

H. B. 3038

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(By Delegates Barker, Lawrence, Ferro, Frazier
and Miley)

(At the Request of the Secretary of State)

[Introduced February 7, 2011; referred to the
Committee on the Judiciary then Finance.]

10 A BILL to amend and reenact §3-1-9, §3-1-21, §3-1-31, §3-1-34, §3-
11 1-35 and §3-1-50 of the Code of West Virginia, 1931, as
12 amended; to amend and reenact §3-5-7, §3-5-8, §3-5-13a, §3-5-
13 21, §3-5-23 and §3-5-24 of said code; to amend and reenact §3-
14 6-4a of said code; to amend and reenact §3-8-1a and §3-8-5a of
15 said code; to amend and reenact §3-9-6 of said code; to amend
16 and reenact §8-5-14; and to amend and reenact §59-3-3 of said
17 code, all relating to the clarification of inconsistencies in
18 the election code and the elimination of obsolete and
19 outdated language.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §3-1-9, §3-1-21, §3-1-31, §3-1-34, §3-1-35 and §3-1-50 of
22 the Code of West Virginia, 1931, as amended, be amended and
23 reenacted; that §3-5-7, §3-5-8, §3-5-13a, §3-5-21, §3-5-23 and §3-
24 5-24 of said code be amended and reenacted; that §3-6-4a of said
25 code be amended and reenacted; that §3-8-1a and §3-8-5a of said
26 code be amended and reenacted; that §3-9-6 of said code be amended

1 and reenacted; that §8-5-14 be amended and reenacted; and that §59-
2 3-3 of said code be amended and reenacted, all to read as follows:

3 **CHAPTER 3. ELECTIONS.**

4 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

5 **§3-1-9. Political party committees; how composed; organization.**

6 (a) Every fourth year at the primary election, the voters of
7 each political party in each state senatorial district shall elect
8 four members consisting of two male members and two female members
9 of the state executive committee of the party. In state senatorial
10 districts containing two or more counties, not more than two
11 elected committee members shall be residents of the same county:
12 *Provided*, That at each election the votes shall be tallied from
13 highest to lowest without regard to gender or county of residence.
14 The two candidates with the highest votes shall be elected first
15 and the other candidates shall be qualified based on vote tallies,
16 gender and county of residence. Upon completion of the canvass,
17 the clerk of the county commission from each county shall send the
18 results of the election of members of each state executive
19 committee and certificates of announcement, if any, to the
20 Secretary of State. Upon certification of the election results,
21 the Secretary of State shall make known to each state executive
22 committee the members elected to such committee and the vacancies,
23 if any. The committee, when convened and organized as herein
24 provided, shall appoint three additional members of the committee
25 from the state at large which shall constitute the entire voting
26 membership of the state executive committee. ~~*Provided, however,*~~

1 ~~That~~ If it chooses to do so, the committee may, by motion or
2 resolution and in accordance with party rules, ~~may~~ expand the
3 voting membership of the committee. When senatorial districts are
4 realigned following a decennial census, members of the state
5 executive committee previously elected or appointed ~~shall~~ continue
6 in office until the expiration of their terms. Appointments made
7 to fill vacancies on the committee until the next election of
8 executive committee members shall be selected from the previously
9 established districts. At the first election of executive
10 committee members following the realignment of senatorial
11 districts, members shall be elected from the newly established
12 districts.

13 (b) At the primary election, the voters of each political
14 party in each county shall elect one male and one female member of
15 the party's executive committee of the congressional district, of
16 the state senatorial district and of the delegate district in which
17 the county is situated if the county is situated in a multicounty
18 state senatorial or delegate district. Upon completion of the
19 canvass, the clerk of the county commission from each county shall
20 send the results of the election of members of each congressional
21 district, state senatorial district and delegate district executive
22 committee of each party to the Secretary of State. Upon
23 certification of the election results, the Secretary of State shall
24 make known to each state executive committee the members elected to
25 each congressional district, state senatorial district and delegate
26 district executive committee and the vacancies, if any. Upon

1 receipt, the state executive committee shall make known any
2 vacancies to the applicable county executive committee for the
3 purpose of filling said vacancies as provided in subsection (f) of
4 this section. When districts are realigned following a decennial
5 census, members of an executive committee previously elected in a
6 county to represent that county in a congressional or multicounty
7 senatorial or delegate district executive committee ~~shall~~ continue
8 to represent that county in the appropriate newly constituted
9 multicounty district until the expiration of their terms.
10 ~~Provided, That~~ The county executive committee of the political
11 party shall determine which previously elected members will
12 represent the county if the number of multicounty state senatorial
13 or delegate districts in the county is decreased and shall appoint
14 members to complete the remainder of the term if the number of
15 districts is increased.

16 (c) At the same time the voters of the county in each
17 magisterial district or executive committee district, as the case
18 may be, shall elect one male and one female member of the party's
19 county executive committee except that in counties having three
20 executive committee districts, there shall be elected two male and
21 two female members of the party's executive committee from each
22 magisterial or executive committee district. Upon completion of
23 the canvass, the clerk of the county commission from each county
24 shall send the results of the election of members of the county
25 executive committee of each party along with the certificates of
26 announcement to the Secretary of State. Upon certification of the

1 election results, the Secretary of State shall make known to each
2 state executive committee the members elected to the county
3 committee and the vacancies, if any. Upon receipt, the state
4 executive committee shall make known any vacancies to the
5 applicable county executive committee for the purpose of filling
6 said vacancies as provided in subsection (f) of this section.

7 (d) For the purpose of complying with the provisions of this
8 section, the county commission shall create the executive committee
9 districts. The districts shall not be fewer than the number of
10 magisterial districts in the county nor shall they exceed in number
11 the following: Forty for counties having a population of one
12 hundred thousand persons or more; thirty for counties having a
13 population of fifty thousand to one hundred thousand; twenty for
14 counties having a population of twenty thousand to fifty thousand;
15 and the districts in counties having a population of less than
16 twenty thousand persons shall be coextensive with the magisterial
17 districts.

18 (e) The executive committee districts shall be as nearly equal
19 in population as practicable and shall each be composed of compact,
20 contiguous territory. The county commissions shall change the
21 territorial boundaries of the districts as required by the increase
22 or decrease in the population of the districts as determined by a
23 decennial census. The changes must be made within two years
24 following the census.

25 (f) All members of executive committees, selected for each
26 political division as herein provided, shall reside within the

1 county or district from which chosen. The term of office of all
2 members of executive committees elected at the primary election ~~in~~
3 ~~the year two thousand ten~~ will begin on the first day of July,
4 following the primary election and continue for four years
5 ~~thereafter~~, except as provided in subsection (g) of this section.
6 Vacancies in the state executive committee shall be filled by the
7 members of the committee for the unexpired term. Vacancies in the
8 party's executive committee of a congressional district, state
9 senatorial district, delegate district or county shall be filled by
10 the party's executive committee of the county in which the vacancy
11 exists for the unexpired term.

12 (g) As soon as possible after the certification of the
13 election of the new executive committees, as herein provided, the
14 newly elected executive committee shall convene an organizational
15 meeting within their respective political divisions, on the call of
16 the chair of the corresponding outgoing executive committee or by
17 any member of the new executive committee in the event there is no
18 corresponding outgoing executive committee. During the first
19 meeting the new executive committee shall select a chair, a
20 treasurer and a secretary and other officers as they may desire.
21 Each of the officers shall, for their respective committees,
22 perform the duties that usually appertain to his or her office.
23 The organizational meeting may be conducted prior to July 1, but
24 must occur after the certification of the election of the new
25 executive committees. If the organizational meeting is conducted
26 prior to July 1, the new committee shall serve out the remainder of

1 the outgoing committee's term and is authorized to conduct official
2 business. A current listing of all executive committees' members
3 shall be filed with the Secretary of State by of July 31 of each
4 year. Vacancies in any executive committee shall be filled by the
5 appropriate executive committee as provided in subsection (f) of
6 this section no later than sixty days after the vacancy occurs.
7 The chair of each executive committee shall submit an updated
8 committee list to the Secretary of State within ten days of a
9 change occurring. Executive committee membership lists shall
10 include at least the member's name, full address, employer,
11 telephone number and term information. An appointment to fill a
12 vacancy does not take effect if the executive committee does not
13 submit the updated list to the Secretary of State within the
14 allotted time period. If the executive committee fails to submit
15 the updated list within the allotted time period, it must make
16 another appointment pursuant to the provisions of this section and
17 resubmit the updated list in a timely manner. If a vacancy on an
18 executive committee is not filled within the sixty-day period
19 prescribed by this section, the chair of the appropriate executive
20 committee, as provided in subsection (f) of this section, shall
21 name someone to fill the vacancy. If the chair of a county
22 executive committee fails to fill a vacancy in a congressional
23 district, state senatorial district or delegate district executive
24 committee, and the failure to fill such vacancy prohibits said
25 committee from conducting official business, the chair of the
26 party's state executive committee shall fill such vacancy.

1 (h) Any meeting of any political party executive committee
2 shall be held only after public notice and notice to each member is
3 given according to party rules and shall be open to all members
4 affiliated with the party. Meetings shall be conducted according
5 to party rules, all official actions shall be made by voice vote
6 and minutes shall be maintained and shall be open to inspection by
7 members affiliated with the party.

8 **§3-1-21. Printing of official and sample ballots; number;**
9 **packaging and delivery; correction of ballots.**

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

14 (b) The persons required to provide the ballots necessary for
15 conducting all other elections are:

16 (1) The Secretary of State, for any statewide special election
17 ordered by the Legislature;

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

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

22 (4) The municipal board of ballot commissioners, for any
23 election conducted for or within a municipality except an election
24 in which the matter affecting the municipality is placed on the
25 county ballot at a county election. Ballots other than those
26 printed by the proper authorities as specified in this section may

1 not be cast, received or counted in any election.

2 (c) When paper ballots are used, the total number of regular
3 official ballots printed shall equal one and one-twentieth times
4 the number of registered voters eligible to vote that ballot. When
5 paper ballots are used in conjunction with or as part of an
6 electronic voting system, the total number of regular official
7 ballots printed shall equal at a minimum eighty percent of the
8 number of registered voters eligible to vote that ballot. The
9 clerk of the county commission shall determine the number of
10 absentee official ballots.

11 (d) The number of regular official ballots packaged for each
12 precinct shall equal at a minimum seventy-five percent of the
13 number of registered voters of the precinct. The remaining regular
14 official ballots shall be packaged and delivered to the clerk of
15 the county commission, who shall retain them unopened until they
16 are required for an emergency. Each package of ballots shall be
17 wrapped and sealed in a manner which will immediately make apparent
18 any attempt to open, alter or tamper with the ballots. Each
19 package of ballots for a precinct shall be clearly labeled, in a
20 manner which cannot be altered, with the county name, the precinct
21 number and the number of ballots contained in each package. If the
22 packaging material conceals the face of the ballot, a sample ballot
23 identical to the official ballots contained therein shall be
24 securely attached to the outside of the package or, in the case of
25 ballot cards, the type of ballot shall be included in the label.

26 (e) All absentee ballots necessary for conducting absentee

1 voting in all voting systems shall be delivered to the clerk of the
 2 county commission of the appropriate county not later than the
 3 ~~forty-second~~ forty-sixth day before the election. All official
 4 ballots in paper ballot systems shall be delivered to the clerk of
 5 the county commission of the appropriate county not later than
 6 twenty-eight days before the election.

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

14 **§3-1-31. Days and hours of elections.**

15 (a) General elections shall be held in the several election
 16 precincts of the state on the Tuesday next after the first Monday
 17 in November of each even year. Primary and special elections shall
 18 be held on the days provided by law therefor.

19 (b) Other than as provided for municipal elections in section
 20 fourteen, article five, chapter eight of this code, at every
 21 primary, general or special election the polls shall be opened in
 22 each precinct on the day of such election at six-thirty o'clock
 23 in the forenoon and be closed at seven-thirty o'clock in the
 24 evening.

25 **§3-1-34. Voting procedures generally; assistance to voters; voting**
 26 **records; penalties.**

1 (a) Any person desiring to vote in an election shall, upon
2 entering the election room, clearly state his or her name and
3 residence to one of the poll clerks who shall thereupon announce
4 the same in a clear and distinct tone of voice. If that person is
5 found to be duly registered as a voter at that precinct, he or she
6 shall sign his or her name in the designated location provided at
7 the precinct. If that person is physically or otherwise unable to
8 sign his or her name, his or her mark shall be affixed by one of
9 the poll clerks in the presence of the other and the name of the
10 poll clerk affixing the voter's mark shall be indicated immediately
11 under the affixation. No ballot may be given to the person until
12 he or she signs his or her name on the designated location or his
13 or her signature is affixed thereon.

14 (b) The clerk of the county commission is authorized, upon
15 verification that the precinct at which a handicapped person is
16 registered to vote is not handicap accessible, to transfer that
17 person's registration to the nearest polling place in the county
18 which is handicap accessible. A request by a handicapped person
19 for a transfer of registration must be received by the county clerk
20 no later than thirty days prior to the date of the election. Any
21 handicapped person who has not made a request for a transfer of
22 registration at least thirty days prior to the date of the election
23 may vote a provisional ballot at a handicap accessible polling
24 place in the county of his or her registration. If, during the
25 canvass, the county commission determines that the person had been
26 registered in a precinct that is not handicap accessible, the voted

1 ballot, if otherwise valid, shall be counted. The handicapped
2 person may vote in the precinct to which the registration was
3 transferred only as long as the disability exists or the precinct
4 from which the handicapped person was transferred remains
5 inaccessible to the handicapped. To ensure confidentiality of the
6 transferred ballot, the county clerk processing the ballot shall
7 provide the voter with an unmarked envelope and an outer envelope
8 designated "provisional ballot/handicapped voter". After
9 validation of the ballot at the canvass, the outer envelope shall
10 be destroyed and the handicapped voter's ballot shall be placed
11 with other approved provisional ballots prior to removal of the
12 ballot from the unmarked envelope.

13 (c) When the voter's signature is properly marked, the two
14 poll clerks shall sign their names in the places indicated on the
15 back of the official ballot and deliver the ballot to the voter to
16 be voted by him or her without leaving the election room. If he or
17 she returns the ballot spoiled to the clerks, they shall
18 immediately mark the ballot "spoiled" and it shall be preserved and
19 placed in a spoiled ballot envelope together with other spoiled
20 ballots to be delivered to the board of canvassers and deliver to
21 the voter another official ballot, signed by the clerks on the
22 reverse side. The voter shall thereupon retire alone to the booth
23 or compartment prepared within the election room for voting
24 purposes and there prepare his or her ballot. In voting for
25 candidates in general and special elections, the voter shall comply
26 with the rules and procedures prescribed in section five, article

1 six of this chapter.

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

13 (e) (1) No voter may receive any assistance in voting unless,
14 by reason of blindness, disability, advanced age or inability to
15 read and write, that voter is unable to vote without assistance.
16 Any voter qualified to receive assistance in voting under the
17 provisions of this section may:

18 (A) Declare his or her choice of candidates to an election
19 commissioner of each political party who, in the presence of the
20 voter and in the presence of each other, shall prepare the ballot
21 for voting in the manner hereinbefore provided and, on request,
22 shall read to the voter the names of the candidates selected on the
23 ballot;

24 (B) Require the election commissioners to indicate to him or
25 her the relative position of the names of the candidates on the
26 ballot, whereupon the voter shall retire to one of the booths or

1 compartments to prepare his or her ballot in the manner
2 hereinbefore provided;

3 (C) Be assisted by any person of the voter's choice, other
4 than the voter's present or former employer or agent of that
5 employer, the officer or agent of a labor union of which the voter
6 is a past or present member or a candidate on the ballot or an
7 official write-in candidate; or

8 (D) If he or she is handicapped, vote from an automobile
9 outside the polling place or precinct by the absentee balloting
10 method provided in subsection (e), section five, article three of
11 this chapter in the presence of an election commissioner of each
12 political party if all of the following conditions are met:

13 (i) The polling place is not handicap accessible; and

14 (ii) No voters are voting or waiting to vote inside the
15 polling place.

16 (2) The voted ballot shall then be returned to the precinct
17 officials and secured in a sealed envelope to be returned to the
18 clerk of the county commission with all other election materials.
19 The ballot shall then be tabulated using the appropriate method
20 provided in section eight, article three of this chapter as it
21 relates to the specific voting system in use.

22 (3) Any voter who requests assistance in voting but who is
23 believed not to be qualified for assistance under the provisions of
24 this section shall nevertheless be permitted to vote a provisional
25 ballot with the assistance of any person herein authorized to
26 render assistance.

1 (4) Any one or more of the election commissioners or poll
2 clerks in the precinct may challenge the ballot on the ground that
3 the voter thereof received assistance in voting it when in his, her
4 or their opinion the person who received assistance in voting is
5 not so illiterate, blind, disabled or of such advanced age as to
6 have been unable to vote without assistance. The election
7 commissioner or poll clerk or commissioners or poll clerks making
8 the challenge shall enter the challenge and reason therefor on the
9 form and in the manner prescribed or authorized by article three of
10 this chapter.

11 (5) An election commissioner or other person who assists a
12 voter in voting:

13 (A) May not in any manner request or seek to persuade or
14 induce the voter to vote any particular ticket or for any
15 particular candidate or for or against any public question and must
16 not keep or make any memorandum or entry of anything occurring
17 within the voting booth or compartment and must not, directly or
18 indirectly, reveal to any person the name of any candidate voted
19 for by the voter or which ticket he or she had voted or how he or
20 she had voted on any public question or anything occurring within
21 the voting booth or compartment or voting machine booth except when
22 required pursuant to law to give testimony as to the matter in a
23 judicial proceeding; and

24 (B) Shall sign a written oath or affirmation before assisting
25 the voter on a form prescribed by the Secretary of State stating
26 that he or she will not override the actual preference of the voter

1 being assisted, attempt to influence the voter's choice or mislead
2 the voter into voting for someone other than the candidate of
3 voter's choice. The person assisting the voter shall also swear or
4 affirm that he or she believes that the voter is voting free of
5 intimidation or manipulation. ~~Provided, That~~ No person providing
6 assistance to a voter is required to sign an oath or affirmation
7 where the reason for requesting assistance is the voter's inability
8 to vote without assistance because of blindness as defined in
9 section three, article fifteen, chapter five of this code and the
10 inability to vote without assistance because of blindness is
11 certified in writing by a physician of the voter's choice and is on
12 file in the office of the clerk of the county commission.

13 (6) In accordance with instructions issued by the Secretary of
14 State, the clerk of the county commission shall provide a form
15 entitled "list of assisted voters", the form of which list shall
16 likewise be prescribed by the Secretary of State. The
17 commissioners shall enter the name of each voter receiving
18 assistance in voting the ballot together with the poll slip number
19 of that voter and the signature of the person or the commissioner
20 from each party who assisted the voter. If no voter has been
21 assisted in voting, the commissioners shall likewise make and
22 subscribe to an oath of that fact on the list.

23 (f) After preparing the ballot, the voter shall fold the
24 ballot so that the face is not exposed and so that the names of the
25 poll clerks thereon are seen. The voter shall announce his or her
26 name and present his or her ballot to one of the commissioners who

1 shall hand the same to another commissioner, of a different
2 political party, who shall deposit it in the ballot box if the
3 ballot is the official one and properly signed. The commissioner
4 of election may inspect every ballot before it is deposited in the
5 ballot box to ascertain whether it is single but without unfolding
6 or unrolling it so as to disclose its content. When the voter has
7 voted, he or she shall retire immediately from the election room
8 and beyond the ~~sixty-foot~~ three hundred-foot limit thereof and may
9 not return except by permission of the commissioners.

10 (g) Following the election, the oaths or affirmations required
11 by this section from those assisting voters, together with the
12 "list of assisted voters", shall be returned by the election
13 commissioners to the clerk of the county commission along with the
14 election supplies, records and returns. The clerk of the county
15 commission shall make the oaths, affirmations and list available
16 for public inspection and ~~shall~~ preserve them for a period of
17 twenty-two months or until disposition is authorized or directed by
18 the Secretary of State or court of record. ~~Provided, That~~ The
19 clerk may use these records to update the voter registration
20 records in accordance with subsection (d), section eighteen,
21 article two of this chapter.

22 (h) Any person making an oath or affirmation required under
23 the provisions of this section who knowingly swears falsely or any
24 person who counsels, advises, aids or abets another in the
25 commission of false swearing under this section is guilty of a
26 misdemeanor and, upon conviction thereof, shall be fined not more

1 than \$1,000 or confined in jail for a period of not more than one
2 year, or both fined and confined.

3 (i) Any election commissioner or poll clerk who authorizes or
4 provides unchallenged assistance to a voter when the voter is known
5 to the election commissioner or poll clerk not to require
6 assistance in voting is guilty of a felony and, upon conviction
7 thereof, shall be fined not more than \$5,000 or imprisoned in a
8 state correctional facility for a period of not less than one year
9 nor more than five years, or both fined and imprisoned.

10 **§3-1-35. Ballots to be furnished voters.**

11 In general and special elections the ballots for all voters of
12 an election precinct shall be the same. In primary elections the
13 ballot of the voter's political party at that election in that
14 precinct shall be furnished to the voter together with separate
15 ballots, if any, on ~~any~~ nonpartisan candidates and ~~any~~ public
16 questions submitted to the voters generally at such primary
17 election. In the event the voter is lawfully registered as
18 "independent" or as an adherent of a political party not appearing
19 on any primary election ballot to be voted in his precinct, he
20 shall not, in a primary election, ~~be given or entitled to vote any~~
21 ~~a party ballot~~ be given a party ballot and is not entitled to vote
22 a party ballot unless the voter requests a ballot of a political
23 party that has permitted the voter to vote according to section
24 thirty-one, article two, of this chapter. ~~but shall be furnished~~
25 ~~any separate ballots to be voted thereat on nonpartisan candidates~~
26 ~~and public questions.~~

1 **§3-1-50. Establishment of state-based administrative complaint**
2 **procedures.**

3 The Secretary of State shall establish and maintain a state-
4 based administrative complaint procedure for complaints received
5 concerning election violations which shall meet the following
6 requirements:

7 (1) The procedures shall be uniform and nondiscriminatory.

8 (2) Under the procedures, any person who believes that there
9 is a violation of any provision of ~~this chapter~~ Title III of the
10 Help America Vote Act of 2002, 42 United States Code §§15481 and
11 15485, including a violation which has occurred, is occurring or is
12 about to occur, may file a complaint.

13 (3) Any complaint filed under the procedures shall be in
14 writing, notarized and signed and sworn by the person filing the
15 complaint.

16 (4) The Secretary of State may consolidate complaints filed
17 under this section.

18 (5) At the request of the complainant, there shall be a
19 hearing on the record.

20 (6) Violations of any provision of this chapter shall be
21 punishable in accordance with the provisions of article nine of
22 this chapter.

23 (7) If, under the procedures, the Secretary of State
24 determines that there is no violation, the Secretary of State shall
25 dismiss the complaint and publish the results of the procedures.

26 (8) The Secretary of State shall make a final determination

1 with respect to a complaint prior to the expiration of the ninety-
 2 day period which begins on the date the complaint is filed unless
 3 the complainant consents to a longer period for making a
 4 determination.

5 (9) If the Secretary of State fails to meet the deadline
 6 applicable under subdivision (8) of this section, the complaint
 7 shall be resolved within sixty days under alternative dispute
 8 resolution procedures established for purposes of this section.

9 The record and other materials from any proceedings conducted under
 10 the complaint procedures established under this section shall be
 11 made available for use under the alternative dispute resolution
 12 procedures.

13 **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

14 **§3-5-7. Filing announcements of candidacies; requirements;**
 15 **withdrawal of candidates when section applicable.**

16 (a) Any person who is eligible and seeks to hold an office or
 17 political party position to be filled by election in any primary or
 18 general election held under the provisions of this chapter shall
 19 file a certificate of announcement declaring his or her candidacy
 20 for the nomination or election to the office.

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

22 (1) Candidates for the House of Delegates, ~~or~~ the State
 23 Senate, circuit court judge, family court judge, state executive
 24 committee and any other office or political position to be filled
 25 by the voters of more than one county shall file a certificate of
 26 announcement with the Secretary of State.

1 (2) Candidates for an office or political position to be
2 filled by the voters of a single county or a subdivision of a
3 county, except for candidates for the House of Delegates or State
4 Senate, shall file a certificate of announcement with the clerk of
5 the county commission.

6 (3) Candidates for an office to be filled by the voters of a
7 municipality shall file a certificate of announcement with the
8 recorder or city clerk.

9 (c) The certificate of announcement shall be filed with the
10 proper officer not earlier than the second Monday in January next
11 preceding the primary election day and not later than the last
12 Saturday in January next preceding the primary election day and
13 must be received before midnight, eastern standard time, of that
14 day or, if mailed, shall be postmarked by the United States Postal
15 Service before that hour.

16 (d) The certificate of announcement shall be on a form
17 prescribed by the Secretary of State on which the candidate shall
18 make a sworn statement before a notary public or other officer
19 authorized to administer oaths, containing the following
20 information:

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

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

25 (3) The legal name of the candidate and the exact name the
26 candidate desires to appear on the ballot, subject to limitations

1 prescribed in section thirteen, article five of this chapter;

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

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

9 (6) For partisan elections, the name of the candidate's
10 political party and a statement that the candidate: (A) Is a
11 member of and affiliated with that political party as evidenced by
12 the candidate's current registration as a voter affiliated with
13 that party; and (B) has not been registered as a voter affiliated
14 with any other political party for a period of sixty days before
15 the date of filing the announcement;

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

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

22 (9) The words "subscribed and sworn to before me this _____
23 day of _____, 20____" and a space for the signature of the
24 officer giving the oath.

25 (e) The Secretary of State or the Board of Ballot
26 Commissioners, as the case may be, may refuse to certify the

1 candidacy or may remove the certification of the candidacy upon
2 receipt of a certified copy of the voter's registration record of
3 the candidate showing that the candidate was registered as a voter
4 in a party other than the one named in the certificate of
5 announcement during the sixty days immediately preceding the filing
6 of the certificate. ~~Provided, That~~ Unless a signed formal
7 complaint of violation of this section and the certified copy of
8 the voter's registration record of the candidate are filed with the
9 officer receiving that candidate's certificate of announcement no
10 later than ten days following the close of the filing period, the
11 candidate may not be refused certification for this reason.

12 (f) The certificate of announcement shall be subscribed and
13 sworn to by the candidate before some officer qualified to
14 administer oaths, who shall certify the same. Any person who
15 knowingly provides false information on the certificate is guilty
16 of false swearing and shall be punished in accordance with section
17 three, article nine of this chapter.

18 (g) Any candidate for delegate to a national convention may
19 change his or her statement of presidential preference by notifying
20 the Secretary of State by letter received by the Secretary of State
21 no later than the third Tuesday following the close of candidate
22 filing. When the rules of the political party allow each
23 presidential candidate to approve or reject candidates for delegate
24 to convention who may appear on the ballot as committed to that
25 presidential candidate, the presidential candidate or the
26 candidate's committee on his or her behalf may file a list of

1 approved or rejected candidates for delegate and the Secretary of
2 State shall list as "uncommitted" any candidate for delegate who is
3 disapproved by the presidential candidate.

4 (h) A person may not be a candidate for more than one office
5 or office division at any election ~~Provided, That~~ except that a
6 candidate for an office may also be a candidate for President of
7 the United States, for membership on political party executive
8 committees or for delegate to a political party national
9 convention.

10 (i) A candidate who files a certificate of announcement for
11 more than one office or division and does not withdraw, as provided
12 by section eleven, article five of this chapter, from all but one
13 office prior to the close of the filing period may not be certified
14 by the Secretary of State or placed on the ballot for any office by
15 the Board of Ballot Commissioners.

16 ~~(j) The provisions of this section enacted during the regular
17 session of the Legislature in the year 1991 shall apply to the
18 primary election held in the year 1992 and every primary election
19 held thereafter. The provisions of this section enacted during the
20 regular session of the Legislature in the year 2009 shall apply to
21 the primary election held in the year 2010 and every primary
22 election held thereafter.~~

23 **§3-5-8. Filing fees and their disposition.**

24 Every person who becomes a candidate for nomination for or
25 election to office in any primary election shall, at the time of
26 filing the certificate of announcement as required in this article,

1 pay a filing fee as follows:

2 (a) A candidate for President of the United States, for Vice
3 President of the United States, for United States Senator, for
4 member of the United States House of Representatives, for Governor
5 and for all other state elective offices shall pay a fee equivalent
6 to one percent of the annual salary of the office for which the
7 candidate announces. ~~Provided, That~~ The filing fee for any
8 candidate for President or Vice President of the United States
9 shall not exceed \$2,500 commencing with the 2004 filing period;

10 (b) A candidate for the office of judge of a circuit court and
11 judge of a family court shall pay a fee equivalent to one percent
12 of the total annual salary of the office for which the candidate
13 announces;

14 (c) A candidate for member of the House of Delegates shall pay
15 a fee of one-half percent of the total annual salary of the office
16 and a candidate for State Senator shall pay a fee of one percent of
17 the total annual salary of the office;

18 (d) A candidate for sheriff, prosecuting attorney, circuit
19 clerk, county clerk, assessor, member of the county commission and
20 magistrate shall pay a fee equivalent to one percent of the annual
21 salary, excluding any additional compensation or commission of the
22 office for which the candidate announces. A candidate for county
23 board of education shall pay a fee of \$25. A candidate for any
24 other county office shall pay a fee of \$10.

25 (e) Delegates to the national convention of any political
26 party shall pay the following filing fees:

1 A candidate for delegate-at-large shall pay a fee of \$20 and
2 a candidate for delegate from a congressional district shall pay a
3 fee of \$10.

4 (f) Candidates for members of political executive committees
5 and other political committees shall pay the following filing fees:

6 A candidate for member of a state executive committee of any
7 political party shall pay a fee of \$20; a candidate for member of
8 a county executive committee of any political party shall pay a fee
9 of \$10; and a candidate for member of a congressional, senatorial
10 or delegate district committee of any political party shall pay a
11 fee of \$5.

12 Candidates filing for an office to be filled by the voters of
13 one county shall pay the filing fee to the clerk of the county
14 commission and candidates filing for an office to be filled by the
15 voters of more than one county shall pay the filing fee to the
16 Secretary of State at the time of filing their certificates of
17 announcement and no certificate of announcement shall be received
18 until the filing fee is paid.

19 All moneys received by the clerk from the fees shall be
20 credited to the general county fund. Moneys received by the
21 Secretary of State from fees paid by candidates for offices to be
22 filled by all the voters of the state shall be deposited in a
23 special fund for that purpose and ~~shall be~~ apportioned and paid by
24 him or her to the several counties on the basis of population. ~~and~~
25 ~~that~~ Moneys received from candidates from a district or judicial
26 circuit of more than one county shall be apportioned to the

1 counties comprising the district or judicial circuit in like
 2 manner. When such moneys are received by sheriffs, it shall be
 3 credited to the general county fund. The remaining twenty-five
 4 percent of moneys received by the Secretary of State shall be
 5 retained in the special fund and used to offset costs associated
 6 with the administration of the election for which the candidates
 7 are seeking nomination or election.

8 **§3-5-13a. Order of offices and candidates on the ballot; uniform**
 9 **drawing date.**

10 (a) The order of offices for state and county elections on all
 11 ballots within the state shall be as prescribed herein. When the
 12 office does not appear on the ballot in an election, ~~then~~ it shall
 13 be omitted from the sequence. When an unexpired term for an office
 14 appears on the ballot along with a full term, the unexpired term
 15 shall appear immediately below the full term.

16 NATIONAL TICKET: President (and Vice President in the general
 17 election), United States Senator, member of the United States House
 18 of Representatives

19 STATE TICKET: Governor, Secretary of State, Auditor,
 20 Treasurer, Commissioner of Agriculture, Attorney General, Justice
 21 of the Supreme Court of Appeals, State Senator, member of the House
 22 of Delegates, circuit court judge in multicounty districts, family
 23 court judge in multicounty districts, any other multicounty office
 24 and State Executive Committee.

25 COUNTY TICKET: circuit court judge in single-county districts,
 26 family court judge in single-county districts, clerk of the circuit

1 court, county commissioner, clerk of the county commission,
 2 prosecuting attorney, sheriff, assessor, magistrate, surveyor,
 3 Congressional District Executive Committee, Senatorial District
 4 Executive Committee in multicounty districts, Delegate District
 5 Executive Committee in multicounty districts and Soil Conservation
 6 District Director.

7 NATIONAL CONVENTION: Delegate to the National Convention --
 8 at-large; Delegate to the National Convention -- congressional
 9 district

10 DISTRICT TICKET: Board of Education; County Executive
 11 Committee.

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

16 (1) On the fourth Tuesday following the close of the candidate
 17 filing, beginning at nine o'clock a. m., a drawing by lot shall be
 18 conducted in the office of the clerk of the county commission in
 19 each county. Notice of the drawing shall be given on the form for
 20 the certificate of announcement and no further notice ~~shall be~~ is
 21 required. The clerk of the county commission shall superintend and
 22 conduct the drawing. ~~and~~ The method of conducting the drawing shall
 23 be prescribed by the Secretary of State.

24 (2) Except as provided herein, the position of each candidate
 25 within each office division ~~shall be~~ is determined by the position
 26 drawn for that candidate individually. ~~Provided, That~~ If fewer

1 candidates file for an office division than the total number to be
2 nominated or elected, the vacant positions shall appear following
3 the names of all candidates for the office.

4 (3) Candidates for Delegate to National Convention who have
5 filed a commitment to a candidate for president shall be listed
6 alphabetically within the group of candidates committed to the same
7 candidate for president and uncommitted candidates shall be listed
8 alphabetically in an uncommitted category. The position of each
9 group of committed candidates and uncommitted candidates shall be
10 determined by lot by drawing the names of the presidential
11 candidates and for an uncommitted category.

12 (c) By the close of business on the day of the random drawing
13 explained in this section, the clerk of the county commission shall
14 submit all relevant ballot information to the Secretary of State in
15 a manner prescribed by the Secretary of State.

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

18 **§3-5-21. Party conventions to nominate presidential electors;**
19 **candidates; organization; duties.**

20 Candidates for presidential electors shall be nominated by the
21 delegated representatives of the political party assembled in a
22 state convention to be held during the months of June, July or
23 August next preceding any general election at which presidential
24 electors are to be elected. The State Executive Committee of the
25 political party, by resolution, shall designate the place and fix
26 the date of the convention, shall prescribe the number of delegates

1 thereto and shall apportion the delegates among the several
2 counties of the state in proportion to the vote cast in the state
3 for the party's candidate for Governor at the last preceding
4 general election at which a Governor was elected. The State
5 Executive Committee shall also ascertain and designate all offices
6 for which candidates are to be nominated at the convention.

7 At least sixty days prior to the date fixed for holding any
8 state convention, the chairman of the party's state executive
9 committee shall cause to be delivered to the party's county
10 executive committee in each county of the state a copy of the
11 resolutions fixing the time and place for holding the state
12 convention and prescribing the number of delegates from each county
13 to the convention. Within ten days after receipt of the copy of
14 the resolutions, the party executive committee of each county shall
15 meet and, by resolution, shall apportion the delegates to the state
16 convention among the several magisterial districts of the county on
17 a basis of the vote received in the county by the candidate of the
18 party for Governor at the last preceding general election at which
19 a Governor was elected. ~~but~~ In such apportionment of county
20 delegates each magisterial district shall be entitled to at least
21 one delegate to the state convention. The party's county executive
22 committee shall call a meeting of the members of the political
23 party in mass convention in the county, which meeting shall be held
24 at least thirty days prior to the date fixed for the state
25 convention and at which meeting the members of the political party
26 in each magisterial district shall elect the number of delegates to

1 which the district is entitled in the state convention.

2 The meeting place in the county shall be as central and
3 convenient as can reasonably be selected and all recognized members
4 of the political party ~~shall be~~ are entitled to participate in any
5 mass convention and in the selection of delegates. Notice of the
6 time and place of holding the county mass convention and of the
7 person who shall act as temporary chairman thereof shall be given
8 by publication as a Class II-O legal advertisement in compliance
9 with the provisions of article three, chapter fifty-nine of this
10 code and the publication area for the publication shall be the
11 county. The first publication shall be made not more than fifteen
12 days and the second publication shall be made not less than five
13 days prior to the date fixed for holding the convention. The
14 notice published shall specify the number of delegates which each
15 magisterial district in the county is entitled to elect to the
16 state convention.

17 Upon assembling, the mass convention of the county shall
18 choose a chairman and a secretary, who, within five days after the
19 holding of the convention, shall certify ~~to the chairman of the~~
20 ~~state executive committee of the political party and the chairman~~
21 ~~of the county committee of the political party,~~ the names and
22 addresses of the parties selected as delegates to the state
23 convention to the chairman of the state executive committee of the
24 political party and the chairman of the county committee of the
25 political party.

26 If, after the election, a vacancy exists for a delegate from

1 any magisterial district, the party's county executive committee,
2 within ten days after the mass convention, shall appoint a member
3 of the political party in the magisterial district to fill the
4 vacancy and shall certify the appointment to the chairman of the
5 state executive committee of the political party.

6 All contests over the selection of delegates to conventions
7 shall be heard and determined by the party executive committee of
8 the county from which the delegates are chosen and the county
9 executive committee shall, upon written petition of any contest,
10 meet for a hearing and make a determination within ten days after
11 the holding of a county mass convention. The circuit court of the
12 county and the Supreme Court of Appeals of the state shall have
13 concurrent original jurisdiction to review, by mandamus or other
14 proper proceeding, the decision of a county executive committee in
15 any contest.

16 The delegates chosen and certified by and from the several
17 magisterial districts in the state and, in the event of any
18 contest, those prevailing in the contest, shall make up the state
19 convention. The number present of those entitled to participate in
20 any convention shall cast the entire vote to which the county is
21 entitled in the convention and it shall require a majority vote to
22 nominate any candidate for office.

23 All nominations made at state conventions shall be certified
24 within fifteen days thereafter by the chairman and the secretary of
25 the convention to the Secretary of State who shall certify them to
26 the clerk of the ~~circuit court~~ county commission of each county

1 concerned. ~~and~~ The names of the persons so nominated shall be
2 printed upon the regular ballot to be voted at the ensuing general
3 election, except that the names of the presidential elector
4 candidates shall not be printed thereon.

5 The delegates to any state convention may formulate and
6 promulgate the party platform or declaration of party principles as
7 to them shall seem advisable.

8 **§3-5-23. Certificate nominations; requirements and control;**
9 **penalties.**

10 (a) Groups of citizens having no party organization may
11 nominate candidates who ~~are~~ were not already candidates in the last
12 preceding primary election for public office as defined in section
13 two, article one of this chapter otherwise than by conventions or
14 primary elections. In that case, the candidate or candidates,
15 jointly or severally, shall file a nomination certificate in
16 accordance with the provisions of this section and the provisions
17 of section twenty-four of this article.

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

26 State of West Virginia, County of, ss:

1 This certifies that the holder of this credential is hereby
2 authorized to solicit and canvass duly registered voters residing
3 in (here place the county, district or other
4 political division represented by the office sought) to sign a
5 certificate purporting to nominate
6 (here place name of candidate heading list on certificate) for the
7 office of and others, at the general
8 election to be held on, 20.....

9 Given under my hand and the seal of my office this
10 day of, 20.....

11

12 Clerk, county commission of County.

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

16 (c) The certificate shall be personally signed by duly
17 registered voters, in their own proper handwriting or by their
18 marks duly witnessed, who must be residents within the county,
19 district or other political division represented by the office
20 sought wherein the canvass or solicitation is made by the person or
21 persons duly authorized. The signatures need not all be on one
22 certificate. The number of signatures shall be equal to not less
23 than one percent of the entire vote cast at the last preceding
24 general election for the office in the state, district, county or
25 other political division for which the nomination is to be made.
26 In offices elected on a staggered term schedule, the number of

1 signatures shall be equal to not less than one percent of the
2 entire vote cast at the last preceding general election for the
3 office term expiring. In no event shall the number of signatures
4 be less than twenty-five. The number of signatures shall be equal
5 to not less than one percent of the entire vote cast at the last
6 preceding general election for any statewide, congressional or
7 presidential candidate but in no event shall the number be less
8 than twenty-five. Where two or more nominations may be made for
9 the same office, the total of the votes cast at the last preceding
10 general election for the candidates receiving the highest number of
11 votes on each ticket for the office ~~shall constitute~~ constitutes
12 the entire vote. A signature on a certificate may not be counted
13 unless it be that of a duly registered voter of the county,
14 district or other political division represented by the office
15 sought wherein the certificate was presented.

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

26 The Secretary of State shall prescribe the form and content of

1 the nomination certificates to be used for soliciting signatures.

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

5 Notwithstanding any other provision of this code to the
6 contrary, a duly registered voter may sign the certificate provided
7 in this section and may vote for candidates of his or her choosing
8 in the corresponding primary election.

9 (e) The Secretary of State, or the clerk of the county
10 commission, as the case may be, may investigate the validity of the
11 certificates and the signatures thereon. If, upon investigation,
12 there is doubt as to the legitimacy and the validity of
13 certificate, the Secretary of State may ask the Attorney General of
14 the state or the clerk of the county commission may ask the
15 prosecuting attorney of the county to institute a quo warranto
16 proceeding against the nominee by certificate to determine his or
17 her right to the nomination to public office. ~~and~~ Upon request,
18 ~~being made,~~ the Attorney General or prosecuting attorney shall
19 institute the quo warranto proceeding. The clerk of the county
20 commission shall, at the request of the Secretary of State or the
21 clerk of the circuit court, compare the information from any
22 certificate to the county voter registration records. ~~in order to~~
23 ~~assist in determining the validity of any certificates.~~

24 (f) In addition to penalties prescribed elsewhere for
25 violation of this chapter, ~~any~~ a person violating the provisions of
26 this section is guilty of a misdemeanor and, upon conviction, shall

1 be fined not more than \$1,000, or confined in jail not more than
2 one year, or both fined and imprisoned: *Provided*, That a criminal
3 penalty may not be imposed upon anyone who signs a nomination
4 certificate and votes in the primary election held after the date
5 the certificate was signed.

6 **§3-5-24. Filing of nomination certificates; time.**

7 (a) All certificates nominating candidates for the House of
8 Delegates, State Senate, State Executive Committee or circuit court
9 judge and any other office or political position to be filled by
10 the voters of more than one county shall file a certificate of
11 announcement with the Secretary Of State office under the preceding
12 section shall be filed, in the case of a candidate to be voted for
13 by the voters of the entire state or by any subdivision of the
14 state other than a single county, with the Secretary of State, and
15 in the case of all candidates for county and magisterial district
16 offices, including all offices to be filled by the voters of a
17 single county, with the clerk of the county commission, not later
18 than August 1 preceding the general election.

19 (b) Each candidate shall pay the filing fee required by
20 section eight of this article at the time of the filing of the
21 nomination certificate. If any nomination certificate is not
22 timely filed or if the filing fee is not timely paid, the
23 certificate may not be received by the Secretary of State, or by
24 the clerk of the county commission, as the case may be.

25 **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS**

26 **§3-6-4a. Filing requirements for write-in candidates.**

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

9 (a) The write-in candidate's certificate of announcement shall
10 be in a form prescribed by the Secretary of State on which the
11 candidate shall make a sworn statement before a notary public or
12 other officer authorized to give oaths containing the following
13 information:

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

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

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

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

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

1 (b) The certificate of announcement shall be filed with the
2 filing officer for the political division of the office as
3 prescribed in section seven, article five of this chapter.

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

6 (1) Except as provided in subdivisions (2) and (3) of this
7 subsection, the certificate of announcement for any office shall be
8 received no later than the close of business on the ~~forty-second~~
9 forty-ninth day before the election at which the office is to be
10 filled;

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

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

1 of business on the fifth day before the election or the close of
2 business on the day following the occurrence of the vacancy,
3 whichever is later.

4 (d) Any eligible person who files a completed write-in
5 candidate's certificate of announcement with the proper filing
6 officer within the required time shall be certified by that filing
7 officer as an official write-in candidate:

8 (1) The Secretary of State shall, immediately following the
9 filing deadline, post the names of all official write-in candidates
10 for offices on the ballot in more than one county and certify the
11 name of each official write-in candidate to the clerks of the
12 county commissions of the appropriate counties.

13 (2) The clerk of the county commission shall, immediately
14 following the filing deadline, post the names of all official
15 write-in candidates for offices on the ballot in one county and
16 certify and deliver to the election officials of the appropriate
17 precincts the names of all official write-in candidates and the
18 office sought by each for statewide, district and county offices on
19 the ballot in the precinct for which valid write-in votes will be
20 counted. ~~and~~ The names of the write-in candidates shall be posted
21 at the office where absentee voting is conducted and at the
22 precincts in accordance with section twenty, article one of this
23 chapter.

24 **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

25 **§3-8-1a. Definitions.**

26 As used in this article, the following terms have the

1 following definitions:

2 (1) "Ballot issue" means a constitutional amendment, special
3 levy, bond issue, local option referendum, municipal charter or
4 revision, an increase or decrease of corporate limits or any other
5 question that is placed before the voters for a binding decision.

6 (2) "Broadcast, cable or satellite communication" means a
7 communication that is publicly distributed by a television station,
8 radio station, cable television system or satellite system.

9 (3) "Candidate" means an individual who:

10 (A) Has filed a certificate of announcement under section
11 seven, article five of this chapter or a municipal charter;

12 (B) Has filed a declaration of candidacy under section
13 twenty-three, article five of this chapter;

14 (C) Has been named to fill a vacancy on a ballot; or

15 (D) Has declared a write-in candidacy or otherwise publicly
16 declared his or her intention to seek nomination or election for
17 any state, district, county or municipal office or party office to
18 be filled at any primary, general or special election.

19 (4) "Candidate's committee" means a political committee
20 established with the approval of or in cooperation with a candidate
21 or a prospective candidate to explore the possibilities of seeking
22 a particular office or to support or aid his or her nomination or
23 election to an office in an election cycle. If a candidate directs
24 or influences the activities of more than one active committee in
25 a current campaign, those committees shall be considered one
26 committee for the purpose of contribution limits.

1 (5) "Clearly identified" means that the name, nickname,
2 photograph, drawing or other depiction of the candidate appears or
3 the identity of the candidate is otherwise apparent through an
4 unambiguous reference, such as "the Governor," "your Senator" or
5 "the incumbent" or through an unambiguous reference to his or her
6 status as a candidate, such as "the Democratic candidate for
7 Governor" or "the Republican candidate for Supreme Court of
8 Appeals."

9 (6) "Charitable Organization" means a person who is or holds
10 itself out to be a benevolent, educational, philanthropic, humane,
11 patriotic, religious or eleemosynary organization, or any person
12 who solicits or obtains contributions solicited from the public for
13 charitable purposes, or any person who in any manner employs any
14 appeal for contributions which may be reasonably interpreted to
15 suggest that any part of such contributions will be used for
16 charitable purposes. A chapter, branch, area, office or similar
17 affiliates or any person soliciting contributions within the state
18 for a charitable organization which has its principal place of
19 business outside the state is a charitable organization for the
20 purposes of this article.

21 ~~(6)~~(7) "Contribution" means a gift, subscription, loan,
22 assessment, payment for services, dues, advance, donation, pledge,
23 contract, agreement, forbearance or promise of money or other
24 tangible thing of value, whether conditional or legally
25 enforceable, or a transfer of money or other tangible thing of
26 value to a person, made for the purpose of influencing the

1 nomination, election or defeat of a candidate. An offer or tender
2 of a contribution is not a contribution if expressly and
3 unconditionally rejected or returned. A contribution does not
4 include volunteer personal services provided without compensation:
5 *Provided*, That a nonmonetary contribution is to be considered at
6 fair market value for reporting requirements and contribution
7 limitations.

8 ~~(7)~~(8) "Corporate political action committee" means a
9 political action committee that is a separate segregated fund of a
10 corporation that may only accept contributions from its restricted
11 group as outlined by the rules of the State Election Commission.

12 ~~(8)~~(9) "Direct costs of purchasing, producing or disseminating
13 electioneering communications" means:

14 (A) Costs charged by a vendor, including, but not limited to,
15 studio rental time, compensation of staff and employees, costs of
16 video or audio recording media and talent, material and printing
17 costs and postage; or

18 (B) The cost of air time on broadcast, cable or satellite
19 radio and television stations, the costs of disseminating printed
20 materials, studio time, use of facilities and the charges for a
21 broker to purchase air time.

22 ~~(9)~~(10) "Disclosure date" means either of the following:

23 (A) The first date during any calendar year on which any
24 electioneering communication is disseminated after the person
25 paying for the communication has spent a total of \$5,000 or more
26 for the direct costs of purchasing, producing or disseminating

1 electioneering communications; or

2 (B) Any other date during that calendar year after any
3 previous disclosure date on which the person has made additional
4 expenditures totaling \$5,000 or more for the direct costs of
5 purchasing, producing or disseminating electioneering
6 communications.

7 ~~(10)~~(11) "Election" means any primary, general or special
8 election conducted under the provisions of this code or under the
9 charter of any municipality at which the voters nominate or elect
10 candidates for public office. For purposes of this article, each
11 primary, general, special or local election constitutes a separate
12 election. This definition is not intended to modify or abrogate
13 the definition of the term "nomination" as used in this article.

14 ~~(11)~~(12) (A) "Electioneering communication" means any paid
15 communication made by broadcast, cable or satellite signal, or
16 published in any newspaper, magazine or other periodical that:

17 (i) Refers to a clearly identified candidate for Governor,
18 Secretary of State, Attorney General, Treasurer, Auditor,
19 Commissioner of Agriculture, Supreme Court of Appeals or the
20 Legislature;

21 (ii) Is publicly disseminated within:

22 (I) Thirty days before a primary election at which the
23 nomination for office sought by the candidate is to be determined;
24 or

25 (II) Sixty days before a general or special election at which
26 the office sought by the candidate is to be filled; and

1 (iii) Is targeted to the relevant electorate: *Provided*, That
2 for purposes of the general election of 2008 the amendments to this
3 article are effective October 1, 2008.

4 (B) "Electioneering communication" does not include:

5 (i) A news story, commentary or editorial disseminated through
6 the facilities of any broadcast, cable or satellite television or
7 radio station, newspaper, magazine or other periodical publication
8 not owned or controlled by a political party, political committee
9 or candidate: *Provided*, That a news story disseminated through a
10 medium owned or controlled by a political party, political
11 committee or candidate is nevertheless exempt if the news is:

12 (I) A bona fide news account communicated in a publication of
13 general circulation or through a licensed broadcasting facility;
14 and

15 (II) Is part of a general pattern of campaign-related news
16 that gives reasonably equal coverage to all opposing candidates in
17 the circulation, viewing or listening area;

18 (ii) Activity by a candidate committee, party executive
19 committee or caucus committee, or a political action committee that
20 is required to be reported to the State Election Commission or the
21 Secretary of State as an expenditure pursuant to section five of
22 this article or the rules of the State Election Commission or the
23 Secretary of State promulgated pursuant to such provision:

24 *Provided*, That independent expenditures by a party executive
25 committee or caucus committee or a political action committee
26 required to be reported pursuant to subsection (b), section two of

1 this article are not exempt from the reporting requirements of this
2 section;

3 (iii) A candidate debate or forum conducted pursuant to rules
4 adopted by the State Election Commission or the Secretary of State
5 or a communication promoting that debate or forum made by or on
6 behalf of its sponsor;

7 (iv) A communication paid for by any organization operating
8 under Section 501(c)(3) of the Internal Revenue Code of 1986;

9 (v) A communication made while the Legislature is in session
10 which, incidental to promoting or opposing a specific piece of
11 legislation pending before the Legislature, urges the audience to
12 communicate with a member or members of the Legislature concerning
13 that piece of legislation;

14 (vi) A statement or depiction by a membership organization, in
15 existence prior to the date on which the individual named or
16 depicted became a candidate, made in a newsletter or other
17 communication distributed only to bona fide members of that
18 organization;

19 (vii) A communication made solely for the purpose of
20 attracting public attention to a product or service offered for
21 sale by a candidate or by a business owned or operated by a
22 candidate which does not mention an election, the office sought by
23 the candidate or his or her status as a candidate; or

24 (viii) A communication, such as a voter's guide, which refers
25 to all of the candidates for one or more offices, which contains no
26 appearance of endorsement for or opposition to the nomination or

1 election of any candidate and which is intended as nonpartisan
2 public education focused on issues and voting history.

3 ~~(12)~~(13) "Expressly advocating" means any communication that:

4 (A) Uses phrases such as "vote for the Governor," "re-elect
5 your Senator," "support the Democratic nominee for Supreme Court,"
6 "cast your ballot for the Republican challenger for House of
7 Delegates," "Smith for House," "Bob Smith in '04," "vote Pro-Life"
8 or "vote Pro-Choice" accompanied by a listing of clearly identified
9 candidates described as Pro-Life or Pro-Choice, "vote against Old
10 Hickory," "defeat" accompanied by a picture of one or more
11 candidates, "reject the incumbent";

12 (B) Communications of campaign slogans or individual words,
13 that can have no other reasonable meaning than to urge the election
14 or defeat of one or more clearly identified candidates, such as
15 posters, bumper stickers, advertisements, etc., which say "Smith's
16 the One," "Jones '06," "Baker", etc; or

17 (C) Is susceptible of no reasonable interpretation other than
18 as an appeal to vote for or against a specific candidate.

19 ~~(13)~~(14) "Financial agent" means any individual acting for and
20 by himself or herself, or any two or more individuals acting
21 together or cooperating in a financial way to aid or take part in
22 the nomination or election of any candidate for public office, or
23 to aid or promote the success or defeat of any political party at
24 any election.

25 ~~(14)~~(15) "Fund-raising event" means an event such as a dinner,
26 reception, testimonial, cocktail party, auction or similar affair

1 through which contributions are solicited or received by such means
2 as the purchase of a ticket, payment of an attendance fee or by the
3 purchase of goods or services.

4 ~~(17)~~(16) "In-kind contribution" means the donation of goods,
5 services, property or other thing of value other than money. The
6 basis for arriving at the dollar value of an in-kind contribution
7 is as follows:

8 (A) New items are valued at retail value;

9 (B) Used items are valued at fair market value; and

10 (C) Services rendered are valued at the actual cost of service
11 per hour.

12 For goods or services provided or rendered for an expenditure
13 less than the dollar value as determined by this section, the
14 difference between the calculated dollar value and the actual cost
15 shall be deemed an in-kind contribution. The actual cost shall be
16 reported as an expenditure of the campaign of committee as required
17 under article eight of this chapter. In-kind services do not
18 include nonprofessional campaign-related services voluntarily
19 rendered for which no compensation is asked or given.

20 ~~(15)~~(17) "Independent expenditure" means an expenditure by a
21 person:

22 (A) Expressly advocating the election or defeat of a clearly
23 identified candidate; and

24 (B) That is not made in concert or cooperation with or at the
25 request or suggestion of such candidate, his or her agents, the
26 candidate's authorized political committee or a political party

1 committee or its agents.

2 Supporting or opposing the election of a clearly identified
3 candidate includes supporting or opposing the candidates of a
4 political party. An expenditure which does not meet the criteria
5 for an independent expenditure is considered a contribution.

6 ~~(16)~~(18) "Membership organization" means a group that grants
7 bona fide rights and privileges, such as the right to vote, to
8 elect officers or directors and the ability to hold office, to its
9 members and which uses a majority of its membership dues for
10 purposes other than political purposes. "Membership organization"
11 does not include organizations that grant membership upon receiving
12 a contribution.

13 ~~(17)~~(19) "Name" means the full first name, middle name or
14 initial, if any, and full legal last name of an individual and the
15 full name of any association, corporation, committee or other
16 organization of individuals, making the identity of any person who
17 makes a contribution apparent by unambiguous reference.

18 ~~(18)~~(20) "Person" means an individual, corporation,
19 partnership, committee, association and any other organization or
20 group of individuals.

21 ~~(19)~~(21) "Political action committee" means a committee
22 organized by one or more persons for the purpose of supporting or
23 opposing the nomination or election of one or more candidates. The
24 following are types of political action committees:

25 (A) A corporate political action committee, as that term is
26 defined by subdivision (8) of this section;

1 (B) A membership organization, as that term is defined by
2 subdivision(18) of this section;

3 (C) An unaffiliated political action committee, as that term
4 is defined by subdivision (29) of this section.

5 ~~(20)~~(22) "Political committee" means any candidate committee,
6 political action committee or political party committee.

7 ~~(21)~~(23) "Political party" means a political party as that
8 term is defined by section eight, article one of this chapter or
9 any committee established, financed, maintained or controlled by
10 the party, including any subsidiary, branch or local unit thereof
11 and including national or regional affiliates of the party.

12 ~~(22)~~(24) "Political party committee" means a committee
13 established by a political party or political party caucus for the
14 purposes of engaging in the influencing of the election, nomination
15 or defeat of a candidate in any election.

16 ~~(23)~~(25) "Political purposes" means supporting or opposing the
17 nomination, election or defeat of one or more candidates or the
18 passage or defeat of a ballot issue, supporting the retirement of
19 the debt of a candidate or political committee or the
20 administration or activities of an established political party or
21 an organization which has declared itself a political party and
22 determining the advisability of becoming a candidate under the
23 precandidacy financing provisions of this chapter.

24 ~~(24)~~(26) "Targeted to the relevant electorate" means a
25 communication which refers to a clearly identified candidate for
26 statewide office or the Legislature and which can be received by

1 one hundred forty thousand or more individuals in the state in the
2 case of a candidacy for statewide office, eight thousand two
3 hundred twenty or more individuals in the district in the case of
4 a candidacy for the State Senate and two thousand four hundred ten
5 or more individuals in the district in the case of a candidacy for
6 the House of Delegates.

7 ~~(25)~~ (27) "Two-year election cycle" means the twenty-four month
8 period that begins the day after a general election and ends on the
9 day of the subsequent general election.

10 ~~(26)~~ (28) "Unaffiliated political action committee" means a
11 political action committee that is not affiliated with a
12 corporation or a membership organization.

13 **§3-8-5a. Information required in financial statement.**

14 (a) Each financial statement required by the provisions of
15 this article, other than a disclosure of electioneering
16 communications pursuant to section two-b of this article, shall
17 contain only the following information:

18 (1) The name, residence and mailing address and telephone
19 number of each candidate, financial agent, treasurer or person and
20 the name, address and telephone number of each association,
21 organization or committee filing a financial statement.

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

25 (3) The name of any person making a contribution and the
26 amount of the contribution. If the total contributions of any one

1 person in any one election cycle amount to more than \$250, the
2 residence and mailing address of the contributor and, if the
3 contributor is an individual, his or her major business affiliation
4 and occupation. ~~shall also be reported.~~ A contribution totaling
5 more than \$50 of currency of the United States or currency of any
6 foreign country by any one contributor is prohibited and a
7 violation of section five-d of this article. The statement on which
8 contributions are required to be reported by this subdivision may
9 not distinguish between contributions made by individuals and
10 contributions made by partnerships, firms, associations,
11 committees, organizations or groups.

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

14 (5) The name, residence and mailing address of any individual
15 or the name and mailing address of each lending institution making
16 a loan or of the spouse cosigning a loan, as appropriate, the
17 amount of any loan received, the date and terms of the loan,
18 including the interest and repayment schedule and a copy of the
19 loan agreement.

20 (6) The name, residence and mailing address of any individual
21 or the name and mailing address of each partnership, firm,
22 association, committee, organization or group having previously
23 made or cosigned a loan for which payment is made or a balance is
24 outstanding at the end of the period, together with the amount of
25 repayment on the loan made during the period and the balance at the
26 end of the period.

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

3 (8) The name, residence and mailing address of any person to
4 whom each expenditure was made or liability incurred, including
5 expenditures made on behalf of a candidate or political committee
6 that otherwise are not made directly by the candidate or political
7 committee, together with the amount and purpose of each expenditure
8 or liability incurred and the date of each transaction.

9 (9) The total expenditure for the nomination, election or
10 defeat of a candidate or any person supporting, aiding or opposing
11 the nomination, election or defeat of ~~any~~ a candidate in whose
12 behalf an expenditure was made or a contribution was given for the
13 primary or other election.

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

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

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

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

26 (2) All of the information required by subdivision (3),

1 subsection (a) of this section.

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

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

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

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

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

16 (f) No person may make any contribution except from his, her
17 or its own funds unless such person discloses in writing to the
18 person required to report under this section the name, residence,
19 mailing address, major business affiliation and occupation of the
20 person ~~which~~ who furnished the funds to the contributor. All such
21 disclosures shall be included in the statement required by this
22 section.

23 (g) Any firm, association, committee or fund permitted by
24 section eight of this article to be a political committee shall
25 disclose on the financial statement its corporate or other
26 affiliation.

1 (h) No contribution may be made, directly or indirectly, in a
2 fictitious name, anonymously or by one person through an agent,
3 relative or other person so as to conceal the identity of the
4 source of the contribution or in any ~~other~~ manner so as to effect
5 concealment of the contributor's identity.

6 (i) No person may accept ~~any~~ a contribution for the purpose of
7 influencing the nomination, election or defeat of a candidate or
8 for the passage or defeat of ~~any~~ a ballot issue unless the identity
9 of the donor and the amount of the contribution is known and
10 reported.

11 (j) When ~~any~~ a person receives an anonymous contribution which
12 cannot be returned because the donor cannot be identified, that
13 contribution shall be donated to the General Revenue Fund of the
14 state. ~~Any~~ An anonymous contribution shall be recorded as such on
15 the candidate's financial statement but may not be expended for
16 election expenses. At the time of filing, the financial statement
17 shall include a statement of distribution of anonymous
18 contributions which total amount shall equal the total of all
19 anonymous contributions received during the period.

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

24 (1) If the portion of dues or assessments designated for
25 political purposes equals ~~twenty-five dollars~~ \$25 or less per
26 member over the course of a calendar year, the total amount raised

1 for political purposes through membership dues or assessments
2 during the period is reported by showing the amount required to be
3 paid by each member and the number of members.

4 (2) If the total payroll deduction for political purposes of
5 each participating member equals \$25 or less over the course of a
6 calendar or fiscal year, as specified by the organization, the
7 organization shall report the total amount received for political
8 purposes through payroll deductions during the reporting period
9 and, to the maximum extent possible, the amount of each yearly
10 payroll deduction contribution level and the number of members
11 contributing at each such specified level. The membership
12 organization shall maintain records of the name and yearly payroll
13 deduction amounts of each participating member.

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

21 (1) Notwithstanding the provisions of section five of this
22 article or of the provisions of this section to the contrary, an
23 alternative reporting procedure may be followed by a political
24 party committee in filing financial reports for fund-raising events
25 if the total profit does not exceed \$5,000 per year. A political
26 party committee may report gross receipts for the sale of food,

1 beverages, services, novelty items, raffle tickets or memorabilia
 2 except that any receipt of more than \$50 from an individual or
 3 organization shall be reported as a contribution. A political party
 4 committee using this alternative method of reporting shall report:

5 ~~(i)~~(1) The name of the committee;

6 ~~(ii)~~(2) The type of fund-raising activity undertaken;

7 ~~(iii)~~(3) The location where the activity occurred;

8 ~~(iv)~~(4) The date of the fundraiser;

9 ~~(v)~~(5) The name of any individual who contributed more than
 10 \$50 worth of items to be sold;

11 ~~(vi)~~(6) The name and amount received from any person or
 12 organization purchasing more than \$50 worth of food, beverages,
 13 services, novelty items, raffle tickets or memorabilia;

14 ~~(vii)~~(7) The gross receipts of the fundraiser; and

15 ~~(viii)~~(8) The date, amount, purpose and name and address of
 16 each person or organization from whom items with a fair market
 17 value of more than \$50 were purchased for resale.

18 **ARTICLE 9. OFFENSES AND PENALTIES.**

19 **§3-9-6. Unauthorized presence in election room; three hundred**
 20 **foot limit; penalties.**

21 If any person, not herein authorized, ~~so to do,~~ enters or
 22 attempts to enter the election room, except upon a lawful errand
 23 and for a proper purpose, or remains within three hundred feet of
 24 the outside entrance to the building housing the polling place,
 25 contrary to the provisions of this chapter, he shall be guilty of
 26 a misdemeanor and, ~~on~~ upon conviction thereof, shall be fined not

1 less than \$50 nor more than \$500, or confined in the county jail
2 for not more than thirty days.

3 Excepting those individuals provided for expressly in this or
4 other sections of the code, only ~~full-time employees~~ designees of
5 the Secretary of State's office or ~~full-time employees~~ designees of
6 the respective county offices of the county clerk or the county
7 prosecutor or international observers who have registered as such
8 and been approved by the Secretary of State may enter or otherwise
9 disturb the polling place.

10 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

11 **ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION**
12 **OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS**
13 **AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY;**
14 **CONFLICT OF INTEREST.**

15 **§8-5-14. Municipal executive committees; election expenses;**
16 **applicability of state primary and general election**
17 **laws; election days and hours; notice.**

18 (a) Except as otherwise provided by charter provision or
19 ordinance or this code, municipal executive committees shall
20 exercise similar functions and be governed by the same laws in
21 regard to municipal primary elections and regular municipal
22 elections as county executive committees in regard to county-state
23 primary and general elections, so far as the same may be
24 applicable.

25 (b) All expenses of conducting municipal primary elections and
26 regular municipal elections shall be paid by the municipality.

1 (c) The provisions of chapter three of this code, referring
2 more particularly to primary elections and general elections,
3 shall, so far as the same can be applied and so far as not
4 otherwise provided by charter provision or ordinance, govern the
5 conduct of municipal primary elections and regular municipal
6 elections, as the case may be.

7 (d) No municipal primary election shall be held on the day of
8 the county-state primary election except as provided in section
9 five of this article nor less than twenty-five days immediately
10 preceding the regular municipal election unless a shorter period of
11 time is established by charter or ordinance.

12 (e) A municipality may, by charter provision or ordinance, set
13 times for the polls to be open on election day which differ from
14 the times provided in section thirty-one, article one, chapter
15 three of this code so long as the municipal election officials
16 provide written notice of the different hours through publication
17 in a qualified newspaper in the manner set out in section ten,
18 article five, chapter three of this code, not less than twenty-five
19 days prior to the election day.

20 **CHAPTER 59.**

21 **FEES, ALLOWANCES AND COSTS;**

22 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

23 **ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.**

24 **§59-3-3. Rates for legal advertisements; computation; filing**
25 **affidavits with Secretary of State.**

26 (a) The rates which a publisher or proprietor of a qualified

1 newspaper in West Virginia may charge and receive for a single or
2 first publication of any legal advertisement set solid depends on
3 the bona fide circulation of the newspaper, as follows:

4 (1) Four cents per word if the qualified newspaper has a bona
5 fide circulation of less than one thousand, except as provided in
6 subdivision (1), subsection (a) of this section;

7 (2) 11 1/2 ¢ per word if the qualified newspaper has a bona
8 fide circulation of one thousand to five thousand;

9 (3) ~~Nine cents~~ 12¢ per word if the qualified newspaper has a
10 bona fide circulation of more than five thousand but less than ten
11 thousand;

12 (4) ~~Ten cents~~ 13¢ per word if the qualified newspaper has a
13 bona fide circulation of more than ten thousand and less than
14 thirty thousand; or

15 (5) ~~Eleven cents~~ 14¢ per word if the qualified newspaper has
16 a bona fide circulation of thirty thousand or more. ~~Provided, That~~
17 ~~on the first day of July in the year two thousand three and on the~~
18 ~~first day of July in the year two thousand four and on the first~~
19 ~~day of July in the year two thousand five the allowable rate per~~
20 ~~word in each of the classifications of qualified newspapers with~~
21 ~~reference to circulation as set forth in this subsection shall, for~~
22 ~~each classification, increase one cent per word over the prior~~
23 ~~year's rate.~~

24 (b) In computing the number of words in a legal advertisement,
25 not set solid, the basis is the size of type in which legal
26 advertising is set by the qualified newspaper making the

1 publication and ~~shall be~~ is computed at the legal rate as though
2 the matter were solid type, that is to say, on the basis of eighty-
3 four words to the single column inch in six point type and fifty-
4 four words to the single column inch in eight point type and any
5 other size type in proportion.

6 (c) In determining the cost of a legal advertisement which is
7 to appear more than once in the same qualified newspaper, the cost
8 for the first publication ~~shall be~~ is computed as specified in
9 subsections (a) and (b) of this section and the cost of the second
10 and each subsequent publication ~~shall be~~ is seventy-five percent of
11 the cost of the first publication computed as specified in
12 subsections (a) and (b) of this section.

13 (d) ~~The average bona fide circulation stated by each qualified~~
14 ~~newspaper in the statement filed by the newspaper with the United~~
15 ~~States post office department in October of each year shall control~~
16 ~~the rate of circulation classification of the qualified newspaper~~
17 ~~for the period commencing the first day of July of each year until~~
18 ~~the last day of June of the following year. On or before November~~
19 March 1 of each year, the publisher or proprietor of each newspaper
20 desiring to publish any legal advertisement during the ensuing one
21 year time period commencing July 1, shall file with the Secretary
22 of State an affidavit stating the average bona fide circulation of
23 the newspaper as listed in the statement of Ownership, Management,
24 and Circulation filed by the newspaper with the United States
25 Postal Service in October of each year during the preceding twelve
26 ~~month time period ending the thirtieth day of September of each~~

1 ~~year and shall~~ set forth sufficient facts in the affidavit to show
2 ~~whether~~ the newspaper is a qualified newspaper. The average bona
3 fide circulation stated in the affidavit ~~by each qualified~~
4 ~~newspaper shall control~~ controls the rate circulation
5 classification for the ensuing twelve-month period commencing July
6 1. Any qualified newspaper ~~for which the required affidavit is not~~
7 ~~filed on or before the first day of March of any calendar year~~
8 ~~shall be~~ which does not file the required affidavit on or before
9 March 1 of any calendar year is conclusively presumed to have a
10 bona fide circulation of less than one thousand for the ensuing
11 twelve-month period commencing July 1. ~~of such year a bona fide~~
12 ~~circulation of less than one thousand. At the time a publisher or~~
13 ~~proprietor of a qualified newspaper files an affidavit with the~~
14 ~~Secretary of State, as required by this subsection, At the same~~
15 time as filing the affidavit with the Secretary of State, the
16 publisher or proprietor shall also notify the clerk of the county
17 commission and the board of education of the county in which the
18 ~~qualified~~ newspaper is published of the circulation classification
19 ~~of the qualified newspaper and of the~~ and applicable rate for
20 publishing legal advertisements ~~in the qualified newspaper~~ during
21 the ensuing twelve-month period commencing July 1. If the
22 qualified newspaper is published in a municipality, the publisher
23 or proprietor shall at the same time ~~also~~ furnish the same
24 notification to the clerk or recorder of the municipality.

25 (e) The rate charged for political advertising appearing in a
26 newspaper at any time or times during the time period commencing

1 thirty days prior to any primary or general election and ending the
2 day following the election may not exceed one hundred five percent
3 of the lowest commercial rate charged by the newspaper in which the
4 political advertising appears.

5 (f) Nothing contained in this section prohibits qualified
6 newspapers from charging less than the specified rates for any
7 legal advertisement or from charging usual and customary rates for
8 notarizing and producing additional copies of the affidavits and
9 statements required in section four of this article.

NOTE: The purpose of this bill is to clarify inconsistencies
in the code and to eliminate obsolete and outdated language.

Strike-throughs indicate language that would be stricken from
the present law and underscoring indicates new language that would
be added.