

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 570**

4 (By Senators Beach, Miller, D. Hall and Wells)

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported March 22, 2013.]
8 _____

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10
11 A BILL to repeal §3-1-10 of the Code of West Virginia, 1931, as
12 amended; and to amend and reenact §3-1-2a, §3-1-4, §3-1-21,
13 §3-1-21a, §3-1-22, §3-1-26, §3-1-32, §3-1-36, §3-1-37,
14 §3-1-38, §3-1-39, §3-1-42 and §3-1-49 of said code, all
15 relating to clarifying language in article one, chapter three
16 of the West Virginia Code; updating, removing or repealing
17 outdated language; adjusting absentee ballot delivery
18 requirement to meet federal and state code; adjusting certain
19 provisions regarding disorder at polls; and clarifying that
20 the Office of the Secretary of State shall hold a certain
21 election training once every two years.

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

23 That §3-1-10 of the Code of West Virginia, 1931, as amended,
24 be repealed; and that §3-1-2a, §3-1-4, §3-1-21, §3-1-21a, §3-1-22,
25 §3-1-26, §3-1-32, §3-1-36, §3-1-37, §3-1-38, §3-1-39, §3-1-42 and
26 §3-1-49 of said code be amended and reenacted, all to read as
27 follows:

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

2 **§3-1-2a. Municipal elections.**

3 (a) Notwithstanding other provisions of this code or of any
4 special legislative or home rule city charter, the provisions of:
5 (1) Articles eight and nine of this chapter; (2) ~~any~~ rules
6 promulgated under authority granted in articles eight and nine of
7 this chapter; and (3) ~~any provisions of~~ this chapter making a
8 practice or conduct unlawful ~~shall apply~~ applies to every municipal
9 election held for any purpose.

10 (b) For purposes of: (1) this section; (2) the application of
11 articles eight and nine of this chapter; (3) the application of the
12 rules mentioned in this section; and (4) the application of
13 provisions of this chapter making a practice or conduct unlawful,
14 the provisions of law which impose ~~any~~ a duty upon or define ~~any~~ an
15 offense or prohibition with respect to the duty or authority of a
16 county officer or county election officer or body of county
17 election officers ~~shall be construed to and shall apply~~ applies
18 with equal force and effect to the person or persons in a municipal
19 election upon whom this code or the city charter or ordinance
20 imposes such duty or vests the same or similar authority.

21 (c) Every municipality shall by charter or ordinance designate
22 the persons in the municipality who perform the same duties as any
23 officer in a county election. The designated persons shall attend
24 ~~a biannual election training held and~~ an election training
25 conducted by the Office of the Secretary of State every two years.

26 (d) This section ~~shall not be construed to~~ does not abrogate
27 the applicability of other provisions of this chapter to municipal
28 elections.

1 **§3-1-4. Manner of voting.**

2 In all elections, the mode of voting shall be by ballot but
3 the voter shall be left free to vote by either open, sealed or
4 secret ballot as ~~he~~ the voter may elect. Voting by ballot may be
5 accomplished as provided in articles three, ~~four~~, four-a, five and
6 six of this chapter.

7 **§3-1-21. Printing of official and sample ballots; number;**
8 **packaging and delivery; correction of ballots.**

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

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

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

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

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

21 (4) The municipal board of ballot commissioners, for ~~any~~ an
22 election conducted for or within a municipality except an election
23 in which the matter affecting the municipality is placed on the
24 county ballot at a county election. Ballots other than those
25 printed by the proper authorities as specified in this section may
26 not be cast, received or counted in ~~any~~ an election.

27 (c) When paper ballots are used, the total number of regular
28 official ballots printed shall equal one and one-twentieth times

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

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

23 (e) All absentee ballots necessary for conducting absentee
24 voting in all voting systems shall be delivered to the clerk of the
25 county commission of the appropriate county not later than the
26 ~~forty-second~~ forty-sixth day before the election. All official
27 ballots in paper ballot systems shall be delivered to the clerk of
28 the county commission of the appropriate county not later than

1 twenty-eight days before the election.

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

9 **§3-1-21a. Vendors authorized to print ballots; eligibility;**
10 **application and certification; denial, suspension**
11 **and revocation of authorization; appeal.**

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

16 (b) ~~Any~~ A vendor authorized to do business in West Virginia
17 and in good standing may apply for a certificate of authorization
18 to print ballots for elections in this state. ~~Provided, That any~~
19 ~~individual, partnership, association or corporation who does not~~
20 ~~qualify as a resident vendor pursuant to the provisions of section~~
21 ~~thirty seven-a, article three, chapter five-a of this code or who~~
22 ~~prints the ballots in a state which prohibits that state or any of~~
23 ~~its political subdivisions from contracting with West Virginia~~
24 ~~resident vendors for the printing of ballots or which prohibits the~~
25 ~~printing of ballots outside of such state, is not eligible to~~
26 ~~obtain a certificate of authorization.~~

27 (c) (1) Every vendor desiring to print ballots for elections
28 held pursuant to the provisions of this chapter shall, prior to the

1 execution of ~~any~~ a contract for the printing of ballots with ~~any~~ a
2 state, county, or municipal government, obtain a certificate of
3 authorization to print ballots.

4 (2) A certificate of authorization may be obtained by
5 application to the Secretary of State upon a form prescribed by the
6 Secretary of State. The form shall include a statement that all
7 printing, packaging and delivery specifications for ballots set
8 forth in this chapter will be substantially met and that the vendor
9 applying for certification is eligible in accordance with the
10 provisions of this section.

11 (3) Upon receipt of the completed application, the Secretary
12 of State shall issue a certificate of authorization to print
13 ballots which ~~shall~~ will remain in effect for two years from the
14 date of issuance and may be renewed upon application: ~~therefor:~~
15 *Provided*, That the Secretary of State may deny the application to
16 issue or renew the certificate of authorization or may suspend or
17 revoke the certificate of authorization upon a determination that
18 the vendor has not substantially complied with the printing,
19 packaging and delivery specifications in the printing of ballots
20 for ~~any~~ a state, county or municipal election or that the vendor is
21 not eligible or is no longer eligible to print ballots pursuant to
22 the provisions of this section. The Secretary of State shall give
23 written notice of ~~any such~~ a denial, suspension or revocation
24 determination by certified mail, return receipt requested, to the
25 vendor setting forth the reason for the suspension, revocation or
26 the denial of the application or the denial of the renewal.
27 ~~thereof.~~ The applicant may, within sixty days of the receipt of
28 ~~such~~ the denial, suspension or revocation, file a written appeal

1 with the State Election Commission. The State Election Commission
2 shall promulgate rules establishing a hearing process for such
3 appeals.

4 (d) On or before the second Monday of January of each year,
5 the Secretary of State shall provide a list of all vendors
6 authorized to print ballots for state, county and municipal
7 elections to the clerk of each county commission of this state.

8 **§3-1-22. County commission clerks to provide election supplies;**
9 **requirements for poll books and ballot boxes.**

10 The clerk of the county ~~court~~ commission of each county shall
11 provide poll books, a list of all precincts within the county,
12 tally sheets, ballot boxes, voting booths, registration records and
13 forms, strong and durable envelopes upon which to make returns,
14 blank forms for certifying returns and whatever further supplies
15 are needed for holding the elections and making the returns.
16 ~~thereof. The poll books shall bear upon each page the following~~
17 ~~heading: "Names of persons voting at precinct No. in the~~
18 ~~District of in the county of~~
19 ~~..... on this (the) day of~~
20 ~~..... in the year"~~ Such poll books shall
21 have columns headed respectively: ~~"Number of Voters," "Signature~~
22 ~~of Voter" and "Challenge of Voter", and shall have under the~~
23 ~~heading "Number of Voters" numbers in consecutive order to the~~
24 ~~bottom of each page. Forms for oaths of commissioners of election~~
25 ~~and poll clerks shall be written or printed on the poll books. The~~
26 poll books shall be printed from the statewide voter registration
27 database. Each ballot box shall be provided with two locks with
28 different keys so that the key for one lock will not open the other

1 and shall be so constructed as to be safely and securely closed and
2 locked with an opening in the lid of the box sufficient only for
3 the passage of a single ballot.

4 **§3-1-26. Election supplies in emergencies.**

5 If, by ~~any~~ an accident or casualty, the ballots or ballot box
6 or boxes delivered to a commissioner of election, or to ~~any~~ a
7 messenger, ~~shall be~~ are lost or destroyed, it ~~shall be the duty of~~
8 ~~such~~ is the duty of the commissioner or messenger to report the
9 loss forthwith to the board of ballot commissioners and clerk of
10 the county ~~court~~ commission from whom ~~the same were or was,~~ these
11 were obtained and make affidavit of the circumstances of the loss.
12 ~~whereupon such~~ The board and clerk shall at once send a new supply
13 by special messenger as provided in other cases. If, for any
14 reason, there should be found no ballots or ballot box or other
15 necessary means or contrivances for voting at the opening of the
16 polls, it ~~shall be~~ is the duty of the commissioners of election to
17 secure ~~the same~~ these as speedily as possible and, if necessary,
18 the ballot commissioners may have ballots printed or written and
19 the election commissioners may have a ballot box or boxes made.

20 **§3-1-32. Opening and closing polls; procedure.**

21 (a) At the time of opening the polls in all precincts ~~wherein~~
22 where voting machines are not to be used, the election
23 commissioners shall examine the ballot box and ascertain that there
24 are no ballots in the ~~same,~~ box and ~~they shall thereupon~~ securely
25 lock the box and give one key to one of the commissioners and one
26 to a commissioner of the opposite political party who shall hold
27 the same. ~~and such~~ The boxes shall not be again opened until the
28 time to begin counting the votes arrives and for that purpose. At

1 or before opening the polls, the commissioners of election shall
2 open the package containing the ballots in such manner as to
3 preserve the seals full and ~~thereupon~~ deliver all of the ballots to
4 the poll clerk. Before ~~any~~ a voter is permitted to vote, the
5 commissioners of election shall proclaim that such election is
6 opened.

7 (b) When the polls are closed, proclamation must be made of
8 the fact by one of the commissioners of election to the people
9 outside in a loud and audible tone of voice and ~~a minute of such~~
10 ~~proclamation and of the time when it was made must be entered on~~
11 the ~~pollbooks~~ form provided by the clerks. The election
12 commissioner shall permit those electors to vote who are present at
13 the polling place prior to the hour specified for the closing of
14 the polls: *Provided*, That at that time of the proclamation they
15 are in a line awaiting their turn to vote within the voting room
16 itself or, if the line extends outside of the voting room itself,
17 within that line. In that event an election commissioner from each
18 party shall immediately, after the closing proclamation, begin with
19 the last voter in line and together supply the voters within the
20 line with waiting-voter permits which shall be prescribed by the
21 Secretary of State. Each voter shall sign his or her permit in the
22 presence of both commissioners who shall ~~then likewise~~ affix their
23 signatures to the permit in the presence of the voter and each
24 other. After each ~~such~~ voter in line has received and signed his
25 or her permit and the election commissioners have affixed their
26 signatures thereto, voting shall be resumed. Each voter shall
27 present his or her permit to one of the poll clerks so that the
28 signature thereon may be compared to the voter's signature when ~~he~~

1 the voter signs the pollbook. Each permit so presented shall be
2 attached to the page in the pollbook on which the voter affixed his
3 or her signature. In no case ~~shall any~~ may a person who arrives at
4 the polling place after the closing ~~hour~~ proclamation be given a
5 waiting-voter permit or be allowed to vote. After the final voter
6 presents his or her waiting-voter permit and casts his or her
7 ballot no more ballots shall be cast or received.

8 **§3-1-36. Report on and disposition of ballots spoiled or not used.**

9 ~~Any~~ A voter who shall spoil, deface or mutilate the ballot
10 delivered to him or her, on returning the ~~same~~ ballot to the poll
11 clerks, shall receive another in place thereof. Every person who
12 does not vote ~~any~~ a ballot delivered to him or her shall, before
13 leaving the election room, return ~~such~~ the ballot to the poll
14 clerks. When a spoiled or defaced ballot is returned, the poll
15 clerks shall make a ~~minute~~ notation of the fact on the ~~pollbooks,~~
16 ~~at the time,~~ form provided by the clerks, and the word "spoiled"
17 shall be written across the face of the ballot and ~~such~~ the ballot
18 shall be placed in an envelope for spoiled ballots.

19 Immediately on closing the polls, the commissioners of
20 election shall ascertain the number of ballots spoiled during the
21 election and the number of ballots remaining not voted. The
22 commissioners of election shall also ascertain from the pollbooks
23 the number of persons who voted and shall report, over their
24 signatures, to the clerk of the county commission, the number of
25 votes ~~case,~~ cast, the number of ballots spoiled during the election
26 and the number of ballots not voted. All unused ballots shall at
27 the same time be returned to the clerk of the county commission who
28 shall separately package the unused ballots from each precinct,

1 mark the name and number of the precinct on the package and retain
2 them securely along with other election materials.

3 Each commissioner who is a member of an election board which
4 fails to account for every ballot delivered to it is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not more
6 than \$1,000 or confined in the county jail for not more than one
7 year, or both fined and imprisoned.

8 The board of ballot commissioners of each county, or the
9 chairman thereof, shall preserve the ballots that are left over in
10 their hands, after supplying the precincts as provided, until
11 twenty-two months after the election.

12 **§3-1-37. Restrictions on presence and conduct at polls.**

13 (a) Except as otherwise provided in this section, no person
14 other than the election officers and voters going to the election
15 room to vote and returning therefrom, may be or remain within three
16 hundred feet of the outside entrance to the building housing the
17 polling place while the polls are open. This subsection does not
18 apply to persons who reside or conduct business within such
19 distance of the entrance to the building housing the polling place
20 while in the discharge of their legitimate business or to persons
21 whose business requires them to pass ~~and repass~~ within three
22 hundred feet of ~~such~~ the entrance.

23 (b) A person who is delivering a voter to a polling place by
24 motor vehicle may drive ~~such~~ his or her vehicle to a convenient and
25 accessible location to discharge the voter notwithstanding that the
26 location is within three hundred feet of the outside entrance to
27 the building housing the polling place. Upon discharging ~~such~~ the
28 voter from the vehicle, the person shall remove the vehicle from

1 within three hundred feet of the entrance until such time as the
2 voter is to be transported from the polling place or another voter
3 delivered. ~~Provided, That~~ Vehicles delivering voters who require
4 assistance by reason of blindness, disability or advanced age may
5 remain within three hundred feet of the entrance until ~~such time as~~
6 the voter is to be transported from the polling place.

7 (c) The election ~~commissions~~ commissioners shall limit the
8 number of voters in the election room ~~so as~~ to preserve order. No
9 person may approach nearer than five feet to any booth or
10 compartment while the election is being held except the voters to
11 prepare their ballots or the poll clerks when called on by a voter
12 to assist in the preparation of his or her ballot. ~~and~~ No person,
13 other than election officers and voters engaged in receiving,
14 preparing and depositing their ballots, may be permitted to be
15 within five feet of any ballot box except by authority of the board
16 of election commissioners and then only for the purpose of keeping
17 order and enforcing the law.

18 (d) Not more than one person may be permitted to occupy ~~any a~~
19 booth or compartment at one time. No person may remain in or
20 occupy a booth or compartment longer than ~~may be~~ necessary to
21 prepare his or her ballot and in no event longer than five minutes.
22 ~~except that any~~ A person who claims a disability pursuant to
23 section thirty-four of this article shall have additional time up
24 to ten additional minutes to prepare his or her ballot. No voter
25 or person offering to vote may hold any conversation or
26 communication with ~~any a~~ person, other than the poll clerks or
27 commissioners of election, while in the election room.

28 (e) The provisions of this section do not apply to persons

1 rendering assistance to blind voters as provided in section
2 thirty-four of this article or to ~~any~~ a child fourteen years of age
3 or younger who accompanies a parent, grandparent or legal guardian
4 who is voting. ~~Any~~ A dispute concerning the age of a child
5 accompanying a parent, grandparent or legal guardian who is voting
6 shall be determined by the election commissioners.

7 **§3-1-38. Disorder at polls; procedure.**

8 The commissioners of election shall preserve order at and in
9 the vicinity of the polls, ~~and~~ keep the way to the polls open and
10 free from obstruction and ~~may~~ direct disorderly persons to be
11 removed ~~therefrom, and, if necessary and proper, to be taken and~~
12 ~~held in custody until sunrise of the next day, or for any shorter~~
13 ~~time, which may be done by any sheriff or constable or other person~~
14 ~~or persons designated by the commissioners of election. For such~~
15 ~~purpose no warrant or authority in writing shall be necessary. The~~
16 ~~jail of the county or other place designated by the commissioners~~
17 ~~of election may be used as the place of custody. But any person so~~
18 ~~arrested shall have an opportunity to vote, if he be entitled to do~~
19 ~~so, before he shall be committed to jail, if he so desires and~~
20 ~~shall be prepared to do so promptly.~~ by the appropriate authority.

21 **§3-1-39. Illegal voting; affidavit; procedure.**

22 (a) If at any time during the election, ~~any~~ a qualified voter
23 ~~shall appear~~ appears at the polls for the purpose of stating that
24 ~~any~~ a person who has voted is an illegal voter in the precinct,
25 that person shall be admitted to the election room and shall appear
26 before a commissioner of election to make an affidavit explaining
27 why he or she believes the accused to be an illegal voter.

28 (b) All affidavits alleging illegal voting shall be placed in

1 a strong and durable envelope by the commissioners of election.
2 The envelope shall be securely sealed and each of the commissioners
3 shall endorse his or her name on the back of the envelope. At the
4 close of the count, the envelope shall be delivered to the clerk of
5 the ~~circuit court~~ county commission in accordance with section
6 sixteen, article five of this chapter and section eight, article
7 six of this chapter. The clerk of the ~~circuit court~~ county
8 commission shall carefully preserve the envelope containing the
9 affidavits and deliver it, with the seal unbroken, to the
10 prosecuting attorney in the county. The prosecuting attorney shall
11 proceed as if it had been made before him or her.

12 **§3-1-42. Time off for voting.**

13 Every person entitled to vote at ~~any~~ an election who may be
14 employed by ~~any~~ a person, company or corporation on the day ~~on~~
15 ~~which such election shall be~~ the election is held in this state,
16 shall, on written demand of ~~such~~ the employee made at least three
17 days prior thereto, be given a period of not more than three hours,
18 if necessary, between the opening and the closing of the polls on
19 such day, for the purpose of enabling such person to ~~repair~~ go to
20 the place of voting to cast his or her vote and return, without
21 liability to ~~any~~ a penalty or deduction from his or her usual
22 salary or wages. ~~on account of such absence, except that any~~
23 ~~employee,~~ An employee, however, who has three or more hours of his
24 or her own time away from his or her work or place of employment at
25 any time between the hours of the opening and the closing of the
26 polls on election day and who fails or neglects to vote or elects
27 not to vote during ~~such~~ the free time away from his or her work or
28 employment, may be subject to wage or salary deductions for the

1 time actually absent from his or her work or employment for voting
2 in ~~such the~~ election.

3 In essential government, health, hospital, transportation and
4 communication services and in production, manufacturing and
5 processing works requiring continuity in operation, the employer
6 may, upon receipt of ~~such a~~ written demand for voting time off,
7 arrange and schedule a calendar of time off for ~~any and~~ all of his
8 or her employees ~~for voting so as~~ to avoid impairment or disruption
9 of essential services and operations. ~~but every such~~ The schedule
10 ~~or calendar~~ of time off for voting ~~so arranged~~ shall provide ample
11 and convenient time and opportunity for each employee ~~of such~~
12 ~~services or works~~ to cast his or her vote. ~~as herein provided.~~

13 **§3-1-49. Voting system standards.**

14 (a) In accordance with 42 U. S. C. §1530, *et seq.*, the Help
15 America Vote Act of 2002, Public Law 107-252, each voting system
16 used in an election for federal office shall:

17 (1) Permit the voter to verify, in a private and independent
18 manner, the votes selected by the voter on the ballot before the
19 ballot is cast and counted;

20 (2) Provide the voter with the opportunity, in a private and
21 independent manner, to change the ballot or correct any error
22 before the ballot is cast and counted including the opportunity to
23 correct the error through the issuance of a replacement ballot if
24 the voter was ~~otherwise~~ unable to change the ballot or correct any
25 error; and

26 (3) If the voter selects votes for more than one candidate for
27 a single office: (A) Notify the voter that the voter has selected
28 more than one candidate for a single office on the ballot; (B)

1 notify the voter before the ballot is cast and counted of the
2 effect of casting multiple votes for the office; and (C) provide
3 the voter with the opportunity to correct the ballot before the
4 ballot is cast and counted. ~~Provided, That~~ A county that uses a
5 paper ballot voting system ~~a punch card voting system~~ or an optical
6 scan voting system may meet the requirements of this paragraph by
7 establishing a voter education program specific to that voting
8 system that notifies each voter of the effect of casting multiple
9 votes for an office and providing the voter with instructions on
10 how to correct the ballot before it is cast and counted including
11 instructions on how to correct the error through the issuance of a
12 replacement ballot if the voter was ~~otherwise~~ unable to change the
13 ballot or correct any error.

14 (4) Ensure that any notification required under this section
15 preserves the privacy of the voter and the confidentiality of the
16 ballot.

17 (b) Each voting system used in an election for federal office
18 shall produce a record with an audit capacity for the system which:
19 ~~shall meet the following requirements:~~

20 (1) ~~Produce~~ Produces a permanent paper record with a manual
21 audit capacity for the system; and

22 (2) ~~Provide~~ Provides the voter with an opportunity to change
23 the ballot or correct any error before the ballot is cast and
24 counted and before the permanent paper record is produced.

25 (c) Each voting system used in an election for federal office
26 shall be accessible for individuals with disabilities including
27 nonvisual accessibility for the blind and visually impaired in a
28 manner that provides the same opportunity for access and

1 participation, including privacy and independence, as for other
2 voters. ~~Provided, That~~ The provisions of this subsection may be
3 satisfied through the use of at least one direct recording
4 electronic voting system or other voting system equipped for
5 individuals with disabilities at each polling place.

(NOTE: The purpose of this bill is to clean up existing language in select sections of article one, chapter three of the West Virginia Code, 1931, as amended.)

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