

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 145

(By Senator Unger)

[Originating in the Committee on the Judiciary;
reported February 20, 2013.]

A BILL to amend and reenact §3-1-50 of the Code of West Virginia, 1931, as amended, relating to the administrative procedure in response to election-related complaints; clarifying language to allow the procedure to be utilized for certain federal election violations; and providing an exception to the procedure for certain allegations that may result in a finding of a criminal violation.

Be it enacted by the Legislature of West Virginia:

That §3-1-50 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

5 (1) The procedures shall be uniform and
6 nondiscriminatory.

7 (2) Under the procedures, any person who believes that
8 there is a violation of any provision of this chapter or Title III
9 of the Help America Vote Act, Pub. L. 107-252, including a
10 violation which has occurred, is occurring or is about to
11 occur, may file a complaint.

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

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

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

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

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

26 (8) The Secretary of State shall make a final
27 determination with respect to a complaint prior to the
28 expiration of the ninety-day period which begins on the date
29 the complaint is filed unless the complainant consents to a
30 longer period for making a determination.

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

35 The record and other materials from any proceedings
36 conducted under the complaint procedures established under
37 this section shall be made available for use under the
38 alternative dispute resolution procedures.

39 (b) The administrative complaint procedure required by
40 subsection (a) of this section is not applicable if, within thirty
41 days of the filing of the complaint, (1) the Secretary of State
42 initiates an investigation; (2) the Secretary of State
43 determines that the allegations contained in the complaint
44 may result in a finding of a criminal violation; and (3) the
45 Secretary of State determines that the administrative
46 complaint procedure required by this section would endanger
47 or impede the associated criminal investigation: *Provided,*
48 That within three business days thereafter the Secretary of
49 State shall notify the complainant in writing that the
50 allegations contained in the complaint may result in a finding
51 of a criminal violation and, therefore, the administrative
52 procedure contained in this section is inapplicable.