

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 565

FISCAL
NOTE

BY SENATOR ROBERTS, TAKUBO, AND RUCKER

[Introduced March 5, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as
2 amended; to amend said code by adding thereto a new section, designated §3-1A-9; to
3 amend and reenact §3-2-6, §3-2-11, §3-2-23, and §3-2-25 of said code; to amend and
4 reenact §3-3-1, §3-3-3, §3-3-5, and §3-3-5c of said code; to amend and reenact §3-7-6
5 and §3-7-7 of said code; to amend and reenact §3-8-2b of said code; to amend and
6 reenact §3-9-13 of said code; to amend said code by adding thereto a new section,
7 designated §3-9-21; and to amend and reenact §51-2A-5 of said code, all relating to the
8 deadline for electronically submitted voter registration applications; runoffs for nonpartisan
9 elections of Justices of the Supreme Court of Appeals, circuit courts, magistrate courts,
10 and family courts when no candidate receives at least fifty percent of the total votes cast
11 for that office; changing the time period of voting inactivity required for county clerks to
12 initiate the confirmation notice mailing process designed to identify voters who may have
13 moved without filing a forwarding address, moved with a forwarding address under
14 another name, died in a another county or state so that the certificate of death was not
15 returned to the clerk of the county commission, or who otherwise have become ineligible,
16 from four years to two years; changing the deadline by which voters may submit their
17 absentee-by-mail and emergency absentee ballot requests consistent with United States
18 Postal Services recommendations effective January 1, 2022; changing the start and end
19 date for early in-person voting; giving eligible citizens the affirmative choice to register to
20 vote at any Department of Motor Vehicles office; requiring jury duty excusal information
21 for out-of-state, non-citizen, and deceased persons to be transmitted to the appropriate
22 election official for voter registration roll maintenance purposes; to permit voter registration
23 roll removal of voters considered mentally incompetent by a licensed medical professional;
24 requiring disclosures on political push-polls and prerecorded political telephone
25 messages; prohibiting candidates from giving personal or business gifts to any non-family
26 member, non-educational institution, or unregistered charity or nonprofit within 60 days of

27 an election and exceptions; extending an electronic absentee ballot transmission option
 28 to first responders called out-of-state in emergency situations which prevents said voters
 29 from participating in the election and to voters qualified for an emergency absentee ballot;
 30 changing jurisdiction of election contests for county, district, and municipal elections to the
 31 circuit courts; clarifying procedures for election contests; establishing three-judge circuit
 32 court panel as the tribunal for hearing an election contest; providing for appeals of such
 33 proceedings to the Supreme Court of Appeals; granting rule-making authority to the
 34 Supreme Court of Appeals for the conduct of county, district, and municipal election
 35 contest proceedings; prohibiting interference with voters' open and accessible ingress and
 36 egress to and from the polls during the early in-person and election day voting periods;
 37 and relating to the regulation of non-public funding sources for election administration and
 38 related expenses.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

1 (a) At the general election to be held in 1968, and every fourth year thereafter, there shall
 2 be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and
 3 Commissioner of Agriculture. At the general election in 1968, and every second year thereafter,
 4 there shall be elected a member of the State Senate for each senatorial district, and a member
 5 or members of the House of Delegates of the state from each county or each delegate district.

6 (b) At the time of the primary election to be held in the year 2016, and every 12th year
 7 thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of
 8 the primary election to be held in 2020, and every 12th year thereafter, two justices of the
 9 Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every

10 12th year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary
11 election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be
12 on a nonpartisan basis and by division as set forth more fully in §3-5-1 *et seq.* of this code.

13 (c) Beginning with the nonpartisan judicial election held in 2022, and in every primary
14 election year thereafter, if no candidate in a division for justice of the Supreme Court of Appeals
15 receives more than 50 percent of the votes cast in the election for that office held concurrently
16 with the primary election, a runoff election for that division shall be conducted concurrently with
17 the general election. The ballot for the runoff election shall include a provision for selection only
18 between those two candidates who received the highest and second highest number of ballots
19 cast in that applicable division for justice of the Supreme Court of Appeals in the election for that
20 office held concurrently with the primary election.

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

1 (a) There shall be elected, at the time of the primary election to be held in 2016, and every
2 eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge,
3 and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to
4 two or more circuit judges; and at the time of the primary election to be held in 2016, and in every
5 fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with
6 the election held in the year 2016, an election for the purpose of electing judges of the circuit
7 court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot
8 printed for the purpose.

9 (b) There shall be elected, at the general election to be held in 1992, and every fourth year
10 thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors
11 prescribed by law for the county; and at the general election to be held in 1990, and every second
12 year thereafter, a commissioner of the county commission for each county; and at the general
13 election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and
14 a clerk of the circuit court for each county.

15 (c) Effective with the primary election of 2016, all elections for judge of the circuit courts in
 16 the respective circuits and magistrates in each county will be elected on a nonpartisan basis and
 17 by division as set forth more fully in article five of this chapter.

18 (d) Beginning with the nonpartisan judicial election held in 2022, and in every primary
 19 election year thereafter, if no candidate in a division for judge of a circuit court or magistrate court
 20 receives more than 50 percent of the votes cast in the election for that office held concurrently
 21 with the primary election, a runoff election for that division shall be conducted concurrently with
 22 the general election. The ballot for the runoff election shall include a provision for ion only between
 23 those two candidates who received the highest and second highest number of ballots cast in that
 24 applicable division for judge of the circuit court or magistrate court in the election for that office
 25 held concurrently with the primary election.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-9. Nonpublic funding sources for election administration and related expenses.

1 Notwithstanding any other provision of law, the Secretary of State, county commissions,
 2 clerks of county commissions, municipal governing bodies, and all other public officials and bodies
 3 responsible for overseeing, administering, or regulating an election held within the State of West
 4 Virginia may not receive, accept, or expend gifts, donations, or funding from private individuals,
 5 corporations, partnerships, trusts, or any third party not provided through ordinary state or county
 6 appropriations without prior written approval by the State Election Commission.

ARTICLE 2. REGISTRATION OF VOTERS.

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

1 (a) Voter registration before an election closes on the 21st day before the election or on
 2 the first day thereafter which is not a Saturday, Sunday, or legal holiday.

3 (b) An application for voter registration, transfer of registration, change of name, or change
 4 of political party affiliation submitted by an eligible voter by the close of voter registration is

5 effective for any subsequent primary, general, or special election if the following conditions are
6 met:

7 (1) The application contains the information required by §3-2-5 (c) of this code. Incomplete
8 applications for registration containing information which are submitted within the required time
9 may be corrected within four business days after the close of registration if the applicant provides
10 the required information; and

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

13 (A) If mailed, the application shall be addressed to the appropriate clerk of the county
14 commission and is postmarked by the postal service no later than the date of the close of
15 registration. If the postmark is missing or illegible, the application is presumed to have been mailed
16 no later than the close of registration if it is received by the appropriate clerk of the county
17 commission no later than the third day following the close of registration;

18 (B) If accepted by a designated agency or motor vehicle licensing office, the application is
19 received by that agency or office no later than the close of registration;

20 (C) If accepted through a registration outreach program, the application is received by the
21 clerk, deputy clerk or registrar no later than the close of registration;

22 (D) If accepted through an approved electronic voter registration system, the application
23 is received by the clerk of the county commission or other entity designated by the Secretary of
24 State ~~no later than the close of business~~ by 11:59 p.m. on the final day of registration; and

25 (3) The verification notice by ~~the provisions of~~ §3-2-16 of this code mailed to the voter at
26 the residence indicated on the application is not returned as undeliverable.

§3-2-11. Registration in conjunction with driver licensing.

1 (a) The Division of Motor Vehicles or other division or department that may be established
2 by law to perform motor vehicle driver licensing services shall obtain as an integral and
3 simultaneous part of every process of application for the issuance, renewal, or change of address

4 of a motor vehicle driver's license, or official identification card pursuant to ~~the provisions of §17B-~~
5 2-1 et seq. of this code, when the division's regional offices are open for regular business, the
6 following information from each qualified registrant:

7 (1) Full name, including first, middle, last, and any premarital names;

8 (2) Date of birth;

9 (3) Residence address and mailing address, if different;

10 (4) The applicant's electronic signature;

11 (5) Telephone number, if available;

12 (6) Email address, if available;

13 (7) Political party membership, if any;

14 (8) Driver's license number and last four digits of Social Security number;

15 (9) A notation that the applicant has attested that he or she meets all voter eligibility
16 requirements;

17 (10) United States citizenship status;

18 (11) Whether the applicant affirmatively agreed or declined to become registered to vote
19 during the transaction with the Division of Motor Vehicles;

20 (12) Date of application; and

21 (13) Any other information specified in rules adopted to implement this section.

22 ~~(b) Unless the applicant affirmatively declines to become registered to vote or update their~~
23 ~~voter registration during the transaction with the Division of Motor Vehicles, the~~ The Division of
24 Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this
25 section to the Secretary of State, who shall forward the information to the county clerk for the
26 relevant county to process the newly registered voter or updated information for the already-
27 registered voter pursuant to law. The Division of Motor Vehicles shall notify the applicant that by
28 submitting his or her signature, the applicant grants written consent for the submission of the
29 information obtained and required to be submitted to the Secretary of State pursuant to this

30 section.

31 (c) By no later than January 1, 2020, the Division of Motor Vehicles shall create a regular
32 process that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this
33 code to confirm that persons who are noncitizens of the United States have not and cannot
34 register to vote via the Online Voter Registration portal.

35 (d) Information regarding a person's failure to sign the voter registration application is
36 confidential and may not be used for any purpose other than to determine voter registration.

37 (e) A qualified voter who submits the required information or update to his or her voter
38 registration, pursuant to the provisions of subsection (a) of this section, in person at a driver
39 licensing facility at the time of applying for, obtaining, renewing, or transferring his or her driver's
40 license or official identification card and who presents identification and proof of age at that time
41 is not required to make his or her first vote in person or to again present identification in order to
42 make that registration valid.

43 (f) A qualified voter, who submits by mail or by delivery by a third party an application for
44 registration on the form used in conjunction with driver licensing, is required to make his or her
45 first vote in person and present identification as required for other mail registration in accordance
46 with ~~the provisions of~~ §3-2-10(g) of this code. If the applicant has been previously registered in
47 the jurisdiction and the application is for a change of address, change of name, change of political
48 party affiliation, or other correction, the presentation of identification and first vote in person is not
49 required.

50 (g) An application for voter registration submitted pursuant to ~~the provisions of~~ this section
51 updates a previous voter registration by the applicant and authorizes the cancellation of
52 registration in any other county or state in which the applicant was previously registered.

53 (h) A change of address from one residence to another within the same county which is
54 submitted for driver licensing or nonoperator's identification purposes in accordance with
55 applicable law serves as a notice of change of address for voter registration purposes if requested

56 by the applicant after notice and written consent of the applicant.

57 (i) Completed applications for voter registration or change of address for voting purposes
58 received by an office providing driver licensing services shall be forwarded to the Secretary of
59 State within five days of receipt unless other means are available for a more expedited
60 transmission. The Secretary of State shall remove and file any forms which have not been signed
61 by the applicant and shall forward completed, signed applications to the clerk of the appropriate
62 county commission within five days of receipt.

63 (j) Voter registration application forms containing voter information which are returned to
64 a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted
65 to the Secretary of State, and maintained by the Secretary of State's office according to the
66 retention policy adopted by the Secretary of State.

67 (k) The Secretary of State shall establish procedures to protect the confidentiality of the
68 information obtained from the Division of Motor Vehicles, including any information otherwise
69 required to be confidential by other provisions of this code.

70 (l) A person registered to vote pursuant to this section may cancel his or her voter
71 registration at any time by any method available to any other registered voter.

72 (m) This section does not require the Division of Motor Vehicles to determine eligibility for
73 voter registration and voting.

74 (n) Except for the changes made to subsection (b) of this section during the 2017 regular
75 legislative session, the changes made to this section during the 2016 regular legislative session
76 become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division
77 of Motor Vehicles. The Commissioner of the Division of Motor Vehicles, the Secretary of the
78 Department of Transportation, and the Secretary of State shall each appear before the Joint
79 Committee on Government and Finance and the Joint Standing Committee on the Judiciary,
80 during the first interim meetings of such committees occurring after September 1, 2019, to present
81 written reports containing a full and complete list of any infrastructure each agency requires to

82 achieve the purposes of this section. Along with the report required by this subsection, the Division
 83 of Motor Vehicles shall submit a written schedule to both committees outlining how the division
 84 will implement the requirements of this section by July 1, 2021.

85 (o) The Secretary of State shall propose rules for legislative approval in accordance with
 86 ~~the provisions of §29A-3-1 et seq.~~ of this code to implement the requirements of this section.

§3-2-23. Cancellation of registration of deceased or ineligible voters.

1 The clerk of the county commission shall cancel the registration of a voter:

2 (1) Upon the voter's death as verified by:

3 (A) A death certificate from the Registrar of Vital Statistics or a notice from the Secretary
 4 of State that a comparison of the records of the registrar with the county voter registration records
 5 show the person to be deceased;

6 (B) The publication of an obituary or other writing clearly identifying the deceased person
 7 by name, residence and age corresponding to the voter record; or

8 (C) An affidavit signed by the parent, legal guardian, child, sibling, or spouse of the voter
 9 giving the name and birth date of the voter, and date and place of death;

10 (2) Upon receipt of an official notice from a state or federal court that the person has been
 11 excused from jury duty based on non West Virginia legal residence or citizenship, death, or
 12 convicted of a felony, of treason or bribery in an election;

13 (3) Upon receipt of a notice from the appropriate court of competent jurisdiction or licensed
 14 medical professional of a determination of a voter's mental incompetence to make independent
 15 decisions on material matters;

16 (4) Upon receipt from the voter of a written request to cancel the voter's registration, upon
 17 confirmation by the voter of a change of address to an address outside the county, upon notice
 18 from a voter registrar of another jurisdiction outside the county or state of the receipt of an
 19 application for voter registration in that jurisdiction, or upon notice from the Secretary of State that
 20 a voter registration application was accepted in another county of the state subsequent to the last

21 registration date in the first county, as determined from a comparison of voter records; or

22 (5) Upon failure to respond and produce evidence of continued eligibility to register
23 following the challenge of the voter's registration pursuant to ~~the provisions of~~ §3-2-28 of this
24 code.

**§3-2-25. Systematic purging program for removal of ineligible voters from active voter
registration files; comparison of data records; confirmation notices; public
inspection list.**

1 (a) The systematic purging program provided in this section shall begin no earlier than
2 October 1 of each odd-numbered year and shall be completed no later than February 1 of the
3 following year. The clerk of the county commission shall transmit or mail to the Secretary of State
4 a certification that the systematic purging program has been completed and all voters identified
5 as no longer eligible to vote have been canceled in the statewide voter registration database in
6 accordance with the law no later than February 15 in the year in which the purging program is
7 completed.

8 (b) The Secretary of State shall provide for the comparison of data records of all counties.
9 The Secretary of State shall, based on the comparison, prepare a list for each county which shall
10 include the voter registration record for each voter shown on that county's list who appears to
11 have registered or to have updated a voter registration in another county at a subsequent date.
12 The resulting lists shall be returned to the appropriate county and the clerk of the county
13 commission shall proceed with the confirmation procedure for those voters as prescribed in §3-
14 2-26 of this code.

15 (c) The Secretary of State may provide for the comparison of data records of counties with
16 the data records of the Division of Motor Vehicles, the registrar of vital statistics and with the data
17 records of any other state agency which maintains records of residents of the state, if the
18 procedure is practical and the agency agrees to participate. Any resulting information regarding
19 potentially ineligible voters shall be returned to the appropriate county and the clerk of the county

20 commission shall proceed with the confirmation procedure as prescribed in §3-2-26 of this code.

21 (d) The records of all voters not identified pursuant to the procedures set forth in
22 subsections (b) and (c) of this section shall be combined for comparison with United States Postal
23 Service change of address information, as described in section 8(c)(A) of the National Voter
24 Registration Act of 1993 (42 U. S. C. §1973gg, et seq.). The Secretary of State shall contract with
25 an authorized vendor of the United States Postal Service to perform the comparison. The cost of
26 the change of address comparison procedure shall be paid for from the combined voter
27 registration and licensing fund established in §3-2-12 of this code and the cost of the confirmation
28 notices, labels and postage shall be paid for by the counties.

29 (e) The Secretary of State shall return to each county the identified matches of the county
30 voter registration records and the postal service change of address records.

31 (1) When the change of address information indicates the voter has moved to a new
32 address within the county, the clerk of the county commission shall enter the new address on the
33 voter record and assign the proper precinct.

34 (2) The clerk of the county commission shall then mail to each voter who appears to have
35 moved from the residence address shown on the registration records a confirmation notice
36 pursuant to section twenty-six of this article and of section 8(d)(2) of the National Voter
37 Registration Act of 1993 (42 U. S. C. §1973gg, et seq.). The notice shall be mailed, no later than
38 December 31, to the new address provided by the postal service records or to the old address if
39 a new address is not available.

40 (f) The clerk of the county commission shall indicate in the statewide voter registration
41 database the name and address of each voter to whom a confirmation notice was mailed and the
42 date on which the notice was mailed.

43 (g) Upon receipt of any response or returned mailing sent pursuant to the provisions of
44 subsection (e) of this section, the clerk shall immediately enter the date and type of response
45 received in the statewide voter registration database and shall then proceed in accordance with

46 ~~the provisions of §3-2-26 of this code.~~

47 (h) For purposes of complying with the record keeping and public inspection requirements
48 of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, et seq.), and with ~~the~~
49 ~~provisions of §3-2-27~~, the public inspection lists shall be maintained either in printed form kept in
50 a binder prepared for such purpose and available for public inspection during regular business
51 hours at the office of the clerk of the county commission or in read-only data format available for
52 public inspection on computer terminals set aside and available for regular use by the general
53 public. Information concerning whether or not each person has responded to the notice shall be
54 entered into the statewide voter registration database upon receipt and shall be available for
55 public inspection as of the date the information is received.

56 (i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of
57 subsection (e) of this section who fails to respond to the notice or to update his or her voter
58 registration address by February 1 immediately following the completion of the program, shall be
59 designated inactive in the statewide voter registration database. Any voter designated inactive
60 shall be required to affirm his or her current residence address, on a form prescribed by the
61 Secretary of State, upon appearing at the polls to vote.

62 (j) In addition to the preceding purging procedures, all counties using the change of
63 address information of the United States Postal Service shall also, once each ~~four~~ two years
64 during the period established for systematic purging in the year following a presidential election
65 year, conduct the same procedure by mailing a confirmation notice to those persons not identified
66 as potentially ineligible through the change of address comparison procedure but who have not
67 updated their voter registration records and have not voted in any election during the preceding
68 ~~four~~ two calendar years. The purpose of this additional systematic confirmation procedure shall
69 be to identify those voters who may have moved without filing a forwarding address, moved with
70 a forwarding address under another name, died in another county or state so that the certificate
71 of death was not returned to the clerk of the county commission, or who otherwise have become

72 ineligible.

ARTICLE 3. VOTING BY ABSENTEES.

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

1 (a) All registered and other qualified voters of the county may vote an absentee ballot
2 during the period of early voting in person.

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

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

7 (A) Disability, illness, injury, or other medical reason;

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

9 (C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a
10 crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery
11 in an election;

12 (2) Any voter who is absent from the county throughout the period and available hours for
13 voting in person because of:

14 (A) Personal or business travel;

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

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

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

24 leaving the United States;

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

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

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

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

33 (6) Any voter who is participating in the Address Confidentiality Program as established
34 by §48-28A-103 of this code.

35 (c) Registered voters and other qualified voters in the county are authorized to vote an
36 electronic absentee ballot in the following circumstances:

37 (1) The voter has a physical disability, as defined in §3-3-1a of this code; or

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

45 (3) The voter becomes eligible to vote an emergency absentee ballot as set forth in §3-3-
46 1(d) of this code after the deadline to submit an application for an absentee-by-mail ballot; or

47 (4) The voter is a first responder and is called away unexpectedly to respond to an
48 emergency outside the voter's county of residence which prevents the voter from participating in
49 the election.

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

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

56 (2) Any voter who resides in a nursing home within the county of residence and would be
57 otherwise unable to vote in person, providing the county commission has authorized the services
58 if the voter has resided in the nursing home for a period of less than 30 days;

59 (3) Any voter who becomes confined, on or after the ~~seventh~~ 12th day preceding an
60 election, to a specific location within the county because of illness, injury, physical disability,
61 immobility due to advanced age, or another medical reason: *Provided*, That the county clerk may
62 require a written confirmation by a licensed physician, physician's assistant, or advanced practice
63 registered nurse that the voter meets the criteria of this subdivision before permitting such voter
64 to vote an emergency absentee ballot; and

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

§3-3-3. Early voting in person.

1 (a) The voting period for early in-person voting is to be conducted during regular business
2 hours beginning on the ~~thirteenth~~ 17th day before the election and continuing through the ~~third~~
3 seventh day before the election. Additionally, early in-person voting is to be available from 9:00
4 a.m. to 5:00 p.m. on Saturdays during the early voting period.

5 (b) Any person desiring to vote during the period of early in-person voting shall, upon
6 entering the election room, clearly state his or her name and residence to the official or
7 representative designated to supervise and conduct absentee voting. If that person is found to be

8 duly registered as a voter in the precinct of his or her residence, he or she is required to sign his
9 or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign
10 his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing
11 the mark of the voter shall sign his or her name in the space provided. No ballot may be given to
12 the person until he or she signs his or her name on the pollbook.

13 (c) When the voter's signature or mark is properly on the pollbook, two qualified
14 representatives of the official designated to supervise and conduct absentee voting shall sign their
15 names in the places indicated on the back of the official ballot.

16 (d) If the official designated to supervise and conduct absentee voting determines that the
17 voter is not properly registered in the precinct where he or she resides, the clerk or his or her
18 representative shall challenge the voter's absentee ballot as provided in this article.

19 (e) The official designated to supervise and conduct absentee voting shall provide each
20 person voting an absentee ballot in person the following items to be printed as prescribed by the
21 Secretary of State:

22 (1) In counties using paper ballots, one of each type of official absentee ballot the voter is
23 eligible to vote, prepared according to law;

24 ~~(2) In counties using punch card systems, one of each type of official absentee ballot the~~
25 ~~voter is eligible to vote, prepared according to law, and a gray secrecy envelope~~

26 ~~(3)~~(2) In counties using optical scan systems, one of each type of official absentee ballot
27 the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

28 ~~(4)~~(3) For direct recording election systems, access to the voting equipment in the voting
29 booth.

30 (f) The voter shall enter the voting booth alone and there mark the ballot: *Provided*, That
31 the voter may have assistance in voting according to the provisions of section four of this article.
32 After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots
33 in the ~~gray~~ secrecy envelope and return the ballot or ballots to the official designated to supervise

34 and conduct the absentee voting: *Provided, however,* That in direct recording election systems,
 35 once the voter has cast his or her ballot, the voter shall exit the polling place.

36 (g) Upon receipt of the voted ballot, representatives of the official designated to supervise
 37 and conduct the absentee voting shall:

38 (1) Remove the ballot stub;

39 (2) Place ~~punch card ballots and~~ the paper ballots into one envelope which ~~shall~~ may not
 40 have any marks except the precinct number and seal the envelope; and

41 (3) Place ballots for all voting systems into a ballot box that is secured by two locks with a
 42 key to one lock kept by the president of the county commission and a key to the other lock kept
 43 by the county clerk.

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

1 (a) Upon oral or written request, the official designated to supervise and conduct absentee
 2 voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate
 3 application for voting absentee as provided in this article. The voter shall complete and sign the
 4 application in his or her own handwriting or, if the voter is unable to complete the application
 5 because of illiteracy or physical disability:

6 (1) The person assisting the voter and witnessing the mark of the voter shall sign his or
 7 her name in the space provided; or

8 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability,
 9 confinement as provided in §3-3-1(d) of this code after the deadline to submit an application for
 10 an absentee-by-mail ballot, or is a first responder unexpectedly called away to respond to an
 11 emergency outside the voter's county of residence which prevents the voter from participating in
 12 the election, may complete and verify the application by available electronic means prescribed by
 13 the Secretary of State.

14 (b) Completed applications for voting an absentee ballot by mail are to be accepted when
 15 received by the official designated to supervise and conduct absentee voting in person, by mail,

16 or electronically within the following times:

17 (1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of
18 this code, relating to absent uniformed services and overseas voters, not earlier than January 1
19 of an election year or 84 days preceding the election, whichever is earlier, and not later than the
20 ~~sixth~~ 11th day preceding the election, which application is to, upon the voter's request, be
21 accepted as an application for the ballots for all elections in the calendar year; and

22 (2) For all other persons eligible to vote an absentee ballot by mail or electronically, not
23 earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier,
24 and not later than the ~~sixth~~ 11th day preceding the election.

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

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

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

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

32 (4) The address to which a ballot is to be mailed is an address outside the county if the
33 voter is applying to vote by mail under ~~the provisions of~~ §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-
34 1(b)(3), or §3-3-1(b)(4) of this code;

35 (5) The applicant is not making his or her first vote after having registered by postcard
36 registration or, if the applicant is making his or her first vote after having registered by postcard
37 registration, the applicant is subject to one of the exceptions provided in §3-2-10 of this code; and

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

41 (d) (1) If the official designated to supervise and conduct absentee voting determines that

42 the required conditions have been met for voting an absentee ballot by mail, two representatives
43 that are registered to vote with different political party affiliations shall sign their names in the
44 places indicated on the back of the official ballot. If the official designated to supervise and conduct
45 absentee voting determines the required conditions have not been met or has evidence that any
46 of the information contained in the application is not true, the official shall give notice to the voter
47 that the voter's absentee ballot will be challenged as provided in this article and shall enter that
48 challenge.

49 (2) If the official designated to supervise and conduct electronic voting determines that a
50 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services
51 voter or overseas voter or a person with a physical disability, is confined as provided in §3-3-1(d)
52 of this code after the deadline to submit an application for an absentee-by-mail ballot, or is a first
53 responder unexpectedly called away to respond to an emergency outside the voter's county of
54 residence which prevents the voter from participating in the election, the official designated to
55 supervise absentee voting shall cause the absentee ballot to be transmitted electronically in the
56 manner required for the electronic ballot marking tool or other electronic means.

57 (e)(1) Beginning on the 46th day prior to election day, within one day after the official
58 designated to supervise and conduct absentee voting has both the completed application and the
59 ballot, the official shall provide to the voter at the address given on the application, or by the
60 appropriate electronic delivery method, the following items as required and as prescribed by the
61 Secretary of State:

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

64 (B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have
65 no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions
66 to the voter;

67 (C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed,

68 designated "Absent Voter's Ballot Envelope No. 2";

69 (D) Instructions for voting absentee by mail or electronically;

70 (E) For electronic systems or transmission, an electronic means by which eligible voters
71 with physical disabilities may mark the absentee ballot without assistance, as prescribed by the
72 Secretary of State; and

73 (F) Notice that a list of write-in candidates is available upon request.

74 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42
75 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, is
76 confined as provided in §3-3-1(d) of this code, or is a first responder unexpectedly called away to
77 respond to an emergency outside the voter's county of residence which prevents the voter from
78 participating in the election. the official designated to supervise and conduct absentee voting shall
79 transmit the ballot to the voter via mail, or electronically, as requested by the voter: Provided, that
80 voters confined as provided in §3-3-1(d) of this code may not be provided the option to vote an
81 electronic absentee ballot if the voter is not confined after the deadline to submit an absentee-by-
82 mail application. If the voter does not designate a preference for transmittal, the clerk may select
83 either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this
84 subdivision, the official designated to supervise and conduct absentee voting shall also transmit
85 electronically:

86 (A) A waiver of privacy form, to be promulgated by the Secretary of State;

87 (B) Instructions for voting absentee by mail or electronically;

88 (C) Notice that a list of write-in candidates is available upon request; and

89 (D) A statement of the voter affirming the voter's current name and address and whether
90 or not he or she received assistance in voting.

91 (f) The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in
92 voting according to the provisions of §3-3-6 of this code.

93 (1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

- 94 (A) Place the ballot or ballots in envelope no. 1 and seal that envelope;
95 (B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;
96 (C) Complete and sign the forms on envelope no. 2; and
97 (D) Return that envelope to the official designated to supervise and conduct absentee
98 voting.

99 (2) If the ballot was transmitted electronically as provided in subdivisions (1) or (2),
100 subsection (e) of this section, the voter shall return the ballot electronically, in the manner
101 prescribed by the Secretary of State, or the voter may return the ballot by United States mail,
102 along with a signed privacy waiver form.

103 (g) Except as provided in subsection (h) of this section, absentee ballots returned by
104 United States mail or other express shipping service are to be accepted if:

105 (1) The ballot is received by the official designated to supervise and conduct absentee
106 voting no later than the day after the election; or

107 (2) The ballot bears a postmark of the United States Postal Service dated no later than
108 election day and the ballot is received by the official designated to supervise and conduct
109 absentee voting no later than the hour at which the board of canvassers convenes to begin the
110 canvass.

111 (h) Absentee ballots received through the United States mail from persons eligible to vote
112 an absentee ballot under ~~the provisions of~~ §3-3-1(b)(3) of this code, relating to uniform services
113 and overseas voters, are to be accepted if the ballot is received by the official designated to
114 supervise and conduct absentee voting no later than the hour at which the board of canvassers
115 convenes to begin the canvass.

116 (i) Voted ballots submitted electronically are to be accepted if the ballot is received by the
117 official designated to supervise and conduct absentee voting no later than the close of polls on
118 election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's
119 office shall enter into an agreement with the Federal Voting Assistance Program of the United

120 States Department of Defense to transmit the ballots to the county clerks at a time when two
121 individuals of opposite political parties are available to process the received ballots. For persons
122 casting absentee ballots electronically due to physical disability, confinement as provided in § 3-
123 3-1(d) of this code, or is a first responder unexpectedly called away which prevents the voter from
124 participating in the election, the county clerk shall designate two individuals of opposite political
125 parties to process the received ballots in the manner required by the particular electronic ballot
126 marking tool or other electronic means of returning the electronic absentee ballot.

127 (j) Ballots received after the proper time which cannot be accepted are to be placed
128 unopened in an envelope marked for the purpose and kept secure for 22 months following the
129 election, after which time they are to be destroyed without being opened.

130 (k) Absentee ballots which are hand delivered are to be accepted if they are received by
131 the official designated to supervise and conduct absentee voting no later than the day preceding
132 the election: *Provided*, That no person may hand deliver more than two absentee ballots in any
133 election and any person hand delivering an absentee ballot is required to certify that he or she
134 has not examined or altered the ballot. Any person who makes a false certification violates ~~the~~
135 ~~provisions of §3-9-1 et seq.~~ of this code and is subject to those provisions.

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

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

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

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

142 (4) Place the sealed envelope into a ballot box that is secured by two locks with a key to
143 one lock kept by the president of the county commission and a key to the other lock kept by the
144 county clerk.

145 (m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection

146 (f) of this section, the official designated to supervise and conduct absentee voting shall place the
147 ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver when
148 appropriate: *Provided*, That no ballots are to be processed without the presence of two individuals
149 of opposite political parties.

150 (n) All ballots received electronically prior to the close of the polls on election day are to
151 be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the
152 extent that those procedures are appropriate for the applicable voting system. The clerk of the
153 county commission shall keep a record of absentee ballots sent and received electronically.

154 (o) The effective date of all changes made during the 2021 Regular Legislative Session
155 shall be January 1, 2022, and all previous provisions of law in effect prior to the passage
156 amendments during the 2021 Regular Legislative Session shall be followed until the changes are
157 in effect.

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

1 (a) Notwithstanding any other provision of this chapter, a person qualified to vote an
2 emergency absentee ballot, as provided in §3-3-1(c) of this code, may vote an emergency
3 absentee ballot under the procedures established in this section. The county commission may
4 adopt a policy extending the emergency absentee voting procedures to: (1) Qualified voters in
5 hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles
6 of the county seat; (2) qualified voters in nursing homes within the county; or (3) qualified voters
7 who become confined, on or after the ~~seventh~~ 12th day preceding an election, to a specific
8 location within the county because of illness, injury, physical disability, immobility due to advanced
9 age, or another medical reason: *Provided*, That the policy is to be adopted by the county
10 commission at least 90 days prior to the election that will be affected and a copy of the policy is
11 to be filed with the Secretary of State.

12 (b) On or before the 56th day preceding the date on which any election is to be held, the
13 official designated to supervise and conduct absentee voting shall notify the county commission

14 of the number of sets of emergency absentee ballot commissioners which he or she determines
15 necessary to perform the duties and functions pursuant to this section.

16 (c) A set of emergency absentee ballot commissioners at-large shall consist of two
17 persons with different political party affiliations appointed by the county commission in accordance
18 with the procedure prescribed for the appointment of election commissioners under ~~the provisions~~
19 ~~of~~ §3-1-1 *et seq.* of this code. Emergency absentee ballot commissioners have the same
20 qualifications and rights and take the same oath required under the provisions of this chapter for
21 commissioners of elections. Emergency absentee ballot commissioners are to be compensated
22 for services and expenses in the same manner as commissioners of election or poll clerks
23 obtaining and delivering election supplies under §3-1-44 of this code.

24 (d) Upon request of the voter or a member of the voter's immediate family or, when the
25 county commission has adopted a policy to provide emergency absentee voting services to
26 nursing home residents within the county, upon request of a staff member of the nursing home,
27 the official designated to supervise and conduct absentee voting, upon receiving a proper request
28 for voting an emergency absentee ballot no earlier than the ~~seventh~~ 12th day next preceding the
29 election and no later than noon of election day shall supply to the emergency absentee ballot
30 commissioners the application for voting an emergency absentee ballot and the balloting
31 materials. The emergency absentee ballot application is to be prescribed by the Secretary of State
32 and is to include the name, residence address and political party affiliation of the voter, the date,
33 location and reason for confinement in the case of an emergency, and the name of the attending
34 physician.

35 (e) The application for an emergency absentee ballot is to be signed by the person
36 applying. If the person applying for an emergency absentee ballot is unable to sign his or her
37 application because of illiteracy or physical disability, he or she is to make his or her mark on the
38 signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The
39 person assisting the voter and witnessing the mark of the voter shall sign his or her name in the

40 space provided.

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

44 (g) At least one of the emergency absentee ballot commissioners receiving the balloting
45 materials shall sign a receipt which is to be attached to the application form. Each of the
46 emergency absentee ballot commissioners shall deliver the materials to the absent voter, await
47 his or her completion of the application and ballot and return the application and the ballot to the
48 official designated to supervise and conduct absentee voting. Upon delivering the application and
49 the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath
50 that no person other than the absent voter voted the ballot. The application and the voted ballot
51 are to be returned to the official designated to supervise and conduct absentee voting prior to the
52 close of the polls on election day. Any ballots received by the official after the time that delivery
53 may reasonably be made but before the closing of the polls are to be delivered to the canvassing
54 board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of
55 this code.

56 (h) Upon receiving the application and emergency absentee ballot, the official designated
57 to supervise and conduct absentee voting shall ascertain whether the application is complete,
58 whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the
59 voter is properly registered to vote with the office of the clerk of the county commission. If the
60 voter is found to be properly registered in the precinct shown on the application, the ballot is to be
61 delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is
62 found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be
63 challenged for the appropriate reason provided for in §3-3-10 of this code.

64 (i) If either or both of the emergency absentee ballot commissioners refuse to sign any
65 application for voting an emergency absentee ballot, the voter may vote as an emergency

66 absentee and the ballot will be challenged in accordance with ~~the provisions of~~ §3-3-10 of this
 67 code, in addition to those absentee ballots subject to challenge as provided in that section.

68 (j) Any voter who receives assistance in voting an emergency absentee ballot shall comply
 69 with ~~the provisions of~~ §3-3-6 of this code. Any other provisions of this chapter relating to absentee
 70 ballots not altered by the provisions of this section are to govern the treatment of emergency
 71 absentee ballots.

72 (k) The changes made to this section during the 2021 Regular Legislative Session shall
 73 be effective January 1, 2022.

ARTICLE 7. CONTESTED ELECTIONS

§3-7-6. County and district contests; notices; time.

1 (a) In all cases of contested elections, the ~~county commission~~ circuit court shall be the
 2 judge of the election, qualifications and returns ~~of their own members and of all county, and~~
 3 ~~district, and municipal~~ officers. ~~Provided, That a member of the county commission whose election~~
 4 ~~is being contested may not participate in judging the election, qualifications and returns~~

5 (b) A person intending to contest the election of another to any county, ~~or~~ district, or
 6 municipal office, including judge of any magistrate court or any office that shall hereafter be
 7 created to be filled by the voters of the county or of any magisterial or other district therein, shall,
 8 within ~~ten~~ seven days after the result of the election is certified, ~~give the contestee notice in writing~~
 9 ~~of such intention and a list of the votes he will dispute, with the objections to each, and of the~~
 10 ~~votes rejected for which he will contend. If the contestant objects to the legality of the election or~~
 11 ~~the qualification of the person returned as elected, the notice shall set forth the facts on which~~
 12 ~~such objection is founded. The person whose election is so contested shall, within ten days after~~
 13 ~~receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the~~
 14 ~~objections to each, and of the rejected votes for which he will contend; and, if he has any objection~~
 15 ~~to the qualification of the contestant, he shall specify in writing the facts on which the objection is~~
 16 ~~founded. Each party shall append to his notice an affidavit that he verily believes the matters and~~

17 ~~things set forth to be true. If new facts be discovered by either party after he has given notice as~~
18 ~~aforsaid, he may, within ten days after such discovery, give an additional notice to his adversary,~~
19 ~~with the specifications and affidavit prescribed in this section.~~

20 ~~The provisions of this section apply to all elections, including municipal elections, except~~
21 ~~that the governing body of the municipality is the judge of any contest of a municipal election~~
22 initiate a civil action in the circuit court of the county wherein the election was held by filing the
23 following with the clerk of the circuit court:

24 (1) A civil case information statement; and

25 (2) A complaint, which includes the information required by subsection (f) of this section.

26 (c) The contestant shall serve the contestee(s) and the board of canvassers who certified
27 the election with a copy of the civil case information statement and the complaint in the manner
28 for personal service according to the Rules of Civil Procedure within 72 hours of filing: *Provided,*
29 That any process served via U.S. Mail shall be sent via Certified Mail return receipt requested
30 and shall be considered timely if postmarked before the close of the 72-hour period. Untimely
31 process shall result in an automatic dismissal without hearing, which decision may be appealed
32 as permitted by law.

33 (d) For an election contest challenging specific votes cast, votes rejected, or voters who
34 participated in the election, a recount proceeding as set forth in §3-6-9 of this code is first required
35 and shall be complete prior to the filing of an election contest on those grounds.

36 (e) For an election contest challenging the legality of the election, qualification of the
37 person considered elected, or reliability of the votes cast in one or more precincts due to a lapse
38 in security or failure to follow statutory procedures, a recount proceeding is not required.

39 (f) The complaint filed with the clerk of the circuit court shall include the following
40 information:

41 (1) A summary of the facts and the contestant's argument;

42 (2) The specific allegations;

43 (i) If contesting specific votes cast or participating voters, a list of the votes cast, votes
 44 rejected, or voters so contested, and specific objections to each; or

45 (ii) If contesting the legality of the election, qualification of the person considered elected,
 46 reliability of the votes cast in one or more precincts due to a lapse in security or failure to follow
 47 statutory procedures, all relevant details pertinent to the allegations;

48 (3) A description of all evidence that will be relied upon in support of the contestant's
 49 claims;

50 (4) A list of witnesses who may be questioned during the election contest proceedings;

51 (5) Any additional information or grounds pertinent to the election contest; and

52 (6) Addresses and contact information for all named parties to the election contest.

53 (g) The person whose election is so contested shall, within seven days after receiving a
 54 copy of the civil case information statement and verified complaint, file a response to the complaint
 55 with the clerk of the circuit court, the contestant, and the board of canvassers in the same manner
 56 set forth in subsection (c) of this section.

57 (h) If new facts are discovered by either party within five days after filing the complaint or
 58 response, an amended complaint or response may be filed in the same manner as filing an
 59 original complaint or response as prescribed in this section.

60 (i) The provisions of this section apply to all elections, including municipal elections, held
 61 within a single county.

**§3-7-7. County Circuit court to hear county, and district, and municipal contests;
 procedure; review.**

1 (a) The county circuit court, composed of a panel of three judges as provided in subsection

2 (b) of this section, shall hear and decide election contests initiated pursuant to the provisions of
 3 the preceding section §3-7-6 of this code.

4 (b) Upon receipt of the civil case information statement and complaint filed by a contestant,
 5 the clerk of the circuit court shall immediately forward a copy of the filing, by the most expedient

6 means approved by the Supreme Court of Appeals, to the Clerk of the Supreme Court of Appeals.
7 The Clerk of the Supreme Court shall immediately provide the election contest filing to the Chief
8 Justice of the Supreme Court of Appeals.

9 (c) Within five business days from the date of receipt of the election contest filing, the Chief
10 Justice of the Supreme Court of Appeals shall designate and appoint a panel of three circuit court
11 judges to preside over the election contest as follows:

12 (1) One circuit court judge shall be selected from the circuit in which the election contest
13 was filed, who shall serve as the chief judge for the election contest proceeding; and

14 (2) Two additional circuit court judges shall be selected from different circuits in the state.

15 (d) The Chief Justice, or his or her designee, shall notify each party to the election contest
16 and the appointed circuit court judges in the manner considered most appropriate by the Chief
17 Justice, which notification shall include a written order that includes the following information:

18 (1) Establish the venue for the election contest in the circuit court wherein the election
19 contest was filed;

20 (2) The name, circuit, and courthouse address for each appointed judge;

21 (3) A directive that the election contest proceeding shall take precedence over all other
22 business of the court, except for emergency proceedings, and shall be heard and adjudicated
23 within 30 days of the date of the initial election contest filing; and

24 (4) Any additional information considered necessary by the Chief Justice.

25 (e) The circuit court panel so appointed shall within three days of receipt of the Chief
26 Justice's order, enter an order designating the date, time, and place for the election contest
27 proceeding.

28 (f) Subpoenas for witnesses for either party shall be issued by the clerk of the county
29 circuit court wherein the contest is to be held, and served as in other civil cases, and the witnesses
30 shall be entitled to the same allowances and privileges, and be subject to the same penalties, as
31 witnesses attending a circuit court in a civil suit. ~~The notice of contest shall be presented to the~~

32 ~~county court at its first term after the same is delivered to the person whose election is contested,~~
33 ~~and the same shall be docketed for trial in such court~~

34 (g) At the trial of ~~such~~ the contest, the circuit court panel shall hear all ~~such~~ legal and

35 proper evidence that may be brought before it by either party, and may, if deemed considered

36 necessary, require the production of the poll books, certificates and ballots deposited with ~~its~~ the

37 county clerk, municipal recorder or clerk, and examine the same. The panel shall determine the

38 outcome of the contest based upon clear and convincing evidence.

39 (h) The hearing may be continued by the circuit court panel from time to time, if it ~~be~~ is

40 shown that justice and right require it, but not beyond three months from the day of election.

41 (i) At the conclusion of the final trial of such contest, the circuit court panel shall:

42 (1) Orally declare the true result of such election by majority decision from the bench;

43 (2) Issue a written opinion and order within two days thereafter; and

44 (3) cause Cause the same to be entered on the records of the court; and

45 (4) ~~When the result of the election is declared, as aforesaid, a~~ Direct that a certified copy

46 of the order and opinion declaring ~~such~~ the result shall, ~~if required,~~ be delivered by the clerk of

47 the circuit court wherein the contest was held to the person ~~declared elected, if such be the result~~

48 of the trial, parties and ~~such copy shall be received~~ in all courts and places as legal evidence of

49 the result of the election therein declared.

50 ~~(h) Either the contestant or contestee shall have the right of appeal to the circuit court of~~

51 ~~the county from the final order or decision of the county court in such proceeding, upon the filing~~

52 ~~of a bond with good personal security, by the party desiring the appeal, to be approved by the~~

53 ~~county court, in a sum deemed sufficient by such court, with condition to the effect that the person~~

54 ~~proposing to appeal will perform and satisfy any judgment which may be rendered against him by~~

55 ~~the circuit court on such appeal. But such appeal shall not be granted unless the party desiring~~

56 ~~the appeal shall make application for such appeal, and file such bond, within thirty days from the~~

57 ~~entering of the final order in such proceeding; and the circuit court may at any time require a new~~

58 ~~bond or increase the penalty thereof when the court deems it necessary. When such appeal is~~
 59 ~~taken to the circuit court, as hereinbefore provided, it shall be heard and determined upon the~~
 60 ~~original papers, evidence, depositions and records filed before and considered by the county~~
 61 ~~court, and the circuit court shall decide the contest upon the merits. From the decision of the~~
 62 ~~circuit court panel, an An appeal shall lie from the decisions of the circuit panel to the Supreme~~
 63 ~~Court of Appeals, as in other cases, but ~~such~~ the appeal shall be heard upon the original papers~~
 64 ~~and copies of all orders made, without requiring ~~the same~~ them to be printed. The proceedings~~
 65 ~~shall take precedence over all other business of the court and shall be heard and determined as~~
 66 ~~soon as possible, except for emergency proceedings.~~

67 (j) If any election contest proceeding continues past the start of the term for the contested
 68 office, the person appearing to be elected to that office according to the official certified returns
 69 shall assume the duties of the office until the completion of the election contest and any appeal
 70 unless otherwise ordered by the circuit court panel.

71 (k) Upon request by a party or *sua sponte*, any court costs and attorney's fees may be
 72 granted to the prevailing party by the circuit court panel or Supreme Court of Appeals upon a
 73 finding that one or more parties brought or defended the election contest proceeding in a frivolous
 74 manner or acted in bad faith.

75 (l) The Supreme Court of Appeals, through its rulemaking power in §51-1-4 of this code,
 76 may promulgate rules and regulations consistent with this article which governing the pleadings,
 77 practice, and procedure for the conduct of county, district, and municipal election contests in the
 78 courts of this state.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2b. Disclosure of electioneering communications; disclaimers on telephone political messaging and polling.

1 (a) Every person who has spent:

2 (1) A total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating

3 electioneering communications during any calendar year; or

4 (2) A total of \$1,000 or more on or after the 15th day but more than 12 hours before the
5 day of any election for the direct costs of purchasing, producing, or disseminating electioneering
6 communications during any calendar year shall, within 24 hours of each disclosure date, file with
7 the Secretary of State a statement which contains all of the information listed in subsection (b) of
8 this section.

9 (b)(1) The name of the person making the expenditure, the name of any person sharing
10 or exercising direction or control over the activities of the person making the expenditure and the
11 name of the custodian of the books and accounts of the person making the expenditure;

12 (2) If the person making the expenditure is not an individual, the principal place of business
13 of the partnership, committee, association, organization, or group which made the expenditure;

14 (3) The amount of each expenditure of more than \$1,000 made for electioneering
15 communications during the period covered by the statement and the name of the person to whom
16 the expenditure was made;

17 (4) The elections to which the electioneering communications pertain, the names, if
18 known, of the candidates referred to or to be referred to therein, whether the electioneering
19 communication is intended to support or oppose the identified candidates and the amount of the
20 total expenditure reported in subdivision (3) of this subsection spent to support or oppose each of
21 the identified candidates; and

22 (5) The names and addresses of any contributors who contributed a total of more than
23 \$1,000 between the first day of the preceding calendar year and the disclosure date and whose
24 contributions were used to pay for electioneering communications.

25 (c) With regard to the contributors required to be listed pursuant to subdivision (5),
26 subsection (b) of this section, the statement shall also include:

27 (1) The month, day, and year that the contributions of any single contributor exceeded
28 \$250;

29 (2) If the contributor is a political action committee, the name and address the political
30 action committee registered with the State Election Commission;

31 (3) If the contributor is an individual, the name and address of the individual, his or her
32 occupation, the name and address of the individual's current employer, if any, or, if the individual
33 is self-employed, the name and address of the individual's business, if any;

34 (4) A description of the contribution, if other than money;

35 (5) The value in dollars and cents of the contribution.

36 (d) (1) Any person who makes a contribution for the purpose of funding the direct costs of
37 purchasing, producing, or disseminating an electioneering communication under this section
38 shall, at the time the contribution is made, provide his or her name and address to the recipient
39 of the contribution;

40 (2) Any individual who makes contributions totaling \$250 or more between the first day of
41 the preceding calendar year and the disclosure date for the purpose of funding the direct costs of
42 purchasing, producing or disseminating electioneering communications shall, at the time the
43 contribution is made, provide the name of his or her occupation and of his or her current employer,
44 if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient
45 of the contribution.

46 (e) In each electioneering communication, a statement shall appear or be presented in a
47 clear and conspicuous manner that:

48 (1) Clearly indicates that the electioneering communication is not authorized by the
49 candidate or the candidate's committee; and

50 (2) Clearly identifies the person making the expenditure for the electioneering
51 communication: *Provided*, That if the electioneering communication appears on or is
52 disseminated by broadcast, cable or satellite transmission, the statement required by this
53 subsection ~~must~~ shall be both spoken clearly and appear in clearly readable writing at the end of
54 the communication.

55 (f) Within five business days after receiving a disclosure of electioneering communications
56 statement pursuant to this section, the Secretary of State shall make information in the statement
57 available to the public through the Internet.

58 (g) For the purposes of this section, a person is considered to have made an expenditure
59 when the person has entered into a contract to make the expenditure at a future time.

60 (h) The Secretary of State ~~is hereby directed to~~ shall propose legislative rules and
61 emergency rules implementing this section for legislative approval in accordance with ~~the~~
62 ~~provisions of §29A-3-1 et seq.~~ of this code.

63 (i) If any person, including, but not limited to, a political organization (as defined in Section
64 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure
65 for electioneering communications which is coordinated with and made with the cooperation,
66 consent or prior knowledge of a candidate, candidate's committee or agent of a candidate, the
67 expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure
68 is coordinated with and made with the cooperation or consent of a state or local political party or
69 committee, agent or official of that party, the expenditure shall be treated as a contribution to and
70 expenditure by the candidate's party.

71 (j) All prerecorded political audio messages, which content falls under the definition of
72 electioneering communications and which messages are delivered via telephone at the direction
73 of a candidate committee, political committee, or any other person or organization, shall contain,
74 or a live operator shall orally provide, within the first 30 seconds of the message, the following
75 information:

76 (1) The name of the candidate or of any organization or organizations the person is calling
77 on behalf of; and

78 (2) The name of the person or organization paying for the delivery of the message and the
79 name of the fiscal agent, if applicable.

80 (k) No person may deliver or knowingly cause to be delivered a prerecorded political

81 message to any telephone number on any federal do not call list.

82 (l) (1) A violation of subsection (j) of this section shall result in a civil penalty of \$5,000 per
83 violation.

84 (2) Any person injured by another's violation of this section may bring an action for
85 damages and for such equitable relief, including an injunction, as the court considers necessary
86 and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages
87 or \$1,000, whichever is greater. If the court finds that the act or practice was a willful or knowing
88 violation of this section, it shall award treble damages. In addition, a prevailing plaintiff shall be
89 awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any
90 attempted waiver of the right to the damages set forth in this paragraph shall be void and
91 unenforceable. Injunctive relief shall be available to private individuals under this section without
92 bond, subject to the discretion of the court.

93 (m) Any person who engages in push-polling by calling voters on behalf, in support, or in
94 opposition of any candidate for public office by telephone, which telephone message asks
95 questions relating to any candidate for public office which implies, conveys, or states information
96 about the candidate's character, status, or political stance, and which is likely to be construed by
97 a voter to be a survey or poll, shall prior to asking any person contacted a question relating to a
98 candidate:

99 (1) Inform the person that the telephone call is a "paid political telephone call;"

100 (2) Identify the organization making the call and the organization paying for the call;

101 (3) Provide a valid, working, current telephone number for the organization making the
102 call; and

103 (4) Identify whether the telephone call is being made on in support of or in opposition to a
104 particular candidate or candidates for public office and identify that candidate or candidates by
105 name.

106 (n)(1) A violation of subsection (m) of this section shall result in a civil penalty of \$5,000

107 per violation.

108 (2) Any person injured by another's violation of this section may bring an action for
 109 damages and for such equitable relief, including an injunction, as the court deems necessary and
 110 proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or
 111 \$1,000, whichever is greater. If the court finds that the act or practice was a willful or knowing
 112 violation of this section, it shall award treble damages. In addition, a prevailing plaintiff shall be
 113 awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any
 114 attempted waiver of the right to the damages set forth in this paragraph shall be void and
 115 unenforceable. Injunctive relief shall be available to private individuals under this section without
 116 bond, subject to the discretion of the court.

117 ~~(j)~~(o) This section does not apply to candidates for federal office. This section is not
 118 intended to restrict or to expand any limitations on, obligations of or prohibitions against any
 119 candidate, committee, agent, contributor, or contribution contained in any other provision of this
 120 chapter.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-13. Buying or selling vote unlawful; penalties.

1 (a) It is unlawful for any person to offer or to pay money or any other thing of value to any
 2 person as consideration for the vote of the offeree or payee, as the case may be, to be cast for
 3 or against any candidate or issue in any election held in the state. Any person who violates the
 4 provisions of this subsection ~~shall be~~ is guilty of a felony, and, upon conviction thereof, shall be
 5 fined not less than \$5,000 or imprisoned in a state correction facility for a period of not less than
 6 one year, nor more than five years, or both fined and imprisoned.

7 (b) It is likewise unlawful for any person to accept or agree to accept money or other thing
 8 of value as consideration for the vote of the acceptee, to be cast for or against any candidate or
 9 issue in any election held in the state. Any person who violates the provisions of this subsection
 10 ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100

11 nor more than \$1,000 or ~~imprisoned~~ confined in ~~the county~~ jail not more than one year, or both
12 fined and confined.

13 (c) It is likewise unlawful for any candidate or candidate's business to give any personal
14 gift or item of more than de minimis value to any other person while running as a candidate for
15 public office within 60 days of any election day: *Provided*, That personal gifts to family members,
16 registered charities, nonprofit organizations, and educational institutions during the 60-day period
17 are not prohibited. Any person who violates the provisions of this subsection is guilty of a felony
18 and, upon conviction thereof, shall be fined not less than \$5,000 or imprisoned in a state correction
19 facility for a period of not less than one year, nor more than five years, or both fined and
20 imprisoned.

§3-9-21.Improper interference with voters' travel to and from the polls.

1 (a) During the hours that polls are open for in-person voting in an election, no person may
2 obstruct or interfere with a voter in any manner that delays, hinders, or interrupts a voter traveling
3 to or from the polls.

4 (b) Prohibited activities include, but are not limited to, the following:

5 (1) Obstructing a road, right of way, or entrance to a polling place parking area;

6 (2) Hindering or delaying a voter traveling to or from a polling place;

7 (3) Stopping vehicles approaching a polling place; and

8 (4) On the walks and driveways leading to and within a reasonable proximity to a polling
9 place, providing unsolicited election-related educational or advocacy materials, candidate lists, or
10 political paraphernalia to voters traveling to a polling place.

11 (c) Exceptions to the prohibited activities described in this section include:

12 (1) Voters that first seek or express interest in the materials or advertisements for election-
13 related educational or advocacy materials, candidate lists, or political paraphernalia;

14 (2) Properly conducting exit polls as provided by the Secretary of State's administrative
15 rule.

16 (d) Any person who violates the provisions of this section is guilty of a misdemeanor, and,
17 upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail
18 not more than one year, or both fined and confined.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

1 (a) Beginning with the election to be conducted in the year 2016, family court judges shall
2 be elected. In family court circuits having two or more family court judges there shall be, for
3 election purposes, numbered divisions corresponding to the number of family court judges in each
4 area. Each family court judge shall be elected at large by the entire family court circuit. In each
5 numbered division of a family court circuit, the candidates for nomination or election shall be voted
6 upon and the votes cast for the candidates in each division shall be tallied separately from the
7 votes cast for candidates in other numbered divisions within the family court circuit. The candidate
8 or candidates receiving the highest number of the votes cast within a numbered division shall be
9 nominated or elected, as the case may be. Effective with the primary election of 2016, all elections
10 for family court judges in the respective circuits will be on a nonpartisan basis by division.
11 Beginning in 2016, there will no longer be primary elections held for family court judges and all
12 elections for family court judges are to be held in the nonpartisan judicial election as set forth in
13 article five, chapter three of this code. All indications of party identification on election ballots for
14 family court judge shall be omitted.

15 (b) The term of office for all family court judges elected in 2002 shall be for six years,
16 commencing on January 1, 2003, and ending on December 31, 2008. Subsequent terms of office
17 for family court judges elected thereafter shall be for eight years.

18 (c) Beginning with the nonpartisan judicial election held in 2022, and in every primary
19 election year thereafter, if no candidate in a division for judge of the family court receives more

20 than 50 percent of the votes cast in the election for that office held concurrently with the primary
21 election, a runoff election for that division shall be conducted concurrently with the general
22 election. The ballot for the runoff election shall include a provision for selection only between
23 those two candidates who received the highest and second highest number of ballots cast in that
24 applicable division for judge of the family court in the election for that office held concurrently with
25 the primary election.

NOTE: The purpose of this bill is to require a runoff election concurrently with the general election for nonpartisan judicial races when no candidate receives at least 50% of votes cast in the previous primary election; add voter registration roll list maintenance procedures voters who are declared mentally incompetent or identified during jury duty selection by state and federal courts; procedures for identifying and contacting voters who appear to have moved to an address different than the one on their voter record; requiring pre-approval by the State Election Commission for any non-public funding offered to any election official or agency to fund election-related expenses to prevent actual or the appearance of corruption; to adopt the list maintenance idle voter procedure from the State of Ohio, which was upheld by the United States Supreme Court of Appeals in *Husted v. A. Philip Randolph Institute* (2018); permit eligible citizens the affirmative option to choose whether to register to vote while at any Department of Motor Vehicles office; change the period of in-person early voting to allot sufficient time for election officials to update voter history, produce poll books, prepare voting equipment, and accomplish last-minute preparations for election day, which time is currently limited to two days prior to any election; require disclosure of political push-polls and prerecorded political telephone messages; make absentee-by-mail and emergency absentee ballot application deadlines consistent with United States Postal Service recommendations effective January 1, 2022; move initial jurisdiction of county, district, and municipal contested elections from a county commission or municipal governing body to circuit court panel of judges; decrease the timeframe for election contest proceedings to ensure efficient finality of elections; grants rule-making authority to the Supreme Court of Appeals for procedural election contest matters; permit prevailing parties to request court costs and attorney fees for frivolous or bad-faith election contest actions; prohibit candidates from giving personal or business gifts of any value to any non-family, non-educational institution, or unregistered charity or nonprofit organization within 60 days of any election day notwithstanding exceptions; extend electronic absentee ballot transmission options to voters eligible to vote an emergency absentee ballot and first responders called away for duty outside their county of residence which prevents them from participating in the election; and to prohibit activities that interfere with or hinder voters' access to the polls by affording them open and accessible ingress and egress during in-person voting in an election.

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