter, shall not be required to make his first vote in person but shall be required to vote during a period covering two statewide primary elections and two general elections next following his registration in order to make such registration valid. Any such person required by this section to make his first vote in person in order to make his registration valid shall present valid identification and proof of age to the clerks at the poll or the clerk in the office of the circuit clerk of the county in which he is registered before casting his first ballot.

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

(g) It shall be the duty of the secretary of state to create and commence distribution of the forms for the uniform statewide application within six months following the effective date of this section [June 8, 1983].

(h) Notwithstanding any other provision of this section, persons specified in subsection (2), section one [§ 3-3-1(2)], article three of this chapter may register by mail using the federal postcard application issued pursuant to the authority of the Uniformed and Overseas Citizens Absentee Voting Act of 1986, (Public Law 99-410, 42 U.S.C. 1973, et seq.). The oath of the applicant using the federal postcard application shall not be required to be administered by a person authorized to perform notarial acts. Any federal postcard application received by the county clerk or circuit clerk which has been designated by the applicant as both an application for registration and a request for an absent voter's ballot shall be accepted for both purposes if all legal requirements are met. (1988)

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

Notwithstanding the provisions contained in section twenty-five [§ 3-2-

25], article two of this chapter, 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 office of the circuit clerk to have such person's name placed upon a special absentee voting list. The special absentee voting list shall be kept by the circuit clerk in a bound book maintained for such purpose.

An application shall be prescribed by the secretary of state and shall be in substantially the following form:

### APPLICATION TO BE PLACED UPON SPECIAL ABSENTEE VOTING LIST

Date.....

I,....., hereby declare that I am a permanent resident of the State of West Virginia and of the County of ....., with permanent address as follows: ....., City ....., State ....., Street ....., in the magisterial district of ....., in said County; that I am registered in the precinct of my residence as provided by law.

I declare further that I am permanently and totally disabled physically and am unable to vote in person at the polls in an election, and do hereby request that my name be placed upon the special absentee voting list.

.....  
Signature of Applicant  
(or in case the applicant is illiterate he or she shall make his mark and have it witnessed on the following lines):

.....  
Mark of Applicant

.....  
Signature of Witness

### STATEMENT OF PHYSICIAN

I,....., hereby declare that I am a physician, duly licensed to practice in the State of.....; that I examined....., the applicant, whose signature appear upon the above application on the..... day of....., 19.....; and that in my opinion such person is permanently and totally disabled physically and would be unable to vote in person at the polls in an election.

.....  
Signature of Physician

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

Each person whose name is contained on the special absentee voting list may make application for voting an absent voter's ballot by mail as provided in section five [§ 3-3-5] of this article, but such person shall not be required to produce a statement of a physician at the time of such application so long as such person's name remains on the special absentee voting list. (1991)

***§ 3-3-3a. Voting absent voters' ballot by personal appearance in Saturday elections for religious reasons.***

(a) In addition to the persons declared eligible to vote absent voters' ballots pursuant to the provisions of section one [§ 3-3-1] of this article, duly registered and otherwise qualified voters who are members of a religious denomination with an established history of observing Saturday as the Sabbath may vote absentee by personal appearance in any election to be held on a Saturday.

(b) Application for an absent voter's ballot authorized by the provisions of this section shall be made on a form prescribed by the secretary of state. The procedures for voting by personal appearance set forth in section three [§ 3-3-3] of this article, to the extent not in conflict with the provisions of this section, shall otherwise govern the procedures herein. (1988)

***§ 3-3-5. Voting an absent voter's ballot by mail; federal postcard application.***

A person desiring to vote an absent voter's ballot by mail may, on or after the first day of January prior to the date of any primary, general or special election in the case of any person outside the continental limits of the United States and not more than eighty-four days prior to the date of any primary, general or special election in the case of any other person, make application by mail to the clerk of the circuit court of the county in which he is registered to vote for an official absent voter's ballot or ballots to be voted at such election. The clerk of the circuit court shall not honor any such application for an absent voter's ballot received by him after the fourth day next

preceding the date of the election. In computing the fourth day, the day of conducting the election shall be excluded.

When a clerk receives a completed application to vote an absent voter's ballot by mail in more than one election in an election year from an applicant eligible to vote absentee under subsection (2), section one [§ 3-3-1(2)] of this article, the clerk shall, if all legal requirements are met, forward to the applicant the appropriate ballot or ballots for each election held within that jurisdiction. The application to be used by persons who wish to vote an absent voter's ballot by mail shall be prescribed by the secretary of state and shall be in substantially the following form:

**APPLICATION FOR VOTING AN ABSENT VOTER'S BALLOT BY MAIL**

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, \_\_\_\_\_, hereby declare that I am now, or will have been, a resident of the state of West Virginia for twelve months, and of the county of \_\_\_\_\_, for thirty days, next preceding the date of the ensuing election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_; that I now reside at \_\_\_\_\_,

(give full address)

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

(1) I will be unable to vote in person at the polls on election day because of \_\_\_\_\_ (state particulars of physical disability, illness or injury).

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

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

- A member of the armed forces in the active service.
- A spouse or dependent of a member of the armed forces in active service.
- A member of the merchant marine of the United States.
- A spouse or dependent of a member of the merchant marine of the

United States.

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

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

(4) I am required to be absent from the aforementioned county in which I am registered during the entire time the polls are open in such election for the reason or reasons hereafter stated; I am not in any of the categories referred to in paragraph (3) above; I am required to be absent from said county during regular business hours of the clerk of the circuit court of said county throughout the period or throughout the remainder of the period of voting an absent voter's ballot by personal appearance at said office.

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

(5) I have been appointed

(state whether an election commissioner or poll clerk)

in precinct No. \_\_\_\_\_ in said election, which precinct is not the precinct in which I am registered to vote.

(6) I will be incarcerated in the county or city jail or other detention facility located in this county on election day but am not under sentence of treason, bribery or a felony, as evidenced below by the statement of the county sheriff, chief of police or authorized deputy. In consideration of the foregoing qualifications, I hereby make application for an official absent voter's ballot (or ballots if more than one are to be used) to be voted by me at such election, and request that such ballot or ballots be mailed to me at the following address:

(give full address for mailing purposes)

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

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

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

I hereby declare under the penalties for false swearing as provided in section three [§ 3-9-3], article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Applicant

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

\_\_\_\_\_  
Mark of Applicant

\_\_\_\_\_  
Signature of Witness

If the person applying for an absent voter's ballot by mail be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed. The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is anticipated confinement in a hospital, institution or other place for medical reasons.

**STATEMENT OF PHYSICIAN (CHIROPRACTOR)**

I, \_\_\_\_\_, hereby declare that I am a physician (chiropractor) duly licensed to practice in the state of \_\_\_\_\_; that I last examined \_\_\_\_\_, the applicant whose signature appears on the application above on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and that in my opinion:

The applicant will, because of \_\_\_\_\_

\_\_\_\_\_  
(state for what medical reasons)

be confined in \_\_\_\_\_

(specify hospital, institution or other place)

on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and will because of such reasons not be able to go to the polls on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the date of the election.

\_\_\_\_\_  
Signature of Physician (Chiropractor)

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

**STATEMENT OF SHERIFF, CHIEF OF POLICE OR AUTHORIZED DEPUTY**

I, \_\_\_\_\_, hereby declare that the applicant whose signature appears on the application above will be confined in the county or city jail or other detention facility on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the

date of the election, and is not under conviction of treason, bribery or a felony.

---

SIGNATURE

---

TITLE

---

COUNTY

In lieu of the application for an absent voter's ballot provided above, those persons specified in subsection (2), section one [§ 3-3-1(2)] of this article may use the federal postcard application for absent voter's ballot form issued under authority of the Uniformed and Overseas Citizens Absentee Voting Act of 1986, as amended (Public Law 99-410, 42 U.S.C. 1973, et seq.). Any such federal postcard application does not have to be executed pursuant to oath or attestation. Upon receipt of a properly completed copy of such form, the clerk of the circuit court shall process it the same as any other application for an absent voter's ballot by mail. Any such properly completed copy may be returned only to the clerk of the circuit court of the county in which the applicant is a registered voter.

Immediately upon receipt of a completed application for voting an absent voter's ballot by mail, the clerk of the circuit court shall determine (1) whether the application for voting such ballot has been completed as required by law; (2) whether he has evidence that any of the statements contained in the application are not true; (3) whether the applicant is in fact duly registered in the precinct of his residence as provided by law and insofar as registration is concerned would be permitted to vote at the polls in such election; and (4) whether the applicant 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 applicant has voted more than four consecutive times shall not apply if the applicant 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 his or her home county. If the determination of the clerk of the circuit court as to (1) or (3) is in the negative or as to (2) or (4) is in the affirmative, the clerk shall notify the applicant at the time he mails the absent voter's ballot to him that he will challenge the applicant's privilege to vote an absent voter's ballot by mail for reasons which he shall indicate and, upon receipt of the applicant's absent voter's ballot, the clerk shall challenge such ballot. If the challenge is made under subdivision (4) above, such a challenge shall be removed upon submission of proof of residence before the board of canvassers.

Upon determination by the clerk of the circuit court that the applicant is entitled to vote an absent voter's ballot by mail or that the applicant will be permitted to vote an absent voter's ballot by mail with such ballot to be challenged by the clerk, the clerk shall between the forty-second day and the



fourth day next prior to the election in which the absent voter's ballot is to be used, mail to the applicant the following absentee voting supplies: Provided, That the clerk shall mail such voting supplies to an applicant whose address is shown to be outside the continental limits of the United States by priority airmail on the same day the application is received in the clerk's office or on the next day thereafter that he has both an application and a ballot:

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

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

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

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

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

Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot and the voter may have assistance in voting his absent voter's ballot in accordance with the provisions of section six [§ 3-3-6] of this article.

After the voter has voted his absent voter's ballot, he shall (1) enclose the same 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 and seal that envelope, (3) complete and sign the forms, if any, on Absent Voter's Ballot Envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid and, if from outside the continental limits of the United States, by priority airmail, the sealed Absent Voter's Ballot Envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote.

Upon receipt of such sealed envelope, the clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his 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 or otherwise (the form of which record and the information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his 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 body of canvassers. (1988, 1989)

**§ 3-3-5b. Procedures for voting with special write-in absent voter's ballot by qualified persons.**

(a) Notwithstanding any other provisions of this chapter, a person qualified to vote an absent voter's ballot, in accordance with subsection (2), section one [§ 3-3-1(2)] of this article, may apply not earlier than ninety days before an election for a special write-in absentee ballot. This ballot shall be for presidential electors and United States senator or representative in Congress.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form or on another form prescribed by the secretary of state.

(c) In order to qualify for a special write-in absent voter's ballot, the voter must state that he or she is unable to vote by regular absent voter's 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 absent voter's ballot.

(d) Upon receipt of said application, the circuit clerk shall issue the special write-in absent voter's ballot which shall be prescribed and provided by the secretary of state. Such ballot shall permit the elector to vote 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. Any such voted ballot must be received by the circuit clerk prior to the close of the polls on election day or it may not be counted. (1988)

**§ 3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.**

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an absent voter's ballot, as defined in subsection (1), section one [§ 3-3-1(1)] of this article, who is admitted, on or after the seventh day next preceding the election, to a hospital or other duly licensed health care facility within the county of their residence for emergency medical treatment, and who remains confined and is unable to vote at the polls on election day, may vote an emergency absent voter's ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat: Provided, That the policy shall be adopted by the county commission at least ninety days prior to the election that will be effected and a copy of such policy shall be filed with the secretary of state.

(b) On or before the first Monday of the month next preceding the date on which any election is to be held the circuit clerk of each county shall notify the county commission of the number of sets of emergency absent voter ballot commissioners which he or she deems necessary to perform the duties and functions hereinafter set forth.

(c) A set of emergency absent voter ballot commissioners at-large shall consist of two persons, appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of section twenty-eight [§ 3-1-28], article one of this chapter but without regard to magisterial district or precinct. Emergency absent voter ballot commissioners shall have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Such commissioners shall be compensated for services and expenses in the same manner as commissioners of election obtaining and delivering election supplies under the provisions of section forty-four [§ 3-1-44], article one of this chapter.

(d) Upon request of the voter or a member of the voter's immediate family, the circuit clerk, upon receiving a proper request for voting an emergency absent voter ballot no earlier than the seventh day next preceding the election and no later than noon of election day, shall supply to the emergency absent voter ballot commissioners the application for voting an emergency absent voter's ballot and the balloting materials. The emergency absent voter ballot application shall be prescribed by the secretary of state and shall be in substantially the following form:

**APPLICATION FOR VOTING AN EMERGENCY ABSENT VOTER'S  
BALLOT**

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS AND IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, \_\_\_\_\_, hereby declare that I am now, or will have been, a resident of the state of West Virginia for twelve months, and of the county of \_\_\_\_\_, for thirty days next preceding the date of the ensuing election to be held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; that I now reside at \_\_\_\_\_

(give full address)

in the magisterial district of \_\_\_\_\_, in said county; that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; that I am registered as a \_\_\_\_\_;

(1) I will be unable to vote in person at the polls on election day because I have been confined in \_\_\_\_\_

\_\_\_\_\_  
(State name and location of facility)

since \_\_\_\_\_

\_\_\_\_\_  
(State date of confinement commenced)

because of \_\_\_\_\_

\_\_\_\_\_  
(State particulars of illness or injury)

(2) My treating physician is \_\_\_\_\_.

I hereby declare under the penalties for false swearing as provided in section three [§ 3-9-3], article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Applicant

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

\_\_\_\_\_  
Mark of Applicant

\_\_\_\_\_  
Signature of Witness

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

The following declaration is to be completed and signed by each of the emergency absent voter's ballot commissioners:

### STATEMENT OF EMERGENCY ABSENT VOTER'S BALLOT COMMISSIONERS

We, \_\_\_\_\_ and \_\_\_\_\_, hereby declare that we are the duly appointed emergency absent voter's ballot commissioners and have met the applicant, whose name appears on the application above at his or her place of confinement on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and that in our opinion, the applicant will, because of an emergency medical confinement which commenced at least seven days prior to the election, be unable to go to the polls on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the date of the election.

We have determined that the applicant has been confined in \_\_\_\_\_

\_\_\_\_\_  
(State name and location of facility)

since \_\_\_\_\_

\_\_\_\_\_  
(State date confinement commenced)

because of \_\_\_\_\_

(State particulars of illness or injury)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Emergency Absent Voter's  
Ballot Commissioner)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Emergency Absent Voter's  
Ballot Commissioner)

(e) At least one of the emergency absent voter ballot commissioners receiving the balloting materials shall sign a receipt which shall be attached to the application form. Each of the emergency absent voter ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and then the ballot, and return the same to the circuit clerk, and upon delivering the application and the voted ballot to the circuit clerk, sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot shall be returned to the circuit clerk prior to the close of the polls on election day. Any ballots received by the clerk after the time that delivery may reasonably be made but before the closing of the polls shall be treated as challenged absent voters' ballots in accordance with the provisions of section ten [§ 3-3-10] of this article and in addition to those absent voters' ballots subject to challenge as enumerated therein.

(f) Upon receiving the application and emergency absent voter's ballot, the clerk of the circuit court shall ascertain whether the application is complete and 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 shall be delivered to the precinct election commissioner pursuant to section seven [§ 3-3-7] of this article. If the voter is found not to be registered, then the ballot shall be challenged for that reason or any other provided for in section ten of this article.

(g) If either or both of the emergency absent voter ballot commissioners should refuse to sign any application for voting an emergency absent voter's ballot, then the voter shall be permitted to vote as an emergency absent voter and any such ballot shall be treated as a challenged absent voter's ballot in accordance with the provisions of section ten of this article and in addition to those absent voters' ballots subject to challenge as enumerated therein.

(h) Any voter who receives assistance in voting an emergency absent voter's ballot shall comply with the provisions of section six [§ 3-3-6] of this article. Any other provisions of this chapter relating to absent voter's ballots not altered by the provisions of this section shall govern treatment of emergency absent voter's ballots. (1988, 1989)

### **§ 3-3-7. Delivery of absent voters' ballots to polling places.**

(a) Except as otherwise provided in this article, the absent voters' ballots of each precinct, together with the applications therefor, the affidavits made in connection with assistance in voting, and such forms, lists and records as may be designated by the secretary of state, shall be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he picks up the official ballots and other election supplies as provided in section twenty-four [§ 3-1-24], article one of this chapter.

(b) An absent voter's ballot shall be delivered by the clerk of the circuit court to the election commissioners of the precinct in which the voter thereof is registered, or if not found to be registered, to the election commissioner of the precinct in which his residence as stated on the voter's application is located.

(c) Absent voters' ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct shall be delivered to the election commissioner of the precinct who has been so designated under aforementioned section twenty-four, article one, by the clerk in person, or by messenger, before the closing of the polls, provided such ballots are received by the clerk in time to make such delivery. Any ballots received by the clerk after the time that delivery may reasonably be made but before the closing of the polls, shall be treated as challenged absent voters' ballots in accordance with the provisions of section ten [§ 3-3-10] of this article and in addition to those absent voters' ballots subject to challenge as enumerated therein. (1988)

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

The clerk of the circuit court may challenge an absent voter's ballot on any 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 residence as provided by law; (4) that the person voting an absent voter's ballot by personal appearance in his office had assistance in voting such ballot when the person was not qualified for such voting assistance because (a) the affidavit of the person who received such assistance does not indicate a legally sufficient reason for such assistance, or (b) the person who received such assistance did not make an affidavit as required by this article, or (c) the person who received such 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 such ballot was not qualified under the provisions of this article for such 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 shall 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.

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 residence as provided by law; (4) that the signatures of the person voting an absent voter's ballot as they appear on his registration record, his 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 thereon the official seal of the clerk of the circuit court and all signatures of members of the board of ballot commissioners; (6) that the person voting an absent voter's ballot by personal appearance in the office of the clerk of the circuit court had assistance in voting such ballot when the person was not qualified for such assistance because (a) the affidavit of the person who received such assistance does not indicate a legally sufficient reason for such assistance, or (b) the person who received such assistance did not make an affidavit as required by this article, or (c) the person who received such assistance is not so illiterate as to have been unable to read the names on the ballot or that he 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 such ballot when not qualified under the provisions of this article for such 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) of section one [§ 3-3-1(3)] 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; (11) that the person voted an absent voter's ballot under authority of subdivision (1) of section one [§ 3-3-1] of this article and was able to vote at the polls on election day; and (12) 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.

Any registered voter in the county may challenge an absent voter's ballot voted under authority of subdivision (3) of section one [§ 3-3-1(3)] of this article on the ground that the voter of such ballot is or was in the county

in which he is registered to vote between the opening and closing of the polls on election day and may challenge an absent voter's ballot voted under authority of subdivision (1) of section one [§ 3-3-1(1)] of this article on the ground that the voter of such ballot was able to vote at the polls on election day.

Forms for, and the manner of, challenging an absent voter's ballot under the provisions of this article shall be prescribed by the secretary of state.

Absent voters' ballots challenged by the clerk of the circuit court under the provisions of this article shall be transmitted by the clerk directly to the county commission sitting as a board of canvassers; and the absent voters' ballots challenged by the election commissioners, poll clerks and registered voters of the county under the provisions of this article shall not be counted by the election officials but shall be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on such challenged absent voters' ballots shall be governed by the provisions of section forty-one [§ 3-1-41], article one of this chapter. (1989)

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

Absent voters' ballots shall be in all respects like other ballots. Not less than seventy days prior to 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 such lesser number of days shall apply, 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 any such 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, shall be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one [§ 3-1-1 et seq.] of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in such number as they shall determine, such absent voters' ballots as are to be printed under their directions as hereinbefore provided, and such ballots shall be delivered to the clerk of the circuit court of the county not less than forty-two days prior to 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 official seal and he and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back thereof. An absent voter's ballot not containing such seal and signatures shall be invalid and shall be subject to challenge by any election commissioner or poll clerk.

The clerk of the circuit court shall be primarily responsible for the



preparation, mailing, receiving, delivering and otherwise handling of all absent voters' ballots. He shall keep such 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, 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 such ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him, if any, and the names of the voters to whom such ballots have been delivered or mailed, or by whom they have been marked, if marked before him. (1986)

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

The secretary of state shall make, amend and rescind such rules, regulations, orders and instructions, and prescribe such forms, lists and records, and consolidation of such forms, lists and records as may be necessary to carry out the policy of the Legislature as contained in this article and as may be necessary to provide for an effective, efficient and orderly administration of the absent 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 absent voters contained in the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (P.L. 99-410, 42 U.S.C. 1973, et seq.) and shall forward a copy of the act to all circuit court clerks and clerks of the county commissions within ninety days of the effective date of this section.

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

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

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

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

(d) The forms and manner of making the challenges to absent voters' ballots authorized by this article;

(e) The forms of, information to be contained in, and consolidation of lists and records pertaining to applications for, and voting of, absent voters' ballots and assistance to persons voting absent voters' ballots;

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

(g) The keeping and security of voted absent voters' ballots in the office of the clerk of the circuit court. (1988)

**§ 3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.**

The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in such election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and challenged ballots. The labels shall be clearly printed in black ink on clear white material of such size as will fit the ballot frames. The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

The heading, the names and arrangement of offices and the printing and arrangement of names of the candidates for each office indicated shall be placed on the ballot for the primary election as nearly as possible according to the provisions of sections thirteen and thirteen-a [§§ 3-5-13 and 3-5-13a], article five of this chapter, and for the general election according to the provisions of section two [§ 3-6-2], article six of this chapter: Provided, That the staggering of the names of candidates in multi-candidate races and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

Each question to be voted on shall be placed at the end of the ballot and shall be printed according to the provisions of the laws and regulations governing such question.

The ballot labels so printed shall total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in such election. All such labels shall be delivered to the clerk of the circuit court at least twenty-eight days prior to the day of the election. The clerk of the circuit court shall determine the number of paper ballots needed for absentee voting and to supply the precincts for challenged ballots and ballots to be cast by persons unable to use the voting machine. All such paper ballots shall be delivered to the clerk of the circuit court at least forty-two days prior to the day of the election.

When the ballot labels and absentee ballots are delivered, the clerk of the circuit court shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct, and deliver the ballot labels to the clerk of the county commission, who shall insert one set in each machine prior to the inspection of the machines as prescribed in section twelve [§ 3-4-12] of this article. The remainder of such ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

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 and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their county. In addition, they shall provide appropriate facilities for the reception and safekeeping of the ballots of absent voters and of challenged voters and of such "independent" voters who shall, in primary elections, cast their votes on nonpartisan candidates and public questions submitted to the voters. (1991)

**§ 3-4-11. Ballot label arrangement in machines; drawing by lot to determine position of candidates on machines; adjustment; records.**

When the ballot labels are printed and delivered to the clerk of the county commission, they shall be placed in the ballot frames of the voting machines in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem of each candidate. Each column or row containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot.

The clerk of the county commission shall cause the voting machines to be programmed so that each lever is properly set to record a vote and that the voter can vote for the maximum number of candidates allowed for each office and no more. In general elections, the straight ticket lever shall cause a vote to be cast for every candidate of the straight ticket party unless the voter cancels a vote within that party by resetting one or more individual levers at the positions of specific candidates to the no-vote position.

The clerk shall then see that the counters referred to in subsection (11) of section eight [§ 3-4-8(11)] of this article are set at zero (000) and shall lock the operating device and mechanism and devices protecting the counter and ballot labels. The clerk shall then enter in an appropriate book, opposite specific voting machine or machines to be used in that precinct. (1991)

**§ 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;

(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;

(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 or by perforating, and such 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 vote by perforating. (1988, 1990)

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

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

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

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

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

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

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

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

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

(9) It shall permit 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 [§ 3-6-5], article six of this chapter.

(10) It shall permit 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 preclude him from voting for any candidate seeking nomination by any other political party, permit him to vote for the candidates, if any, for nonpartisan nomination or election, and permit him to vote on public questions;

(11) It shall, where applicable, be provided with means for sealing 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 shall have the capacity to contain the names of candidates constituting the tickets of at least nine political parties, and to accommodate the wording of at least fifteen questions;

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

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which shall make it safely transportable;

(B) Be so constructed with frames for the placing of ballot labels and with suitable means for the protection of such labels, that the labels on which are printed the names of candidates and their respective parties, titles of offices, and wording of questions shall be so reasonably protected from mutilation, disfigurement or disarrangement;

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

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

(E) Be accompanied by a mechanically operated instruction model which shall show the arrangement of ballot labels, party columns or rows, and questions. (1988, 1990)

***§ 3-4A-10. County clerk to be custodian of vote recording devices and tabulating equipment; duties.***

When an electronic voting system is acquired by any county commission the vote recording devices, where applicable, and the tabulating equipment shall be immediately placed in the custody of the county clerk, and shall remain in his or her custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the vote recording devices and the tabulating equipment are properly protected and preserved from damage or unnecessary deterioration, and shall not permit any unauthorized person to tamper with them. The clerk shall also be charged with the duty of keeping the vote recording devices and tabulating equipment in repair and of preparing the same for voting. (1990)

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

Where vote recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: Provided, That a minimum of one vote recording device per party be provided, except for "independent" voters, which shall be determined under section twenty [§ 3-4A-20] of this article. (1990)

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

The ballot commissioners of any county in which an electronic voting

system utilizing voting devices for registering the voter's choices is to be used in any election shall cause to be printed for use in such election the ballot cards and ballot labels, as appropriate, for the electronic voting system.

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

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

(c) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office shall conform as nearly as possible to the provisions of sections thirteen and thirteen-a [ §§ 3-5-13 and 3-5-13a], article five of this chapter.

(d) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office shall conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article. The secretary of state shall assign uniform numbers which shall be used by all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. After taking into account the numbers so assigned by the secretary of state, the clerk of the circuit court shall arrange the offices and the candidates within each office as prescribed by section two [ § 3-6-2], 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 shall conform as nearly as practical to the following example:

Democratic Ticket
For Governor (Vote for One)

Republican Ticket
For Governor (Vote for One)

(candidate's name) 10⇒  
(residence, county)

⇐11 (candidate's name)  
(residence, county)

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

For Governor  
(Vote for One)

Democrat	(candidate's name) (residence, county)	10⇒
Republican	(candidate's name) (residence, county)	11⇒
People's	(candidate's name) (residence, county)	12⇒

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

Democratic Ticket

For House of Delegates  
First Delegate District  
(Vote For Not More  
Than Two)

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

(candidate's name) 69⇒  
(residence, county)

(candidate's name) 71⇒  
(residence, county)

Republican Ticket

For House of Delegates  
First Delegate District  
(Vote For Not More  
Than Two)

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

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

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



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

(f) In elections in which voters are authorized to vote for persons whose names do not appear on the ballot label, a separate write-in ballot, which may be in the form of a paper ballot or card or may be part of the secrecy envelope, shall be provided if required to permit a voter to enter the title of the office and the names of persons whose names are not on the ballot, for whom he or she wishes to vote. The manner of voting for write-in candidates upon electronic voting devices shall be as prescribed by rules and regulations of the secretary of state.

(g) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots, facsimile diagrams of the vote recording device ballot and official printed ballots or ballot cards adequate for the orderly conduct of the election in each precinct in their county. In addition they shall provide all other materials and equipment necessary to the conduct of the election, including voting booths, appropriate facilities for the reception and safekeeping of ballot cards, the ballots of absent voters and of challenged voters and of such "independent" voters who shall, in primary elections cast their votes on nonpartisan candidates and public questions submitted to the voters. (1991)

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

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

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

(2) Both the face and the reverse side of the ballot may contain the names of candidates, only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are

printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(3) The arrangement of candidates within each office shall be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot only, lines for entering write-in votes shall be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected. The words "WRITE-IN, IF ANY" shall be printed directly under each line for write-ins. Such lines shall be opposite a position to mark the vote. Write-in votes which appear on the ballot in places other than the lines provided for write-ins shall not be counted, but any name entered on a line for a write-in vote shall be counted in accordance with the rules for counting write-ins in a general election in other voting systems.

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

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election. (1990)

***§ 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 shall equal one and one-half times the total number of corresponding vote recording devices to be used in the election. All such labels shall 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 shall conform as nearly as possible to the requirements for paper ballots. Official ballot cards printed and packaged for the various precincts shall 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 shall 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 and/or party 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 remainder of such ballot labels for each machine shall be retained by the clerk of the county commission 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. (1990, 1991)

***§ 3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.***

When the clerk of the county commission has completed the preparation of the ballots and vote recording devices as provided in sections eleven, eleven-a and twelve [§§ 3-4A-11, 3-4A-11a and 3-4A-12] of this article and as provided in section twenty-one [§ 3-1-21], article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and devices, where applicable, are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices, where applicable, and ballots are stored, not later than five days before the day of the election, and shall inspect the devices and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-O legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. Any candidate and one representative of each political party on the ballot may be present during such examination. If the devices, where applicable, and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall, where applicable, endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts. The vote recording devices and the ballots shall then be secured in double lock rooms. The county clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, where applicable,

and the ballots for transportation to the polls. Upon such removal of the devices and ballots, the county clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, where applicable, and packages of ballots were found to be sealed when removed for transportation to the polls. 7

Not later than one day before the election, the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerks of the circuit court and county commission of such county to receive the necessary election records, books and supplies required by law. Such election commissioners shall receive the per diem mileage rate prescribed by law for this service. Such election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. Such receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission. (1990)

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

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

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

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by articles five [§ 3-5-1 et seq.] and six [§ 3-6-1 et seq.] of this chapter, shall consist of a facsimile of the ballot or ballot labels with the names of the candidates and the offices for which they are running shown in their proper positions. (1990)

**§ 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. Such delivery shall be made not than one hour prior to the opening of the polls and shall be made in the presence of the precinct election commissioners. At the time of the delivery of such vote recording device, where applicable, and the ballots, the device shall be sealed in such a way to prevent its use prior to the opening of the polls and any tampering with the ballot labels and the ballots shall be packaged and sealed in such a way to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots shall be opened, and the seal of the vote recording device shall 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 such 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 such 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 shall elect to close the curtain, screen or hood to the voting booth. (1990)

**§ 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 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 such clerk a reserve vote recording device, and thereafter proceed to conduct the election. Any reserve vote recording device so used shall be prepared for use by the clerk or his duly appointed deputy and said reserve vote recording device shall be prepared, inspected and sealed, and delivered to the polling place wherein the seal shall be broken and such 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 shall be returned immediately to the custody of the clerk who shall then promptly cause such vote recording device to be repaired, prepared and resealed in order that it may be used as a reserve vote recording device if needed. (1990)

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

(1) 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.

(2) 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.

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

(4) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths so that they will be 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 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 so certify

in writing their findings upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies shall be so 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 such ballots in sequential order to each voter.

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

(6) Any voter who shall spoil, deface or mutilate the ballot delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot delivered to him shall, before leaving the election room, return such 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, and the word "spoiled" shall be written across the face of the ballot and it shall be placed 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 shall at the same time be returned to the clerk of the county commission who shall count them and record the number. If there is no discrepancy, the unused ballots shall be destroyed forthwith, before a representative of each party on the ballot, by fire or otherwise, by the clerk of the county commission or a duly designated deputy clerk. If there is a discrepancy, the unused ballots shall 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 shall each have a key. Upon resolution of the discrepancy, the unused ballots shall forthwith, before a representative of each party on the ballot, be destroyed by fire or otherwise, by the clerk of the county commission or a duly designated deputy clerk.

Each commissioner who is a member of an election board which fails to account for every ballot delivered to it shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both. The board of ballot commissioners of each county, or the chairman thereof, 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 such ballots shall then be destroyed by such board, or the chairman thereof,

by fire or otherwise.

(7) Where ballots are used, the voter, after he has marked his ballot shall, before leaving the voting booth, place the ballot inside the envelope provided for this purpose, with the stub extending outside said 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 shall be accepted by the officer in charge of the ballot box, but such ballot shall be marked "spoiled" and placed with the spoiled ballots.

(8) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted, as indicated by the pollbooks, and shall place two copies of this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the election commissioners so that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different political parties shall forthwith deliver the ballot box to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor, which receipt shall carefully set forth in detail any and all irregularities pertaining to the ballot boxes and noted by the precinct election officers. The receipt shall be prepared in duplicate, a copy of which shall remain with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place shall be noted on the two remaining copies of the report, which shall be immediately mailed to the clerk of the county commission.

(9) The pollbooks, register of voters, unused ballots, spoiled ballots and other records and supplies shall be delivered to the clerk of the county commission, all in conformity with the provisions of this section. (1990)

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

Every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article shall provide two lines for the signatures of the poll clerks. Both of the signature lines shall 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 ballot and after the ballot stub has been removed.

Each of the two poll clerks shall sign his name on one of the designated lines provided on each ballot before any ballot is distributed to a voter. After a voter has signed the pollbook, as required in section nineteen [§ 3-4A-19] 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 herein.



In the course of an election contest, if it is established that a ballot does not contain the two signatures required by this section, such ballot shall be null, void and of no effect, and shall not be counted. (1990)

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

If at any primary elections, nonpartisan candidates for office and public questions are submitted to the voters and on which candidates and questions persons registered as "independent" are entitled to vote, as provided in section eighteen [§ 3-2-18], 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, so that such "independent" voters may vote only those portions of the ballot relating to the nonpartisan candidates and the public questions submitted, or provide a ballot containing only provision for voting for those candidates and/or upon those issues common to the ballots provided to all voters regardless of political party affiliation.

In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the "independent" voters, provision shall 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. (1990)

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

Absentee voters shall cast their votes on absent voter ballots. If absentee voters shall be deemed eligible to vote in person at the office of the clerk of the circuit court, in accordance with the provisions of article three [§ 3-3-1 et seq ] of this chapter, the clerk of the circuit court of each county shall provide a vote recording device or other means, as may be appropriate for votes recorded by electronically sensible ink or pencil, for the use of such absentee voters. For all absentee voters deemed eligible to vote an absent voter's ballot by mail, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall prepare and issue an absent voter ballot packet consisting of the following:

- (a) One official absent voter ballot;
- (b) One punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;
- (c) 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;

(d) One absent voter instruction ballot;

(e) One absent voter's ballot envelope No. 1, unsealed, which shall have no writing thereon and which shall be identical to the secrecy envelope used for placement of ballots at the polls; and

(f) One absent voter's ballot envelope No. 2, which envelope shall be marked with the proper precinct number and shall provide a place on its seal for the absent voter to affix his signature. Such envelope shall also otherwise contain the forms and instructions as provided in section five [§ 3-3-5], article three of this chapter, relating to the absentee voting of proper ballots.

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 absent voter's ballot in accordance with the provisions of section six [§ 3-3-6], article three of this chapter.

After the voter has voted his absent voter's ballot, he shall (1) enclose the same 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 thereon, and (4) mail, postage prepaid, sealed absent voter's ballot envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote, unless the voter has appeared in person, in which event he shall hand deliver the sealed absent voter's ballot envelope No. 2 to the clerk.

Upon receipt of such sealed envelope, the circuit clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his 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 (the form of which record and information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his 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.

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 such ballots as prescribed in article three [§ 3-3-1 et seq.] 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 therefrom the absent voter's ballot envelopes No. 1. These ballot envelopes No. 1 shall then 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 therefrom. The poll clerks shall then affix their signatures thereto as provided in section nineteen-a [§ 3-4A-19a] 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. (1990)

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

(a) Any duly 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 one of the following means:

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

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

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting such voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter's choice. Such person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. (1990)

**§ 3-4A-24. Voting by challenged voter.**

If the right of any person to vote be challenged in accordance with the provisions of article one [§ 3-1-1 et seq.] 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, such person shall be permitted to cast his vote by use of the vote recording device or ballot, as may be appropriate. He shall be provided with a challenged ballot and ballot envelopes for the insertion of the ballot after voting. There shall be an inner envelope marked with the precinct number for the challenged ballot. There

shall also be another envelope for the inner envelope and the challenged voter stub, which envelope shall provide a place for the challenged voter to affix his signature on the seal of such outer envelope.

After the county commission, as prescribed in article one [§ 3-1-1 et seq.] 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 such inner envelopes. The commissioners shall then open the inner envelopes, remove the ballots and add the votes to the previously counted totals. (1990)

### **§ 3-4A-25. Closing polls.**

As soon as the polls have been closed and the last qualified voter has voted, no further voting on any ballot may be had and the vote recording devices utilized in counties with electronic voting systems where votes are recorded by perforating shall be sealed against further voting. All unused ballots shall be placed in a container for return to the clerk of the county commission. (1990)

### **§ 3-5-2. Delegates to national conventions; alternate delegates.**

(a) At the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, there shall be elected by the voters of each political party of the state, in accordance with a plan adopted by the state party, persons to be delegates to the national convention of the party to be held next after the date of such primary.

(b) The plan adopted by each political party of the state shall state the method, subject to compliance with their national party rules and not inconsistent with the provisions of this chapter, for the election of persons in each congressional district of the state as delegates to the national convention of the party, for the election or selection of persons in each congressional district of the state as alternate delegates to the national convention of the party and for the selection of all remaining delegates and alternate delegates allocated to the party in their national convention. Not less than one hundred twenty days before the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, the governing body of each political party of the state shall certify the plan adopted by the party under signature of the state party chairman and file the plan with the secretary of state. Any questions regarding whether such plan was rightfully adopted by the party shall be resolved by the party based upon party rules.

(c) The plan adopted by each political party of the state shall, to the extent permissible under their national party rules, provide for the following:

(1) The voters of each political party shall elect in each congressional district the number of persons as delegates to the national convention of the party to which the district is entitled.

(2) If the rules of the national political party do not require the apportionment of delegates on the basis of their commitment for president, the persons receiving the highest number of votes as delegates in any congressional district to the number to which the district is entitled, shall be elected delegates. After the election of delegates in each congressional district to the number to which the district is entitled, the persons receiving the next highest votes in each congressional district and having qualified, as may be provided in the plan adopted by the party, shall be elected as alternate delegates to the number of alternate delegates to which the district is entitled.

(3) If the rules of the national political party require that the percentage of votes cast for the various presidential candidates determine the apportionment of committed candidates to be elected as delegates or alternates, regardless of whether such committed candidates received the highest number of votes, then the plan adopted by the political party of the state shall prescribe the number of delegates and alternates to be elected under such apportionment, the method by which the apportionment shall be made, and the method by which the secretary of state shall determine which delegates and alternates are elected. A committed candidate for delegate to national convention is one whose preference for a particular presidential candidate appears on the ballot.

(4) In the event the number of persons elected in the primary election in a congressional district is less than the number to which the district is entitled as delegates and alternate delegates to the national convention of the political party, the governing body of the political party of the state shall appoint persons from the congressional district to serve as delegates or alternate delegates to the national convention of the party unless the rules of the party otherwise provide.

(5) The number of persons which each of the congressional districts in the state are entitled to elect as delegates to the national convention of the political party shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party's national convention elected in all congressional districts in the state as the population of the congressional district bears to the total population of the state based upon the census of population taken by the bureau of the census of the United States department of commerce in the year one thousand nine hundred ninety, and in every tenth year thereafter.

(d) The official primary ballot at the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter shall, following the names of all candidates for delegates to the national convention of the party, contain the words "For election in accordance with the plan adopted by the party and filed with the secretary of state."

(e) Unless and until a political party of the state has adopted and certified a plan for the election of delegates to the national convention of the party and filed the plan with the secretary of state, there shall be elected by the voters of the political party of the state at the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, the number of persons to which the party is entitled as delegates-at-large, and by the voters of each political party in each congressional district in the state the number of delegates to which the district is entitled. The persons receiving the highest number of votes in the state as delegates-at-large, to the number to which the state is entitled, shall be elected delegates. The persons receiving the highest number of votes as delegates in any congressional district, to the number to which the district is entitled, shall be elected delegates. Each delegate so elected shall then appoint an individual to serve as alternate delegate, and shall by registered letter notify the secretary of state of such appointment within forty days after the primary election. (1991)

### ***§ 3-5-3. Presidential preference.***

In presidential election years, in addition to the candidates required to be nominated at the primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section thirteen [§ 3-5-13] of this article, upon the filing with the secretary of state of the certificate of announcement as provided in section seven [§ 3-5-7] of this article and the filing fee or petition in lieu of filing fee as provided in sections eight and eight-a [§§ 3-5-8 and 3-5-8a] of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the names and certificates of the party aspirants for the party nomination for the office of governor. (1991)

### ***§ 3-5-4. Nomination of candidates in primary elections.***

At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, of each judicial circuit of West Virginia, of each county and of each magisterial district in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen, or where a judicial circuit has two or more circuit judges and one circuit judge is to be chosen for each numbered division within the circuit, the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that: (1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the state of West Virginia; (2) members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six [§§ 3-5-5 and 3-5-6] of this article; (3) candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in section two [§ 1-2-2], article two, chapter one of this code; and (4) in judicial circuits having numbered divisions, each numbered division shall be tallied separately and the candidate in each division receiving a plurality of the votes cast shall be declared the party nominee for the office in that numbered division.

In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by the executive committee of the party for the political division in which such persons are candidates. (1990, 1991)

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

Any person who is eligible to hold and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring as a candidate for the nomination or election to such office.

(a) The certificate of announcement shall be filed as follows:

(1) With the secretary of state, if it be an office or political position to be filled by the voters of more than one county;

(2) With the clerk of the circuit court, if it be for an office to be filled by the voters of a single county or of a subdivision less than a county;

(3) With the recorder or city clerk if it be for an office to be filled by the voters of a municipality.

The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January next preceding the primary

election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States postal service before that hour.

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

(1) The date of the election in which the candidate seeks to appear on the ballot;

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

(3) The legal name of the candidate, and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen [§ 3-5-13], article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

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

(6) For partisan elections, the name of the candidate's political party, and a statement that the candidate is a member of and affiliated with that political party as is evidenced by the candidate's current registration as a voter affiliated with that party, and that the candidate has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or, a statement that the candidate prefers to remain "uncommitted";

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

(9) The words "subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_," and a space for the signature of the officer giving the oath.

The secretary of state or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate evidencing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate be filed with



the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.

(c) The certificate of announcement shall be subscribed to and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on said certificate is guilty of false swearing and shall be punished as set forth in section three [§ 3-9-3], article nine of this chapter.

(d) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the secretary of state by letter received by the secretary of state no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate, and the secretary of state shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(e) No person shall be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for president of the United States, for membership on a political party executive committee or for delegate to a political party national convention. Notwithstanding the provisions of this section, nothing shall prohibit a candidate from jointly running for or jointly holding the offices of county clerk and circuit clerk in those counties which operate a joint clerkship system.

(f) Any candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven [§ 3-5-11], article five of this chapter, from all but one office prior to the close of the filing period shall not be certified by the secretary of state or placed on the ballot for any office by the board of ballot commissioners.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred ninety-two and every primary election held thereafter. (1990, 1991)

***§ 3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.***

A candidate seeking nomination to any office who is unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

The candidate shall file an oath with the appropriate office required under section eight [§ 3-5-8] of this article stating that he is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not

earlier than the second Monday in January next preceding the primary election day. 3

Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: Provided, That the filing fee shall be waived in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought: Provided, however, That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

No qualified voter forfeits his or her opportunity to vote in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The county clerk may not be required to determine the validity of a greater number of signatures than that required by this section.

Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three [§ 3-5-23] of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the county clerk or secretary of state, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be prescribed by the secretary of state. (1986)

**§ 3-5-11. Withdrawals; filling vacancies in candidacy; publication.**

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal with the same officer with whom the certificate of announcement was filed. If such statement of withdrawal is received not later than the third Tuesday following the close of candidate filing, the name of a candidate who files that statement of withdrawal may not be printed on the ballot. No candidate who files a statement of withdrawal after that time may have his or her name removed from the ballot.

(b) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the circuit court shall give a written notice which shall

be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(c) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by failure of any person of a party to file for each available seat of each available office, the executive committee of the party for the political division within which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its chair, the candidate's certificate of announcement, and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday following the close of filing. A candidate appointed to fill a vacancy on the ballot under this subsection shall have his or her name printed on the primary ballot for that party. (1991)

### ***§ 3-5-13. Form and contents of ballots and ballot labels.***

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(a) The heading of every ballot shall be printed in display type. The heading shall contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots shall contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading. The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the board of education shall contain the words "Nonpartisan Ballot of Election of Members of the \_\_\_\_\_ County Board of Education". The districts for which less than two candidates may be elected and the number of available seats shall be specified and the names of the candidates shall be printed without reference to political party affiliation, and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question shall have a heading which clearly states the purpose of the election, according to the statutory requirements for that question.

(b) (1) For paper ballots, the heading of the ballot shall be separated from the rest of the ballot by heavy lines, and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket", and, in a presidential election year, "National Convention", or, in a nonpresidential election year "District Ticket". The columns shall be separated by heavy lines. Within the columns, the offices shall be arranged in the order prescribed in section

thirteen-a [§ 3-5-13a] of this article.

(2) For voting machines, electronic voting devices, and any ballot tabulated by electronic means, the offices shall appear in the same sequence as prescribed in section thirteen-a, and under the same headings as prescribed in subsection (a) of this section. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

(3) The title of each office shall be separated from preceding offices or candidates by a line, and shall be printed in bold type, no smaller than eight point. Below the office shall be printed the number of the district, if any, the number of the division, if any, and the words "Vote for \_\_\_\_\_" with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_" in multi-candidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there shall be a clear explanation of such limitation, as prescribed by the secretary of state, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system.

(c) The location for indicating the voter's choices on the ballot shall be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot shall contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(d) (1) The name of every candidate certified by the secretary of state or the board of ballot commissioners shall be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the secretary of state, the name of each candidate shall appear in the form set out by the candidate on the certificate of announcement, but in no case shall the name misrepresent the identity of the candidate, nor shall the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(2) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county, and the magisterial district of residence of every candidate for an office subject to magisterial district limitations, shall be printed in lower case letters beneath the names of the candidates.

(3) The arrangement of names within each office shall be determined as prescribed in section thirteen-a of this article.

(4) If the number of candidates for an office exceeds the space available on a column or ballot label page and requires that candidates for a single office be separated, to the extent possible, the number of candi-

dates for the office on separate columns or pages shall be nearly equal, and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(e) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office, or for the voters to elect sufficient members to the board of education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": Provided, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of board of education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office.

(f) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the secretary of state" shall be printed following the names of all candidates for delegate to national convention.

(g) All paper ballots shall be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back. Ballot cards and paper for printing ballots using electronically sensible ink shall meet minimum requirements of the tabulating systems.

(h) Electronically tabulated ballots and ballot cards shall contain perforated tabs at the top of the ballots and shall be printed with unique sequential numbers from one to the highest number representing the total number of ballots or ballot cards printed. On paper ballots, the ballot shall be bordered by a solid line at least one sixteenth of an inch wide, and the ballot shall be trimmed to within one-half inch of that border.

(i) On the back of every official ballot or ballot card, there shall be printed the words "Official Ballot" with the name of the county and the date of the election. Beneath shall be two blank lines, followed by the words "Poll Clerks".

(j) Absent voters' ballots shall be in all respects like other official ballots, except that three blank lines shall be printed on the back of the ballot or ballot card in the lower left corner with the words "Ballot Commissioners" printed underneath.

(k) The face of sample paper ballots and sample ballot labels shall be like other official ballots or ballot labels, except that the word "sample" shall be prominently printed across the front of the ballot in such a way that the names of candidates are not obscured, and the word "sample" may be printed in red ink. No printing shall be place on the back of the sample. (1991)

**§ 3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.**

(a) The order of offices for state and county elections on all ballots within

the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

**NATIONAL TICKET:** President (and vice president in the general election), United States senator, member of the United States house of representatives

**STATE TICKET:** Governor, secretary of state, auditor, treasurer, commissioner of agriculture, attorney general, justice of the supreme court of appeals, state senator, member of the house of delegates, circuit judge in multi-county districts, any other multi-county office, state executive committee

**COUNTY TICKET:** Circuit judge in single-county districts, clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive committee, senatorial district executive committee in multi-county districts, delegate district executive committee in multi-county districts

**NATIONAL CONVENTION:** Delegate to the national convention—at-large, delegate to the national convention—congressional district

**DISTRICT TICKET:** County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a.m., a drawing by lot shall be conducted in the office of the clerk of the circuit court in each county. Notice of the drawing shall be given on the form for the certificate of announcement, and no further notice shall be required. The clerk of the circuit court shall superintend and conduct the drawing, and the method of conducting the drawing shall be prescribed by the secretary of state.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings. (1991)

**§ 3-5-19. Vacancies in nominations; how filled; fees.**

(a) If any vacancy shall occur in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section eleven [§ 3-5-11] of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: Provided, That if the executive committee fails to make an appointment in a duly called meeting or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven [§ 3-5-7] of this article, and, except for appointments made under subdivisions (4), (5) or (6) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a [§3-5-8 or § 3-5-8a] of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

(3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than the Thursday preceding the primary election.

(4) If a vacancy in nomination is caused by the disqualification or incapacity of the candidate, and if the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(5) If a vacancy in nomination is caused by the withdrawal of the candidate no later than ninety-eight days before the general election due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected, and if the candidate or the chairperson of the executive committee for the political division applies in writing to the state election commission no later than ninety-five days before the general election for permission to fill the vacancy, the state election commission shall review the reasons for the withdrawal. If the commission finds the circumstances warrant the withdrawal of the candidate, the commission may authorize appointment by the executive committee to fill the vacancy, upon which authorization a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight

days before the general election.

(6) If a vacancy in nomination is caused by the death of the candidate occurring no later than twenty-five days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than twenty-one days following the date of such death, or no later than twenty-two days before the general election, whichever date occurs first.

(b) Except as otherwise provided in article ten [§ 3-10-1 et seq.] of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which vacancy creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the circuit court no earlier than the first Monday in August and no later than seventy-seven days before the general election. (1991)

**§ 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 [§ 3-5-24] 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 ....., a duly registered voter of this state; 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 one 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. 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 subscrib-

ers 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 signatures. 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 hereof, in addition to penalties prescribed elsewhere for violation of this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, in the discretion of the court. (1986)

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

(a) All ballots prepared under the provisions of this section shall contain:

(1) The name and ticket of each party which is a political party under the provisions of section eight [§ 3-1-8], article one of this chapter;

(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three [§ 3-6-23] of this article;

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law, and no others.

(b) The provisions of subsections (b)(3), (c), (d)(1), (d)(2), (g), (h), (i), (j) and (k) of section thirteen [§ 3-5-13(b)(3), (c), (d)(1), (d)(2), (g), (h), (i), (j) and (k)], article five pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading shall be in display type and shall contain the words, "Official Ballot, General Election" and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot shall contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem, the position for straight party voting for each party and the name of each party as prescribed in subsection (a) of this section. On paper ballots, the position for straight party voting shall be a heavy circle, three-fourths inch in diameter, surrounded by the words "For a straight ticket mark within this circle" printed in bold six point type. On all other ballots or ballot labels, the positions for straight party voting shall be marked "Straight Party Ticket". For ballots tabulated electronically, the secretary of state shall prescribe a uniform number for the straight ticket position for each party.

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election shall be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote shall be next, and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election shall be placed in the sequence in which the final certificates of nomination by petition were filed.

(4) (A) Except for lever machine ballot labels, the following general instructions for straight party voters shall be printed in no smaller than eight point bold type: "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office." The last sentence of the above instructions shall not be included on any ballot which does not contain any office or division where more than one candidate will be elected.

On paper ballots, the general instructions shall be placed below the party name and across the top of all columns, followed by a heavy line separating them from the rest of the ballot. On ballots marked with electronically sensible ink and on ballot labels for voting devices in punch card systems, the general instructions shall be placed after the position for straight voting and before any office.

(B) Except for lever machine ballot labels, the following specific instructions shall be printed on the ballot for any partisan election for an office or division to which more than one candidate is to be elected: "If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office."

On paper ballots, the specific instructions shall be placed below the office name of any partisan office where more than one is to be elected, and across the top of all columns for that office before the names of any

candidates. On all other ballots and ballots labels, the specific instructions shall be placed above or to the side of the names of the candidates, as the voting system requires.

(5) For all ballots, any columns, rows or sections in which the tickets of one party appears shall be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices shall be arranged in the order prescribed in section thirteen-a [§ 3-5-13a], article five of this chapter, under the appropriate tickets, which shall be headed "National Ticket", "State Ticket" and "County Ticket". The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

(d) The arrangement of names within each office for all ballot systems shall be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice president of each party shall be placed beside a brace with a single voting position, so that a vote for any presidential candidate shall be a vote for the electors of the party for which such candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected shall be determined as prescribed in section thirteen-a, article five of this chapter: Provided, That the drawing by lot shall be conducted on the seventieth day next preceding the date of the general election, beginning at nine o'clock a.m.

(3) Except in voting machine systems, in any office where more than one person is to be elected, the names of the candidates for the office shall be staggered so that no two candidates for that office shall appear directly opposite any other candidate, as shown in the example below:

---

For House of Delegates  
First Delegate District  
(Vote For Not More  
Than Two)

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

---

SUSAN B. ANTHONY  
City (County)

---

---

For House of Delegates  
First Delegate District  
(Vote For Not More  
Than Two)

---

JOHN ADAMS  
City (County)

---

ABRAHAM LINCOLN  
City (County)

---

JAMES MONROE  
City (County)

---

(4) Each voting system shall provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of the candidate shall be placed under the proper office for each vacancy in nomination, and for an office for which more than one is to be elected, any such vacancy shall appear after any other candidates for the office.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot label, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words "No Candidate Nominated" shall be printed in the space that would be occupied by the name of the candidate, and for an office for which more than one is to be elected, any such vacancy shall appear after any other candidates for the office.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate section or page of the ballot shall be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates, and shall be headed "Nonpartisan Board of Education".

(e) Any constitutional amendment shall be placed following all offices, followed by any other issue upon which the voters shall cast a vote. The heading for each amendment or issue shall be printed in large, bold type according to the requirements of the resolution authorizing such election.

(f) The board of ballot commissioners may not place any issue on the ballot for election which is not specifically authorized under the West Virginia constitution or statutes, or which has not been properly ordered by the appropriate governmental body charged with calling such election. (1991)

**§ 3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.**

(a) No person shall act as the treasurer of any political committee, or as financial agent for any candidate for nomination or election to any office to be filled by the voters of the entire state, or candidates for nomination or

election for any office, encompassing an election district larger than a county, or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, encompassing an election district larger than a county, unless a written statement designating him as such treasurer or financial agent shall be filed with the secretary of state, at least twenty-eight days before the election at which he is to act, and must be received before midnight, eastern standard time, of that day, or if mailed, shall be postmarked before that hour.

(b) No person shall act as treasurer of any such committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, or as the treasurer or financial agent for a candidate for the nomination or election to any other office, or for the passage or defeat of any issue, thing or item to be voted upon not herein mentioned, unless a written statement designating him as such treasurer or financial agent shall be filed with the clerk of the county commission at least twenty-eight days before the election at which he is to act, and must be received before midnight, eastern standard time, of that day, or if mailed, shall be postmarked before that hour.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a filing designating a treasurer or financial agent for a state or county political executive committee may be made anytime before the committee either accepts or spends funds on behalf of the committee. Once a designation is made by a state or county political executive committee, no additional designations shall be required under this section until a successor treasurer or financial agent is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee's account. This written request shall be made with either the secretary of state or the clerk of the county commission as provided by subsections (a) and (b) of this section.

(d) As used in this article:

The term "person" shall include an individual, partnership, committee, association, corporation, and any other organization or group of persons; and

The term "financial agent" shall include any person acting for and by himself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party or principle at any election, or any proposition submitted to a vote at a public election. (1989)

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

(a) Each financial statement required by the provisions of this article shall contain the following information:

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

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

(3) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars by any one contributor is prohibited unless it is made by money order or by check, and a violation of this provision is subject to section five-d [§ 3-8-5d] of this article. As used herein, the term "check" shall have the meaning ascribed to that term in section one hundred four [§ 46-3-104], article three, chapter forty-six of this code.

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

(5) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee making or cosigning a loan and the amount of any loan received, the date and terms of the loan, including interest and repayment schedule, along with a copy of the loan agreement.

(6) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The first name, middle initial, if any, and the last name, residence and mailing address of any individual, or the full name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the

nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

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

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

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

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

(2) All of the information required by subdivision (3), subsection (a) of this section.

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

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

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

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

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in case of a firm, association or committee, residence and mailing address and the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight [§ 3-8-8] of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity. No person, firm, association or committee may accept any contribution for



the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any issue or thing to be voted upon unless the identity of the donor and the amount of the contribution is known and reported.

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

(k) Any membership organization which raises funds for political purposes by payroll deduction [by] assessing them as part of its membership dues or as a separate assessment may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through such payroll deductions during the reporting period, and to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(l) For purposes of this section:

(1) "Political purposes" means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the retirement of the debt of a candidate or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee or advocating or opposing the passage of a ballot issue.

(2) "Membership organization" means a group that grants bona fide

rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. This term shall not include organizations that grant membership upon receiving a contribution.

(3) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services. (1991)

### ***§ 3-9-3. False swearing; penalties.***

(a) If any election official, or other person, making any affidavit required under any provision of this chapter, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall be guilty of a misdemeanor, and, on conviction therefor shall be fined not less than fifty nor more than one thousand dollars and imprisoned in the county jail for a period of not more than one year.

(b) If any person making any declaration required under any provision of this chapter shall knowingly make a false statement or representation therein, or if any person shall counsel, advise, aid or abet another to make such a declaration containing any false statement or representation, any such person shall be deemed to be guilty of false swearing although no oath was administered, and such offense is hereby declared to be a misdemeanor. Upon conviction of such offense, any such person shall be fined not less than fifty nor more than one thousand dollars and imprisoned in the county jail for a period of not more than one year. (1988)

### ***§ 3-9-6. Unauthorized presence in election room; three-hundred-foot limit; penalties.***

If any person, not herein authorized so to do, enters or attempts to enter the election room, except upon a lawful errand and for a proper purpose, or remains within three hundred feet of the outside entrance to the building housing the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or confined in the county jail for not more than thirty days.

Excepting those individuals provided for expressly in this or other sections of the code, only full-time employees of the secretary of state's office or full-time employees of the respective county offices of the county clerk or the county prosecutor may enter or otherwise disturb the polling place. (1986)

### **§ 3-9-9. Other unlawful acts at polling places; penalties.**

No officer of election may disclose to any person the name of any candidate for whom a voter has voted. No officer of election may do any electioneering on election day. No person may do any electioneering on election day within any polling place, or within three hundred feet of the outside entrance to the building housing the polling place. No person may apply for or receive any ballot in any polling place, other than that in which he is entitled to vote, nor may any person examine a ballot which any voter has prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement, directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of election, may receive from any voter a ballot prepared by him for voting. No voter may receive a ballot from any person other than one of the poll clerks; nor may any person other than a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No voter may deliver any ballot to a commissioner of election to be voted, except the one he receives from the poll clerk. No voter may place any mark upon his ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him. Whoever violates any provision of this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for not more than one year, or both fined and confined. (1986)

### **§ 3-10-1. Elections to fill vacancies.**

Except as provided in sections three and four [§§ 3-10-3 and 3-10-4] of this article, elections to fill vacancies shall be conducted to fill any unexpired term when more than one year of the term of office remains at the time of such election. When less than one year of the term of office remains at the time of the election, the person appointed to fill the vacancy shall continue in office until the completion of the term. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections. The persons elected, having first duly qualified, shall enter upon the duties of their respective offices. (1991)

### **§ 3-10-3. Vacancies in offices of state officials, United States senators and judges.**

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States senator, judge of the supreme court of appeals, or in any office created or

made elective, to be filled by the voters of the entire state, or judge of a circuit court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, be for less than two years, or if the unexpired term of any other office named in this section be for a period of less than two years and six months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state. If the election be to fill a vacancy in the office of judge of a circuit court, the proclamation shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the judicial circuit. (1990)

### **§ 3-10-6. Vacancy in office of circuit court clerk.**

When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges, or the chief judge thereof in vacation, shall fill the same by appointment of a person of the same political party as the officeholder vacating the office until the next general election, or until the completion of the term if the term ends on the thirty-first day of December following the next general election and the person so appointed shall hold office until his or her successor is elected and qualified. At such general election a clerk shall be elected for the unexpired term if the unexpired term is greater than one year. The circuit court, or the chief judge thereof in vacation, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be the county. If the vacancy occurs no later than the eighty-fourth day before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven [§ 3-5-11], article five of this chapter. If the vacancy occurs after the eighty-fourth day before the primary but not later than the eighty fourth day before the

general election, they shall be nominated by the county executive committee in the manner provided in section nineteen [§ 3-5-19], article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the circuit court of such county, shall be placed upon the ballot to be voted at such next general election. (1991)

**§ 3-10-7. Vacancies in offices of county commissioner and clerk of county commission.**

Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the governor of the state shall fill any vacancy in such county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. The vacancy shall be filled by election for the unexpired term if the unexpired term is greater than one year: Provided, That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner it shall be the mandatory, nondiscretionary duty of each such county commissioner, within sixty days from the date such vacancy occurs, to submit in person to the chief judge of the circuit court of such county, the name of one person who is a member of the same political party as was the person whose vacancy is being filled and was such a member for at least one year next preceding the filling of such vacancy and who is legally qualified and willing to fill such vacancy. The judge shall thereupon, in the presence of the quorum of the county commission, cause each name to be written on a separate piece of paper, shall fold or roll up the pieces of paper so as to resemble each other and so that the name written thereon shall not be visible on the outside, and shall deposit the pieces of paper in a box from which one of the county commissioners, selected by lot under the supervision of such judge, shall, in the presence of each other and the judge, draw one of the names and the person whose name is so drawn shall be the county commission's choice to fill such vacancy. The circuit court shall have jurisdiction to compel compliance with the provisions of this proviso.

Notice of such election as aforesaid shall be given by order of the county commission and published as prescribed in section six [§ 3-10-6] of this article. Nomination of candidates to fill the office for an unexpired term in the office of county commission or clerk of the county commission shall be made in the manner prescribed for making nominations to fill a vacancy in the office of the clerk of the circuit court. (1991)

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.**

Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission by appointment of a person of the same political party as the officeholder vacating the office, and the appointed person shall hold the office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. Such vacancy shall be filled by election for the unexpired term if the unexpired term is greater than one year. Notice of an election to fill a vacancy in any of the offices named in this section shall be given by the county commission, or by the president thereof in vacation, and published or posted in the manner prescribed in section six [§ 3-10-6] of this article. Nomination of candidates to fill any such vacancy shall be made in the manner prescribed in said section six of this article for nominating candidates to fill a vacancy in the office of the clerk of the circuit court. (1991)

**CHAPTER 8: MUNICIPAL CORPORATIONS**

**§ 8-5-5. Regular election of officers; establishment of longer terms.**

After the first election of officers of a city, town or village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages, as the case may be.

A municipal election date established by a charter provision may fall on the same day as the county-state primary or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as the county-state primary or general election, the municipality and county may agree to use the county election officials in the municipal elections, if practicable, or the municipality may provide for separate election officials.

A municipal election date established by charter provision may fall within twenty-five days of a county-state primary or general election only where separate registration books are provided and maintained for the municipal election.

Any municipality which establishes its election date by charter provision must comply with the provisions of this section or the election date shall be

the second Tuesday of June. The language of this section shall not be construed to prevent any city, town or village from amending the provisions of its charter or special legislative charter, as the case may be, to provide that its municipal election be held on some day other than the second Tuesday in June.

Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision or charter amendment providing for four-year terms is voted upon. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposed charter, revision or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposition is approved. (1986)

**§ 8-5-5a.** Repealed. (1987)

## CHAPTER 16: PUBLIC HEALTH

**§16-13A-2. *Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.***

The county commission of any county may, on its own motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in such order a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section [June 6, 1986], no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules and regulations promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not such

territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where such territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting.

Such petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if such territory is situated in more than one county, then such petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of such territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of such county at the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county commission of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid,



the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, expanding, merging or consolidating the district: Provided, however, That within ten days after the entry of an order creating, expanding or merging or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules and regulations relating to such filings and the approval, disapproval or modifi-

cation of county commission orders for creating, expanding, merging or consolidating districts.

The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1986)

## CHAPTER 18: EDUCATION

### **§ 18-5-1a. Eligibility of members.**

No person shall be eligible for membership on any county board of education who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

No member or member-elect of any board of education shall be eligible

for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee.

Any person who is elected or appointed to a county board of education on or after the fifth day of May, one thousand nine hundred ninety-two, shall possess at least a high school diploma or a general educational development (GED) diploma: Provided, That this provision shall not apply to members or members-elect who have taken office prior to the fifth day of May, one thousand nine hundred ninety-two, and who serve continuously therefrom.

No person elected to a county board of education after the first day of July, one thousand nine hundred ninety, shall assume the duties of board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office. Members appointed to the board shall attend and complete the next such course offered following their appointment. Commencing on the effective date of this section, members shall annually receive seven clock hours of training in areas relating to boardsmanship and governance effectiveness. Such orientation and training shall be approved by the state board of education and conducted by the West Virginia school board association or other organization or organizations approved by the state board. Failure to attend and complete such an approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause shall constitute neglect of duty. (1990, 1991)

### ***§ 18-5-1b. Election; terms of office.***

As the terms of county school board members who presently hold office expire, members shall be elected for four-year terms at the time of each regular primary election commencing with the year one thousand nine hundred ninety. The terms of such members shall begin on the first day of July next following the primary election at which they were elected.

The term of office of any member of any county board of education shall immediately cease, and a vacancy shall exist, upon occurrence of ineligibility as prescribed in section one-a [§ 18-5-1a] of this article.

This section shall in no manner be construed so as to affect the unexpired terms of county school board members who hold office or were elected under prior existing law. (1989)

### **§ 18-5-2. Filling vacancies.**

(a) The board shall, by appointment, fill within forty-five days any vacancy that occurs in its membership. In the event that the board does not fill the vacancy within forty-five days, the state superintendent of schools shall appoint a person to fill the vacancy:

(b) (1) When the vacancy occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirtieth day of June following the next primary election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs after the eighty-fourth day before a general election and not later than the close of candidate filing for the next succeeding primary election, and the affected term of office does not end on the thirtieth day of June following the next primary election, an election for the unexpired term shall be held at the next primary election, and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in the general election, and the appointment shall continue until a successor is elected and certified.  
(1991)

## **CHAPTER 29: MISCELLANEOUS BOARDS AND OFFICERS**

### **§ 29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.**

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

(d) No employee in the classified service or member of the board or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

(1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e [§ 3-8-3, § 3-8-4 or § 3-8-5e], article eight, chapter three of this code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section shall be permitted.

(f) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances or activities shall not be deemed to be prohibited by the foregoing provisions of this section.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of such candidacy, commencing upon the filing of the certificate of candidacy. (1989)

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