

# MANUAL FOR ELECTION OFFICIALS OF WEST VIRGINIA



## WEST VIRGINIA SECRETARY OF STATE'S OFFICE ELECTIONS DIVISION

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# 1 CHAPTER ONE: Introduction and Relevant Laws

## Introduction

The West Virginia Secretary of State is the Chief Elections Officer of the state and is responsible for creating policies and establishing rules for the administration of elections in West Virginia.

Working with election officials across the state, the Secretary of State receives and publishes Campaign Finance reports for candidates running for statewide office. The Secretary of State is also a member of the State Election Commission, which is an advisory body that recommends policies and practices relating to elections, voter registration, and voting system certification.

Both the Secretary of State and the State Election Commission are additionally responsible for investigating potential violations of the West Virginia Code and operating an Investigation Unit to focus on all aspects of election law violations.

The purpose of this manual is to provide comprehensive explanations of primarily Chapter 3 of the West Virginia Code. This manual also incorporates statutes, administrative rules, and case law at both the State and Federal level that govern election processes in West Virginia.

### Applicable Laws and Treaties

#### *The United States Constitution*

Since its ratification in 1789, the United States Constitution (U.S. Const.) has provided the governmental framework for the country at large. In West Virginia, election officials look to the provisions of U.S. Const. Article I, Section 4 to understand the administration of federal elections. Such provisions also grant civil and voting rights by abolishing poll taxes, determining the voting age, and preventing states from restricting the citizens' right to vote.

According to U.S. Const. Article I, Section 4, "The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time make or alter such Regulations."

Thus, the Constitution allows individual states to schedule and arrange elections for their own state officials, at the will of Congress. West Virginia's Legislature does this through Chapter 3 of the West Virginia Code. As for the election of federal officials, Congress has set a mandatory uniform date for federal elections in each state, which is "The Tuesday next after the first (1<sup>st</sup>) Monday in November, in every even numbered year."<sup>1</sup>

#### *Amendments to the Right to Vote*

The 15<sup>th</sup> amendment, ratified by West Virginia on March 3, 1869, ensures that rights of citizens of West Virginia to vote "shall not be denied or abridged . . . on account of race, color, or

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<sup>1</sup> 2 U.S.C. §7

previous condition of servitude.”

The 19<sup>th</sup> amendment, ratified by West Virginia on March 10, 1920, provides that “the right of citizens of the United States to vote shall not be denied or abridged . . . on account of sex.”

The 24<sup>th</sup> amendment, ratified by West Virginia on February 1, 1963, provides that the right to vote would not be denied or abridged for failure to pay taxes, especially poll taxes.

The 26<sup>th</sup> amendment, ratified by West Virginia on April 28, 1971, lowers the voting age to eighteen (18) years old.

### ***Federal Laws***

West Virginia is also subject to certain Federal laws governing the administration of elections: The Voting Rights Act of 1965<sup>2</sup>, The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Military and Overseas Voter Empowerment Act (MOVE) of 1986<sup>3</sup>, the Americans with Disabilities Act of 1990<sup>4</sup> (ADA), The National Voter Registration Act of 1993<sup>5</sup> (NVRA), and the Help America Vote Act of 2002<sup>6</sup> (HAVA).

### ***The West Virginia Constitution***

The West Virginia Constitution, adopted in 1872, provides West Virginia’s basic governmental framework, as well as the foundation of the law and civil rights of citizens in our state.

In this state constitution, Article IV provides processes for the administration of elections, oaths by elected officials, and the impeachment of officials. Articles VI and VII provide more specific information on the legislative and executive offices, including qualifications for office and procedures for filling office vacancies.

The West Virginia Constitution is cited throughout this manual as “W. Va. Const.,” followed by the article and section. You can also find the full text of the W. Va. Const. on the Legislature’s website at [http://www.legis.state.wv.us/WVCODE/WV\\_CON.cfm](http://www.legis.state.wv.us/WVCODE/WV_CON.cfm).

### ***The West Virginia Code***

The majority of the West Virginia Code concerning elections is collected in Chapter 3, which is cited as the West Virginia Election Code. It is further broken down into 51 Articles. However, other chapters and sections in the Code may be relevant to the purpose of this manual. References to the West Virginia Code are cited throughout this manual as “W. Va. Code,” followed by chapter, article, and section number. You may browse the W. Va. Code at <https://code.wvlegislature.gov/>.

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<sup>2</sup> 52 U.S.C.A. §10301

<sup>3</sup> 52 U.S.C.A. §20301

<sup>4</sup> 52 U.S.C.A. §20101

<sup>5</sup> 42 U.S.C §19733gg (now 52 U.S.C.A. §20503)

<sup>6</sup> 52 U.S.C.A. §20901

### ***The West Virginia Code of State Rules***

The West Virginia Legislature delegates some of its rulemaking ability to offices or commissions, allowing them to create or interpret laws through administrative rules. These rules are often narrower than statutes and are specifically tailored to the agency's purpose. The process for adopting such rules is prescribed by Chapter 29A, Article 3 of the W. Va. Code and is reviewed by legislative committees to ensure that the office or agency does not exceed its authority.

The Secretary of State has adopted a number of administrative rules, which are found in Title 153 of the West Virginia Code of State Rules. These and other relevant administrative rules will be cited throughout the manual as "C.S.R.," followed by the title, series, and rule number. You can find the entire C.S.R. at <https://apps.sos.wv.gov/adlaw/csr/>.

### ***The Municipal Code and Charters***

Chapter 8 of the W. Va. Code is also known as the Municipal Code of West Virginia and governs the election and administration of municipal government, as well as the processes for drafting, adopting, and amending municipal charters. Once accepted and framed, the charter of a City or Town individually governs procedures of the municipality, including elections, compensation, candidate guidance, and others, except where the state Municipal Code takes precedence. Voters and candidates participating in a municipal election should read their municipality's charter for more specific information.

### ***Opinions of the West Virginia Attorney General***

According to W. Va. Code §5-3-1, "The [West Virginia Attorney General] shall give written opinions and advice upon questions of law" to certain public officials, when required. However, these opinions are not law and only provide advice to guide officials in executing their duties.

Any Attorney General opinions throughout this manual will be cited as "[Title of the opinion] W. Va. Att'y Gen. Op.," followed by the date of the opinion. Opinions written since 2013 can be found at the West Virginia Attorney General's website:

<http://www.ago.wv.gov/publicresources/Attorney%20General%20Opinions/>. Opinions written from 1986-2012 can be found in the State Register and on the Attorney General's website: <http://www.ago.wv.gov/publicresources/Attorney%20General%20Opinions/Pages/Opinions-1986-2012.aspx>.

# 2 CHAPTER TWO: Voter Registration

## Eligibility

To be qualified to register to vote, a person must:

- **Be a citizen** of the United States and a legal resident of West Virginia and the county where they are applying to register;
- **Be at least eighteen (18) years of age;** and
  - Or be seventeen (17) years of age if they will be eighteen by the time of the next general election (*see note below for more detail*).
- **Reside in the state and county** in which they are to vote for at least thirty (30) days before the election to be considered eligible to vote.<sup>7</sup> This thirty-day requirement also applies to elections in municipalities, barring other language in municipal charters.<sup>8</sup>

**NOTE:** Persons who will be eighteen by the time of the general election but are seventeen for the primary will be able to vote in the primary if they are registered to vote.<sup>9</sup> Seventeen-year-olds registered this way will *only* be eligible to vote in the primary election until they turn eighteen.

### Residency

A “resident” for the purposes of voting is defined as “any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality, or within the boundaries of a territory.”<sup>10</sup> The West Virginia Supreme Court has provided a more informative definition, writing that the term “residence” is synonymous with “domicile.”<sup>11</sup>

Legally, “domicile” is defined as:

- Physical presence in a place; and
- An intention to remain in that place indefinitely.

Neither of these alone are enough to *create* a residence but taken together will satisfy the residency requirement.

If a person owns multiple homes or places of residence, their “residency” for voting purposes can be examined by a court by using an objective test, which takes into account:

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<sup>7</sup> W. Va. Const. Art. 4 §1; W. Va. Code §3-1-3a; W. Va. Code §3-2-2(a)

<sup>8</sup> *State ex. Rel. Peck v. City Council of Montgomery*, 150 W. Va. 580 (1966) (relying upon language of a previous version of Art. 4 §1, the Court upholds the constitutionality of the requirement that a person “reside in the state for a year and in the county for a period of sixty days” to apply to municipalities. Though the language of this Article has changed, the case has not been overturned.)

<sup>9</sup> W. Va. Code §3-2-2(a) and §3-1-3

<sup>10</sup> W. Va. Code §8-1-2(b)(13)

<sup>11</sup> *White v. Manchin*, Syl. Pt. 7, 318 S.E.2d 470 (1984)

- The physical character of each residence;
- The time spent at each;
- The things done at each; and
- Whether or not there is an intention to return to the original domicile.<sup>12</sup>

### **Disqualification**

A person is *not* qualified to vote if:

- They have been convicted of a felony, treason, or bribery in an election under either state or federal law;
  - Persons disqualified in this way may not register (or continue to vote if already registered), for the entire period they are serving their sentence, including incarceration, probation, and parole.
- They have been declared mentally incompetent by a court of competent jurisdiction.
  - Persons disqualified in this way may not register (or continue to vote if already registered) for as long as the disability continues.<sup>13</sup>

The Clerk of the County Commission (county clerk) is the chief registration authority in her or his county and supervises her or his deputies and employees.<sup>14</sup> County clerks are also responsible for the administration of voter registration services and may establish their own procedures to ensure they meet the requirements of federal and state laws. The county clerk may maintain and store voter registration in digital format and shall follow the records destruction process of W. Va. Code § 3-2-29 prior to destroying any physical voter registration records.<sup>15</sup>

The county commissions' responsibility is to allocate resources for voter registration and provide clerical assistance in systematic purging. They also have the authority to summon and examine any person, witness, or piece of evidence concerning the registration of voters; to generally investigate any irregularities in registration; and to conduct hearings on the matter.<sup>16</sup>

## **Application Process**

### **The Forms**

The Secretary of State prescribes the forms for registering voters, with the exception of the Federal Post Card Application (FPCA) - which is issued through the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) - and the mail voter registration application - which is prescribed by the Federal Election Commission (FEC). The Secretary of State's forms can be different for each of the various methods of application and may also set out procedures for

<sup>12</sup> *White v. Manchin*, 318 S.E.2d 470, 485-86 (1984)

<sup>13</sup> W. Va. Code §3-2-2(b)

<sup>14</sup> W. Va. Code §3-2-4(a)

<sup>15</sup> W. Va. Code §3-2-4(d)

<sup>16</sup> W. Va. Code §3-2-4(b-c)

registering through secure electronic registration systems.<sup>17</sup> Each application will include:

- A statement specifying eligibility requirements for registration and an attestation that the applicant meets each requirement;
- Specific notice required for a specific type or use of application;
- Notice that a voter may be permitted to vote in a partisan primary only if the voter has designated a political party on their application for registration (unless the political party has determined otherwise);
- The applicant's driver's license or identification number issued by the Division of Motor Vehicles (DMV). If the applicant does not have a driver's license or identification card, then they will provide the last four digits of their social security number; and
- Any instructions or information essential to complete the application process.<sup>18</sup>

### ***The Voter's Information***

The applicant must supply the following information under oath:

- The applicant's legal name, including first, middle, and last name;
- The month, day, and year of the applicant's birth;
- The applicant's residence address including the number, street/route, city, and county of residence; except
  - If the person is eligible to register under UOCAVA, the address at which they lived before leaving the U.S. or entering the uniformed services should be provided;
  - If the applicant is homeless (has no fixed address but remains regularly within the county), the address of a shelter, assistance center, or family member that they have regular contact with should be provided, approved by the county clerk;
  - If the applicant is in the Address Confidentiality Program, the address assigned to them by the Secretary of State should be provided.
- The applicant's signature to the eligibility to register to vote and to the truth of the information given.
  - Clerks can accept electronically submitted signatures on file with a state database for an applicant that applies to register to vote using an approved electronic voter registration system.<sup>19</sup>

If the application is missing any of this information, it will either be returned to the voter for completion, or it will be denied.

The form will also request the following information, but it will not be dismissed for its absence:

- Indication of whether the application is for a new registration or a changed registration, name, or party affiliation;

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<sup>17</sup> W. Va. Code §3-2-5(a)

<sup>18</sup> W. Va. Code §3-2-5(b)

<sup>19</sup> W. Va. Code §3-2-5(c)

- The applicant's choice of political party affiliation, or no affiliation;
- The applicant's residence mailing address;
- Last four digits of applicant's Social Security number;
- The applicant's telephone number;
- The applicant's email address;
- For the purposes of canceling or transferring registration, the address where the applicant was last registered to vote; and
- The applicant's gender.<sup>20</sup>

The Secretary of State submits the specifications of the voter registration application for statewide bidding by July 1<sup>st</sup> of every odd-numbered year. The bidding contract period will begin September 1<sup>st</sup> of each odd-numbered year and continues for two (2) consecutive calendar years.<sup>21</sup>

### **Registering by Mail**

**General Information.** Any eligible citizen can apply to register to vote by mail using the forms described above.<sup>22</sup> The Secretary of State prepares and provides mail-in registration forms to authorized voter registration agencies and organizations for them to make available to the public. Requests for two hundred (200) or more forms are recorded, and the requestor must provide certain contact information.<sup>23</sup>

The county clerk will provide up to four (4) mail-in registration forms to any resident upon request. To the extent possible, the clerk will make registration forms available to organized voter registration programs. They will also keep records of all requests for ten (10) or more forms as the Secretary of State does above.<sup>24</sup>

**Process Overview.** Applicants must provide all required information on the application and sign her or his name under oath with penalty of perjury. No person may change the information on the application except the county clerk, and only then upon properly documented request.

Completed applications must be mailed or delivered to the county clerk of the county where the voter lives or the Secretary of State's Office. If the application is sent to the wrong county, the county clerk will forward the application to the clerk of the proper county within three (3) days.<sup>25</sup>

Upon receipt of an appropriate application for registration, the county clerk will:

- Attempt to establish whether the address given is within the boundaries of a municipality

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<sup>20</sup> W. Va. Code §3-2-5(d)

<sup>21</sup> W. Va. Code §3-2-5(g)

<sup>22</sup> W. Va. Code §3-2-10(a)

<sup>23</sup> W. Va. Code §3-2-10(b)

<sup>24</sup> W. Va. Code §3-2-10(c)

<sup>25</sup> W. Va. Code §3-2-10(e)

- and, if so, make the proper entry for municipal residence; and
- Immediately begin the verification process (*see page 10 of this Manual for details*).

If a person registers by mail and has not previously voted in an election in the state, he or she is required to present identification to either the Secretary of State or her or his county clerk. Alternatively, if the individual attempts to vote in person, he or she may present a valid and current identification card or document that shows the voter's name and address. If the individual votes by mail, an identifying document must be included with the ballot. If the person cannot or does not provide an identifying document, the voter should cast a provisional ballot.<sup>26</sup>

Persons registering under UOCAVA are exempt from the requirement to enclose an identifying document, if on their FPCA they provide a driver's license number or last four digits of their social security number for the county clerk to match with an existing record.

Voters authorized to vote absentee under the Voting Accessibility for the Elderly and Handicapped Act, or otherwise qualified to vote in person under a federal law are exempt from the identifying document requirement.

Voters voting by absentee ballot for the following reasons are also exempt from the identifying document requirement:

- Voter is in confinement due to:
  - Injury;
  - Illness;
  - Age;
  - Immobility; or
  - Incarceration which does not cancel the right to vote;
- Attendance at college, university, etc.;
- Being outside the country throughout the period of early voting for reasons prescribed under UOCAVA; or
- Being qualified to vote by an emergency absentee ballot.<sup>27</sup>

**Updating Voter Registration Generally.** If a registered voter submits a new registration application to her or his county clerk to change address, party affiliation, or legal name, he or she is not required to vote in person or present identification or proof of age.<sup>28</sup>

### ***Voter Registration Service Agencies***

The Secretary of State has the duty to review all state programs that offer voter registration services and operate with state funds, in conjunction with a designated representative of the

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<sup>26</sup> W. Va. Code §3-2-10(g)

<sup>27</sup> W. Va. Code §3-2-10(i)

<sup>28</sup> W. Va. Code §3-2-10(j)



appropriate state agencies, every even-numbered year. The Secretary of State will establish emergency rules to designate specific programs required to provide voter registration services under the National Voter Registration Act of 1993.<sup>29</sup>

The following state agencies are required by W. Va. Code to offer voter registration services along with their standard operations:

- State agencies administering food stamp programs: the Aid to Families with Dependent Children (AFDC), the Women, Infants, and Children (WIC), and Medicaid programs;
- State funded agencies primarily engaged in providing services to persons with disabilities;
- County marriage license offices;
- Armed services recruitment offices; and
- The Department of Revenue (if it provides a choice on any form authorizing the Department to request a registration form on the applicant's behalf).<sup>30</sup>

Each agency required to offer voter registration services will designate an employee to serve as the state supervisor to administer voter registration services, who will also be responsible for coordination with the Secretary of State. This supervisor will also be responsible for designating an employee to coordinate voter registration services and be responsible for the proper handling of voter registration applications and reporting requirements.

Any person who provides voter registration services may not:

- Seek to influence an applicant's political preference or party registration;
- Display any political preference or party allegiance to any applicant;
- Make any statement to an applicant or take any action to discourage the applicant from registering to vote.; or
- Make any statement to an applicant or take any action to lead the applicant to believe that a decision to register or not has any bearing on availability of services or benefits.<sup>31</sup>

### ***Federal Post Card Application***

When a Federal Post Card Application (FPCA) is received along with an absentee ballot request from a UOCAVA eligible voter, the official designated to supervise absentee voting will:

- Enter the name of the applicant in the permanent absentee voter's record for each election the voter applied for, photocopy each application, and store a separate copy;
- Determine if the applicant is registered to vote at the address on the application; and
  - If they are not registered (or registered at a different address), the official delivers the original FPCA to the county clerk to process the FPCA as a voter registration application; or

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<sup>29</sup> W. Va. Code §3-2-13(c-d)

<sup>30</sup> W. Va. Code §3-2-13(b)

<sup>31</sup> W. Va. Code §3-2-13(i)

- If the FPCA is received after the close of voter registration for the next election, the official will challenge the absentee ballot for that election; and
- If the listed address is correct, mail the application and ballot on the first day they both become available.<sup>32</sup>

## Processing Voter Registration Forms

### *The County Clerk*

The county clerk will provide voter registration services at all times when the office is open for regular business. An eligible voter who wants to apply in person may complete a voter registration application on the prescribed form and sign the required oath in the presence of the clerk or their deputy. The applicant must provide valid identification and proof of age prior to voting.

The clerk must attempt to establish whether the residence address given is within an incorporated municipality and, if so, properly indicate that information in the voter's records.

Upon receipt of the completed application, the clerk will provide notices of procedure for residence verification (unless the applicant presents a current driver's license or other state-issued identification card upon registering that contains the residence address which appears on the voter registration application, in which case the clerk will issue the receipt of registration).<sup>33</sup>

### *Registration Outreach Services – Temporary and Volunteer Registrars*

Registration outreach services can be provided at locations outside of the county clerk's office by one or more deputy clerks or by temporary or volunteer registrars.

Temporary or volunteer registrars have the same eligibility requirements as election officials,<sup>34</sup> serve on teams composed of two (2) persons of opposite political parties, will be trained and supervised by the county clerk, and must take an oath to perform the duties of the office before beginning their duties. Eligibility to become a registrar can be suspended for:

- Failure to appear at the required time and place or to perform the duties of a registrar;
- Alteration or destruction of a voter registration application;
- Improper influence of the choice of party affiliation of a voter or other improper interference or intimidation relating to the voter's decisions to register or not; or
- Being under the influence of alcohol or drugs; or
- Gambling or wagering on any election.<sup>35</sup>

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<sup>32</sup> W. Va. Code §3-3-5a(3)

<sup>33</sup> W. Va. Code §3-2-7

<sup>34</sup> See "Poll Workers" on page 28.

<sup>35</sup> W. Va. Code §3-2-9(a-b)

**Appointment.** When a county clerk appoints temporary registrars, an equal number must be appointed from each of the two (2) major political parties in the state. The county commission notifies each county executive committee in writing, specifying the number of registrars to be appointed, schedule of registration activities, and the date by which the nominations must be received, which is to be at least twenty-eight (28) days following the date of notice.

**Nomination.** Each committee may nominate the number of persons needed to serve as registrars and shall submit the nominations in writing to the county commission by the specified date. The county clerk will notify the nominated persons and, if anyone fails to appear, will fill the vacancy with a qualified person of the same political party.

**Compensation.** Temporary registrars will be compensated at a rate not less than the federal minimum wage and will be reimbursed for mileage traveled.<sup>36</sup> If the county clerk appoints volunteer registrars, they will serve without compensation, and the county clerk must inform the county commission of the names and party affiliations of any such volunteers.<sup>37</sup>

**Temporary Registration Offices/Locations.** The county clerk may establish temporary registration offices to provide voter registration services to residents. The clerk will file a list of the scheduled times and locations of any temporary registration offices with the county commission at least fourteen (14) days prior to each office opening and should advertise the time and locations on the radio, television, and newspapers serving that county.

**High School Registration Services.** The county clerk *shall* establish an approved program of voter registration services for eligible high school students at each high school in the county. No later than forty-five (45) days before a statewide primary election held during a school year, the clerk shall conduct the program at an appropriate time. All such programs will include opportunities for students to register in person and present identification at the high school where they are enrolled. Official school records will be accepted as identification and proof of age for eligible students.<sup>38</sup>

**Door-to-Door Registration when Precinct Boundaries Change.** The county clerk or temporary registrars may conduct door-to-door registration services in an area where voters are required to change their registrations due to shifting precinct boundaries. They may register, alter, or transfer the voter's registrations in those areas and, if they find a voter has moved from the address where the voter is registered, the clerk shall challenge that voter's registration.<sup>39</sup>

All persons conducting registration outreach services will follow instructions for registration found in W. Va. Code §3-2-7 and discussed above in the "The County Clerk" section.

### ***Voter Registration Service Agencies***

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<sup>36</sup> W. Va. Code §3-2-9(d)

<sup>37</sup> W. Va. Code §3-2-9(e)

<sup>38</sup> W. Va. Code §3-2-8(b)

<sup>39</sup> W. Va. Code §3-2-8(c)

On July 1<sup>st</sup> in each odd-numbered year after the Secretary of State designates an agency as one that must include voter registration services as part of its business, that agency must:

- Distribute a declination form<sup>40</sup> and voter registration application with each application for service or assistance, recertification, renewal, or change of address form relating to it;
- Provide to each applicant who wishes to vote the same degree of assistance in registration as is provided in the agency's other forms;
- Accept completed voter registration applications and forward those applications to the Secretary of State within five (5) days of receiving it;
- Accept declination forms and retain or forward those forms as prescribed by the Secretary of State;
- Provide, on the request of an applicant or the person assisting them, a reasonable number of mail application forms for use by other eligible persons residing with the applicant; and
- Make any required reports.<sup>41</sup>

Any voter who checks "no," fails to check a box on the declination form, fails to sign the voter registration application, or fails to return the voter registration application to an agency will be considered to have declined to register.<sup>42</sup>

When the Secretary of State receives forms from an agency, completed and signed applications are sent to the appropriate county clerk within five (5) days. Any forms not signed by the applicant will be removed and filed.

Any qualified voter who submits an application for registration in person at an agency and presents identification and proof of age at that time or previously, will not be required to make his or her first vote in person or present identification again. If the voter submits the application by mail or delivery by a third party, he or she will be required to make their first vote in person and show identification to validate the registration.<sup>43</sup>

When a voter appears in person to apply for a marriage license, he or she will also be presented with a voter registration application. If the voter does not intend to change his or her legal name or residence upon marriage, he or she may immediately apply to register or update his or her registration. Applications completed in this way are forwarded directly to the county clerk's registration office.

If the applicant does wish to change his or her legal name or residence upon marriage, as well as register to vote, the applicant will be given a mail registration card to use after the name or

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<sup>40</sup> A form sent by the Secretary of State to agencies with voter registration services that allows applicants to indicate whether he or she would like to register to vote.

<sup>41</sup> W. Va. Code §3-2-14(c)

<sup>42</sup> W. Va. Code §3-2-14(d)

<sup>43</sup> W. Va. Code §3-2-14(g)

address change has occurred.<sup>44</sup>

### ***County Clerk Procedures for Voter Registration Processing***

When the county clerk receives an application for registration, he or she will determine if the application is complete and that the applicant is eligible to register to vote in the county. If either of these criteria are not met, the clerk will deny the application (described below).

If the application is determined to be complete and **from an eligible voter not previously registered in the county, not included in active voter registration files with the preceding calendar year, and not presenting a driver's license containing the residence address**, the clerk will mail a verification notice to the applicant at the address given on the application (unless the voter registers as a UOCAVA or homeless voter and provides a local address).<sup>45</sup> Such notice:

- Shall state the purpose of the procedure, that no further action is required of the applicant, and that a notice of the disposition of registration will be mailed after the ten (10) day return period;
- If the notice is not returned as undeliverable within ten (10) days, the application for registration will be accepted and entered into the active voter registration files, and a registration receipt will be mailed designating the voter's assigned precinct;
- If the notice is returned as undeliverable within ten (10) days, the clerk will compare the address given on the application with the address used on the envelope. If there is any discrepancy, the county clerk will send a second notice to the correct address. If there is no discrepancy, the application will be denied and a notice of denial mailed;
- If the verification notice is returned as undeliverable after the registration is accepted, the clerk will start the confirmation procedure.<sup>46</sup>

If the application is returned complete **and by an eligible person currently registered in the county or in the active voter registration files**, the clerk will send a notice of disposition and:

- A new voter registration receipt, if the application is for a change of name, address, party affiliation, reinstatement, or other correction of the previous registration; and
- Notification that the voter need not change his or her previous registration if he or she lives at the same address and has the same legal name.

If the notice of disposition is returned as undeliverable after the registration is accepted, the clerk will seek confirmation.<sup>47</sup>

If an application indicates an applicant's previous address is from another county or state, the

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<sup>44</sup> W. Va. Code §3-2-15

<sup>45</sup> The mailing address will not be included on the notice if it appears to identify a distinctly different location from the residence address.

<sup>46</sup> W. Va. Code §3-2-16(b)

<sup>47</sup> W. Va. Code §3-2-16(c)

clerk will give notice to the clerk or registrar of that jurisdiction to cancel that registration.<sup>48</sup>

### **Denial**

The clerk will deny an application if he or she finds on the application or official documentation of eligibility:

- The applicant is not eligible to register in the county at the time the application is received;<sup>49</sup>
- The applicant submitted an incomplete application; or
- The verification notice is returned as undeliverable at the address given by the voter.<sup>50</sup>

When the clerk determines the application must be denied, the clerk will send a notice to the voter that the application for registration was denied and the reasons why.

If the application is denied because it is incomplete, the clerk will inform the voter of the right to reapply and enclose a form for that purpose.

If the application is denied because the verification notice is returned as undeliverable at the address given, the clerk will inform the voter of the right to present proof of residence in order to validate it.

If the application is denied because the voter is ineligible, the notice shall include a statement of eligibility requirements for registration and the right to demand appeal.<sup>51</sup>

Any applicant who is denied due to ineligibility or failure to submit proof of residence can make a written request for reconsideration and present evidence of their eligibility. The clerk must review the request and issue a decision in writing within fourteen (14) days.

### **Appeal**

If the application is denied on reconsideration, the applicant can make a written request for a hearing before the county commission. The county commission will schedule and conduct the hearing within thirty (30) days of receiving the request and will issue a decision in writing within fifteen (15) days after the hearing.

An applicant can appeal the county commission's decision to the circuit court, which will only consider the record before the county commission as authorized by the county clerk. The circuit court may affirm or reverse the decision, or remand the decision back to the county commission for further hearing.

Any party to an appeal to the circuit court may appeal to the West Virginia Supreme Court of

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<sup>48</sup> W. Va. Code §3-2-16(d)

<sup>49</sup> W. Va. Code §3-2-2; and see "Eligibility" on page 4.

<sup>50</sup> W. Va. Code §3-2-17(a)

<sup>51</sup> W. Va. Code §3-2-17(b)

Appeals within thirty (30) days of the final order by the circuit court. The Supreme Court of Appeals may grant or refuse an appeal at its discretion and has jurisdiction to hear and determine the appeal on record before the circuit court. It is the duty of the circuit and Supreme Court of Appeals to expedite registration and election procedures by holding as many sessions as necessary to determine any cases involving the registration of voters.<sup>52</sup>

## Deadlines

Voter registration for each election closes on the twenty-first (21<sup>st</sup>) day before the election (or on the next day after the 21<sup>st</sup> day that is not a Saturday, Sunday, or legal holiday).

Applications for voter registration, change, or transfer of registration will be effective for the next election if:

- The application contains the applicant's legal name, birth date, signature, and residence address (unless registering under UOCAVA, homeless, or participating in Address Confidentiality Program);
- The application is received by the appropriate county clerk before the close of registration;
  - If mailed, the application must be addressed to the appropriate county clerk and postmarked no later than the date of close of registration.
    - If the postmark is missing or ineligible, the application is presumed to have been mailed before close of registration if it is received by the clerk within three (3) days prior to the close.
  - If accepted by an agency of a motor vehicle licensing office, the application is received by that agency/office no later than the close of registration;
  - If accepted through a registration outreach program, the application is reviewed by the clerk, deputy clerk, or registrar no later than close of the election;
  - If accepted through an approved electronic voter registration system, the application is received by the county clerk no later than close of registration; and
- The notice of verification is mailed and not returned as undeliverable.<sup>53</sup>

**Deadline Exceptions.** There are exceptions to the twenty-one (21) day deadline, entitling certain persons to register in person at the county clerk's office up to the day of the election:

- Any member of a uniformed service of the United States on active duty;
- Any member of a uniformed service of the United States discharged from active duty during the sixty (60) days immediately before the election;
- Any member of the United States Merchant Marines;
- Any person residing outside of the country because of employment in support of national security functions or purposes, who presents documentation of such employment;

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<sup>52</sup> W. Va. Code §3-2-17(d-g)

<sup>53</sup> W. Va. Code §3-2-6

- Any spouse or dependent residing with one of the above persons.<sup>54</sup>

These exceptions *only* apply to applicants who are otherwise qualified to vote and are either normally absent from their residence county or have been absent previously and only returned to reside there during twenty-one (21) days before the election.

**Voters who are qualified to register under these exceptions and do after the deadline must still cast a provisional ballot.** That provisional ballot will be counted unless the county clerk determines the voter otherwise fails to meet the eligibility requirements.

### Inputting into the Statewide Voter Registration System (SVRS)

The Secretary of State is required to implement and maintain a statewide, centralized, computerized voter registration database of legally registered voters. The Statewide Voter Registration System (SVRS) contains the name, registration, and voting history of every voter in the state, along with a unique voter ID number. It allows the Secretary of State, county clerk, or any authorized designee to electronically access and enter information in the SVRS.<sup>55</sup>

The Secretary of State and county clerks must perform maintenance on the SVRS in order to remove the names of those who are no longer qualified to vote in accordance with the National Voter Registration Act of 1993.<sup>56</sup> The W. Va. Code requires that each registered voter appear in the database, and that only voters who request in writing to be removed or are deceased, duplicated, or no longer eligible to vote are removed from the SVRS.<sup>57</sup>

The Secretary of State must perform any maintenance necessary to ensure that voter registration records are accurate and updated regularly, including:

- Creating a system of file maintenance that makes a “reasonable effort” to remove registrants who are ineligible to vote.<sup>58</sup> If registrants do not respond to a confirmation notice, do not update their address or registration, *and* have not voted in any election over the past two (2) federal general election cycles, their registration will be cancelled;
- Ensuring that voters that have moved across state lines or become deceased in another state will be removed through participation in maintenance programs with other states;
- Creating safeguards to ensure that eligible voters are not removed from the official list.<sup>59</sup>

### Statewide Maintenance

Each county clerk must also maintain SVRS information and keep a voter registration record book, which contains a log of all actions taken affecting the programming or records in the

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<sup>54</sup> W. Va. Code §3-2-6a

<sup>55</sup> W. Va. Code §3-2-4a(a)

<sup>56</sup> 42 U.S.C. §1973gg (now 52 U.S.C. §20501)

<sup>57</sup> W. Va. Code §3-2-4a(c)

<sup>58</sup> See “Canceling Voter Registrations” on page 19.

<sup>59</sup> W. Va. Code §3-2-4a(e)



system by the clerk or someone under their supervision.<sup>60</sup>

The county clerk is responsible for appointing and managing all personnel authorized to update voter registration information in the SVRS.<sup>61</sup>

Activities, records, and information entered into the SVRS shall include:

- Information provided on voter registration applications;
- Maintenance of registration and voting records;
- Conduct of elections; and
- Statistical purposes.<sup>62</sup>

All entries must be specifically authorized by law, and each entry affecting the status of a voter registration should be based on information in the original voter registration record.

Pertaining to voter registration in the SVRS, the county clerk is responsible for maintaining:

- Active and inactive voter registration records;
- Confirmation pending records;
- Canceled voter registration records;
- Pending application records; and
- Rejected application records.<sup>63</sup>

Upon receipt of a completed voter registration application, the clerk shall enter the information provided into the SVRS and mark that record as pending. Upon completion of the verification process, the clerk will update the record with the result.

The county clerk will promptly make necessary changes in the SVRS upon receipt of:

- Completed voter registration applications;
- Written confirmation from a voter of a change of:
  - address;
  - legal name;
  - party affiliation; or
  - other correction;
- Notice of death; or
- Request for cancellation.<sup>64</sup>

The county clerk will enter voting records from each election into the Statewide Voter Database

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<sup>60</sup> W. Va. Code §3-2-21(a)

<sup>61</sup> W. Va. Code §3-2-21(b)

<sup>62</sup> W. Va. Code §3-2-21(c)

<sup>63</sup> W. Va. Code §3-2-21(e)

<sup>64</sup> W. Va. Code §3-2-21(f-j)

within eighty (80) days after each election.<sup>65</sup>

## DMV Registration

The Secretary of State and the Commissioner of the Department of Motor Vehicles (DMV) must match and transfer information in the DMV database to the SVRS to verify the accuracy of information on voter registration applications.

For each person applying for registration, the DMV will agree to specifically share his or her:

- Name fields;
- Residence and mailing address fields;
- Driver's license or state identification number;
- Last four digits of Social Security number;
- Date of birth;
- License or identification issuance and expiration dates; and
- Current record status.

This information will be used by the Secretary of State for in-state list maintenance and interstate list maintenance through authorized interstate data-sharing agreements.<sup>66</sup>

The DMV is required to obtain the following information from each license applicant:

- Full name;
- Date of birth;
- Residence address and mailing address, if different;
- The applicant's electronic signature;
- Telephone number, if available;
- Email address, if available;
- Political party membership, if any;
- Driver's license number;
- Last four digits of Social Security number;
- A notation that the voter attests that they meet all voter eligibility requirements;
- Whether the applicant affirmatively declines to become registered to vote at the DMV;
- Date of application; and
- Any other information specified by adopted rules.<sup>67</sup>

If the applicant *does not* affirmatively decline to be registered to vote or to update his or her registration while at the DMV, the DMV will release all of the above information obtained to the Secretary of State, who shall in turn forward the information to the relevant county clerk to process the newly registered or updated information.

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<sup>65</sup> W. Va. Code §3-2-18(e)

<sup>66</sup> W. Va. Code §3-2-4a(g)(2)

<sup>67</sup> W. Va. Code §3-2-11(a)

If the applicant *does* affirmatively decline, the DMV will release their full name, residence address, date of birth, electronic signature, and a notification that the applicant affirmatively declined to the Secretary of State to facilitate any future attempt by the applicant to register.<sup>68</sup>

Qualified voters who submit applications by mail or have them delivered by a third party on the form used for registration in conjunction with driver licensing must make their first vote in person with the same identification as is required by mail registration, as discussed earlier. **If the application only updates the registration, presentation of identification is not necessary.**<sup>69</sup>

Qualified voters who submit the required information in person at a driver licensing facility, along with proof of age and identification, are not required to make their first votes in person.<sup>70</sup>

**Registration and/or Address Changes.** If a person submits an application for registration or updates a previous voter registration, he or she thereby authorizes the cancellation of registrations in other counties or states where he or she was previously registered.<sup>71</sup> A change in address submitted for driver licensing also serves a change of address for voter registration if requested after notice is sent and the written consent of the applicant is received.<sup>72</sup>

Completed applications received by the DMV must be forwarded to the Secretary of State within five (5) days of receiving it. The Secretary of State then has five (5) days to remove and file any unsigned forms and forward completed, signed applications to the appropriate county clerk.<sup>73</sup>

If a person wishes to cancel a registration made through the DMV (or elsewhere), he or she may do so at any time.<sup>74</sup>

## Canceling Voter Registrations

### *The Duty to Purge*

The Secretary of State and county clerks of the state are required under the National Voter Registration Act of 1993 (NVRA) to maintain and occasionally “purge” the voter rolls of inactive voters. County clerks are responsible for cancelling the registration of a voter in the following circumstances:

- Upon the voter’s death as verified by:
  - A death certificate from the Registrar of Vital Statistics or notice from a federal agency that receives and utilizes state vital statistics information (*e.g.* Social Security Administration’s Death Master File);

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<sup>68</sup> W. Va. Code §3-2-11(b)

<sup>69</sup> W. Va. Code §3-2-11(f)

<sup>70</sup> W. Va. Code §3-2-11(e)

<sup>71</sup> W. Va. Code §3-2-11(g)

<sup>72</sup> W. Va. Code §3-2-11(h)

<sup>73</sup> W. Va. Code §3-2-11(i)

<sup>74</sup> W. Va. Code §3-2-11(l)

- A notice from the Secretary of State of the records of the county and registrar showing the person deceased;
- Obituary publication or other writing clearly identifying the deceased by name, residence, and age corresponding to the voter record; or
- An affidavit signed by the parent, legal guardian, child, sibling, or spouse of the voter giving the name of the voter, date, and place of death.
- Upon notice from a state or federal court that the person has been convicted of treason or bribery in an election;
- Upon receipt of a notice from the appropriate court of a determination of a voter's mental incompetence;
- Upon receipt from the voter of a written request to cancel the registration;
- Upon confirmation by the voter of a change of address to an address outside the county;
- Upon notice from a voter registrar of another jurisdiction outside the county or state that he or she received another application for voter registration;
- Upon notice from the Secretary of State that a voter registration was accepted in another county or state after the registration date in the first county found by comparison; or
- Upon a voter's failure to respond and produce evidence of continued eligibility to register following the challenge of that voter's registration.<sup>75</sup>

The Secretary of State also has the authority to propose legislative rules regarding the maintenance of voter registration records and to make changes and cancellations to voter registrations.<sup>76</sup>

### ***The Systematic Purging System***

No earlier than October 1<sup>st</sup> of each odd-numbered year, county clerks must begin the systematic purging of ineligible voter registration files, and they must complete the process by February 1<sup>st</sup> of the following year. When complete, clerks transmit a certification to the Secretary of State that the systematic purging program has been completed and all ineligible voter registrations have been canceled by February 15<sup>th</sup> of that year.<sup>77</sup>

Based on a comparison of voter registration data records, the Secretary of State will prepare for each county a list of voters in that county who appear in the SVRS to have registered or updated their registration in another county. That list is sent to the appropriate county clerk to start the confirmation procedure discussed in W. Va. Code §3-2-26.<sup>78</sup>

The Secretary of State may compare records from the DMV, the Registrar of Vital Statistics, or any other state agency that maintains records of state residents if the procedure to do so is

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<sup>75</sup> W. Va. Code §3-2-23

<sup>76</sup> W. Va. Code §3-2-23a

<sup>77</sup> W. Va. Code §3-2-25(a)

<sup>78</sup> W. Va. Code §3-2-25(b)

practical and the agency agrees to participate.<sup>79</sup>

The Secretary of State will also compare records of change of address information compiled by the United States Postal Service (USPS) and return matches of county voter registration records to each county.<sup>80</sup> If the new address information is for a different address in the same county, the clerk will change the address on the voter record and assign the proper precinct.

If it appears from the USPS records that a voter has moved from the residence address on their registration, clerks will follow the confirmation notice procedure discussed below by mailing one (1) notice of confirmation no later than December 31<sup>st</sup> to the new address, or to the old address if the new address is not available.<sup>81</sup> The clerk then enters the voter's new address in the SVRS.

Any voter who does not answer the confirmation notice or update her or his registration by February 1<sup>st</sup> following the completion of the program will be designated an "inactive" voter in the SVRS. Inactive voters are required to affirm their current residence address on a form (usually in the poll book) when appearing at the polls to vote.

All counties using the change of address information from the USPS will also mail confirmation notices to people *not* identified as potentially ineligible but who have not updated their voter registration nor voted during the past four (4) calendar years (a/k/a "idle voters").<sup>82</sup>

### **Confirmation Notices**

A confirmation notice is sent to a voter when it appears that the voter may have moved or become ineligible to vote. The county clerk will mail a confirmation notice only when:

- A verification notice is returned as undeliverable;<sup>83</sup>
- A notice that voter registration was denied is returned as undeliverable;<sup>84</sup>
- The clerk receives information from the systematic voter purging program;
- The clerk receives information from the DMV;
- The clerk receives information from the USPS; or
- Upon notice of address change received by authorized list maintenance vendors.<sup>85</sup>

The clerk sends the confirmation notices via first-class, forwardable mail and includes pre-addressed, postage pre-paid (or business reply return) card that the voter may write his or her current address on. The confirmation notice must conform to the requirements of the NVRA.<sup>86</sup>

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<sup>79</sup> W. Va. Code §3-2-25(c)

<sup>80</sup> 42 U.S.C. §1973gg (now 52 U.S.C. §20507)

<sup>81</sup> W. Va. Code §3-2-25(e)

<sup>82</sup> W. Va. Code §3-2-25(j)

<sup>83</sup> W. Va. Code §3-2-16

<sup>84</sup> W. Va. Code §3-2-17

<sup>85</sup> W. Va. Code §3-2-26; also W. Va. Code §3-2-4a(e)(2)

<sup>86</sup> 42 U.S.C. §1973gg §8(d)(2) (now 52 U.S.C. §20507)

When the voter returns the confirmation notice completed and signed, the county clerk will either update the voter registration, noting the confirmation of the current address or entering any change of name or address requested by the voter, or cancel the voter's registration if the voter confirms he or she has moved out of the county or state.<sup>87</sup>

If the confirmation is returned as undeliverable, the clerk may send a confirmation to the old residence address if the first notice was sent to a new address provided by the USPS. If there is no second address provided or the confirmation is returned as undeliverable again, the clerk will designate the registration as inactive.<sup>88</sup>

If the clerk does not receive a response to the notice by February 1<sup>st</sup> after it is mailed, the clerk will designate the registration as inactive.<sup>89</sup>

Inactive voter registration will be returned to active status upon any affirmation of accuracy, a voter's update to the registration, or if a voter votes in any election while they remain on the inactive list.<sup>90</sup>

The county clerk will cancel the records of inactive voters who:

- Have not responded to confirmation notices after the requisite time period;
- Have not otherwise updated their voter registrations;
- Have not voted in *any* state, county, or municipal election held within the county between the date of the notice and the day after the second general election for federal office after the date of notice.<sup>91</sup>

No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled in both county and municipal records.<sup>92</sup>

## Publication and Correction of Voter Lists

The Secretary of State has general supervision of voter registration records and has the authority to require reports and investigate violations to ensure proper conduct of voter registration throughout the state and its subdivisions.

The Secretary of State can provide written notice to the clerk of a county that has not conducted voter registration list maintenance. If the clerk fails to complete the maintenance within ninety (90) days, the Secretary of State may notify the county and make the necessary changes after the requisite period passes.<sup>93</sup>

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<sup>87</sup> W. Va. Code §3-2-27(a)

<sup>88</sup> W. Va. Code §3-2-27(b)

<sup>89</sup> W. Va. Code §3-2-27(c)

<sup>90</sup> W. Va. Code §3-2-27(d)

<sup>91</sup> W. Va. Code §3-2-27(e)

<sup>92</sup> W. Va. Code §3-2-19(a)(3)

<sup>93</sup> W. Va. Code §3-2-3

### ***Correcting the Voter Record***

If a voter changes residences within the same county, he or she should file a request for a change of address by completing, signing, and filing one of the following:

- A change of address form through the office of the county clerk or through any voter registration outreach program;
- A state or federal mail registration form;
- A change of address form for driver licensing purposes;
- A change of address form for voter registration purposes at any authorized voter registration agency;
- A confirmation of change of address form received as part of the notice of confirmation procedure;<sup>94</sup> or
- An affidavit of change of address at the polling place of the precinct in which the new residence is located on Election Day.<sup>95</sup>

Once the county clerk receives a request for a change of address, he or she will enter the county, precinct number, and municipal precinct number (if applicable) onto the voter registration record and issue a notice of acknowledgement to the new address.

**Updating Address on Election Day.** A voter who has changed residences may update her or his address at the polling place on Election Day. If the voter's new address is in the same precinct as the previous, then the voter may vote without challenge.

If the voter's new residence is in a different precinct, that voter may still change her or his address at the polling place but must vote a provisional ballot. If the voter's registration record is found in the county, and no other challenges exist, the provisional ballot should be counted at canvass.<sup>96</sup>

If the county clerk receives notice that a voter has moved residences within the county from the USPS or another voting registration records comparison program, the clerk will enter the change of address into the voter registration record and follow the confirmation notice procedures described above.<sup>97</sup>

Any voter changing his or her legal name, either through marriage or by order of a circuit court, may file a request for change of address by signing, completing, and filing:

- Any voter registration application form; or
- An affidavit of change of legal name at the polling place on Election Day.<sup>98</sup>

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<sup>94</sup> For notice of confirmation procedure, see W. Va. Code §3-2-25 through §3-2-27.

<sup>95</sup> W. Va. Code §3-2-22(a)

<sup>96</sup> W. Va. Code §3-2-31

<sup>97</sup> W. Va. Code §3-2-22(c), §3-2-(25-27), and see "Canceling Voter Registration" on page 19.

<sup>98</sup> W. Va. Code §3-2-22(d)

When the clerk receives the request for a change of legal name, he or she must enter the change and issue an acknowledgement notice.

Any voter who wants to change his or her political party affiliation must do so before the deadline for the close of voter registration by filling out an authorized voter registration application. Upon receipt, the clerk will enter the change and issue notice to the voter.<sup>99</sup>

If a voter finds any error on his or her voter registration, the voter may request a correction by the same process of signing, completing, and filing any voter registration form. The voter can also fill out an affidavit requesting the correction at the polling place on Election Day.

If a voter at the polls on a primary election asserts that the party affiliation on their voter registration is not correct, he or she may vote a provisional ballot of the desired political party. The ballot will be counted at canvass if the original registration record contains a designation of the appropriate political party filed by the close of registration for the primary election.<sup>100</sup>

## Challenges to the Right to Vote

The registration of any voter may be challenged by:

- The county clerk, Secretary of State, or any registrar of the county;
- The chairman of any political party committee; or
- Any voter who appears in person at the clerk's office.

Any person who challenges a voter's registration must complete a form giving the name and address of the voter, and the reason for the challenge. The challenge itself will be filed as a matter of record with the county clerk.<sup>101</sup>

When the county clerk receives the challenge, he or she will mail a notice of challenge to the person whose vote is being challenged. The notice should state that the voter's registration will be canceled if the voter does not appear in person at the clerk's office with evidence of her or his eligibility within thirty (30) days of the notice's mailing date.<sup>102</sup>

If the notice of challenge is returned as undeliverable at the registration address, or if the challenged voter does not appear at the clerk's office within thirty (30) days, the registration will immediately be canceled.

If the challenged voter appears within thirty (30) days and presents evidence of his or her eligibility, the clerk will determine the voter's eligibility to be registered as in any other case.

If the reason for ineligibility is that the voter does not reside at the address on the registration, and the voter presents evidence that he or she lives at a different address in the county, the

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<sup>99</sup> W. Va. Code §3-2-22(f)

<sup>100</sup> W. Va. Code §3-2-22(g)

<sup>101</sup> W. Va. Code §3-2-28(a)

<sup>102</sup> W. Va. Code §3-2-28(b)



clerk will treat it as a request for change of address and remove the challenge.<sup>103</sup>

## Management of Public Records

### *Retention of Records*

All original paper registration records will remain in the custody of the county clerk. However, if stored electronically, all original registration records will remain in the SVRS.<sup>104</sup>

Original voter registration records will be kept for a minimum of five (5) years following the last recorded activity relating to that record. Any duplicate applications that do not alter existing registrations will be retained for a minimum of two (2) years.<sup>105</sup>

Before a county clerk orders the destruction of original voter registration applications or registration cards of registrations that have been canceled for at least five (5) years, the clerk must first notify the Secretary of State of his or her intent to destroy. The Secretary may decide within ninety (90) days whether those records should instead be applied to microfilm or “other permanent data storage,” and may have those records processed at state expense.<sup>106</sup>

Original registration records that have been retained for a period of time may be destroyed if an exact digital or facsimile copy of the records are made, following approval from the Secretary of the State.<sup>107</sup>

Canceled and rejected registrations will be maintained for five (5) years before being removed from the SVRS and destroyed.<sup>108</sup>

No record will be removed from the SVRS or the custody of a county clerk except for use in an election, by order of a court of record, or in compliance with a subpoena issued by the Secretary of State.<sup>109</sup>

### *Maintenance in Municipal Elections*

In municipal elections, registrations of both active and inactive voters will be maintained by the county clerks, who are responsible for preparing poll books or voter lists to be used in elections where either:

- County and municipal precinct boundaries are the same, and all voters of the precincts are entitled to vote in all state, county, and municipal elections in the precinct; or
- The registration records of municipal voters within a county precinct are separated and maintained in a separate section for municipalities for that precinct and may be used to

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<sup>103</sup> W. Va. Code §3-2-28(c)

<sup>104</sup> W. Va. Code §3-2-29(a)

<sup>105</sup> W. Va. Code §3-2-29(b)

<sup>106</sup> W. Va. Code §3-2-29(c)

<sup>107</sup> W. Va. Code §3-2-29(b)

<sup>108</sup> W. Va. Code §3-2-29(d)

<sup>109</sup> W. Va. Code §3-2-29(a)

make up a complete set of registration records for the municipal election precinct.<sup>110</sup>

A municipality can request to keep precinct books separate from the county in cases where the municipal precincts or wards divide county precincts and using county poll books is impractical. If the county clerk objects to the municipal request, it falls to the State Election Commission to determine whether separate books should be maintained.<sup>111</sup>

Within thirty (30) days of any annexation order or change in street names or numbers, the governing body of the municipality will file with the county clerk a certified, current, official municipal boundary map, along with a list of street numbers within the municipality. The county clerk will use this information in determining whether a voter's address is within the boundaries of the municipality.<sup>112</sup>

### **Public Inspection**

Any person may examine the active, inactive, rejected, and canceled voter registrations during the county clerk's office hours. Any person may view the voter record information in either printed form or a read-only data format on a computer set aside for public use.

Voter information available for public examination may include all publicly available registration and voting information. **Private information not available for examination includes voters':**

- Phone numbers;
- Email addresses;
- Social security numbers; and
- Driver's license or state identification numbers.<sup>113</sup>

The county clerk will provide printed copies of voter lists for each precinct, upon request, which will include the same information allowed for public examination only.

The clerk will establish a written policy, to be posted in public view, listing the options for sorting the viewable list of voters, which will include *at least*:

- The name;
- Residence address;
- Political party affiliation;
- Status of registrant;
- Available formats of the lists; and
- Times at which the lists will be prepared.

County policies created in this way will be filed with the Secretary of State no later than January

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<sup>110</sup> W. Va. Code §3-2-19(a)(1)

<sup>111</sup> W. Va. Code §3-2-19(a)(2)

<sup>112</sup> W. Va. Code §3-2-19(b)

<sup>113</sup> W. Va. Code §3-2-30(a)

1<sup>st</sup> of every even-numbered year.<sup>114</sup>

### ***Purchase of Voter Registration Lists***

Lists of registered voters can be obtained from the county clerk for noncommercial purposes, either in data format on a disk or as a printed list, for one cent (\$0.01) per name. Any information provided will include only the information allowed for public examination.<sup>115</sup>

Any fees received from the requests for voter information are deposited into a separate account and used to ease the costs of preparing voter lists. After deducting these costs, the clerk deposits the remainder of the proceeds in the State Election Fund.<sup>116</sup>

The Secretary of State will also make voter lists available for sale that include only information allowed for public examination. The Secretary of State will charge the following fees:

- \$1,000 for an Election Cycle Subscription Service;
- \$500 for a Statewide Voter Registration List;
- \$500 for a Master Voter History List Export;
- \$200 for a Statewide Early Voters List;
- \$200 for a Statewide Absentee Requests List;
- \$200 for a Statewide Absentee Received List; and
- Current hourly rate for a Partial Voter Registration List, Voter History List, or Complex Research Queries.<sup>117</sup>

Revenue from the purchasing of lists will be deposited into the State Election Fund.<sup>118</sup>

Purchased lists must not be used for commercial or charitable solicitations, advertising, or sold or reproduced for sale.<sup>119</sup>

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<sup>114</sup> W. Va. Code §3-2-30(b)

<sup>115</sup> W. Va. Code §3-2-30(c)

<sup>116</sup> W. Va. Code §3-2-30(d)

<sup>117</sup> W. Va. Code §59-1-2b

<sup>118</sup> W. Va. Code §3-2-30(e)

<sup>119</sup> W. Va. Code §3-2-30(f)

# 3 CHAPTER THREE: Poll Workers

## Poll Workers

### *Eligibility*

To be eligible to be appointed or serve as a poll worker, also known as an “election official,” in any state, county, or municipal election in West Virginia, a person must:

- Be a registered voter of the county for elections held in the county, and a registered voter of the municipality for elections in the municipality;
  - If the required number of election officials are either unavailable or unwilling to serve, a registered voter of the county from outside the municipality may serve.
- Be able to read and write the English language;
- Not be a candidate on the ballot or an official write-in candidate (except for executive committee candidates);
- Not be the parent, child, sibling, or spouse of a candidate on the ballot or an official write-in candidate in the precinct where the official serves;
- Not be a person prohibited from serving as an election official due to statute; and
- Not have been previously convicted of a violation of any election law.<sup>120</sup>

Additionally, the county commission may suspend a person’s eligibility to serve as an election official for four (4) years on a majority vote of the commission, for any of the following reasons:

- Failure to appear at the polling place at the designated time without notice or cause;
- Failure to perform the duties of an election official as required by law;
- Improper interference with or violating the secrecy of a voter casting a ballot;
- Being under the influence of alcohol or drugs while serving as an election official; or
- Having anything wagered or bet on an election.<sup>121</sup>

If the county commission receives a petition of at least twenty-five (25) registered voters of the precinct where the individual last served at least ninety (90) days prior to an election, the commission may suspend a person’s eligibility to serve as an election official for two (2) years with a majority vote. The petition must be signed and evidence of one of the reasons listed above must be presented.

### *Election Official Nomination*

Election officials are nominated by the county executive committee for each of the two (2) major political parties in the county by majority vote at a duly called meeting. The county commission will release to both major political party county executive committees a list of the designated number and type of election boards required, at least eighty-four (84) days before

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<sup>120</sup> W. Va. Code §3-1-28(a)

<sup>121</sup> W. Va. Code §3-1-28(b)

each primary and general election.<sup>122</sup>

Each committee will nominate one (1) person for each team of poll clerks and one (1) for each team of election commissioners. The appointing body will select one (1) qualified person as the additional election commissioner.<sup>123</sup> The appointing body is either the county commission (for elections ordered by the commission or for joint municipal and county elections), the municipal governing body (for elections ordered by that body not concurrent with county elections), or the Board of Education (for special elections ordered by the board unlike other elections).<sup>124</sup>

The county executive committees will also nominate qualified alternates for *at least* ten percent (10%) of the poll clerks and election commissioners to be appointed and may authorize as many persons as there are precincts in the county to serve if others appointed fail to accept appointment or fail to appear for the required training or the execution of their duties.<sup>125</sup>

The executive committee must file in writing a list of all nominated persons and the positions they are nominated for, including alternates, to the appointing body no later than the seventieth (70<sup>th</sup>) day before the election.<sup>126</sup>

In municipal elections, municipal executive committees perform the duties of the county executive committees for the two (2) major political parties. If the municipality does not have an executive committee, the governing body of the municipality will provide a method for nominating eligible persons by ordinance, which gives due consideration to the recommendations by voters and candidates on the ballot.<sup>127</sup>

Candidates nominated can be confirmed prior to appointment by the county clerk or the municipal recorder, whichever is appropriate.

If unable to nominate a sufficient number of qualified persons, who agree to serve, members of one precinct's standard receiving board may be assigned to simultaneously serve on the standard receiving board of another precinct. There may be no more than three precincts within the same building that share these board members.<sup>128</sup>

### ***Appointment and Attendance***

The appointing body must appoint election officials for each board no later than the forty-ninth (49<sup>th</sup>) day before the election. If the persons nominated by the executive committees were timely filed and the nominees were eligible, then they will be appointed. If no or too few

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<sup>122</sup> W. Va. Code §3-1-29(b)

<sup>123</sup> W. Va. Code §3-1-30(a)

<sup>124</sup> W. Va. Code §3-1-30(c)

<sup>125</sup> W. Va. Code §3-1-30(a)(3)

<sup>126</sup> W. Va. Code §3-1-30(a)(4)

<sup>127</sup> W. Va. Code §3-1-30(b)

<sup>128</sup> W. Va. Code §3-1-30(j)

nominations were filed, the appointing body will fill the positions.<sup>129</sup>

At the same or a later meeting, the appointing body also appoints persons as alternates. No alternate will be compensated for election training *unless* he or she is instructed to attend the training, actually attends, and is available to serve as needed on Election Day.<sup>130</sup>

Alternates nominated by the executive committees will be appointed. The appointing body may also appoint additional alternates, after the nominated alternates have been assigned. The appointing body also determines how many persons may be instructed to attend training as alternates.<sup>131</sup> If any vacancies remain, the county clerk will appoint qualified people to fill them.

Within seven (7) days of appointment, the county clerk will notify, by first-class mail, all election commissioners, poll clerks, and alternates of their appointment. The notice includes a response form for the appointed person to return indicating whether or not he or she agrees to serve. If the appointee fails to return the response or otherwise confirm to the county clerk within fourteen (14) days, the position will be filled.<sup>132</sup>

If an appointed official fails to appear at the polling place by forty-five minutes past five o'clock a.m. (5:45 a.m.) on Election Day, the officials present will contact the office of the county clerk (or municipal recorder or clerk) to fill the vacancy. The clerk may:

- Try to contact the person originally appointed;
- Assign an alternate nominated by the same political party as the absent person; or
- Appoint another eligible person if there is no alternate available.

If the election officials are unable to contact the county clerk within a reasonable time, they will diligently attempt to fill the position with an eligible person of the same political party as the absent official.<sup>133</sup>

If the two teams of election officials are properly present, the person filling a vacancy in the additional commissioner's position may be of any party.

### ***Standard Receiving Board***

Election officials in a particular precinct are referred to as the "standard receiving board," which conducts the process of voting in the polls and consists of "no less than five (5) persons, to be comprised as follows"<sup>134</sup> (NOTE: municipal receiving boards are a minimum of four (4) persons):

- At least one team of poll clerks;
- At least one team of election commissioners for the ballot box; and

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<sup>129</sup> W. Va. Code §3-1-30(e)

<sup>130</sup> W. Va. Code §3-1-30(f)

<sup>131</sup> W. Va. Code §3-1-30(f)

<sup>132</sup> W. Va. Code §3-1-30(h-i)

<sup>133</sup> W. Va. Code §3-1-30(k)(2)

<sup>134</sup> W. Va. Code §3-1-29(a)

- One additional commissioner (*additional commissioner is not required in municipalities*).

Receiving board members must take and sign the oath required by W. Va. Code §3-1-30a.<sup>135</sup>

Any precinct may add additional teams at the discretion of the county clerk or the county commission. The county commission designates the number and type of election boards for the precincts and shall notify the county executive committees of the two (2) major political parties, in writing, at least eighty-four (84) days before the primary and general elections as to the number of nominations for poll clerk and election commissioner that can be made.<sup>136</sup>

Poll clerk and election commissioner teams are comprised of two (2) persons of opposite/different political parties (not registered with the same party, or one registered with no party affiliation).

Precincts can also accept “election official trainees,” which are individuals of sixteen (16) or seventeen (17) years of age who meet the eligibility requirements to become a poll worker.

For municipal elections held when there are no county elections, the governing body of the municipality performs the duties of the county commission (designating number and type of election boards and suspending eligibility). The receiving board can be made up of *at least* four (4) members, including one team of poll clerks and one team of election commissioners.<sup>137</sup>

### **Compensation**

The compensation for ballot commissioners, commissioners of election, poll clerks, and alternate commissioners is fixed by the county commission.<sup>138</sup> All persons classified by W. Va. Code § 3-1-44 to be in the class of election officials shall be paid the same amount within the county.<sup>139</sup>

Ballot commissioners are paid a sum for each day he or she serves as ballot commissioner. However, for any one election, they may not be given allowance for more than 10 days’ service.<sup>140</sup>

Election commissioners and poll clerks are paid for one day’s service of election officials’ school of instruction attendance if they provide at least one day’s service during an election.<sup>141</sup>

Alternative election commissioners and poll clerks may be paid for one days’ service for attendance to the election officials’ school of instruction. However, they are not to be eligible to be paid for election training unless:

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<sup>135</sup> W. Va. Code §3-1-30a

<sup>136</sup> W. Va. Code §3-1-29(b)

<sup>137</sup> W. Va. Code §3-1-29(c)

<sup>138</sup> W. Va. Code §3-1-44

<sup>139</sup> W. Va. Code §3-1-44(f)

<sup>140</sup> W. Va. Code §3-1-44(a)

<sup>141</sup> W. Va. Code §3-1-44(b)

- The alternate is subsequently appointed; or,
- Is instructed to attend and actually attends training and is available to serve on Election Day.<sup>142</sup>

Election commissioners or poll clerks obtaining and delivering election supplies are to be paid an additional sum and are to be paid mileage at reimbursement rate.<sup>143</sup>

Recommendation for poll worker compensation:

The typical amount paid is \$175 for Election Day and \$125 for training; consult the county clerk for current pay rates for election officials.<sup>144</sup>

### ***Elections with Double Boards***

The county commission has the option of appointing a “counting board” in addition to the standard receiving board for an election. The counting board has the same make up as the receiving board with the same eligibility requirements, but takes a different oath and has different duties during the election.<sup>145</sup>

In elections where both a receiving and a counting board have been appointed (*i.e.* a double board), the receiving board attends the opening of the polls and receives votes as they are cast. The counting board is not required to attend the polls until three (3) hours after the opening, when they will take over the ballot box containing the morning’s votes and begin counting and tabulating the cast ballots in a partitioned room.

Once the counting board finishes counting the ballots in the first box, they seal those votes in an envelope not to be opened until the two boards join at the close of polls. They then exchange the empty ballot box for the other and continue counting, repeating the process until the close of polls.<sup>146</sup>

### **Voter Challenge by Precinct Election Official**

The receiving board will challenge the right of any person requesting a ballot if:

- The person’s registration record is not available at the time of the election;
- The signature of the person in the poll book does not match the signature on the record;
- The registration record of the person indicates any other legal disqualification;
- The person fails to present a valid identifying document; or
- Any other valid challenge exists against the voter for absentee ballot.

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<sup>142</sup> W. Va. Code §3-1-44(c)

<sup>143</sup> W. Va. Code §3-1-44(d)

<sup>144</sup> See Municipal Elections Guide at

<https://sos.wv.gov/FormSearch/Elections/Informational/MunicipalElectionsGuide.pdf>; W. Va. Code §3-1-44

<sup>145</sup> W. Va. Code §3-1-30a

<sup>146</sup> W. Va. Code §3-1-33



If a person is challenged, he or she must still be allowed to vote and will be given an official ballot. However, instead of endorsing the ballot as normal, the poll clerks shall complete and sign a form saying they challenge the voter for certain reasons and listing the names of the challengers. This form will be attached to the voter's ballot and deposited into an envelope marked "challenged (or provisional) ballots."<sup>147</sup>

Before a person is given the provisional ballot, the poll clerk must give him or her written instructions concerning the free access system for seeing if his or her vote is counted and a statement that the vote may not be counted if the voter is voting in the wrong precinct. If it is discovered that the voter is voting in the wrong precinct, the poll clerk will attempt to help them find the appropriate precinct.

Provisional votes are not counted by the election officials, but by the county commission during canvassing, which will determine whether the challenges are unfounded. All challenges that are considered unfounded should be counted at canvass and added to the other ballots cast in the election.<sup>148</sup>

An individual who votes a provisional ballot, or whose vote is otherwise challenged, may track her or his vote by visiting the free access system on the West Virginia Secretary of State's website or by contacting the county commission in which they voted.<sup>149</sup>

**Poll Workers Voting on Election Day.** A person who is a duly appointed election commissioner or clerk who serves in a precinct other than the precinct where he or she is entitled to vote may cast a provisional ballot in the precinct in which they are serving. Only the votes for the offices that the voter was legally authorized to vote for may be counted, and the county commission will record the provisional ballot on the voter's permanent registration record.<sup>150</sup>

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<sup>147</sup> W.Va. Code §3-1-41(a-b)

<sup>148</sup> W. Va. Code §3-1-41(e)

<sup>149</sup> W. Va. Code §3-1-41(g)

<sup>150</sup> W. Va. Code §3-1-41(f)

# 4 CHAPTER FOUR: Candidates and Finances

## Primaries and Nomination

### *Age and Residency Requirements*

The West Virginia Constitution provides that “No person, except citizens entitled to vote, shall be elected or appointed to any state, county, or municipal office.”<sup>151</sup> Potential candidates must therefore meet the following voter registration requirements:

- Age eighteen (18) years or older;
- Residence in the state, district, or municipality that elects the offices they are running for;
- Not declared mentally incompetent by a court of competent jurisdiction;
- Not under conviction of treason, felony, or bribery in an election.<sup>152</sup>

Additionally, candidates for Governor and Judges must have attained the age of thirty (30), and candidates for Attorney General and Senators must have attained the age of twenty-five (25) at the beginning of their respective terms of service. These candidates must also have been citizens of the state for five (5) years preceding their election or appointment.<sup>153</sup>

### *Certificate of Announcement*

Any eligible person seeking to hold an office or party position filled by election must file a certificate of announcement to declare his or her candidacy. Such certificate will be filed:

- With the Secretary of State, if he or she is to be a candidate for:
  - House of Delegates;
  - State Senate;
  - Circuit Judge;
  - Family Court Judge; or
  - Any office or political position to be filled by voters of more than one (1) county.
- With the County Clerk, if he or she is to be a candidate for:
  - An office or political position to be filled by voters by voters of a single county or subdivision, not including offices listed for the Secretary of State above.
- With the Municipal Recorder or City Clerk, if he or she is to be a candidate for an office filled by voters of that municipality.<sup>154</sup>

The certificate of announcement must be filed between the second (2<sup>nd</sup>) Monday in January and the last Saturday in January before the primary election. Certificates will only be valid if

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<sup>151</sup> W. Va. Const. Art. 4 §4

<sup>152</sup> W. Va. Const. Art. 4 §1 and see “Voter Registration” on page 4.

<sup>153</sup> W. Va. Const. Art. 4 §4

<sup>154</sup> W. Va. Code §3-5-7(b)

they are received by midnight (12:00 a.m.) that day, or postmarked by the USPS before then.<sup>155</sup>

For candidates of “minor” parties or otherwise unaffiliated candidates, the certificate of nomination must be filed with a certificate of announcement and filing fee by August 1<sup>st</sup>, or ninety (90) days before the relevant election.<sup>156</sup>

The certificate of announcement is a form created by the Secretary of State, on which candidates sign a sworn, notarized statement which contains:

- The date of the election in which the candidate seeks to appear;
- The name of the election in which the candidate seeks to appear;
- The name of the office sought, along with the district and division, if any;
- The legal name of the candidate and the exact name the candidate wants on the ballot;<sup>157</sup>
- The county of residence and a statement that the candidate is a legally qualified voter of that county;
  - Candidates elected from magisterial districts must include their magisterial district of residence.
- The specific address where the candidate resides at the time of filing, including the number, street, box number, city, state, and zip code.

**For partisan elections:**

- The candidate must also include his or her political party and a statement that the candidate:
  - Is a member of and affiliated with that political party according to his or her current voter registration; and
  - Has not registered as a voter affiliated with any other political party for sixty (60) days before the date of filing the announcement.<sup>158</sup>

**For delegate to national convention candidates, the certificate of announcement includes:**

- The name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot, or “uncommitted;”
- A statement that the person filing the certificate is a candidate for the office in good faith; and
- The words, “subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_. 20 \_\_\_\_” and a space for the signature of the officer giving the oath.<sup>159</sup>

A person may not announce to be a candidate for more than one (1) office, or office division,

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<sup>155</sup> W. Va. Code §3-5-7(c)

<sup>156</sup> Opinion of the Attorney General Regarding the Applicable Filing Deadline for Minor Party and Unaffiliated Candidates to Appear on the General Election Ballot. W.Va. Att’y Gen. (July 7, 2017)

<sup>157</sup> W. Va. Code §3-5-13(4); see also 153CSR14

<sup>158</sup> W. Va. Code §3-5-7(d)(6)

<sup>159</sup> W. Va. Code §3-5-7(d)

unless that person is also seeking to be a candidate for:

- President or Vice President of the United States;
- Membership on political party executive committees; or
- Delegate to a national convention.<sup>160</sup>

If a candidate files a certificate of announcement for multiple offices and does not withdraw from all but one (1) office before the close of the filing period, that candidate shall not be certified and will not be placed on the ballot.<sup>161</sup>

The Secretary of State or board of ballot commissioners, as the case may be, may refuse to certify candidacy or remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record which shows that the candidate was registered with a party other than the one named on the certificate during the sixty (60) days before filing.

However, if there is no signed formal complaint of violation, and the certified copy of the candidate's voter registration record is filed with the officer which receives the candidate's certificate of announcement within ten (10) days following the close of the filing period, the candidate may not be refused certification for this reason.<sup>162</sup> **Any person knowingly providing false information on the certificate of announcement is guilty of false swearing.**

If a delegate to the national convention wishes to change their presidential preference after filing, he or she must notify the Secretary of State by letter, which must be received no later than the third (3<sup>rd</sup>) Tuesday after the close of candidate filing.

If the rules of a political party require all presidential candidates to approve or reject delegate candidates appearing for them, the presidential candidate, or the presidential committee, may file a list of approved and rejected candidates with the Secretary of State. If a delegate has been rejected in this way, the delegate will be listed as "uncommitted" on the ballot.<sup>163</sup>

### ***Nomination for Non-affiliated Candidates***

Candidates having no recognized major party affiliation can secure nomination by filing a nomination certificate. Candidates seeking nomination in this way must obtain permission from each county in which they are running, and gather signatures from registered voters in the state, district, county, or other political division of the office they are seeking nomination to.

The certificates are prescribed the Secretary of State and must be personally signed by registered voters, in their own proper handwriting or by marks duly witnessed, who are residents of the county, district, or other political division represented by the office sought.

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<sup>160</sup> W. Va. Code §3-5-7(h)

<sup>161</sup> W. Va. Code §3-5-7(i)

<sup>162</sup> W. Va. Code §3-5-7(e)

<sup>163</sup> W. Va. Code §3-5-7(g)

The number of signatures required to be taken must be at least one percent (1%) of the entire vote cast in the preceding general election for any statewide congressional or presidential candidate and will not be less than twenty-five (25). If two (2) or more nominations can be made for the same office, one percent (1%) of the total votes for the candidate or candidates receiving the highest number of votes in the last election will be the target.<sup>164</sup>

If the office sought is filled by the voters of multiple counties, the candidate must use separate signature forms for each county.

The certificates will state:

- The name and residence of each of the candidates;
- That they are legally qualified to hold the office;
- That the subscribers are legally qualified and duly registered as voters; and
- That the subscribers desire the candidate.

A brief name of the party which the candidate represents, along with a device or emblem, may be placed on the certificate to be later printed on the ballot.<sup>165</sup>

All candidates who are nominated by signed certificates will be placed on the ballot as if otherwise nominated.

The Secretary of State or the county clerk, as the case dictates, may investigate the validity of the certificates and signatures. If the certificate's validity is in doubt, the Secretary of State may ask the Attorney General, or the county clerk may ask the county prosecuting attorney, to begin a proceeding against the nominee to determine his or her right to nomination.<sup>166</sup>

All nominating certificates must be filed no later than August 1<sup>st</sup> before the general election.

In the case of all other elections, the certificates must be filed ninety (90) days before the date of the election, unless otherwise provided by a charter or ordinance.<sup>167</sup>

Candidates filing nomination certificates must file them with the same office that they submit their certificates of announcement to:

- For offices to be voted on by the entire state or multiple counties, certificates are filed with the Secretary of State.
- For candidates for county and magisterial offices or offices filled by voters of a single county, certificates are filed with the county clerk of that county.
- For candidates for municipal offices, certificates are filed with the municipal recorder.<sup>168</sup>

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<sup>164</sup> W. Va. Code §3-5-23(c)

<sup>165</sup> W. Va. Code §3-5-23(d)

<sup>166</sup> W. Va. Code §3-5-23(e)

<sup>167</sup> W. Va. Code §3-5-24(a)

<sup>168</sup> W. Va. Code §3-5-24(b)

### **Write-In Candidate Filing**

In order to be placed on the ballot as a write-in candidate, a person must file a specific write-in certificate of announcement. **Candidates cannot file for write-in candidacy for delegates to the national convention or for political party nominations for any office.**<sup>169</sup>

The write-in candidate's certificate of announcement is a separate form prescribed by the Secretary of State on which the candidate must give a sworn oath in front of a notary public or other authorized officer, which contains the following information:

- The name of the office sought, the district, and division, if any;
- The legal name of the candidate, and the first and last name they can be identified by;
- The specific address of the location where the candidate resides at the time of filing, including street number or rural route, box number, city, state, and zip code;
- A statement that the person filing the certificate is a candidate in good faith; and
- The words "subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_" and a space for the signature of the officer giving the oath.

The write-in certificate of announcement will be filed with the same office as a normal certificate of announcement.<sup>170</sup>

Write-In certificates of announcement, generally, must be received no later than the forty-ninth (49<sup>th</sup>) day before the election the candidate is participating in. However, when there is a vacancy in the nomination of candidates resulting from death, disqualification, or removal of the nominee between the forty-eighth (48<sup>th</sup>) and the fifth (5<sup>th</sup>) day before the general election, the deadline will instead be the fifth (5<sup>th</sup>) day before the election, or the day following the occurrence of the vacancy, whichever is later.<sup>171</sup>

Any eligible person who timely files a completed write-in candidate's certificate of announcement with the appropriate office will be certified. The Secretary of State will, immediately after the filing deadline, post the names of all official write-in candidates in multiple counties, and certify the name to the county clerks. The county clerk will in turn post the names of all official write-in candidates filed for office in their respective county and certify and deliver the names of the official write-in candidates to election officials in the appropriate precincts.

The names of all official write-in candidates will be posted at the office where absentee and early voting is conducted and at the precincts.<sup>172</sup>

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<sup>169</sup> W. Va. Code §3-6-4a

<sup>170</sup> W. Va. Code §3-5-7 and see "Certificate of Announcement" on page 34.

<sup>171</sup> W. Va. Code §3-6-4a(c)

<sup>172</sup> W. Va. Code §3-6-4a(d)

### Filing Fees

When a candidate files a certificate of announcement (or certificate of nomination, if applicable), he or she must also pay a filing fee. The fee amount varies depending on the office they intend to run for:

- Candidates for the following offices will pay one percent (1%) of the total annual salary of that office:
  - President of the United States (up to \$2,500);
  - U.S. Senate;
  - U.S. House of Representatives;
  - Governor;
  - State Elective Offices;
  - Circuit Court Judge;
  - Family Court Judge;
  - State Senate;
  - Sheriff;
  - Prosecuting attorney;
  - Circuit Clerk;
  - County Clerk;
  - Assessor;
  - Member of the County Commission; and
  - Magistrate.
- Candidates for House of Delegates will pay one-half percent (0.5%) of the total annual salary for that office;
- Candidates for a county board of education will pay \$25;
- Candidates for any other county office will pay \$10;
- Delegates for the national convention for any political party will pay:
  - \$20 for Delegate-at-Large; and
  - \$10 for District Delegate.
- Candidates for political executive committees and other political committees will pay:
  - \$20 for a political party's state executive committee;
  - \$10 for a political party's county executive committee; and
  - \$5 for a political party's congressional, senatorial, or delegate district committee.<sup>173</sup>

These filing fees must be paid to the election official that the certificate of announcement was filed with and must be paid when the certificate is submitted.<sup>174</sup>

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<sup>173</sup> W. Va. Code §3-5-8(a)

<sup>174</sup> W. Va. Code §3-5-8; W.Va. Code §3-6-44a; *Phillips v. Hechler*, 120 F.Supp.2d 587 (2000) (holding that filing fees for write-in candidates are unconstitutional).

### ***In-Lieu-of-Filing-Fee Petitions***

If a candidate seeking nomination is unable to pay the filing fee, he or she may qualify without payment through a petition process instead.

No earlier than the second (2<sup>nd</sup>) Monday in January before the primary election, the candidate must file an oath that states his or her inability to pay the filing fee in the same office where the candidate would file a certificate of announcement.

When the receiving officer receives the oath, the officer will give the candidate an “in-lieu-of-filing-fee” petition form and instructions on gathering signatures. The candidate will need the signatures of four (4) qualified voters for every dollar (\$1) of the filing fee. The candidate can submit more signatures than necessary, but signatures above the required amount will not be counted.

Only registered voters of the county, district, or other political division represented by the office may be solicited for signatures in this way. Candidates soliciting for signatures must also be residents of the county, district, or political division represented by the office, but they do not need to be registered voters.

If the candidate is soliciting signatures from multiple counties, he or she must use separate petition forms for signatures of voters from each county.

Signatures obtained for “in-lieu-of-filing-fee” petitions are not counted toward the number of voters required to sign nomination certificates.<sup>175</sup>

Candidates must file their petitions with the number of signatures needed no later than the last day for payment of filing fees and declaration of candidacies.

### ***Certification of Candidates***

The Secretary of State must arrange and certify the names of all candidates who have correctly filed their announcements and are entitled to have their names placed on the ballot by the eighty-fourth (84<sup>th</sup>) day before the primary election. Each certificate of candidates will show:

- The name and residence of each candidate;
- The office for which each is a candidate;
- The name of their political parties;
- Which ballot their names are printed on; and
- If candidates are delegates for the national convention, the names those candidates prefer for president, or “uncommitted.”

Duplicates of these certificates will be posted in a conspicuous place in the Secretary of State’s office until after the primary election.

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<sup>175</sup> W. Va. Code §3-5-8a



Once the Secretary completes a certification, he or she will take note of the names to appear on the ballot in each county of the state and certify such information to the county clerks of those counties. The information should be transmitted by registered or certified mail. In emergency cases, it may be transmitted by other reliable and quick means of transportation.

Certificates must reach the clerks by the seventeenth (17<sup>th</sup>) day preceding the election.<sup>176</sup>

### ***Election of Delegates to the National Convention***

Delegates to the national convention of a political party will be elected at each primary election before a presidential election according to a plan adopted by the state party.<sup>177</sup> While this plan is subject to some provisions in the W. Va. Code, it can be - and has largely been - overwritten by each political party. Please contact your respective political party for more details.

According to the Code, each political party of the state will create a method in compliance with the rules of their national party for the election of delegates in each congressional district of the state and for the selection of delegates and alternate delegates if any spots are available after the election.

The party method must be certified by the state party chairman and filed with the Secretary of State no later than one hundred twenty (120) days before the primary election.<sup>178</sup>

The party plan must provide for the following, as far as their national party guidelines will allow:

- The voters of the political party will elect the number of persons as delegates to the national convention to which the district is entitled;
- If the rules of the state party do not require apportionment of delegates based on their commitment for president:
  - The persons receiving highest number of votes as delegates, to the number to which the district is allowed, shall be elected as delegates;
  - The persons receiving the next highest votes will be elected as alternate delegates to the allowed number.
- If the rules of the national party require that the percentage of votes cast for various presidential candidates determines the apportionment of committed candidates to be elected as delegates/alternates, regardless of committed candidates receiving the highest number of votes, the plan will provide:
  - The number of delegates and alternates to be elected under such apportionment;
  - The method by which the apportionment shall be made; and
  - The method by which the Secretary of State will determine which delegates and alternates are elected.
- If less delegates and alternates are elected in the primary than the district is entitled, the

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<sup>176</sup> W. Va. Code §3-5-9

<sup>177</sup> W. Va. Code §3-5-2(a)

<sup>178</sup> W. Va. Code §3-5-2(b)

governing body of the state party will appoint persons from the district to serve as delegates or alternates;

- The number of delegates and alternates apportioned to each congressional district is based upon the population of that district according to the most recent national census.<sup>179</sup>
- The official primary ballot shall have written, following the names of all candidates, “For election in accordance with the plan adopted by the state party and filed with the Secretary of State.”<sup>180</sup>

**The above rules have largely been overwritten by the administrative rules of the state parties.** Please consult the respective parties for exact, up-to-date details on the selection of delegates to the national convention.<sup>181</sup>

### *Election of County Boards of Education*

Elections for county boards of education will be held on the same date as primary elections on non-partisan ballots printed especially for the purpose.

No more than two (2) members may be elected, or serve simultaneously, from the same magisterial district. Eligibility to be elected for full four (4) year terms or unexpired two (2) year terms will be based on this limitation determined at certification.

Eligibility will be based on:

- The magisterial district residence of incumbent members whose terms will continue beyond July 1<sup>st</sup> following the election; and
  - No person can be elected who resides in a district with two (2) incumbent members.
  - No more than one (1) candidate is eligible to be elected who resides in a district with one (1) incumbent.
  - The person with the highest number of votes may be elected to an unexpired term, even if his or her district already has two (2) representatives on the board, as long as at least one (1) of those representatives will be leaving on July 1<sup>st</sup> following the primary.
- The person elected to an unexpired term will assume the duties of a member of the county board of education.<sup>182</sup>

During canvass, the board of canvassers will declare and certify the election of the required number of candidates receiving the highest votes to fill any full terms, and the next highest will

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<sup>179</sup> W. Va. Code §3-5-2(c)

<sup>180</sup> W. Va. Code §3-5-2(d)

<sup>181</sup> West Virginian Republican Party – <https://wvgop.org/>; West Virginian Democratic Party – <http://www.wvdems.org/>; and see W. Va. Code §3-5-2(e) for the election of delegates-at-large.

<sup>182</sup> W. Va. Code §3-5-6(b)

fill any unexpired terms after the full terms are filled.<sup>183</sup>

People elected to the county board of education who did not receive a majority or the plurality of the vote will still take office as duly elected members.<sup>184</sup>

### ***Election of Judicial Offices at Primary***

The offices of Justice of the Supreme Court of Appeals, Intermediate Court of Appeals judges, circuit judges, family court judges, and magistrates will all be elected at primary elections on non-partisan ballots printed for the purpose according to the following stipulations:

- If multiple justices are being elected, the election will be divided by numbered division corresponding to the number of justices being elected;
- Votes for each justice of each division will be tallied and certified separately by the board of canvassers;
- If no candidate in a division for judge of a circuit court receives more than 30 percent of the vote, there will be a runoff election at the time of the general election between the two candidates who received the highest and next-highest number of votes<sup>185</sup>; and
- Each Justice of the Supreme Court of Appeals will be elected at large from the entire state.<sup>186</sup>

### ***Vacancy in Nomination***<sup>187</sup>

If there are any vacancies in the political party nomination or appointment for offices, they may be filled subject to the following restrictions:

- Appointments due to vacancies are to be made by the executive committee of the political party in which the vacancy occurs<sup>188</sup>;
  - If the committee holds a duly called meeting but fails to make an appointment or certify the appointment within the time required, the chairperson of the executive committee may make the appointment not later than two (2) days after the committee's deadline.
- Each appointment made is complete only if the proper filing officer, who would normally receive the certificate of announcement,<sup>189</sup> receives the certificate of appointment from the committee or its chairperson, along with the filing fee, if applicable;
- If vacancy is caused by failure of a candidate to file, or by withdrawal not later than the third (3<sup>rd</sup>) Tuesday following the close of candidate filing, nominees may be appointed by the executive committee and certified no later than thirty (30) days after the last day to

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<sup>183</sup> W. Va. Code §3-5-6(c)

<sup>184</sup> W. Va. Code §3-5-6(d)

<sup>185</sup> W. Va. Code § 3-1-17(d)

<sup>186</sup> W. Va. Code §3-5-6a-e

<sup>187</sup> W. Va. Code §3-5-19

<sup>188</sup> W. Va. Code §3-5-19(a)(1)

<sup>189</sup> See "Certificate of Announcement" on page 34.

- file a certificate of announcement<sup>190</sup>;
- If vacancy is caused by the disqualification of a candidate and occurs not later than eighty-four (84) days before the general election, a nominee can be appointed by the executive committee and certified not later than seventy-eight (78) days before the general election;
    - Candidates may be disqualified if a written request is made:
      - By an individual;
      - With information to show a candidate's ineligibility to be placed on the ballot or to hold office;
      - To the State Election Commission;
      - No later than eighty-four (84) days before the general election.
    - The State Election Commission will review the reasons for the request. If it finds the circumstances warrant disqualification, they will authorize appointment by the executive committee.
  - If vacancy is caused by the incapacity of a candidate occurring not later than eighty-four (84) days before the election, the executive committee may appoint a nominee no later than seventy-eight (78) days before the general election;
  - If a vacancy is caused by a statement of withdrawal, the executive committee may appoint a replacement no later than seventy-eight (78) days before the general election;
  - If vacancy is caused by the death of the candidate no later than (25) twenty-five days before the general election, the executive committee may appoint a nominee no later than twenty-one (21) days following the date of death, *or* twenty-two (22) days before the election, whichever is first.
  - If any vacancy occurs in a partisan office or position (other than the party executive committee), it will be appointed by the executive committee and certified no later than seventy-eight (78) days before the general election if that vacancy:
    - Creates an unexpired term for a position that would not otherwise appear on the ballot in the general election; *and*
    - Occurs after the close of candidate filing for the primary and before the eighty-four (84) days prior to the general election.<sup>191</sup>

If a vacancy occurs in the Board of Education after close of candidate filing, but before eighty-four (84) days before the general election, a special candidate filing period will be established. If any candidate seeks election to the unexpired term, he or she must file a certificate of announcement and pay the filing fees to the county clerk no earlier than the first (1<sup>st</sup>) Monday in August and no later than seventy-seven (77) days before the general election.<sup>192</sup>

## Contest of Election by Candidates

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<sup>190</sup> W. Va. Code §3-5-19(a)(3)

<sup>191</sup> W. Va. Code 3-5-19(b)

<sup>192</sup> W. Va. Code §3-5-19(c)

Candidates who are up for nomination or election to be filled by voters of the state or are candidates for membership of a political party executive committee may contest the primary election before the county court by the same procedure as contesting general elections of county or magistrate offices.<sup>193</sup>

The actions of the following boards, committees, and persons may also be challenged by a candidate, political committeeman, or delegate voted for at the same primary:

- Political party executive committees, in the discharge of any of the duties imposed upon such committee by the article;
- Any board of election officials, in conducting the result of the primary election; or
- Any board of canvassers in canvassing and certifying the result of a primary election.

These challenges must be filed with the circuit court. Decisions of the circuit court may be reviewed by the ~~OBJ~~. If a contest or the petition of review is not completed by ten (10) days before the next election (or ten (10) days before the convention, if the contesting candidate is running for a delegate position to that convention), the case will be dismissed and the person “shown by the face of the returns of the primary election” will have his or her name printed to the ballot (or, in the case of a convention delegate, will be entitled to sit at the convention)<sup>194195</sup>

## Deaths of Candidates and Vacancies

If a candidate who has filed a certificate of announcement dies before the ballots are printed, the candidate’s family may request to have his or her name removed from the ballot.

If a candidate dies after the ballots are printed, but before the election, the county clerk shall post a written notice with each sample ballot at each precinct and early voting location containing the name, residence, and office the candidate had announced for, along with a statement that he or she is now deceased.<sup>196</sup>

If there is a vacancy on the ballot due to the failure of any person of a party to file for the available seats of each office on the ballot, the executive committee of the party will fill the vacancy and certify the candidate named to the appropriate filing officer.

Certification of the appointment, the candidate’s certificate of announcement, and the filing fee must be received by one of the following deadlines:

- For appointments by an executive committee, the certificates and filing fees must be received no later than the second Friday following the close of filing;

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<sup>193</sup> W. Va. Code §3-5-20, W. Va. Code §3-7-1 generally; and see Contest on page 93.

<sup>195</sup> W. Va. Code §3-5-20

<sup>196</sup> W. Va. Code §3-5-11(c)

- For an appointment by the committee chair, if the executive committee fails to act, they must be received no later than the third (3<sup>rd</sup>) Tuesday following the close of filing.<sup>197</sup>

If all appointments are properly and timely filed, the appointed candidates will have their names added to the primary ballot for their party.

## Withdrawal

If a candidate wishes to withdraw from the election after filing a certificate of announcement, he or she must file a signed and notarized statement of withdrawal with the same office with which he or she filed a certificate of announcement before:

- In primary, special primary, or non-partisan elections held in conjunction with a primary, the statement must be received before the close of business not later than the third (3<sup>rd</sup>) Tuesday after the candidate filing period closes;
- In general, special general, or non-partisan elections held in conjunction with a general, the statement must be received before the close of business eighty-four (84) days before the election.<sup>198</sup>

If the appropriate officer receives a properly filed and notarized statement of withdrawal before the deadlines listed above, the candidate's name will not be certified and will not appear on the ballot.<sup>199</sup>

## Vacancy of the Governor's Office

If the Governor dies, is impeached, fails to qualify, resigns, or is otherwise unable to continue as Governor, the President of the Senate will act as the Governor until the vacancy is filled or the Governor's disability is removed. If the President of the Senate is also incapable of performing the duties of Governor, the Speaker of the House of Delegates will act as Governor. If none of these positions can fill the vacancy of the Governor's Office, the Legislature shall choose someone else by a joint vote of the Legislature.<sup>200</sup>

If the vacancy occurs in the Office of Governor before the first three (3) years of the term have expired, a new election for Governor will be held to fill the vacancy. The election will consist of a special primary and a special general election, which will be held in time to permit the person elected to assume the office within one (1) year of the date of vacancy.

The acting Governor must, within thirty (30) days from when the vacancy occurs, issue a proclamation to fix the time for the statewide election to fill the vacancy. The special primary will take place no less than ninety (90) days after the proclamation and no later than one hundred forty (140) days from the date of the vacancy. The special general will be held no sooner than ninety (90) days after the special primary and no later than two hundred eighty (280) days from the vacancy.<sup>201</sup>

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<sup>197</sup> W. Va. Code §3-5-11(d)

<sup>198</sup> W. Va. Code §3-5-11(b)

<sup>199</sup> W. Va. Code §3-5-11

<sup>200</sup> W. Va. Code §3-10-2(a)

<sup>201</sup> W. Va. Code §3-10-2(b)

# 5 CHAPTER FIVE: Absentee and Early Voting

## The Absentee Voter

An absentee voter is a voter who is eligible to vote and cannot make it to the polls on Election Day. In West Virginia, absentee voters have the option to vote in the designated period for early in-person voting or, under certain circumstances, may vote an absentee ballot by mail or electronically.

In West Virginia, there are four (4) ways to vote an absentee by mail ballot:

- General absentee voting;
- Special absentee voting;
- Uniformed Overseas Citizens Absentee Voting Act (UOCAVA) voting; or
- Emergency absentee voting.

A voter can vote an electronic absentee ballot, if:

- The voter has a physical disability;
- The voter is absent from the county throughout the period and available hours for voting in person and is an absent uniformed services voter or overseas voter defined by UOCAVA.<sup>202</sup>

Disability is defined as a physical or mental impairment that substantially limits one or more major life activities.

A physical disability is defined as a physical impairment that substantially limits major life activities and renders a person unable to vote in person, at the polls, without assistance.<sup>203</sup>

### Eligibility

All registered and otherwise qualified voters may vote an absentee ballot during the period of early voting *in-person*. However, to receive a ballot by mail, the potential voter must fall into one of the following categories:

- Confined to a location because of an injury, illness, or other medical reason;
- With physical disability or immobility due to extreme advanced age;
- Under incarceration or home detention, *unless* they are detained for felony or election bribery;
- Absent from the county during the hours of the early voting period *and* Election Day voting, for employment work hours and distance from county seat that makes voting impossible; or

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<sup>202</sup> W. Va. Code §3-3-1(c)

<sup>203</sup> W. Va. Code §3-3-1a

- Cannot access the voting area within the courthouse or annex because of physical disability.<sup>204</sup>

If a voter will receive the ballot at an address outside of the county, he or she may also receive an absentee ballot by mail if they fall into one of the following categories:

- Voter will be absent from the county due to personal or business travel;
- Voter will be absent due to attendance at a college, university, or other place of education or training;
- Voter will be residing outside of the county for the election period while serving as an elected or appointed federal or state officer;
- Voter will be residing outside of the county for the election period serving in any other employment of specific duration four (4) years or less.<sup>205</sup>

Voters seeking to be added to the Special Absentee Voting List must be:

- Participating in the Address Confidentiality Program; or
- Permanently physically disabled, preventing the voter from going to the polling place.<sup>206</sup>

Voters seeking eligibility with the Uniformed Overseas Absentee Voting Act (UOCAVA) must be:

- A member of the United States' Uniformed Armed Services or of the Merchant Marines on active duty, including activated National Guard members away on orders;
- The spouse or dependent of such members on active duty; or
- A United States citizen temporarily, or permanently, residing outside the country and qualified to vote in the last place in which the person was domiciled before leaving the United States.<sup>207</sup>

Subject to county policy, voters seeking eligibility to vote an emergency absentee ballot must be:

- Confined, or expect to be confined, in a hospital or other healthcare facility within the county of residence or other authorized area on Election Day;
- Working as a replacement poll worker assigned to be out of their voting district, *only if* the assignment was made after the period for voting in person has expired
- Residing in a nursing home within the county for less than thirty days;
- In a hospital or other duly licensed health care facility within an adjacent county or within thirty-five miles of the county seat;
- Confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age,

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<sup>204</sup> W. Va. Code §3-3-1

<sup>205</sup> W. Va. Code §3-3-5(c)(4)

<sup>206</sup> W. Va. Code §3-3-2b

<sup>207</sup> W. Va. Code §3-3-1(b)(3)



or another medical reason.<sup>208</sup>

The application processes and benefits of each kind of voting will be discussed in more detail in the next section.

## Application and Types of Absentee Voting

### *General Absentee Ballot*

To apply for a mail-in Absentee Voting Ballot, a voter must complete, in his or her own handwriting, a request form supplied by the Secretary of State and sent to the county clerk of the county in which the voter is a resident.

A voter who is unable to complete the application because of illiteracy or physical disability may receive assistance in filling out the application or do so electronically. If the voter receives assistance from an individual, the person assisting must sign his or her name in the space provided.<sup>209</sup>

The application must include the following voter information:

- Name;
- Date of Birth;
- Political affiliation;
- Residence address within the county;
- Address to which the ballot is to be mailed;
- The authorized reason, if any, for which the ballot is requested;
  - If that reason is illness, the application must include the name and telephone number of the attending physician.
- The signature of the voter to a declaration made under the penalties of false swearing<sup>210</sup> that the statements and declarations above are true;
- Any additional required information;
- Any affidavit which may be required; and
- An indication of the application being for voting in person, by mail, or electronically.<sup>211</sup>

While this form can be found on the Secretary of State's website at any time, the county clerk may only accept applications for voting regular absentee ballots between the eighty-fourth (84<sup>th</sup>) and sixth (6<sup>th</sup>) day before the election. The form may be sent to the County Clerk by mail, in person, or electronically between those days.<sup>212</sup>

Voters with a physical disability may submit the completed application by mail or electronically,

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<sup>208</sup> W. Va. Code §3-3-1

<sup>209</sup> W. Va. Code §3-3-5(a)

<sup>210</sup> Penalties of False Swearing may be found under W. Va. Code §3-9-3.

<sup>211</sup> W. Va. Code §3-3-2(b)

<sup>212</sup> W. Va. Code §3-3-2(b)

as prescribed by the Secretary of State.<sup>213</sup>

If a person is unable to get the official form for an absentee ballot by mail before the deadline, he or she may instead apply in a form of their choosing (e.g. a letter), as long as that application includes all of the information bulleted above and is written and signed in the applicant's own handwriting.<sup>214</sup>

### **UOCAVA Voting**

Uniformed service members, other U.S. citizens residing outside of the country, or their spouses and dependents, may apply for absentee ballots under the Uniformed Overseas Citizens Absentee Voting Act (UOCAVA). Voters applying under this federal act have a longer period for application to their county commissions, not earlier January 1<sup>st</sup> or eighty-four (84) days before the election (whichever is earlier), and not later than the sixth (6<sup>th</sup>) day preceding the election,<sup>215</sup> and they may submit and receive ballots electronically.

Eligible voters may apply by filling out and signing in her or his own handwriting the Federal Post Card Application (FPCA) or the application for military and overseas voters, both of which are provided on the West Virginia Secretary of State's website.<sup>216</sup> The application is sent to the county commission of the voter's home county for processing.

**Federal Write-In Absentee Ballot.** At any time applicable for a UOCAVA application, the UOCAVA-eligible voter may also request a Federal Write-in Absentee Ballot (FWAB). If the FWAB is received by the election official after the forty-ninth (49<sup>th</sup>) day before the election, the official shall only honor applications for local, state, and federal offices in general, primary, and special elections. The FWAB can also be requested via the FPCA or the UOCAVA form supplied by the Secretary of State and must be sent prior to thirty (30) days before the election. The voter must state that he or she is unable to vote a regular absentee ballot due to requirements of military service or living in an isolated or remote area. **The FWAB itself must be received by close of the polls on Election Day.**<sup>217</sup>

If a voter mails the application from within the United States and does not apply for a regular absentee ballot, or whose application for regular ballot was not received before thirty (30) days before the election, the application may not be counted.<sup>218</sup>

UOCAVA application forms also function as voter registration forms, in case the voter was unable to register because of his or her service or absence.<sup>219</sup>

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<sup>213</sup> W. Va. Code §3-3-2(b)(3)

<sup>214</sup> W. Va. Code §3-3-2(b)(4)

<sup>215</sup> W. Va. Code §3-3-2(b)(2)

<sup>216</sup> Applications may be found at <https://sos.wv.gov/elections/Pages/UOCAVA.aspx>.

<sup>217</sup> W. Va. Code §3-3-5b

<sup>218</sup> W. Va. Code §3-3-5b(e)

<sup>219</sup> W. Va. Code §3-2-5(a)(2) and see "Deadlines" on page 15.

### ***Special Absentee Voting List***

Some voters may apply for placement on the Special Absentee Voting List. Voters active on this list will be sent an absentee ballot by mail beginning no later than forty-six (46) days before each election, without further application required by the voter.<sup>220</sup> Applications for the list can be found on the West Virginia Secretary of State's website, which are required to include:

- The voter's name and signature;
- The residence address of the voter, unless the applicant is participating in the Address Confidentiality Program; and
- A statement that the applicant is permanently and totally disabled, or that the voter is a participant in the Address Confidentiality Program.<sup>221</sup>

There are two (2) ways to become eligible for addition to the Special Absentee Voting List. The first requires the voter to be permanently and totally disabled, causing them to be unable to vote in person at the polls. This application must be sent to the county clerk, accompanied by a statement that the voter is permanently and totally physically disabled and a description of the nature of the disability, to be signed by a physician.<sup>222</sup>

The second way to be added to the list is to be a participant in the Address Confidentiality Program (ACP).<sup>223</sup> Members of the ACP may apply to the ACP manager in the Secretary of State's office for placement on the list. Applicants under this provision do not need to provide a residence address or certificate of permanent disability, but instead must provide a statement that the voter is a participant in the ACP.<sup>224</sup>

Once on the list, voters can be removed from the list if:

- The person requests in writing that his or her name be removed;
- The person removes his or her residence from the county, is purged from the voter registration books, or otherwise becomes ineligible to vote;
- A ballot mailed to the address provided on the application is returned as undeliverable by the United States Postal Services;
- The person no longer has a physical disability;
- The death of the person; or
- In the case of an ACP participant, withdrawal or removal from that program.<sup>225</sup>

### ***Emergency Absentee Voting***

Emergency Absentee Voting is available for voters who find themselves in the hospital on

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<sup>220</sup> W. Va. Code §3-3-2b(e)

<sup>221</sup> W. Va. Code §3-3-2b(c)

<sup>222</sup> W. Va. Code §3-3-2b(c)(3)(A)

<sup>223</sup> W. Va. Code §3-3-2b(b) and §48-28A-103

<sup>224</sup> W. Va. Code §3-3-2b(c)(3)(B)

<sup>225</sup> W. Va. Code §3-3-2b(d)

Election Day or must work last-minute as replacement poll workers.

The County Commission may adopt a policy before each election to extend emergency absentee voting to the following individuals:

- Voters who have resided in a nursing home within the county for less than thirty days
- Voters who are in a hospital or other duly licensed health care facility within an adjacent county or within thirty-five miles of the county seat;
- Voters who become confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason.<sup>226</sup>

In cases of confinement on or after the seventh (7<sup>th</sup>) day preceding the election, the county clerk may require a written confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse that the voter meets the criteria permitting such voter to vote an emergency ballot.<sup>227</sup>

On or before the fifty-sixth (56<sup>th</sup>) day preceding Election Day, the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions of administration.<sup>228</sup>

Emergency absentee voting is not mandatory, but it may be adopted by the county clerks if he or she chooses to do so. Additionally, county commissioners may optionally adopt an emergency absentee policy to extend this privilege to hospitals in adjacent counties or within thirty-five (35) miles of the county seat, or to nursing homes within the county. If the commissioners choose to extend the privilege in this way, they must do so at least ninety (90) days prior to Election Day. These policies are only in effect for a period of one (1) election and must be refiled for primary and general elections as well.<sup>229</sup>

Emergency Absentee Ballot applications are prescribed by the Secretary of State.<sup>230</sup> They must be signed by the person requesting the ballot, which may be:

- The voter;
- A member of the voter's immediate family; or
- A staff member of the nursing home (if the county has chosen to extend such privileges).

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<sup>226</sup> W. Va. Code §3-3-5c(a)

<sup>227</sup> W. Va. Code §3-3-1(d)(3)

<sup>228</sup> W. Va. Code §3-3-5c(b)

<sup>229</sup> W. Va. Code §3-3-5c

<sup>230</sup> Application may be found at

<https://sos.wv.gov/FormSearch/Elections/Voter/Application%20for%20Voting%20an%20Emergency%20Absent%20Voter's%20Ballot.pdf>.

Emergency Absentee Ballot Applications must include:

- Name and residence of the voter
- Voter's political party affiliation
- The date and location of confinement
- Reason of confinement
- Name of the attending physician<sup>231</sup>

If the person requesting is not able to sign his or her own name, the applicant may be assisted in accordance with the rules for assisting voters.<sup>232</sup>

Voters are eligible to receive assistance in voting an emergency absentee ballot if they declare that he or she is:

- Blind
- Disabled
- Unable to read or write
- Of extreme advanced age
- In need of assistance<sup>233</sup>

Any person providing assistance in voting an emergency absentee ballot by mail shall make an affidavit on a form including the requirements set forth in W. Va. Code §3-3-6.

Upon receiving the request after the seventh (7<sup>th</sup>) day before the election and no later than noon (12:00 p.m.) on Election Day, the team of emergency election commissioners will deliver the materials to the voter, wait for completion of the application and ballot, and then return to the polls before they close on Election Day.<sup>234</sup>

### ***Provisional Ballots***

If the county clerk, or other election official, determines that a voter is not eligible to vote absentee, either for an improperly completed application or otherwise, the county clerk must send the voter a provisional ballot, which will be challenged according to rules for doing so.<sup>235</sup>

## **Processing Absentee Ballot Applications**

### ***Processing Absentee Ballots***

Applications for absentee ballots must be made between eighty-four (84) and six (6) days prior to the election in order to be accepted by the county clerk or other election official. Upon acceptance of a completed application, the official designated to supervise and conduct

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<sup>231</sup> W. Va. Code §3-3-5c(d)

<sup>232</sup> W. Va. Code §3-3-5c(e) and see "Absentee Ballot Voter Assistance" on page 74.

<sup>233</sup> W. Va. Code §3-3-6

<sup>234</sup> W. Va. Code §3-3-5c(d)

<sup>235</sup> W. Va. Code §3-1-41

absentee voting shall determine whether the following requirements have been met:

- The application has been completed as required by law;
- The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;
- The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;
- The address to which the ballot is to be mailed is an address outside the county, if the voter is applying to vote by mail;<sup>236</sup>
- The applicant is not making his or her first vote after having registered by postcard registration; and
  - If the applicant *is* making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements.
- No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.<sup>237</sup>

It is the duty of the county clerk (or an official designated to preside over absentee voting during the election) to decide whether the voter's application is likely to be a valid application. If the clerk or the designee believe, for any of the above reasons, that it is not, the voter will be issued a provisional ballot with notice that the absentee ballot will be challenged.<sup>238</sup>

On the other hand, if the clerk or designee determines that the conditions are met, he or she will mail the applicant a ballot packet including:

- One of each ballot requested, signed by two (2) representatives registered to different parties;
- One unsealed envelope marked "Absent Voter's Ballot Envelope No. 1;"
- One postage paid envelope marked "Absent Voter's ballot Envelope No. 2;"
- Instructions for the voter;
- A device for marking by electronically sensible pen, as appropriate;
- Notice stating that a list of write-in candidates can be provided if requested; and
- Any other supplies required for voting a particular system.<sup>239</sup>

Upon receipt of the forms, the voter will complete the ballot and return it according to the instructions provided. Ballots returned by absentee voters must either be hand-delivered<sup>240</sup> by the day before the election, mailed back (postmarked with a date before Election Day) before

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<sup>236</sup> W. Va. Code §3-3-1

<sup>237</sup> W. Va. Code §3-3-5(c)

<sup>238</sup> W. Va. Code §3-3-5(d)

<sup>239</sup> W. Va. Code §3-3-5(e)(1)

<sup>240</sup> Note: No person may deliver more than two (2) absentee ballots to the County Clerk's office.

the start of canvass, or mailed back without a postmark by the day after Election Day.<sup>241</sup>

### ***Special Absentee Ballots***

Voters that have successfully applied to the Special Absentee Voting List will be sent their ballots by mail like a regular absentee voter by mail. These ballots are the same as the ballots sent to regular absentee voters, except that they are sent automatically beginning on the forty-sixth (46<sup>th</sup>) day before the election. The return dates for special absentee ballots is the same as the regular absentee ballot by mail and can be returned either by mail or by hand-delivery, keeping in mind the limitations on hand delivery.<sup>242</sup>

### ***UOCAVA Ballot Application***

Unlike general absentee voting requests, applications under UOCAVA can be made between the January 1<sup>st</sup> before the election (or the eighty-fourth (84<sup>th</sup>) day before the election, whichever is soonest) and the sixth (6<sup>th</sup>) day before the election. Upon receipt and determination of validity of a UOCAVA application by the absentee voting official, the official will send a ballot pack to the applicant either by mail or electronically, as per the applicant's choice. If there is no selected choice, the official will choose either method.<sup>243</sup>

A ballot pack sent by mail will contain the same materials as listed above. However, a ballot pack sent electronically will contain:

- A waiver of privacy form (as prescribed by the Secretary of State);
- Instructions for voting absentee by using the electronic system;
- Notice stating that a list of write-in candidates is available upon request; and
- A statement by the voter confirming his or her name, address, and whether the voter received assistance in voting.<sup>244</sup>

UOCAVA ballots, once completed, must be returned "no later than the hour at which the board of canvassers convenes to begin canvass."<sup>245</sup> If the ballot is completed and returned electronically, it must be received no later than the close of polls on Election Day.<sup>246</sup>

### ***Federal Postcard Application (FPCA)***

Upon receipt of a Federal Postcard Application (FPCA), the clerk or other appointed absentee voting official must take the following steps:

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<sup>241</sup> W. Va. Code §3-3-5(g), (k)

<sup>242</sup> W. Va. Code §3-3-2b

<sup>243</sup> W. Va. Code §3-3-5

<sup>244</sup> W. Va. Code §3-3-5(e)(2)

<sup>245</sup> W. Va. Code §3-3-5(h)

<sup>246</sup> W. Va. Code §3-3-5(i)

- Enter the name of the applicant in the permanent absentee voter’s record for each election a ballot was requested for, make a photocopy of the application for each election for which a ballot is requested, and place the separate copies in secure files to be maintained for use in elections;
- Determine if the applicant is registered to vote at the residence listed on the application;
  - If not, the official shall deliver the FPCA to the county clerk for processing, where it will be treated as an application to register.
- Determine if the FPCA was received during the window for registering for the next election; and
  - If not, the official shall challenge the absentee ballot.
- Process the application as if it were an application for a normal absentee ballot by mail.

After the application has been put through these steps, the official will mail the ballot(s) to the voter on the first day the application and the ballot(s) become available.<sup>247</sup>

### ***Federal Write-In Absentee Ballot (FWAB)***

If the voter is applying under the UOCAVA and also applied for a Federal Write-in Absentee Ballot (FWAB), the FWAB can be used as a replacement or back-up ballot for the UOCAVA ballot. The FWAB itself must be received by close of polls on Election Day. If a voter mails the application from within the United States, does not apply for a regular absentee ballot or regular absentee ballot by mail, or their application for regular ballot was not received before thirty (30) days before the election, it may not be counted.<sup>248</sup> If a ballot and FWAB are both received by the county clerk, the clerk will accept the ballot and spoil the FWAB.

### ***Emergency Absentee Ballot Application***

Upon receiving a request for emergency absentee ballots, the county commission will send a team of commissioners at-large to the requesting party with an application and a ballot. As the W. Va. Code provides, “A set of emergency absentee ballot commissioners at-large shall consist of two (2) persons with different political party affiliations.”<sup>249</sup> The county clerk will notify the county commission of how many of these “teams” will be required before the fifty-sixth (56<sup>th</sup>) day before the election, and at least one team must be appointed no less than forty-nine (49) days prior to an election.<sup>250</sup>

At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form.<sup>251</sup>

The team will deliver the application first, ensuring that the voter completes and signs the

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<sup>247</sup> W. Va. Code §3-3-5a

<sup>248</sup> W. Va. Code §3-3-5b(e)

<sup>249</sup> W. Va. Code §3-3-5c(c)

<sup>250</sup> W. Va. Code §3-3-5c(c) and §3-1-29

<sup>251</sup> W. Va. Code §3-3-5c(g)



application, or receives assistance in doing so. Each member of the team will then sign and complete a declaration stating their names, the date, and the particulars of the nature of the confinement where the voter is located.<sup>252</sup>

After the application is complete, the commissioners at-large will deliver the ballot to the voter who will complete it. The team will return the ballot and application to the absentee voting official, along with a signed oath that “no person other than the absent voter voted the ballot.” The team will make delivery in this way before the close of polls on Election Day, and any ballots delivered after will be challenged and delivered to canvassing along with the challenged absentee votes.<sup>253</sup>

When the application and emergency absentee ballot are received, the absentee voting official shall ascertain whether the application is complete, whether the voter is eligible to vote the emergency absentee ballot, and whether the voter is properly registered in that county. If the absentee voting official is satisfied, the ballot is delivered to the precinct election commissioner for counting. If the absentee voting official is not satisfied, the ballot will be challenged.<sup>254</sup>

If either member of the team of commissioners at-large refuse to sign the application for voting an emergency ballot, the ballot will be challenged.<sup>255</sup>

### ***Erroneous Absentee Ballots***

If a ballot is found to contain “an error which, in the opinion of the board [of ballot commissioners], is of sufficient magnitude to confuse or mislead the voters,” the board can choose to either reprint the offending ballots or to cover the mistakes with stickers of an appropriate size.<sup>256</sup> If such a mistake is found after the mailing of absentee ballots begins, the county clerk should:

- Stop processing absentee ballots until the mistake is corrected;
- Mail corrected ballots to each voter who received a ballot with an error; and
- Include a letter explaining the situation.

If the voter returns only the ballot containing the error, the ballot should be made provisional, and the board of canvassers should count all votes on the correct portions. The board will decide how to deal with the rest.

If the voter returns both ballots, the ballot containing the error will be spoiled and the corrected ballot will be made provisional. The board of canvassers should count this ballot.

If the voter returns the corrected ballot only, the ballot will be made provisional. Assuming no

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<sup>252</sup> W. Va. Code §3-3-5c(f)

<sup>253</sup> W. Va. Code §3-3-5c(g)

<sup>254</sup> W. Va. Code §3-3-5c(h)

<sup>255</sup> W. Va. Code §3-3-5c(i)

<sup>256</sup> W. Va. Code §3-1-21

other challenge exists, the board should count the corrected ballot.

### ***Eligibility of Former Residents to Vote in a Presidential Election***

Some voters may be eligible to vote if they have recently moved away from the state. Any citizen of the United States who:

- Moves from the state within thirty (30) days preceding an election for President and Vice President;
- Satisfied registration requirements of this state before they moved; and
- Has not satisfied registration requirements in the state which they moved to, may vote for their choice of electors for President and Vice President, or for President and Vice President in that election.<sup>257</sup>

This statute is intended to bring the state in line with the federal Voting Rights Act Amendments of 1970.

## **Processing Absentee Ballots**

### ***Storage and Administration of Votes***

Upon receipt of absentee ballots, the county clerk is responsible for their security until Election Day. If a ballot by mail is accepted according to the criteria discussed in the previous section of this manual, the absentee voting official should:

- Complete any other information required on the envelope;
- Enter the challenge, if any, to the ballot;
- Enter the required information into the permanent record of persons applying and voting absentee ballot in person; and
- Place the sealed envelope into a ballot box secured by two (2) locks, with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.<sup>258</sup>

If the ballot is accepted electronically from a voter under UOCAVA, the absentee voting official shall place the ballot in an envelope marked “Absentee by Electronic Means” with the waiver of privacy included with the vote. Ballots are not to be processed this way unless there are two (2) individuals of different political parties. Electronic ballots should also be tabulated the same as ballots by mail, to the extent that it’s appropriate. The clerk must keep a record of all absentee ballots sent and received.<sup>259</sup>

Ballots will remain stored this way until the ballots are counted on Election Night.<sup>260</sup>

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<sup>257</sup> W. Va. Code §3-1-3a(2)

<sup>258</sup> W. Va. Code §3-3-5(l)

<sup>259</sup> W. Va. Code §3-3-5(m)

<sup>260</sup> W. Va. Code §3-3-5(n)

### **Late Ballots**

Ballots received after the proper time<sup>261</sup> cannot be accepted. Instead of being placed in a ballot box, late votes are placed unopened into an envelope marked for the purpose and kept for twenty-two (22) months following the election, after which time they are to be destroyed without being opened.<sup>262</sup>

### **Hand-Delivery of Ballots**

One (1) person may only hand-deliver up to two (2) ballots in an election, and that person is consequentially required to certify that they have not examined or altered a ballot.<sup>263</sup>

### **Early Voting**

“The voting period for early in-person voting is to be conducted during regular business hours beginning on the thirteenth (13<sup>th</sup>) day before the election and continuing through the third (3<sup>rd</sup>) day before the election,”<sup>264</sup> and from 9:00 a.m. to 5:00 p.m. on Saturdays during this period.

### **Locations**

The county commission may designate the courthouse or judicial annex as the primary location for early voting and may designate other community voting locations with a vote by a majority of the members. If the commission wants to designate additional locations, they must publish notice of their intent to designate those additional locations at least thirty (30) days before the designation and by way of advertisement in the county.

Potential community voting locations must:

- Be available for use during the early voting period;
- Have the facilities necessary to accommodate early voting requirements;
- Have adequate space for equipment, workers, and voters; and
- Have adequate security, public accessibility, and parking.

These additional community locations must be active at least five (5) consecutive days during the early voting period but need not be active the entire early voting period. If multiple community voting locations are designated, each shall be utilized for an equal number of voting days and for an equal number of hours.<sup>265</sup>

### **Electioneering**

Electioneering<sup>266</sup> is prohibited within one hundred (100) feet of the designated entrance to a

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<sup>261</sup> See “Processing General and Absentee Ballots” on page 66.

<sup>262</sup> W. Va. Code §3-3-5(j)

<sup>263</sup> W. Va. Code §3-3-5(k)

<sup>264</sup> W. Va. Code §3-3-3(a)

<sup>265</sup> W. Va. Code §3-3-2a(b)

<sup>266</sup> W. Va. Code §3-9-9

polling area, including early voting community locations. Defined: “No person may do any electioneering nor may any person display or distribute in any manner...any literature, posters or material of any kind which tends to influence the voting for or against any candidate.”<sup>267</sup> Additionally, during Early Voting only, electioneering is prohibited on the entire property of the early voting location, regardless the property extends beyond 100-feet from the entrance.<sup>268</sup>

### **Staffing**

The county clerk must assign at least two (2) individuals of different political parties to assist with early voting. Before beginning work, those staffers must take the receiving members’ oath, which can be found at the West Virginia Secretary of State’s website.<sup>269</sup>

### **Voting Procedure**

To submit an early voting ballot, the voter shall clearly state his or her name and address upon entry to the election room. If the voter is properly registered, the representatives will issue all necessary ballot materials to the voter. If the representatives determine the voter is not properly registered in that precinct, the clerk or the representative will challenge the vote.<sup>270</sup>

The voter then completes the ballot alone *or* with assistance, as prescribed in the rules for assisting voters.<sup>271</sup>

When the ballot is complete, it will be placed in a locked ballot box, secured by two (2) locks with keys kept by the president of the county commission and county clerk respectively, to be counted on Election Night.<sup>272</sup>

### **Ballot Counting Procedures for Early and Absentee Voting**

Absentee and early voting ballots are tabulated at the close of the polls on Election Night, in accordance with procedures for the voting system being used.

In paper ballot systems where the county clerk determines that absentee votes need to be counted at the precinct which they are registered in, the receiving board must first process the absentee votes and deposit them in the box of ballots to be counted. The receiving board shall then count the votes as normal.

If the county clerk determines that absentee ballots should be counted at the central counting

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<sup>267</sup> W. Va. Code §3-3-2a(d)(5)

<sup>268</sup> W. Va. Code §3-3-2a(d)(5)

<sup>269</sup> Oath may be found at

<https://sos.wv.gov/FormSearch/Elections/Administrators/Oath%20of%20Election%20Commissioners%20and%20Poll%20Clerks.pdf>.

<sup>270</sup> W. Va. Code §3-3-3(d)

<sup>271</sup> W. Va. Code §3-3-4

<sup>272</sup> W. Va. Code §3-3-3(g)(3)

center, vote counting proceeds as normal.<sup>273</sup>

### **Absentee** Ballot Voter Assistance

Providing assistance to voters who are voting absentee is generally prohibited. However, the voter being assisted can make a declaration at the time he or she applies for an absent voter's ballot that he or she requires assistance due to:

- Blindness;
- Disability;
- Advanced age; or
- Inability to read or write.

Upon receiving the ballot, a voter who requires assistance can choose any eligible person to assist them, who must make an affidavit that he will not induce or persuade the voter to vote a certain way, or keep record of anything occurring in the voting booth, or reveal the name of any candidate voted for by the voter, etc.

Note that there are no statutory limitations on who can help a voter *apply* for an absentee ballot, if such assistance is needed. There are only limitations in the voting of the ballot itself.<sup>274</sup>

### **Absentee** Ballot Challenge

The official who supervises absentee voting may challenge an absent voter's ballot on any of the following grounds:

- The application for an absentee voter's ballot has not been adequately completed;
- Any statement or declaration on the absentee voter's application is false;
- The applicant for an absent voter's ballot is not registered to vote in the precinct of his or her residence;
- The person voting absentee in person receives assistance when that person is not eligible for assistance because:
  - The affidavit of the person who received assistance gives no sufficient reason;
  - The person who received assistance did not make an affidavit; or
  - The person who received assistance is not so illiterate as to have been unable to read the names, or not so physically disabled as to be unable to mark the ballot.
- The person who voted an absent voter's ballot by mail and received assistance was not qualified; or
- The person has voted absentee by mail as a result of being out of the county four (4) consecutive times; except that this determination may not be made if the person is:
  - A citizen residing outside of the United States;
  - A member of the uniformed services or his or her spouse or dependent; or

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<sup>273</sup> W. Va. Code §3-3-8

<sup>274</sup> W. Va. Code §3-3-6

- A college student living outside of his or her home county.<sup>275</sup>

Any election commissioner or poll clerk in a precinct may challenge an absent voter's ballot if:

- The application was not adequately completed;
- Any statement or declaration on the application is untrue;
- The person voting absentee is not registered to vote in the precinct;
- The person voting absentee in person received assistance and was not qualified for one of the reasons discussed above;
- The person voted absentee by mail and received assistance when they were not qualified;
- The person who voted absentee voted in person on Election Day;
- The person voted absentee under UOCAVA and was present in the county in which he or she is registered to vote between opening and closing of the polls on Election Day; or
- For any other reason on which or for which the ballot of a voter voting in person at the polls on Election Day may be challenged.<sup>276</sup>

No challenge may be made to any absent voter's ballot if the voter was registered and qualified to vote according to W. Va. Code 3-3-1(a).

Absentee ballots challenged will be sent to the board of canvassers, uncounted. The board will then decide the disposition of the challenge according to W. Va. Code §3-1-41, which provides that, if the challenges are determined to be unfounded, the votes are to be shuffled into the other regular ballots and counted with them, or, if they are determined to be proper challenges, the votes will remain uncounted.<sup>277</sup>

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<sup>275</sup> W. Va. Code §3-3-10(a)

<sup>276</sup> W. Va. Code §3-3-10(b) and §3-1-41(b)

<sup>277</sup> W. Va. Code §3-1-41(e)

# 6 CHAPTER SIX: Election Day Voting

## Delivery and Return of Ballot Equipment

### *General Responsibilities of the County Clerk*

The clerk of the county commission is responsible for providing poll books, a list of all precincts in the county, tally sheets, ballot boxes, voting booths, registration records and forms, durable envelopes for returns, blank forms for certifying returns, and any further supplies needed for administering voting.<sup>278</sup>

The county commission itself is responsible for arranging polling places, ensuring that they have heat/air conditioning, and at least two (2) voting booths. If the county commission determines that a suitable room or building is not reasonably available in the precinct, then the commission may look to an adjacent precinct for as close a location as they can find.<sup>279</sup>

At least one (1) day before the election, the county clerk must appoint one (1) of the election commissioners or poll clerks from each precinct to receive the voting materials. It is the duty of these appointed officials to deliver the supplies to their precincts with any seals intact in time for the election. All ballots will be in unbroken, sealed packages, and “not in excess of one and one-twentieth (1.05) times the number of registered voters in the precinct.”<sup>280</sup>

The clerk will supply two (2) ballot boxes for each precinct and two (2) locks with an appointed receiving and counting board.

In primaries, the ballots for each party will be separately signed and sealed, and in the same numbers for each party; poll book copies will be supplied to the precinct for each party on the ballot.

If the appointed commissioner or poll worker fails to appear to collect the ballot materials, the county clerk must dispatch the materials by a special messenger, who may be paid \$5 and with mileage pay.<sup>281</sup>

If the ballots or ballot boxes are delivered to the designated messenger, but are then lost or destroyed, the messenger should report the loss immediately to the county commission, which shall at once send new equipment via a special messenger.

### *Electronic Voting Device Delivery*

The county clerk is responsible for the delivery of electronic vote recording and poll book devices not less than one (1) hour before polls open, in the presence of precinct election

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<sup>278</sup> W. Va. Code §3-1-22

<sup>279</sup> W. Va. Code §3-1-23

<sup>280</sup> W. Va. Code §3-1-24(c)

<sup>281</sup> W. Va. Code §3-1-25

commissioners. The machines shall be sealed to prevent use and tampering until immediately before the opening of polls. The precinct election commissioners must certify in writing that these machines were sealed and delivered in their presence, and that the seals had been broken in their presence.<sup>282</sup>

An initial check will be done of the electronic poll books to make sure they are in working order. If they are not, the county clerk shall send another in accordance with the rules to deliver in an emergency. Physical poll books may accompany electronic poll books.<sup>283</sup>

### ***Returning Supplies***

Voting supplies are to be returned after completion of the count, tabulation, and posting of the certificate of result. One (1) of the election commissioners or poll clerks of each party at the precinct shall be responsible for their delivery to the county clerk.<sup>284</sup>

### **Registered Voters**

Citizens of the state are entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively reside.

Notwithstanding, the following groups are prohibited from voting and must vote a provisional ballot:

- Persons not registered to vote;
- Minors;<sup>285</sup>
- Persons who have been declared mentally incompetent by a court of competent jurisdiction;
- Persons convicted of treason, felony, or bribery in an election; and
- Persons who are not bona fide residents of the state, county, or municipality in which they offer to vote.<sup>286</sup>

### **Signature Poll Books**

Each page of the poll books will have a line denoting the precinct number, district name, county name, and date of the election being conducted. Columns should be headed respectively:

- Number of Voters;
- Signature of Voter; and
- Challenge of Voter.

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<sup>282</sup> W. Va. Code §3-4a-16

<sup>283</sup> W. Va. Code §3-4a-17

<sup>284</sup> W. Va. Code §3-5-16

<sup>285</sup> Minors may be permitted to vote if they will reach age eighteen (18) before the next general after the primary.

<sup>286</sup> W. Va. Code §3-1-3



Poll books will also have oaths for commissioners of election and poll clerks written on them.<sup>287</sup>

Upon entering the polls and stating an intention to vote, each voter will sign their name in the poll book, which will be used to confirm the voter's identity in the event of a challenge.

## Procedure

### *Days and Hours of Election*

General elections are held statewide on the first (1<sup>st</sup>) Tuesday after the first (1<sup>st</sup>) Monday in November of even numbered years.

Primary elections are held statewide on the second (2<sup>nd</sup>) Tuesday in May.

For *all* elections—primary, general, and special—the polls will be opened at six-thirty a.m. (6:30 a.m.) on the morning of the election and will be closed at half past seven p.m. (7:30 p.m.) that evening.<sup>288</sup>

### *The Voting Process*

A person desiring to vote in an election shall clearly state his or her name and residence to one of the poll clerks, who will repeat it back. The person desiring to vote must also present to one of the poll clerks a valid identifying document, which the clerk will inspect and confirm that the name on the document conforms to the name on the voter's registration record. If any doubt exists, the ballot must be cast as provisional.

If the voter is unable to furnish a valid I.D., or the clerk determines that the document does not qualify, the voter will be allowed to vote a provisional ballot after signing an affidavit affirming his or her identity. The provisional ballot will be counted after the voter's eligibility is determined by comparing the voter's signature on the affidavit to the voter's signature on file.<sup>289</sup>

If the poll clerk finds that the person is a duly registered voter, the voter will sign his or her name, or otherwise fix their mark<sup>290</sup> to the poll book. The two (2) poll clerks will sign their names in the appropriate blank and give a ballot to the voter to be voted.

If the voter returns the ballot "spoiled," the poll clerks will dispose of the ballot and give the voter another official ballot. When a ballot is returned in this way the clerks will clearly write "spoiled" across the ballot and make note of the incident in the poll book. Following the election, the election commissioners will make note of the number of ballots spoiled and the ballots remaining untouched and make a report to the county clerk of these numbers, along with the number of successful votes. The unused ballots will be preserved after supplying other

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<sup>287</sup> W. Va. Code §3-1-22

<sup>288</sup> W. Va. Code §3-1-31

<sup>289</sup> W. Va. Code §3-1-34(a)(5)

<sup>290</sup> See "Assisting Voters" on page 74.

precincts for twenty-two (22) months after the election.<sup>291</sup>

After the voter has completed the ballot, he or she will fold the ballot so that only the names of the poll clerks can be seen, announce his or her name to the commissioner, and give the commissioner the ballot. The commissioner will then hand the ballot to another commissioner of a different political party, who will put the ballot in the ballot box. The election commissioner may inspect every ballot before it is deposited to ensure it is official and properly signed.<sup>292</sup>

Once the voter has returned the ballot, the poll clerk will mark a checkmark to indicate that the voter voted and will write a set of initials to indicate the candidate that the voter voted for on the voter's registration record. The clerk will also include any challenges to a vote and the subsequent removal of the challenge. In primaries, the clerks identify the political party that the voter voted for.

### ***The Ballot***

In general and special elections, ballots for all voters of an election precinct will be the same. In primaries, voters will only be given the ballot of their political party, along with any separate ballots for nonpartisan candidates or public questions.

Individuals registered as "independent" or no party affiliation will not be given a party ballot other than any nonpartisan and/or public question ballots.<sup>293</sup>

All ballots are to contain:

- The words "Official Ballot" with the county name and election date printed on the back, with two (2) blank lines followed by the words "Poll Clerks" beneath the date;
- Perforated tabs with unique sequential numbers, from one (1) to the highest number representing the total number of ballots printed, printed at the top of the ballot<sup>294</sup>;
- Ink color as specified by the Secretary of State for the various political parties in a primary election.<sup>295</sup>
- Black ink on sufficiently thick paper if a paper ballot;
- A solid line border at least one-sixteenth (1/16<sup>th</sup>) of an inch wide, with the ballot trimmed within one-half (0.5) inch of the border<sup>296</sup>;
- Ballot headings that are separated from the rest of the ballot by heavy lines;
- Headings that display a ballot title, the county name, the state, the type of election, and the election date;
  - In primary elections, the ballot heading of the political party ballots will contain

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<sup>291</sup> W. Va. Code §3-1-36

<sup>292</sup> W. Va. Code §3-1-34(f)

<sup>293</sup> W. Va. Code §3-1-35

<sup>294</sup> W. Va. Code §3-5-13(8)

<sup>295</sup> W. Va. Code §3-4A-11a(c)

<sup>296</sup> W. Va. Code §3-5-13(8)

- the words “Official Ballot of the \_\_\_\_ Party” and may show the party symbol.
- In general elections, the ballot heading will contain the words “Official Ballot, General Election,” with the party emblem and name of each party after the heading, in compliance with W. Va. Code §3-6-2(c).
  - In nonpartisan elections or for public questions, the ballot heading shall correspond to the requirements for the offices being elected according to W. Va. Code §3-5-13(2)(A)-(B).
  - Offices arranged in columns left to right across the ballot, separated by heavy lines and printed in bold type at least eight (8) point: National Ticket, State Ticket, and County Ticket;<sup>297</sup>
    - In presidential election years, also “National Convention.”
    - In nonpresidential election years, also “District Ticket.”
  - The number of the district or division, if any, under the office, and the words “Vote for \_\_\_\_” with the number to be elected, or “Vote For Not More Than \_\_\_\_” in multicandidate elections.
    - The office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns<sup>298</sup>
  - Any limitations relating to the number to be elected, nominated, or appointed to an office printed in bold type under the names of the candidates for those offices;
  - In counties with more than three (3) county commissioners and an equal number of county commission members and the county’s magisterial districts, the office of county commission listed separately for each district, with the name of the magisterial district and the words “Vote for One” printed below the office name;
  - Clearly shown areas where the voter should mark his or her choice(s);<sup>299</sup>
    - For paper ballots, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names<sup>300</sup>
  - A space for voters to write in the name of a candidate who is not on the ticket;<sup>301</sup>
    - The words “WRITE-IN IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.<sup>302</sup>
  - The name and ticket of each political party as defined in W. Va. Code §3-1-8;
  - The name chosen as the party name by each group which secured nomination of two (2) or more candidates by petition;<sup>303</sup>
    - Political parties are to be ordered with the party for whose presidential candidate

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<sup>297</sup> W. Va. Code §3-5-13a

<sup>298</sup> W. Va. Code 3-5-13(C)

<sup>299</sup> W. Va. Code §3-5-13 and §3-6-2

<sup>300</sup> W. Va. Code §3-5-13(D)

<sup>301</sup> W. Va. Code §3-6-2(d)(4)

<sup>302</sup> W. Va. Code §3-4A-11a(b)(6)

<sup>303</sup> W. Va. Code §3-6-2(a)

- received the highest number of votes during the last presidential election to be placed in the left, or first column, with the next highest vote next, and so on.
- Any parties who had no candidates for president in the previous election are placed in order of when their final certificates of nomination were filed.<sup>304</sup>
  - If for a public question, a heading, clearly stating the purpose of the election;<sup>305</sup>
  - The name of every candidate in capital letters no smaller than eight (8) point type,<sup>306</sup> and staggered, if possible, with a thin line separating each candidate;<sup>307</sup>
    - Names are to be ordered according to drawing by lot for multiple candidates;<sup>308</sup>
  - The residence of every candidate printed in lower case letters beneath the name of the candidate;<sup>309</sup>
  - Instructions to the voter to see the following column or page for candidates that could not fit on the available column or page space for a single office on a ballot, if any;
    - If the number of candidates exceeds the space available on a column or ballot page and requires candidates for a single office to be separated, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions shall be given to the voter that candidates are continued on the following page<sup>310</sup>
  - Any constitutional amendments placed after all offices and before all issues, the heading for each amendment or issue in large, bold type as required by the resolution;<sup>311</sup>
    - The issue, or public question, be specifically authorized under the West Virginia Constitution or ordered by the appropriate governmental body.<sup>312</sup>
  - The word “sample” prominently printed on sample ballots, which are to appear the same as the official ballots.
    - Sample ballots may be printed in red ink;
    - No printing may be placed on the back of the sample;
    - Names of candidates may not be obscured<sup>313</sup>
  - In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the Secretary of State” printed following the names of all candidates for delegate to the national convention;<sup>314</sup>
  - In presidential election years, candidates for President and Vice President of each party

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<sup>304</sup> W. Va. Code §3-6-2(c)(3)

<sup>305</sup> W. Va. Code §3-6-2

<sup>306</sup> W. Va. Code §3-5-13 and §3-6-2(b)

<sup>307</sup> W. Va. Code §3-6-2(d)(3)

<sup>308</sup> W. Va. Code §3-5-13a(b) if a primary, or §3-6-2(d)(2) if a general.

<sup>309</sup> W. Va. Code §3-5-13(4)(B)

<sup>310</sup> W. Va. Code §3-5-13(4)(D)

<sup>311</sup> W. Va. Code §3-6-2(e)

<sup>312</sup> W. Va. Code §3-6-2(f)

<sup>313</sup> W. Va. Code §3-5-13 and §3-6-3. See “Ballots and Preparation” on page 91 for color requirements in primaries.

<sup>314</sup> W. Va. Code §3-5-13 and §3-6-2(b)

placed beside a brace with a single voting position;<sup>315</sup>

- In general elections, in a county filling board of education seats, a separate ballot from the partisan ballot made with the heading, “Nonpartisan Board of Education;”<sup>316</sup>
- In primary elections, if not enough candidates have been nominated to fill an office, the words “No Candidate Filed” in the blanks that would normally hold candidate names. If there are multiple vacancies, the Secretary of State may approve a short description in place of the words “No Candidate Filed;”<sup>317</sup>

The order of offices for state and county elections on all ballots within the state shall list in order:

- NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the House of Representatives
- STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee
- NONPARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, Intermediate Court of Appeals, judge of the circuit court, family judge, and magistrate.<sup>318</sup>
- COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts
- NONPARTISAN BALLOT: Nonpartisan elections for board of education, conservation, district supervisor, or any question to be voted on
- DISTRICT TICKET: county executive committee
- NATIONAL CONVENTION: Delegate to the national convention – congressional district, delegate to the national convention – at-large.<sup>319</sup>

The ballot commissioners will prepare a sample official general election ballot for all political parties, nominees with no party (unless nominated by an independent party), non-partisan candidates, and all ballot issues. The ballot will be published in local newspapers, at no less than sixty-five (65%) percent normal size.<sup>320</sup>

Ballot commissioners of individual counties will prepare an official list of offices and nominees for each office appearing on the election ballot for each political party, non-party affiliated candidates not nominated by independent party, and non-partisan candidates to be voted for. The list will contain the same information that would be on the ballot, and in the same format,

<sup>315</sup> W. Va. Code §3-6-2(d)(1)

<sup>316</sup> W. Va. Code §3-6-2(d)(5)

<sup>317</sup> W. Va. Code §3-5-13(5)

<sup>318</sup> W. Va. Code §3-5-13(2)(A)(i-v)

<sup>319</sup> W. Va. Code §3-5-13a(a)

<sup>320</sup> W. Va. Code §3-6-3(a-b)

which will also be published in local newspapers.<sup>321</sup> In a general election, the order of the offices and candidates for each office and the manner of designating parties should be as follows:

- The offices shall be listed in the same order as they are on the ballot
- The candidates within each office for which one is to be elected shall be instead in the order they appear on the ballot, from left to right or top to bottom
- The candidate's political party affiliation shall be indicated by one or two letter initials in parenthesis to the right of the candidate's name
- The candidates within each office for which more than one shall be elected shall be arranged by political party groups in the order they appear on the ballot<sup>322</sup>

The publication of the official list of nominees for each party and for nonpartisan candidates should be in single or double columns, meeting the requirements as follows:

- The words "Official List of Nominees and Issues," the name of the county, the words "General Election," and the date of the election shall be printed in all capital letters and in bold print no smaller than 14 point; and
- The names of the candidates and the initial within parenthesis designating party affiliation shall be in all capital letters in bold print no smaller than 10 point.<sup>323</sup>

When a ballot issue is to appear on the ballot, the title shall be printed in all capital letters in bold print no smaller than 12 point. The ballot issue text shall appear in no smaller than 8 point type. Ballot commissioners may require the publication of the ballot issue in the facsimile sample ballot format in lieu of the alternate format.<sup>324</sup>

If a candidate is nominated to fill a vacancy by either the political party executive committee or the chairman of that committee, and certified by the county clerk after ballots have been issued, the county clerk will prepare and deliver stickers to the election commissioners of each precinct in which the candidate can be voted for when a paper ballot is used. The stickers will be at least equal to the number of ballots in that precinct.<sup>325</sup>

A ballot does not have to offer the voter the option of voting a straight party ticket by one (1) mark or punch.<sup>326</sup>

### **Electronic Ballots**

Counties around the state are permitted to use electronic voting systems for registering, recording, and computing votes. Each county must write a policy for securing the equipment,

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<sup>321</sup> W. Va. Code §3-6-3(c-d)

<sup>322</sup> W. Va. Code §3-6-3(c)(2)(A-C)

<sup>323</sup> W. Va. Code §3-6-3(d)(3)(A-B)

<sup>324</sup> W. Va. Code §3-6-3(d)(4)

<sup>325</sup> W. Va. Code §3-6-4

<sup>326</sup> W. Va. Code §3-6-2(g)

and the clerks of those counties must submit a copy of that policy to the Secretary of State by February 1<sup>st</sup> of each even numbered year. Any changes to the policy must be sent within thirty (30) days of the change.<sup>327</sup>

For instruction of voters in counties utilizing an electronic voting system that uses a screen upon which votes may be recorded by means of stylus or touch, the ballot commissioners shall provide each polling place a sample ballot with each screen as it will appear on the devices, together with written operation instructions<sup>328</sup>

Election officers shall offer instruction to each voter before voting upon request.<sup>329</sup>

Sample ballots may be a photographic reproduction of the absentee ballot; however, ballots must be altered to include various districts in the appropriate order when the ballots for county precincts contain different senatorial, delegate, magisterial, or executive committee districts, or when the ballots for city precincts contain different municipal wards.<sup>330</sup>

For ballot tabulated by electronic means, the offices must appear in the same sequence as prescribed in W. Va. Code §3-5-13a. The pages, columns, or rows may be modified to meet the limitations of ballot size and compensation requirements subject to approval by the Secretary of State.<sup>331</sup>

Election officers have a statutory duty to “constantly and diligently maintain a watch in order to see that no person votes more than once, and to prevent any voter from occupying the voting booth for more than five (5) minutes.”<sup>332</sup>

The procedures for voting electronically are the same as for paper voting, except in the return. Upon completion of the ballots, the voters will place their ballots inside the secrecy sleeve/envelope provided, with the stub sticking out. The voter must not remove the stub, as any ballots without a stub will not be accepted by the election commissioner.<sup>333</sup>

If the voter fails to finish the ballot and cannot be recalled, any combination of two (2) election commissioners or poll clerks of differing parties will spoil the ballot.

In precincts using electronic systems, when the precinct election commissioners prepare their report of the number of voters, spoiled ballots, and unused ballots, they must make four (4) copies. Two (2) of these copies are to be placed in the ballot box. The other two (2) should be placed in a sealed container provided by the county clerk, which will be delivered to the county clerk at the central counting center.

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<sup>327</sup> W. Va. Code §3-4a-1

<sup>328</sup> W. Va. Code §3-4A-15(a)

<sup>329</sup> W. Va. Code §3-4A-15(a)

<sup>330</sup> W. Va. Code §3-6-3(b)(3)

<sup>331</sup> W. Va. Code §3-5-13(3)(B)

<sup>332</sup> W. Va. Code §3-4a-19(a)

<sup>333</sup> W. Va. Code §3-4a-19(j)

### **Non-Primary Elections**

In general and special elections, additional procedures apply in marking the ballot:

- In order to vote for official write-in candidates, voters may write in ink or affix a sticker, label, or ink stamp to designate who they wish to vote for in the space designated for write-in votes.
- On paper ballot systems, voters may write or otherwise place the name in any position on the face of the ballot, as long as the intention is clear.
- If the voter marks more names than there are persons to be elected to an office, or if it is impossible to determine the voter's choice, the ballot will not be counted. The intention is considered clear if the write-in contains either the first or last name of the candidate.
  - If two (2) or more candidates share a first or last name, the voter's intention will only be clear if it contains both first and last name of the intended candidate.<sup>334</sup>

### **Valid Voter Identification**

West Virginia voter identification law requires a desiring voter to present a valid identifying document to poll clerks.<sup>335</sup> An identifying document is considered valid if it:

- Has been issued by the State of West Virginia, one of its subsidiaries, or by the United States Government; and
- Contains the name of the person desiring to vote.<sup>336</sup>

The following documents may be considered valid if they meet the above criteria:

- A West Virginia driver's license or state identification card issued by the West Virginia Division of Motor Vehicles;
- A driver's license issued by another state;
- A U.S. passport or passport card;
- An employee identification card with a photograph of the voter issued by any branch or entity of the United States Government or the State of West Virginia, or by any county, municipality, or other political subdivision of West Virginia;
- A student identification card with a photograph of the voter issued by an institution of higher education or a high school in West Virginia;
- A military identification card issued by the United States with a photograph of the voter;
- A concealed carry permit with a photo of voter issued by the sheriff of the county;
- A Medicare or Social Security Card;
- A birth certificate;
- A voter registration card issued by a county clerk in the state of West Virginia;
- A hunting or fishing license issued by the State;

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<sup>334</sup> W. Va. Code §3-6-5(b)

<sup>335</sup> W. Va. Code §3-1-34(a) *et seq.*

<sup>336</sup> W. Va. Code §3-1-34(a)(1)



- An identification card issued to the voter by the West Virginia Supplemental Nutrition Assistance program (SNAP);
- An identification card issued to the voter by the West Virginia Temporary Assistance for Needy Families program (TANFP);
- An identification card issued to the voter by West Virginia Medicaid;
- A bank card or debit card;
- A utility bill issued within six (6) months of the date of the election;
- A bank statement issued within six (6) months of election;
- A health insurance card issued to the voter;<sup>337</sup>

If a voter does not show a valid I.D. and a voter affidavit is executed, a note of the procedure will be indicated in the poll book.

Instead of an identifying document, a registered voter may be accompanied by an adult that he or she has known for at least six (6) months. The accompanying adult must sign a provided affidavit, prescribed by the Secretary of State, stating under oath that he or she has known the registered voter for the time period. The accompanying adult must also present a valid identifying document with his or her name, address, and photo.

A poll worker may allow a voter he or she has known for at least six (6) months to vote without presenting a valid identifying document.<sup>338</sup>

Voters voting in person at a polling place that is part of a state licensed care facility where the voters are residents are not required to provide proof of I.D. as a condition to voting.

If a participant in the Address Confidentiality Program does not show valid I.D. and must execute a voter identity affidavit, his or her residential and mailing address are privileged under that chapter.<sup>339</sup>

### ***Individuals Prohibited from the Booth***

No person other than the voter may be anywhere within five (5) feet of the voting booth during the time the voter is voting, and no person may communicate with the voter in any manner, unless the person is:

- An election officer conducting election duties under W. Va. Code §3-4a-19; or
- Anyone assisting a voter under W. Va. Code §3-4a-22.

No voter may enter the booth with any recording or electronic device to interfere with the voting process.<sup>340</sup>

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<sup>337</sup> W. Va. Code §3-1-34(a)(2)

<sup>338</sup> W. Va. Code §3-1-34(a)(4)

<sup>339</sup> W. Va. Code §3-1-34(a)(8)

<sup>340</sup> W. Va. Code §3-4a-23

## Marking the Ballot

The voter has only five (5) minutes to occupy the poll booth and make his or her vote.<sup>341</sup>

The voter may spoil his or her ballot by writing “spoiled” across the face of the ballot, or otherwise defacing or mutilating the ballot. If the voter returns the ballot “spoiled,” the poll clerks will dispose of the ballot<sup>342</sup> and give the voter a new official ballot. When a ballot is returned in this way, the clerks will clearly write “spoiled” across the ballot and make note of the incident in the poll book. Following the election, the election commissioners will report the number of ballots spoiled, ballots remaining untouched, and successful votes overall to the county clerk. The unused ballots will be preserved after supplying other precincts, until twenty-two (22) months after the election.

If the voter fails to finish the ballot and leaves the polling place and cannot be recalled, any combination of two (2) election commissioners or poll clerks of differing parties will spoil the ballot.

If two (2) or more ballots are found folded or rolled together, and the names voted for are the same, then only one (1) will be counted. If the names voted are different, then neither shall be counted. Matching numbers will be placed on the ballots to indicate that they were paired.

If there are more than the proper number of names voted for any office, then the vote for that office will not be counted.

If the voter votes for someone who is not a resident of the proper county, that vote will not be counted.

If it is impossible to determine the voter’s choice of candidate, the vote will not be counted for that candidate.<sup>343</sup>

## Assisting Voters

### *Accessible Polling Places*

In its duty of providing a suitable polling place, the county commission must insure that there is at least one (1) parking space reserved for handicapped voters.<sup>344</sup>

Each precinct must have one voting system in an election for federal office to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access, participation, privacy, and

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<sup>341</sup> W. Va. Code §3-4a-19

<sup>342</sup> W. Va. Code §3-1-36

<sup>343</sup> W. Va. Code §3-6-7

<sup>344</sup> W. Va. Code §3-1-23

independence as other voters.<sup>345</sup>

If the county clerk verifies that a precinct at which a handicapped person is registered to vote is not handicap-accessible, the county clerk can transfer that person's registration to the nearest polling place in the county which is.

Requests for a transfer of registration by a handicapped person must be received by the county clerk no later than thirty (30) days prior to an election. If a request was not made by this date, the voter may vote a provisional ballot at a handicapped polling place in the same county. If the county commission determines that the vote was otherwise valid, the vote will be counted.

If a handicapped person's registration is transferred, he or she may continue to vote in that precinct so long as the disability exists or the precinct he or she was transferred from remains inaccessible.

Alternatively, if the polling place is not handicap-accessible and there are no voters voting or waiting inside of the polling place, the handicapped voter may vote absentee from an automobile outside of the polling place in the presence of an election commissioner.<sup>346</sup>

### ***Assistance in Completing Ballots***

An otherwise duly registered voter may request and be given assistance at the polls if he or she requires assistance for at least one of the following reasons:

- Blindness;
- Disability;
- Extreme advanced age; or<sup>347</sup>
- Inability to read and write.

Once assistance has been requested and approved, the voter may be given assistance by a person of the voter's choice, so long as that person is not:

- The voter's present or former employer;
- An agent of the voter's present or former employer;
- An officer or agent of a labor union of which the voter is a past or present member; or
- A candidate on the ballot, or an official write-in candidate.<sup>348</sup>

Anyone who is not an election officer who assists a voter must sign a written oath before assisting the voter, stating that he or she will not override the preference of the assisted voter or mislead the voter into voting for someone not intended, and affirming that the voter is voting free of intimidation or manipulation, unless the assisted voter is blind and a physician's

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<sup>345</sup> W. Va. Code §3-1-49(c)

<sup>346</sup> W. Va. Code §3-1-34 and §3-3-5(e)

<sup>347</sup> W. Va. Code §3-3-1(b)(1)(B)

<sup>348</sup> W. Va. Code §3-3-4(a)

certification of that fact is on file in the county clerk's office.<sup>349</sup>

The voter may also request assistance from the poll clerks or ballot commissioners at the polling place. Assistance may be given in this way only by any two (2) election officers of different political party affiliations. The voter will make his or her choice of candidate and disposition on public issues, and the officers will mark the vote for the voter.<sup>350</sup>

Election commissioners or poll clerks may challenge votes on the grounds that the voter was not eligible to receive assistance.<sup>351</sup>

Among the ballot supplies, the county clerk will provide a form entitled "List of Assisted Voters" on which commissioners will record the name of each voter receiving assistance, the poll slip number of the voter, and the signature of the person or commissioners who assisted the voter. If no voters received assistance in that precinct, the commissioners will make an oath to that fact. This list shall be returned to the county clerk, where it will be kept along with any oaths and affirmations for twenty-two (22) months and used to update voter records.<sup>352</sup>

### ***Restrictions on Presence at the Polls***

Other than elections officers and voters going to the election room to vote and returning from there, no one may be within one hundred (100) feet of the outside entrance to the building housing the polling place while the polls are open, unless he or she lives or conducts business within that distance or passes through on legitimate business.<sup>353</sup>

If delivering a voter by car or other motor vehicle, a person may enter the one hundred (100) foot zone to drop the voter off, but must immediately exit until the voter is to be picked up to leave, unless the driver is also assisting a voter (eligible under the Assisting Voters rules), in which case the vehicle may remain.<sup>354</sup>

Election commissioners shall limit the number of voters in the election room to preserve order. No person may enter within five (5) feet of the voting booth or compartment where the ballots are being prepared except the voter or poll clerks called to assist.

No person except election officers and voters depositing their ballots may be allowed within five (5) feet of any ballot, except by order of the board of election commissioners for the purpose of keeping order and enforcing law.<sup>355</sup>

Only one (1) person can occupy a voting booth at a time and will be allowed to remain there no

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<sup>349</sup> W. Va. Code §3-1-34(e)(5)(B)

<sup>350</sup> W. Va. Code §3-4a-22 and §3-1-34(e-i)

<sup>351</sup> W. Va. Code §3-3-4(c)

<sup>352</sup> W. Va. Code §3-3-4(e)

<sup>353</sup> W. Va. Code §3-1-37(a)

<sup>354</sup> W. Va. Code §3-1-37(b)

<sup>355</sup> W. Va. Code §3-1-37(c)

longer than five (5) minutes. A person who claims disability<sup>356</sup> will have up to ten (10) minutes.

Voters may not talk to anyone other than the poll clerks or election commissioners while in the election room.

These restrictions do *not* apply to persons assisting blind voters or children under fourteen (14) who are accompanying parents. Disputes as to a child's age will be decided by the election commissioners.<sup>357</sup>

## Closing the Polls

For every primary, general, or special election, the polls shall be opened in each precinct at six-thirty a.m. (6:30 a.m.) and be closed at seven-thirty p.m. (7:30 p.m.).<sup>358</sup>

When the polls are to be closed, an election commissioner must proclaim such "in a loud and audible tone of voice" to the people outside the polling area. This proclamation must be made for a full (1) minute and a note made in the poll book of the time it was given.

Voters in the polling place and in line outside of the polling place will be allowed to complete their votes even after the polls have been closed. Starting with the last voter in line, election commissioners from each party will give voters waiting in line "waiting-voters" permits, signed by the commissioners and by the voter in the presence of the commissioners. The voter's signature will be compared when he or she signs the poll book to vote, and the permit will be attached to that page in the poll book.<sup>359</sup>

In the case of electronic voting machines, all voting machines will be sealed after the last vote has been cast. Any unused ballots are to be returned to the county clerk.<sup>360</sup>

## Counting Ballots

In precincts where a single (1) election board serves, the receiving board will count the votes. In a precinct where two (2) election boards are serving together, both receiving and counting boards will count and tabulate together. This counting occurs immediately after polls close, and the boards may not adjourn until the work is completed.<sup>361</sup>

To start, if the county clerk has determined that absentee votes should be counted in the precincts where they are registered, these ballots must first be processed and added to the ballot box to be counted.

Once this step is completed, or the absentee votes are counted at a central counting center, the

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<sup>356</sup> See "Assistance in Completing Ballots" on page 85.

<sup>357</sup> W. Va. Code §3-1-37(e)

<sup>358</sup> W. Va. Code §3-1-31

<sup>359</sup> W. Va. Code §3-1-32

<sup>360</sup> W. Va. Code §3-4a-25

<sup>361</sup> W. Va. Code §3-6-6 and see W. Va. Code §3-1-33 for double board procedures.

board will record the total number of voters who have voted and subtract from that the number of challenged votes, which should equal the number of ballots remaining in the box. Boards will also report the number of unvoted and spoiled ballots.<sup>362</sup>

The ballot boxes will then be opened, and all votes tallied in the presence of the entire election board. Commissioners will:

- Take one (1) ballot from the box at a time and determine if the ballot is properly signed by the poll clerks of the receiving board;
  - If not properly signed, the ballot will be placed in an envelope specifically for this purpose without unfolding it;
    - All votes without proper signatures will be challenged.
    - If an accurate accounting of the ballots is made and no other challenge exists against that voter, the vote will be counted at canvass.
  - If the ballot is properly signed, the commissioner gives the ballots to a team of commissioners of opposite political parties, who will read off the marked votes for each office;
    - Write-in votes for anyone who is not an official write-in candidate shall be disregarded.
- Keep a tally of the number of ballots as they are removed. When that tally equals the number of voters entered on the poll book, minus all provisional ballots, any additional ballots in the box will be placed in the envelope for unsigned ballots not counted, without unfolding them. The number of excess ballots will be recorded on the envelope;
- Mark an individual tally of the votes on tally sheets, to show the number of votes received by each candidate for each office, and for and against each issue on the ballot; and
- String the ballots on a thread, once the reading of the votes is complete.<sup>363</sup>

In precincts where two (2) boards are appointed, the counting board counts votes throughout the day as voting goes on, while the receiving board manages the polls. At the close of polls, the two boards meet and complete the counting process as outlined above.<sup>364</sup>

If two (2) or more precincts' elections are held in the same building, each precinct must have its own receiving board, and no two precincts may share a counting board.<sup>365</sup>

### **Election Returns**

Once the counting is complete and the results ascertained, election officials will make out and sign under oath<sup>366</sup> four (4) certificates of result, on a form provided by the Secretary of State. This certificate gives the complete returns of the election, including the name of each office and

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<sup>362</sup> W. Va. Code §3-6-6

<sup>363</sup> W. Va. Code §3-6-6

<sup>364</sup> W. Va. Code §3-1-33

<sup>365</sup> W. Va. Code §3-1-29(a); W. Va. Code §3-1-5(a)

<sup>366</sup> See W. Va. Code §3-5-15(c) for the oath.

candidate on the ballot and the write-in ballot, and indicating the number of votes, in both words and numbers, received by each candidate. The certificate will also indicate each issue on the ballot and the number of votes, in both words and numbers, for and against the issue.

The certificates are to be sealed in separate envelopes, and commissioners and clerks shall each sign across the seal.

Two (2) of the certificates of result in sealed envelopes will be sent to the county clerk, who will mail one (1) of the sealed returns by certified mail to the Secretary of State within forty-eight (48) hours of receiving it.<sup>367</sup>

One (1) of the unsealed certificates will be posted outside the front door of the polling place.

After counting, tabulation, and posting of certificates, the election supplies are to be gathered up, sealed, and returned to the county clerk.<sup>368</sup>

## Partisan Primary

### *Dates and Process*

Primary elections are held at the voting place in each of the voting precincts in the state on the second (2<sup>nd</sup>) Tuesday in May every even-numbered year. The opening and closing times of the polls are the same as for general elections.

In primaries before presidential elections (every four (4) years), voters will elect persons to be delegates to the national convention of a political party that is held after the date of the primary, according to a plan adopted by the state party.

The state party's plan will state the method for the election of persons in each congressional district of the state as delegates and alternate delegates, in compliance with the national party rules.<sup>369</sup>

The governing body of each political party of the state will certify the party plan, adopted by the party chairman and by his signature, and file it with the Secretary of State not less than one hundred twenty (120) days before the primary election. The plan will provide for the following:

- The voters of each political party shall elect in each congressional district the number of persons as delegates to the national convention to which the district is entitled;
- If the rules of the national party do not require apportionment of delegates on the basis of their commitment to the president, the persons receiving the highest votes to be delegate will become delegates, and those with the next highest votes will become alternate delegates;
- If the national party requires that the percentage of votes cast for the candidates

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<sup>367</sup> W. Va. Code §3-5-15(d)

<sup>368</sup> W. Va. Code §3-6-8

<sup>369</sup> W. Va. Code §3-5-2(a-b)

determines the apportionment of committed candidates, then the plan of the state party shall prescribe the number of delegates and alternates to be elected under such apportionment, the method by which apportionment will be made, and the method by which the Secretary of State shall determine which delegates are elected;

- If less people are elected in the primary than the number the district is entitled to, the state party shall appoint persons from the congressional district to serve as delegates or alternates, unless the rules of the party say otherwise; and
- The number of persons which each of the congressional districts in the state are entitled to elect as delegates shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party's national convention elected in all congressional districts in state.<sup>370</sup>

Every presidential primary election will have the statement, "For election in accordance with the plan adopted by the party and filed with the Secretary of State," following the names of all delegate candidates.

If the state party does not file a plan with the Secretary of State, the voters will elect the number of persons the congressional district is entitled to elect as delegates-at-large. Candidates receiving the most votes will be selected as delegates in any congressional district, and delegates appointed in this way will appoint their own alternates. The Secretary of State must be notified within forty (40) days after the primary by registered letter of any appointments of alternates.<sup>371</sup>

Assuming a party's candidate for president appropriately files an announcement and pays all filing fees to the Secretary of State, that candidate will be placed on the ballot, and votes for that candidate will be marked.<sup>372</sup>

At each primary election, the candidate or candidates of each political party for each office to be filled at the general election will be nominated by the voters of the different political parties. A plurality of votes is enough for the nomination of the candidate. If only one (1) candidate is to be nominated, the candidate with the highest votes is nominated. If multiple candidates are to be nominated, the number of candidates to be chosen with the highest number of votes in the division shall be declared party nominees. These provisions, however, do not apply to:

- Candidates for county commissioner, who are nominated under Article IX, Section 10 of the West Virginia Constitution;<sup>373</sup>
- Members of a county board of education, who are elected under W. Va. Code §3-5-6; and
- Candidates for House of Delegates, who are nominated and elected with additional

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<sup>370</sup> W. Va. Code §3-5-2(c)

<sup>371</sup> W. Va. Code §3-5-2(e)

<sup>372</sup> W. Va. Code §3-5-3

<sup>373</sup> W. Va. Const. Art. 9 §10 and W. Va. Code §7-1-1b



residence restrictions found in W. Va. Code §1-2-2.<sup>374</sup>

In tie votes in primary elections, the political party's choice is determined by the political party executive committee of the division the candidate runs in.

### ***Election of County Board of Education and Judicial Offices***

Elections for county boards of education are held on the same day as the primary election, but on a non-partisan ballot. No more than two (2) members may be elected from or serve the same magisterial district. Board members serve either full terms of four (4) years or unexpired terms of two (2) years. Eligibility of candidates is determined at the time of certification of the election and is based on the magisterial district residence of incumbent members of the board whose terms will continue through July 1<sup>st</sup> following the primary.

- No person is eligible to be declared elected who resides in a district which has two (2) incumbents;
- No more than one (1) candidate is eligible to be declared elected who resides in a district which has one (1) incumbent; and
- A person with the highest number of votes can be elected to an unexpired term of two (2) years, notwithstanding that there are already two (2) representatives from that district, provided that the number of representatives from that district will be less as of July 1<sup>st</sup> following the primary.

Any person elected to an unexpired term of two (2) years assumes the duties of a member of the board.

In the election, the canvassers shall declare and certify the election of the required number of eligible candidates receiving the highest number of votes to fill any remaining full terms, and the second highest number of votes to fill any remaining full and unexpired terms.<sup>375</sup>

Only a plurality of votes is needed to be elected, not a majority, and, in the case of a tie, the board of canvassers will decide the tie within thirty (30) days. If the board of canvassers does not decide within those thirty days, the Governor will decide.<sup>376</sup>

Elections for Justices of the Supreme Court of Appeals will be held on the same day as the primary, on the non-partisan ballot. If more than one (1) justice is to be elected, the election will be held by numbered division. Each division will be tallied separately, and the canvassing board will declare and certify the candidate receiving the highest number of votes.<sup>377</sup>

Elections for Intermediate Court of Appeals judges, circuit court judges, family court judges, and magistrates are all also held on the primary date and are elected by the same process as

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<sup>374</sup>W. Va. Code §3-5-4

<sup>375</sup> W. Va. Code §3-5-6

<sup>376</sup> W. Va. Code §3-6-12

<sup>377</sup> W. Va. Code §3-5-6a

justices for the Supreme Court.<sup>378</sup>

### ***Ballots and Preparation***

The ballot commissioners will prepare a sample ballot for both partisan and non-partisan candidates, as well as any ballot issues, and publish them in newspapers as specified in the Code, between twenty (20) to twenty-six (26) days before the election.<sup>379</sup>

Ballot commissioners will prepare a list of all offices, candidates, and issues, which will also include any information appearing on the ballot, including instructions and additional language, which will also be published in qualified newspapers on the last day on which a newspaper is published immediately preceding the election, and in the form prescribed by Code.<sup>380</sup>

Separate ballots will be printed on different colored paper for each political party participating, and no two (2) parties' ballots will be the same color or tint. Sample ballots will also be printed and will be a different color from all other ballots and its official counterpart.<sup>381</sup>

Primary ballots differ in some ways from a general election ballot in form and information. The primary ballot follows the same rules for order of offices on the ballot. In cases where multiple candidates file for office, their positions on the ballot will be determined by lots drawn on the fourth (4<sup>th</sup>) Tuesday after the close of candidate filing at nine o'clock a.m. (9:00 a.m.) conducted by the county clerk.<sup>382</sup>

The counting process for a primary election is the same as for a general election, except that the number of votes is kept and counted for voters of each party and for non-partisan voters.

The canvass, the certification of returns, and the recount procedure are the same as for general elections, except that the disposition of the certificates from canvass is governed by W. Va. Code §3-5-18.<sup>383</sup>

### **Required Postings**

Election officials are required by W. Va. Code to post certain notices and items throughout the polling place in their duties as officials, such as:

- **Cards of General Information**: Cards including the date and time of election, instructions for mail-in registration and first-time voters, and voters' rights and prohibitions. The cards will be posted both inside and outside of the voting place where voters pass by or wait to vote. These are also to be posted during early in-person voting within the voting area.

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<sup>378</sup> W. Va. Code 3-5-6a through 35-6e

<sup>379</sup> W. Va. Code §3-5-10(b)

<sup>380</sup> W. Va. Code §3-5-10(d)

<sup>381</sup> W. Va. Code §3-5-13

<sup>382</sup> W. Va. Code §3-5-13a

<sup>383</sup> See "Canvass" on page 86.

- Sample Ballots: Two (2) or more copies of sample ballots, of different colors than the real ballots, are to be posted along with the cards of general information both inside and outside of the polling place and at early voting.
- Official Write-In Candidates: A list of official write-in candidates will be posted in the same location as the general information cards at both Election Day and early voting.
- Provisional Ballot Notice: A notice including a description of the voter’s rights as a provisional voter; primarily, the right to inquire as to the correct precinct and the penalties for voting in the wrong one. These notices are to be posted in a “highly visible location” for voters to review.
- How to Prepare the Ballots: One (1) card instructing voters how to prepare the ballots for deposit and how to replace a spoiled ballot is to be placed in each voting booth by an election commissioner.
- Certificate of Results: One (1) unsealed certificate of result for a primary election will be posted on the outside of the front door at the polling place.<sup>384</sup>
- Certification of Candidates: In conjunction with the Secretary of State’s duty to certify candidates for an election, the Secretary will post a duplicate of the certificate showing the following in her or his office until after the election:
  - The name and residence of each candidate;
  - The office for which he or she is a candidate;
  - Name of the party for which he or she is a candidate;
  - What ballot his or her name is printed on; and
  - In the case of a candidate for delegate to the national convention, the name of the person the candidate prefers for president or “uncommitted” if he or she does not have a preference.<sup>385</sup>
- Electronic Voting Machine Inspection: Electronic voting materials will be made available for inspection in the seven (7) days after canvass has been completed. Any candidate may inspect the sealed materials, provided that he or she places a notice of the time and place of that examination at the central counting center before nine o’clock (9:00 a.m.) on the morning of the examination, so that anyone entitled to be present may join him or her.<sup>386</sup>
- Handicapped Parking: At least one (1) parking space must be reserved at the polling place for handicapped voters, and must be clearly designated as such.

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<sup>384</sup> W. Va. Code §3-5-15

<sup>385</sup> W. Va. Code §3-5-7

<sup>386</sup> W. Va. Code §3-4a-28

## Prohibition of Electioneering

### *The Polling Place*

The polling place is the location provided by the county commission for voting.<sup>387</sup> The following activities are prohibited inside the polling place:

- No person may approach nearer than five (5) feet to any booth where the election is being held except persons voting or persons assisting voters;
- No person may be permitted within five (5) feet of any ballot box, except by the authority of the board of election commissioners;
- No more than one (1) person may be permitted to occupy a booth at a time;
- Persons may not remain in the booth for more than five (5) minutes, or ten (10) if the voter claims disability; and
- No person may hold a conversation with any person other than the poll clerks or commissioners of election.

These rules do not apply to children under fourteen (14) years of age accompanying a legal guardian or persons assisting blind voters.<sup>388</sup>

### *The Surrounding Area*

In addition to prohibited acts in the polling place, W. Va. Code extends some protections to a one hundred (100) foot zone around the polling place. The restricted area is measured from the outside entrance door where the precinct number and American flags are displayed. If there are multiple outside doors marked with numbers and flags, the measurement is made for each door. Before the opening of the polls, election officials must clearly mark the boundary in at least two (2) places.<sup>389</sup>

There are additional restrictions on some activities occurring within a one hundred (100) foot perimeter of the entrance of the polling place, as measured from the outside entrance door:

- No person other than election officers and voters going to and from the election room may remain within the perimeter while polls are open, unless they reside within the perimeter, or are there on legitimate business;
- A person who is delivering a voter may enter the perimeter to drop them off, but they must exit the perimeter until they return to pick them up, unless the person who is driving is also assisting the voter who requires assistance, in which case the person driving may leave the car parked within the perimeter.<sup>390</sup>

Another activity that is heavily restricted within the one hundred (100) foot zone is the practice

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<sup>387</sup> W. Va. Code §3-1-23

<sup>388</sup> W. Va. Code §3-1-37

<sup>389</sup> C.S.R. §153-8-3

<sup>390</sup> W. Va. Code §3-1-37

of electioneering, which is defined in the W. Va. Code as:

- Displaying signs or other campaign paraphernalia;
- Distributing campaign literature, cards, or handbills; or
- Soliciting signatures to any petition, or votes for or against a bona fide candidate or question that expressly advocates the election/passage or defeat of such.

Electioneering is prohibited within the polling place and the one hundred (100)-foot perimeter, including during the early voting period while voting takes place.

Persons that own property within the one hundred (100) foot perimeter may engage in electioneering if it is on their property and the electioneering is otherwise legal.<sup>391</sup> Only property owners can engage in electioneering in this way; they cannot invite non-property owners to electioneer on their property.<sup>392</sup>

All permanent business within the one hundred (100) foot perimeter may remain open, and employees may pass through the restricted area “while in discharge of their legitimate business,” but no person may engage in electioneering under the cover of this business.<sup>393</sup>

Any vehicles within the perimeter are not required to remove bumper stickers or signs affixed to the vehicle while passing through or parked in the perimeter.

Any permanent signs erected within the perimeter, such as billboards, may display political advertising and are not required to be moved for Election Day. Electioneering signs erected on private property within the perimeter are also permitted.<sup>394</sup>

Electioneering does not include the practice of exit polling, so long as the persons exit polling are not engaging in any electioneering actions.<sup>395</sup>

Only the following individuals are permitted to enter or otherwise disturb the election room:

- Full-time employees of the Secretary of State’s office
- Full-time employees of the respective county clerk’s office
- County prosecutor

## Media Access to Polling Locations

According to the W. Va. Code of State Rules, legitimate news media personnel may remain within the perimeter while conducting official and legitimate business, including exit polls, but they are not allowed to enter the polling place or the building that houses it.<sup>396</sup>

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<sup>391</sup> W. Va. Code §3-9-9

<sup>392</sup> C.S.R. §153-8

<sup>393</sup> C.S.R. §153-8-4

<sup>394</sup> C.S.R. §153-8-11

<sup>395</sup> For a complete list of what does and does not qualify as electioneering, see W. Va. Code §3-8-1a(15-16).

<sup>396</sup> C.S.R. §153-8-8

## CHAPTER SEVEN: Post-Election Activities

### Canvass

Canvass is the proceeding in which the materials, equipment, and results of an election are reviewed, corrected, and officially recorded before the election is finally certified. The county commission, acting as the board of canvassers, is required to meet on the fifth (5<sup>th</sup>) day after every election held in the county (excluding Sundays).

The board of canvassers may require any election official present at the election to testify and may make other necessary orders to procure correct returns and true results. All orders, questions, and answers to witnesses will be taken down in writing and preserved.<sup>397</sup>

The board of canvassers is made up of the county commission and presided over by the county clerk in every election, except for municipal elections that are *not* held in conjunction with a county or state election, in which the municipal governing body becomes the board of canvassers and is presided over by the municipal recorder.<sup>398</sup>

The board of canvassers shall only perform canvass if a majority of commissioners are present at all times. The board may adjourn but for no longer than necessary. If the majority is not met, the board will adjourn until the next day until a majority is met.<sup>399</sup>

During canvass, the board removes the sealed ballots from their packages and counts them without unfolding them, puts ballot numbers in the record, and then reseals the ballots in new envelopes, signing their names across the seal to prevent tampering.

#### ***The Central Counting Center***

All proceedings at the counting center, including canvass, are to be under the supervision of the county clerk and must take place in a room “of sufficient size and satisfactory arrangement to permit observation.” Persons entitled to be present include:

- Candidates whose names appear on the ballots, or representatives of such candidates who present written authorization signed by the candidate;
- Two (2) representatives of each political party on the ballot, chosen by the county executive committee chair; and
- A reasonable number of the general public. If all members of the general public desiring to see cannot be admitted at one time, a periodic and convenient rotation will be provided for.

No one who is not authorized for the purpose may touch any ballot or record used in the

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<sup>397</sup> W. Va. Code 3-6-9(a)

<sup>398</sup> C.S.R. §153-18-2.1

<sup>399</sup> C.S.R. §153-18-3.2

election.<sup>400</sup>

Persons counting and processing ballots are to do so in teams of two (2), consisting of members of opposite political parties who will be deputized and will give an oath in writing. They will then be given an official badge, which they will wear prominently.<sup>401</sup>

If ballots are damaged or defective to the point where they cannot be counted by the automatic tabulating equipment, a true duplicate copy will be made in the presence of representatives of each political party on the ballot and substituted for the damaged ballot. These ballots will be labeled “duplicate” and will have a serial number recorded on the damaged ballot and replacement ballot.

If it becomes impracticable to count all or part of the ballots with tabulating equipment, the county commission may direct that the votes be counted manually.<sup>402</sup>

### ***The Process***

After the board of canvassers has met and a majority has been met, the board of canvassers will begin canvass by receiving the absentee ballots, placing the ballots postmarked on or before Election Day together with application packets and precinct lists of those ballots, all to be delivered in packets according to the precinct. Any absentee ballots challenged by the clerks will also be sorted by precinct via the same process. The board will also receive a certification from the clerk responsible for absentee voting that the registration records for each voter have been examined, and that unchallenged ballots were cast by properly registered voters.<sup>403</sup>

The board will also separate any absentee ballots *not* postmarked by Election Day and received after polls are closed and place them separately along with their original applications and a list of the ballots. The board will open the packet and examine each absentee ballot, counting and recording the number of envelopes found with late or missing postmarks, and return these ballots to the packet to be resealed after that precinct is processed. If the examination yields a postmark properly dated on or before Election Day, those ballots will be placed with the materials from the correct precinct to be processed later.<sup>404</sup>

The Secretary of State provides a guide for canvassing individual precincts to each canvassing body. Each will follow the procedures and fill out worksheets for each precinct.<sup>405</sup>

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<sup>400</sup> W. Va. Code §3-4a-27(a)

<sup>401</sup> W. Va. Code §3-4a-27(b)

<sup>402</sup> W. Va. Code §3-4a-27(f)

<sup>403</sup> C.S.R. §153-18-5.1

<sup>404</sup> C.S.R. §153-18-5.2

<sup>405</sup> C.S.R. §153-18-6.1; The 2020 Best Practices Guide for Canvassing can be found at <https://sos.wv.gov/FormSearch/Elections/Informational/Canvassing%20Manual.pdf> and the 2020 Best Practices Guide for Recounts can be found at <https://sos.wv.gov/FormSearch/Elections/Informational/Recount%20Manual.pdf>.

The guide provides that the board shall proceed with the following steps. The board will:

- Randomly select a number of precincts to be counted by hand. The method of random selection will be left up to the board, but it must be conducted publicly during an open meeting;
- Count at least three percent (3%) of the precincts manually by hand;
  - If the difference of the votes between the manual count and the automatic machine count is greater than one percent (1%), or by results in a different outcome on an issue, the discrepancy will immediately be disclosed to the public and *all* verified paper ballots will be manually counted. In every case where there is a difference in totals between manual and automatic tabulation, the manual count will be the vote of record.<sup>406</sup>
- Handle one (1) precinct at a time, completing all procedures and worksheets for it before moving on to the next;
- Start by comparing the number of ballots cast on Election Day, early voting, and absentee voting reported on the Statement of Ballots Used (SBUs) and the Absentee/Early Voting Record (AEVR), included in ballot materials, with the number of ballots tabulated manually for comparison;
  - If these totals are not the same, the board will count the ballot stubs or review the printed reports, and compare that number to the number of signatures found on the poll tickets, poll book, or absentee applications.
- Open and count the spoiled ballots, comparing that number to the SBU and AEVR, and then will do the same with the provisional ballots;
- Determine the number of unused ballots by reviewing the ballot stub numbers on the ballot;
- Confirm that the total number of ballots received by the precinct equals the total ballots voted, including the provisional, spoiled, and unused ballots, making determinations if there is a discrepancy and making note of it in the record of canvass;<sup>407</sup>
- Review the absentee ballots by mail that were received by mail *after* Election Day. If the absentee ballots meet the requirements for acceptance<sup>408</sup> the votes will be received;<sup>409</sup>
- Count the total number of absentee ballots and place all ballots with votes to be counted in one pile, and votes not to be counted in another, making sure not to open the ballots that are not to be counted;<sup>410</sup>
- Shuffle the small envelopes to maintain secrecy before opening and removing the ballots one (1) at a time, removing the ballot stubs (being sure to keep them separate from Election Day stubs) and setting aside any ballots that have write-in votes;

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<sup>406</sup> W. Va. Code §3-4A-28(d)

<sup>407</sup> C.S.R. §153-18

<sup>408</sup> See "Processing General and Absentee Ballots" on page 66.

<sup>409</sup> C.S.R. §153-18

<sup>410</sup> C.S.R. §153-18



- Tabulate each ballot, with write-in votes tabulated last;<sup>411</sup>
- Place the ballots, stubs, and all other absentee materials, including votes not counted, back in the precinct envelope. Document the number of absentee ballots;
- Review provisional ballots and determine if they are to be counted. The board can decide validity individually, or by two (2) groups, one to be counted and one not to be counted;
- Protect the secrecy and privacy of any provisional voters, and must not announce their names during canvass. If there is only one (1) provisional vote from a precinct to be counted, it should be placed with another precinct in the same district and made note of in the record of canvass. Provisional ballots are to remain sealed and maintained with other election material;
- Decide whether or not to count a provisional ballot or group of ballots. If they are to be counted, the outer envelope of each should be opened and a number written on the inner envelope, starting with one (1) and proceeding sequentially;
- Shuffle the inner envelopes, open them, and mark the ballots within with the same number as the envelope. Check for write-in votes and place those in a stack to be reviewed under Election Night procedures;
- Add the provisional votes to the original returns from that precinct, and return the ballots to their original envelopes;
- Make a record of the findings for each precinct, including the initial comparison made and number of ballots of each type. If any discrepancies, make a detailed note in the record;<sup>412</sup>
- Hand count the votes of the preselected precinct;
  - Teams of four (4) individuals will take a written oath to perform the duty fairly;<sup>413</sup>
  - Two (2) members read the votes cast on the ballot, while the other two (2) separately record the votes using tally sheets.
- Record the votes and compare the hand count tally with the automated tally.<sup>414</sup> If there is a difference caused by mechanical failure, it is up to the board to determine the error and take corrective measures;
  - If the nature of the error prevents the board from making corrections, then the vote will be counted as an accurately-cast vote;
  - If corrections are made, votes will be run through the machine for final tabulation;
  - Any activity undertaken will be entered in the record of canvass.<sup>415</sup>
- Determine if there is a difference of more than one percent (1%) between tabulated results for all offices on all votes cast in a precinct and the hand count. If so, *all* precincts must be hand-counted;<sup>416</sup>

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<sup>411</sup> C.S.R. §153-27-4.3

<sup>412</sup> C.S.R. §153-18

<sup>413</sup> W. Va. Code §3-4A-27(b)

<sup>414</sup> C.S.R. §153-18-7

<sup>415</sup> W. Va. Code §3-4A-29

<sup>416</sup> C.S.R. §153-18-7.5

- Upload and send all results of the canvass to the Secretary of State's office. The board should verify that these results have been received;<sup>417</sup>
- Reseal all precinct materials in their appropriate envelopes. The results will be declared and recorded in the official record of canvass;<sup>418</sup>
  - If the election pertains to a multi-county race, the date and time of the declaration will be reported to the Secretary of State via phone or email.<sup>419</sup>
- Set a time to certify the results, after the forty-eight (48) hour recount period;<sup>420</sup>

If it becomes necessary for the board to test any vote recording device, the test must be done by the county clerk in the presence of the board of canvassers and any candidate (or his or her party representative). The results of the test will be recorded and filed by the county clerk.<sup>421</sup>

If the precinct or county's ballots are entirely on paper ballots, not using optical scan, ExpressVote or iVotronic systems, the procedure for counting will be the same, except that it will not include a mandatory hand count of three percent (3%) of the votes.

In the case of provisional votes cast by handicapped persons at a precinct in which they are not registered, the board determines at canvass whether the voter was registered in a precinct with a non-handicap accessible polling place and, if so, will count the vote if otherwise valid.<sup>422</sup>

### ***Recount Request Period***

The board of canvassers may not issue an order certifying the results until the end of a forty-eight (48) hour waiting period after the declaration after canvass. During this forty-eight (48) hour period, a candidate on the ballot may demand the ballots be unsealed and recounted.

If the candidate is on the ballot in multiple counties, then the forty-eight (48) hour period starts when the last county's board makes its public declaration of the results.<sup>423</sup>

The recount can also be demanded on a ballot issue by any voter affected by the issue if it does not involve an individual's candidacy.<sup>424</sup>

### ***Touch Screen Counting Procedure***

The manual also includes a detail of touch screen counting procedures. The board of canvassers still provide for the hand count of three percent (3%) of precincts. The board still compares ballots cast on SBU and AEVR, but after printing them out using the Election Management

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<sup>417</sup> C.S.R. §153-18

<sup>418</sup> C.S.R. §153-18

<sup>419</sup> W. Va. Code §3-6-9(a)(8)(B)

<sup>420</sup> C.S.R. §153-18-8.2

<sup>421</sup> W. Va. Code §3-4a-29(2)

<sup>422</sup> See "Assisting Voters" on page 74.

<sup>423</sup> W. Va. Code §3-6-9(a-c)

<sup>424</sup> W. Va. Code 3-4a-28(c)

Software (EMS).

The manual suggests tabulating the ballots by merging them into the EMS system or by counting them manually and inputting them into the machine.

The procedure for counting provisional ballots remains the same, but, once the decision is made to count them, they must be entered into the EMS for each respective precinct.

If a paper jam or other error causes votes to be misconstrued, it will be necessary to print the ballot images directly to flashcards for each machine affected.

The results of the canvass will be transmitted to the Secretary of State through EMS instead of by mail.<sup>425</sup>

### **Certification**

If there is no recount demanded, the board, in a primary election, will prepare duplicate certificates for each office and each party. For general elections, the board will prepare certificates for each office and ballot issue. For both elections, the certificate will include the total votes for each candidate or question entered in both words and numbers. In general elections, certificates for federal, statewide, legislative, and judicial offices will be prepared in triplicate originals.<sup>426</sup>

The certification will be the result of official action by the board of canvassers, and each member of the board will sign each certificate. A form of the certification for general elections can be found in W. Va. Code §3-6-10, and a form for primary elections can be found in W. Va. Code §3-5-17.

The board will transmit the certificates within thirty (30) days of a primary or, if a recount is demanded, thirty (30) days from the end of recount; and:

- One (1) of each original shall be filed with the election records of the county commission, or of the municipal governing board if it is in a municipal election;
- For candidates on the ballot *only* within the county, including single county districts, county offices, or county executive committees, one (1) of each original shall be filed with the circuit court clerk, and one (1) of each copy shall be filed with the Secretary of State;
- For candidates on the ballot in multiple counties, one (1) of each original will be filed with the Secretary of State;
- Upon request of the chairman of the political party executive committee of the county, a certificate showing the number of votes received by each of the candidates of the party in the county or magisterial district may be sent to that chairman; and

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<sup>425</sup> See the 2020 Best Practices Guide for Canvassing at <https://sos.wv.gov/FormSearch/Elections/Informational/Canvassing%20Manual.pdf> and the 2020 Best Practices Guide for Recounts at <https://sos.wv.gov/FormSearch/Elections/Informational/Recount%20Manual.pdf>.

<sup>426</sup> C.S.R. §153-18-9.1

- In municipal elections, one (1) of each original shall be filed with the municipal recorder or clerk.<sup>427</sup>

In general elections, the board of canvassers will send the certification by the same thirty (30) day guidelines as the primary; and:

- One (1) of each original shall be filed with the election records of the county commission, or of the municipal governing board if it is in a municipal election;
- One (1) certificate shall be mailed to each candidate voted for on the ballot;
- One (1) copy shall be filed with the Governor and Secretary of State for the offices of President, Vice President, U.S. Senator, U.S. House of Representatives, Justice of the Supreme Court of Appeals, and circuit court judge;
- One (1) of each original shall be filed with the Secretary of State for all candidates of statewide offices, except Justice of the Supreme Court of Appeals, and candidates for State Senate and House of Delegates; and
- One (1) of each original will be filed with the Secretary of State for each special issue on the ballot.<sup>428</sup>

If a recount is requested by a candidate, the board will certify all candidates and issues not subject to the recount.<sup>429</sup>

In addition to certification by the board of canvassers, the Secretary of State must certify to the county clerk the name of the candidate of the political party that had the highest votes in his or her district, and that his or her name should be placed on the ballot in the general election. The Secretary of State must issue the certification by the seventy-first (71<sup>st</sup>) day preceding the general election.<sup>430</sup>

If a person files a notarized statement of withdrawal, the Secretary of State will not certify said person.<sup>431</sup>

### ***Voting Machine Examination***

Within a seven (7) day period after the completion of canvass, any candidate or local chair of a political party may be permitted to examine any sealed materials (such as vote-recording devices, electronic poll books, etc.). Notice of the time and place of the examination must be posted at the central counting center before nine o'clock a.m. (9:00 a.m.) on the day of examination, and everyone entitled to be present, including any candidate or his or her representative, may be there. After this seven (7) day period, the vote-recording devices, test

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<sup>427</sup> C.S.R. §153-18-9.3

<sup>428</sup> C.S.R. §153-18-9.4 and W. Va. Code §3-6-11

<sup>429</sup> C.S.R. §153-18-10.1

<sup>430</sup> W. Va. Code §3-6-18

<sup>431</sup> W. Va. Code §3-5-11

results, and standard validation test ballots are sealed for one (1) year.<sup>432</sup>

## Recount

During the forty-eight (48) hour period after the close of canvassing, but before the final certification of results, persons authorized to demand a recount may do so by paying the bond set by the board of canvassers during the canvassing process. The bond shall be “in a reasonable amount with good sufficient surety” to cover the costs of expenses of the recount, but will not exceed \$300.<sup>433</sup> Bond may be in cash, personal property, or other bond. The party requesting the recount will pay *all* costs that are incurred during the recount, up to and beyond their bond, unless they choose to stop the recount.

Persons authorized to demand a recount are candidates who were in the election in question, or, when recounting on an issue, a voter affected by that issue.<sup>434</sup>

After the demand for recount is received by the board, they have an additional forty-eight (48) hours to send notice of the recount to all candidates who filed for the office in question, including the time, place, and date the recount will take place. The notice will be delivered by any sheriff of the county to each candidate in person. If the candidate cannot be found, it will be delivered to the usual residence of the candidate and information about it will be given to anyone above sixteen (16) found there. If the sheriff finds no one, they will leave the notice posted at the residence's front door. The sheriff will make return of the manner and time of service. If the sheriff fails to perform these duties, he or she will be fined \$20.<sup>435</sup> In the case of a recount on a special issue, a notice will also be posted on the front door of the facility where the recount will take place.

The date of the recount will be set no sooner than three (3) days after the notice is served. After the notice is served, any candidates served will have an additional twenty-four (24) hour period to notify the board in writing that they intend to preserve their right to demand a recount of precincts not covered by the original demand.<sup>436</sup>

There will only be one (1) recount of each precinct. A demand for a recount of ballots cast at any precinct may be made only by the candidate that requested the recount and any candidates who notified the board of their intent to preserve their right to demand recount of additional precincts.

As discussed above, authorized parties must wait until all elections which they, or their issues, are a part of have reported the results before making the demand for recount.

If the board discovers a malfunction in the counting machines during recount, they will attempt

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<sup>432</sup> W. Va. Code §3-4a-28(a)

<sup>433</sup> W. Va. Code §3-6-9(h)

<sup>434</sup> W. Va. Code §3-4a-28(c)

<sup>435</sup> W. Va. Code §3-6-9(g)

<sup>436</sup> W. Va. Code §3-6-9(f)

to correct the issue according to the process outlined in W. Va. Code §3-4a-29.

### **Written Request**

The written request for recount can be submitted by any candidate for the elected office being recounted, or any voter affected by a special issue to be recounted, and must contain:

- The name of the candidate (or affected voter) requesting a recount;
- The office or issue to be recounted;
- If it is an issue, the voter's name and address;
- All the precincts to be recounted;
- Any specific precincts not to be hand-counted; and
- The bond set by the board of canvassers.

By default, the request for recount includes all precincts covered by that election, unless the person filing specifies otherwise. If the candidate does specify otherwise, he or she cannot afterwards add other precincts to the list.<sup>437</sup>

If any precincts are not hand-counted, they are recounted by processing the votes as they would be during canvassing.<sup>438</sup>

The candidate making the recount request will present it in writing to the county clerk, who in turn will present it to the board of canvassers.

The request to preserve the right to recount shall state the name of the candidates or governing board filing the request and the intent to preserve the right to request the recount of precincts not originally included, and the right to continue the recount should the original recount requester stop it. Candidates or governing boards reserving the right to recount must furnish the same bond as the original candidate.<sup>439</sup>

### **Recount Process**

At the end of the forty-eight (48) hour request period, the board of canvassers will certify the results for all offices and issues *not* subject to any recounts.

The county clerk or municipal recorder, whichever is appropriate, will assist with recount. After officers in custody of the relevant election materials have brought them to the board, recount occurs.<sup>440</sup> Employees of the county commission and clerk may assist the board, along with any persons who may be employed to assist. No candidate or member of his or her immediate family may assist in the recount, nor may any member of a governing board which requested a special election or any board member's immediate family, nor may any voter requesting the

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<sup>437</sup> C.S.R. §153-20-3.1

<sup>438</sup> W. Va. Code §3-4a-27 and §3-6-9

<sup>439</sup> C.S.R. §153-20

<sup>440</sup> C.S.R. §153-20-4.1-3 and see §153-20-6 for the entire recount process.

recount of a special election, or member of their immediate family.<sup>441</sup>

All persons assisting in the recount will work in teams of two (2) persons of opposite political parties, who will take an oath and be deputized as officials are during the initial canvass.

*All* costs of the recount shall be paid by the candidate or voter requesting, as long as it continues, unless the outcome of the election is reversed at the conclusion of the recount, in which case the requester will not be charged. If the original requester stops the recount, but another party continues it, that continuing person will incur any costs after that time if the outcome is not reversed again. The same is true of recounts on special issues.<sup>442</sup>

As with canvass, a majority of the board will be present at all times during a recount and will be conducted under their supervision. If majority cannot be met, they will adjourn and re-meet daily until it is. The board may adjourn from day to day if recount cannot be completed within one (1) day.<sup>443</sup>

Before recount begins, the board will decide the order to recount the precincts in. The order must be decided logically, either by drawing or sequential order beginning with the lowest and continuing to the highest. The order must meet with the agreement of the parties to the recount.<sup>444</sup>

Before recount begins, the board must resolve any incorrect recordation or tabulation of votes on voting machines, and announce any adjusted vote totals.

The candidate or voter that requested the recount (or his or her officially designated representative), the candidates or voters who preserved their rights to demand recount (or their officially designated representatives), and a reasonable number of the public are admitted to the room of the recount.<sup>445</sup>

The candidate, voter, or his or her representative may not handle the voting materials, but they are entitled to view and examine tally sheets and ballots; they also have the right to question any ballot during the recount. If a ballot is questioned, the team shall reexamine that ballot and reach their finding. Any questioned ballot will be marked.<sup>446</sup> If a majority of the team cannot agree on the intent of the voter's markings, the ballot will remain questioned and its votes unrecorded.

Any evidence considered at a recount shall be only that obtainable from the viewing of the election material or relevant evidence from the election commissioners, poll clerks, or others

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<sup>441</sup> C.S.R. §153-20-4.6

<sup>442</sup> C.S.R. §153-20-4.7.b

<sup>443</sup> C.S.R. §153-20-6.1

<sup>444</sup> C.S.R. §153-20-6.9

<sup>445</sup> W. Va. Code §3-4a-27

<sup>446</sup> C.S.R. §153-20-6.3

present at the election. The board may not consider any extra evidence.<sup>447</sup>

When ballots are counted by hand, two (2) teams of two (2) are required. One (1) team will read the ballots together, aloud, so that the second team that is recording the vote can hear. Each member of the recording team marks his or her own tally sheet, and the recording team should compare their vote count in order to catch marking errors.

Each team may handle only one (1) elected office or special issue at a time, even if multiple recounts have been demanded for multiple offices, and will work with that specific office or issue, one (1) precinct at a time, until it is complete. After that recount is done, they may be assigned to work on another elected office.<sup>448</sup>

Challenged and provisional ballots will receive the same treatment they received at canvass, with the same procedures in place to maintain the secrecy of the ballots.<sup>449</sup>

If the result of the recount does not match the result of the canvass, the ballots and tallies will be rechecked by one (1) of the teams in order to discover any error in reading the ballots or making and computing the tally.

### ***Stopping a Recount***

The candidate or voter who requested the recount may stop the recount at the conclusion of any precinct by withdrawing his or her request. Any other candidates, voters, or governing boards that preserved their right to continue the recount may exercise that right, including identifying any of the remaining precincts that need not be hand-counted.

Once a person has stopped the recount, he or she may not resume the recount later on. The requester will pay for any costs incurred if the recount does not reverse the outcome of the election. Likewise, any person who exercises his or her right to continue the recount will pay any costs incurred from the point that he or she exercised that right, if the results of the election are not reversed.<sup>450</sup>

### ***Certifying Results***

The recount is complete when the board seals the ballots in a container with their endorsement and delivers them to the county or municipal clerk; whichever is appropriate. Upon completion, the board will certify the recount by preparing certificates in the form provided in W. Va. Code §3-6-10, stating the full name of the persons voted for and the number of votes for each, written in words. In primary elections, the certificates will be prepared in duplicate for each elected office considered by the recount and will detail the total votes for each candidate in that office. In general election, the certificates for any federal, statewide, legislative, and

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<sup>447</sup> C.S.R. §153-20-6.4

<sup>448</sup> C.S.R. §153.20.6.5

<sup>449</sup> C.S.R. §153.20.6.7.a

<sup>450</sup> C.S.R. §153-20-6.8



judicial offices will be prepared in triplicate.

Each board member will sign each certificate and will prepare and transmit the certificates for the offices involved in the same way as for canvassing discussed above.<sup>451</sup>

## Contest

### *Contest Process*

Any person who was a candidate for the office at the election to be contested, or a candidate for the nomination to that office, may begin the contest process.<sup>452</sup>

According to case law, in the interest of fairness, a contest stemming from specific votes cast can only be called after a recount has been called and held. However, if the only issues at contest are fraud, a candidate's eligibility, or the legality of the election, the contest can proceed without a recount.<sup>453</sup>

After the close and certification of the voting result, the contestant will have ten (10) days to send notice of his or her intent to contest, in writing, to the contestee. However, in a judicial contest, case law provides that contestants have up to sixty (60) days after the election to serve notice, and that contestees may delay their return service until thirty (30) days after receipt.<sup>454</sup>

The notice of contest will also include a list of the specific votes the contestant wishes to dispute, along with specific objections to each, and a list of any votes that were rejected for which he or she will contend.

If the contestant objects to the legality of the election or the qualification of the person elected, the notice will include these objections.

Within ten (10) days of receiving the notice, the person whose election is contested may reply with a similar list of votes he or she wishes to reject, and her or his objections to them, and any rejected votes for which he or she wishes to contend. If the contestee has any objections to the contestant's qualification, the objection should also be specified in written reply.

Both contestant and contestee must include an affidavit with their notices that they do or do not believe the matters set forth in the notice to be true. If any new facts are discovered by either party after this notice is given, he or she will provide notice of this information along with another affidavit to the other,<sup>455</sup> which must affirmatively appear that the new facts were first discovered after service of the first notice and could not have been discovered before.

In all contested elections, except municipal elections, the county commission will be the judge

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<sup>451</sup> C.S.R. §153-20-9.5 and W. Va. Code §3-6-11

<sup>452</sup> W. Va. Code §3-5-20

<sup>453</sup> *Miller v. County Com'n of Boone County*, 208 W. Va. 263, 269 (2000)

<sup>454</sup> *Loomis v. Jackson*, 6 W. Va. 613 (1873)

<sup>455</sup> W. Va. Code §3-7-6

of the election, qualification, and returns of their own members, as well as county and district officers. If it is the election of a member of the county commission that is being contested, that member may not participate. If a municipal election is contested, the governing body of the municipality will serve as the judicial body for the contest.<sup>456</sup>

The county commission will be presented with notice of the contest at its first term after notice is delivered to the contested person, and the contest will be docketed for trial.

Witnesses will be issued by the county commission and entitled to the same allowances and penalties as witnesses attending a civil suit in the circuit court. The commission will hear all legal and proper evidence and may require product of poll books, certificates, and ballots to be examined.

The case may not be continued beyond three (3) months after the Election Day. When the hearing is complete, the commission will declare the “true result” of the election, enter those results in the records, and deliver a copy of that result to the person declared elected. A copy will be retained with the commission as evidence of the outcome.

Either contestant or contestee may appeal the decision of the commission to the circuit court, and the case will be heard and determined “upon the original papers, evidence, depositions, and records” considered by the county commission. The case may then be appealed further to the West Virginia Supreme Court of Appeals.<sup>457</sup>

### ***Contest of Delegates***

Contests of the nominations of delegates are heard and determined by the party executive committee of the county from which the delegates are chosen. The contestant must send a written petition to the county executive committee, in addition to notices to contestees, which will then meet for a hearing.

The committee must make a determination within ten (10) days after holding a county mass convention. In addition, both the circuit court and the Supreme Court each have original jurisdiction to review the decision of the county executive committee, either by writ of mandamus or other proper proceeding.<sup>458</sup>

### ***Cost of a Contest***

The costs of a contested election will include the expenses incurred in serving notices, taking depositions, and giving allowances to witnesses. These costs will be noted at the foot of each deposition by the person taking the deposition. If the contestant fails to set aside the election, the costs incurred or expended by the person declared elected will be awarded against the

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<sup>456</sup> *Harrison v. Lewis*, 6 W. Va. 713 (1873)

<sup>457</sup> W. Va. Code §3-7-7

<sup>458</sup> W. Va. Code §3-5-21

contestant.

Otherwise, each party will pay their own costs, unless it appears the person declared elected was guilty of fraud or malpractice in the election, or fraud in procuring that declaration. If fraud or malpractice is found, costs will be awarded in favor of the plaintiff.

Costs awarded to either party will be decided by the court or joint session that decides the case, and a certificate signed by the presiding officer of that body will be given to the party who was awarded for. If the costs are not paid by the other party within ten (10) days after the date of the certificate, the circuit court clerk may issue execution on the certificate.

No person contesting a seat in the Legislature will be entitled to pay (i.e. reimbursement) for mileage if the contest fails.<sup>459</sup>

### ***Contests in Special Circumstances***

If the election of any of the following positions is contested, certain special procedures must be followed:

- Governor;
- Secretary of State;
- Treasurer;
- Auditor;
- Attorney General;
- Commissioner of Agriculture;
- Judge of the Supreme Court of Appeals; or
- Judge of a Circuit Court.<sup>460</sup>

Contestants must give notice within ten (10) days after the election is certified, and return notice must be given within ten (10) days of the first delivery of notice,<sup>461</sup> except in the case of a challenge to a judicial position, where notice can be provided as late as sixty (60) days after the certification of results, and return notice provided up to thirty (30) days after that.<sup>462</sup>

Also, in contests of judicial offices, bribery can only be used as a basis for contest if the contestee has *already* been convicted of bribery at the election.

The parties must finish taking depositions within forty (40) days of the delivery of notice. These depositions will be given to the clerk of the House of Delegates, who will deliver it to the appropriate joint committee or special court that will oversee the contest.<sup>463</sup>

If the election of the Governor is contested, the notice of contest and depositions will be

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<sup>459</sup> W. Va. Code §3-7-9

<sup>460</sup> W. Va. Code §3-7-3

<sup>461</sup> W. Va. Code §3-7-1

<sup>462</sup> *Loomis v. Jackson*, 6 W. Va. 613 (1873)

<sup>463</sup> *Morrison v. McWhorter*, 57 W. Va. 614 (1905)

referred to a joint committee of the two houses for examination and report. The committee will consist of two (2) senators elected by the Senate and three (3) delegates elected by the House of Delegates. The contest will be determined by both houses of the legislature sitting in joint session, in the Hall of the House of Delegates, with the President of the Senate presiding.<sup>464</sup>

In all special cases except for the Governor, the contest will be heard by a special court. The special court will be made up of one (1) person selected by the contestee, one (1) person selected by the contestant, and one (1) person selected by the Governor. The three of them will meet at some time and place within the state to be appointed by the Governor, and proceed to hear and determine the case.<sup>465</sup>

In cases such as these, the contestant must also provide notice to the Governor via petition, which will include the grounds of contest, notice, and specifications. The petition must remain in the Governor's office as evidence to justify any action he or she may take.<sup>466</sup>

Members of the special court will be entitled to \$10 a day each and mileage reimbursement equivalent to a member of the Legislature. They may also hire a stenographer at "reasonable compensation."

Witness and documentary evidence may be required at any designated place of hearing. In case of disobedience, the special court may invoke the aid of the circuit court in requiring evidence and testimony of witnesses and production of evidence. The circuit court will issue an order requiring a subpoenaed person to appear and produce all evidence ordered.

Decisions of the special court may be appealed to the Supreme Court of Appeals, or, if a judge of the Supreme Court is in vacation, by petition within thirty (30) days after the final decision is certified to the Governor. If the contestee or appellee is absent, a copy of the notice may be mailed to his or her last known post-office address. A copy of the petition will be delivered to the contestee before it is delivered to the court.

The court or judge will set a time for the hearing that is not sooner than five (5) days after the notice is given. The court may suspend its final decision, require bond, and impose reasonable and just terms and conditions upon the petitioner before fixing a time for the final hearing.

Before a final hearing, the special court must file all papers, testimony, evidence, and records with the clerk of the Supreme Court of Appeals, attached to a copy of the special court's final decision. After argument by counsel, the Supreme Court shall decide the matter at controversy, in both law and evidence, "as may seem to it to be just and right." The Supreme Court of Appeals is given jurisdiction to enforce its decision by writs of prohibition, mandamus, and certiorari, as it deems appropriate.<sup>467</sup>

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<sup>464</sup> W. Va. Code §3-7-2

<sup>465</sup> W. Va. Code §3-7-3

<sup>466</sup> *Loomis v. Jackson*, 6 W. Va. 613 (1873)

<sup>467</sup> W. Va. Code §3-7-3

If a member of the Legislature is contested, he or she follows the same process as a county or municipal contest, except that the case is heard by the proper branch<sup>468</sup> of the Legislature, which must be notified within ten (10) days of its meeting.<sup>469</sup>

### ***Depositions in Contests for Legislative Seats***

Either party may take depositions, beginning at any time after the delivery of the original notice. Reasonable notice of every deposition will be given and will specify the names of witnesses being examined.

Depositions may be taken before a justice, notary, or any other officer authorized to take depositions in civil suits. If a deposition is taken before any of these officers, that officer must certify and seal his or her position and write his or her name across the place he or she is sealed before sending it by mail, or otherwise, to the clerk of the body in which the seat is contested. If the contest is deferred to a committee, the clerk will forward that information to the committee for examination.

Parties must finish taking depositions five (5) days before the second (2<sup>nd</sup>) Wednesday of the next January.

Subpoenas for witnesses will be issued by the clerk of the circuit court, and witnesses will be entitled to the same allowances and privileges and subject to the same penalties as if summoned by the circuit court.

### ***Tied Votes in Legislative Contests***

If there is a tie vote at the conclusion of the contest, the house in which the contest is being heard will declare who is elected.<sup>470</sup>

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<sup>468</sup> "Proper Branch" is not clarified anywhere in the W. Va. Code. It can be assumed to mean the branch that the candidate is being elected for.

<sup>469</sup> W. Va. Code §3-7-4

<sup>470</sup> W. Va. Code §3-7-5

# 8 CHAPTER EIGHT: Penalties for Elections Violations

## Chart of Penalties

The following chart outlines the criminal penalties provided for in the W. Va. Code. Alleged violations of these Code sections are investigated and prosecuted by the Secretary of State's Investigations Unit. Common violations include, but are not limited to, vote buying, improper election procedures, and campaign finance violations. Felony violations appear on this list in **red**, while misdemeanor violations appear in **blue**.

Type of Crime	Violation	Code Citation
<b>Illegal Voting Procedures</b>	Authorizing or providing assistance to a voter known to not require assistance.	§3-1-34(i)
<b>False Swearing in Oath or Affirmation</b>	Falsely swearing, counseling, advising, aiding or abetting another in the commission of false swearing during voting procedure.	§3-1-34(h)
<b>Improperly Registering or Failure to Lawfully Register Voter by Clerk or Registrar</b>	Allowing a person to register when not entitled, or refuses to register a lawful voter, or makes an improper entry into a registration form or file.	§3-2-32(a) *Note: applies to municipal officials per §§3-1-2a; 8-5-13
<b>Improper Registration</b>	Registering or changing registration when not entitled.	§3-2-32(b)
<b>Neglect of Duty by Registration Official</b>	Neglecting the duty to perform registration functions or to follow the directive of the Secretary of State as the Chief Registration Official.	§3-2-33(a)
<b>Alteration of Registration Document</b>	Improperly inserting a name or entry on registration document; destroying or removing such record.	§§3-2-34(a) & (b)
<b>Withholding Information</b>	Neglecting or refusing to furnish required information in connection to registration to the WVSOS or County Clerk.	§3-2-35
<b>False Information on Registration Form</b>	Providing false information, or suborning false information, on a voter registration application.	§3-2-36(a) §61-5-1 §61-5-3
<b>False Registering of Voter</b>	Registering a voter who is not qualified, by providing false information.	§3-2-36(b)
<b>False Swearing on Affidavit for Absentee Ballot</b>	Providing false information on an affidavit for an absentee ballot.	§3-3-4(g)
<b>Illegal Assistance to Absentee Voter</b>	Unlawfully providing assistance to an absentee voter.	§3-3-4(h)
<b>Absentee Ballot Certification</b>	Delivering more than two (2) absentee ballots on behalf of another person, examining or altering the ballots, or certifying the same. False certification is false swearing.	§3-3-5(k) §3-9-3
<b>Ballot Commissioner Neglect</b>	Failing to account for every ballot by commissioner.	§3-4A-19(h)

Unlawful Presence at Voting Booth	Being present within five (5) feet of voting booth, communicating with person who is voting, or bringing recording device near the voting booth.	§3-4A-23
Tampering of Vote Recording Device	Tampering or attempted tampering of vote recording device, e-poll book, ballots, ballot label, ballot card, program deck, or other tabulating equipment.	§3-4A-33(a)
Election Official Permitting Tampering of Vote Recording Device	Permitting tampering or attempted tampering of vote recording device, E-poll book, ballots, ballot label, ballot card, program deck, or other tabulating equipment.	§3-4A-33(b)
Willful Neglect of Duty by Officials	Neglecting duties imposed under Article 4A of Code.	§3-4A-34
Violation of Certificate of Nomination for Unaffiliated Candidates	Failing to provide true information on certificate of announcement for unaffiliated or minor party candidates.	§3-5-23(h)
Failure to File Campaign Finance Report	Failing to comply with any reporting requirement by candidate.	§3-8-2(h)
Receiving Currency Greater Than \$50	Receiving currency of the U.S. or a foreign country greater than \$50 by candidate.	§3-8-5d(a)
Accepting Contributions from Foreign Nationals	Soliciting, accepting, or receiving contributions or donations from foreign nationals.	§3-8-5g(b) §3-9-23
Providing False Information to Person Required to Report	Providing false information to a person required to report campaign contributions.	§3-8-5d(c)
Providing Grossly Incomplete or Grossly Inaccurate Statement	Failing to file a sworn, itemized statement within the time limitations, or willfully filing a grossly incomplete or grossly inaccurate statement.	§3-8-7(a)-(b)
Disclosing Existence of Complaint, Report, or Investigation	Disclosing the existence of the filing of any complaint or report, or the facts of any investigation.	3-8-8(i)
Illegally Influencing a Vote	Threatening harm, directly or indirectly, to influence a vote, forcing an employee to influence a vote, publishing a false statement to influence a vote, or publishing a paid editorial to influence a vote.	§3-8-11
Anonymous Campaign Support	Circulating campaign literature or ads without disclosures, promising employment as a reward for political support, contributing in excess of campaign finance limits, soliciting from certain governmental employees, soliciting without disclosing any commission to be received by the solicitor, or unlawfully using a newspaper/mail receptacle for campaign literature.	§3-8-12
Ballot Tampering	Providing false return of voting results, mis-delivering ballots, signing the name of another to a ballot, or unlawfully accessing a voter registration system.	§3-9-1
Printing or Possession of Unauthorized Ballots	Printing or possessing ballots not authorized by ballot commissioners or taking ballots from an election room.	§3-9-2
False Swearing on Affidavit	Providing false information on an affidavit.	§3-9-3

Failure to Return Supplies	Failing to procure or deliver election supplies.	§3-9-4
Destruction or Removal of Election Supplies	Removing or destroying supplies or booths.	§3-9-5
Unauthorized Presence in Election Room	Being unlawfully present within one hundred (100) feet of an election room.	§3-9-6
Refusal to Allow Challenge or Frivolous Challenge to a Vote	Refusing the right of a qualified voter to vote, knowingly accepting an unlawful voter, or maliciously challenging the right of a voter.	§3-9-7
Inducing or Conspiring to Illegally Vote	Inducing or conspiring to induce a voter to place a name or mark on a ballot to demonstrate how they voted.	§3-9-8
Unlawful Acts at Polls	Disclosing how someone voted, electioneering at a polling place, giving the wrong ballot, mishandling a ballot, or marking a ballot when not voting.	§3-9-9
Disorder at Polls	Preventing or attempting to prevent a voter, official or otherwise from election, by force, menace, fraud or intimidation.	§3-9-10
Failure to Make Election Returns	Willfully failing to prepare and certify results of election within twelve (12) hours after completion of the count.	§3-9-11
Influence or Bribery by Candidates	Loaning, offering, or promising money or thing of value to elector to influence or retain a vote.	§3-9-12 <i>See also §61-5-4 for Felony Bribery</i>
Buying or Selling Votes	Offering or giving money or any thing of value for a vote.	§3-9-13(a)
Receiving Money or Thing of Value for Vote	Receiving money or thing of value for a vote.	§3-9-13(b)
Unlawful Acts by Employer	Giving pay envelope, statement, poster, or verbal message threatening or tending to influence an employee to vote a certain way.	§3-9-15
Unlawful Acts by Corporations and Membership Organizations	Soliciting or contributing corporate funds by force, threat, or condition of employment	§3-8-8(d)
Receiving or Soliciting Money or Thing of Value for a Vote	Asking for or receiving money, gifts, loans, employment, or endorsement for voting or refraining to vote.	§3-9-16
Unlawful Voting in Primary	Knowingly voting in primary on ticket of wrong party, or election official knowingly giving ticket of wrong party.	§3-9-17
Fraudulent Absentee Ballot	Intending to commit fraud by obtaining, removing, or disseminating an absentee ballot, intimidating an absentee voter, or altering an absentee ballot.	§3-9-19(a)
Election Official Failure to Perform Duties Regarding Absentee Ballot	Willfully failing to lawfully process an absentee ballot.	§3-9-19(b)
Obstructing Employee's Freedom to Vote	Preventing an employee from voting or casting a particular vote.	§3-9-20
Betting on Elections	Betting or wagering money or thing of value on any election.	§3-9-22



General Provision Penalty	Committing any violation not prescribed by law.	§3-9-23
Exceeding Public Finance Limits	Receiving funds in excess of limits by candidate.	§3-12-15(a)
False Information to State Election Commission	Making a false statement to the State Election Commission.	§3-12-15(b)
Unchallenged, Unlawful Authorized Absentee Voter Assistance	Authorizing a voter to receive unchallenged assistance in voting an absentee ballot when the individual is known to the official designated to supervise and conduct absentee voting not to be authorized to receive assistance in voting	§3-3-4(i)

### Violations Caused by Organizations

In the case of violations caused by any:

- Partnership;
- Committee;
- Association;
- Corporation; or
- Other organization,

The following individuals will be subject to the penalties described above:

- Officers;
- Directors; or
- Managing or controlling heads; who
  - Knowingly and willingly participated in the violation.<sup>471</sup>

### Statute of Limitations

Generally, all the above violations have a statute of limitations, in which the crime must be prosecuted. Provided that, “no person shall be prosecuted for any crime or offense under...this chapter, unless upon an indictment found and presentment made within five (5) years after the date of the commission of the crime.”<sup>472</sup>

Misdemeanor offenses must be charged within one (1) year of the offense.<sup>473</sup>

Felony offenses under the W. Va. Code must be commenced within five (5) years of the violation.<sup>474</sup>

Offenses related to perjury must be prosecuted within three (3) years of the offense.<sup>475</sup>

<sup>471</sup> W. Va. Code §3-8-13

<sup>472</sup> W. Va. Code §3-9-24

<sup>473</sup> W. Va. Code §61-11-9

<sup>474</sup> W. Va. Code §3-8-5d(b) and §3-9-24

<sup>475</sup> W. Va. Code §61-11-9

Any corollary felony crimes (*e.g.* Identity Theft – W. Va. Code §61-3-54; Forgery/Uttering – W. Va. Code §61-4-5; Computer Fraud – W. Va. Code §61-3C-4; Falsifying Accounts – W. Va. Code §61-3-22) have no statute of limitations.

# Duties of the Secretary of State



WEST VIRGINIA SECRETARY OF STATE'S OFFICE  
ELECTIONS DIVISION

## West Virginia Constitution Provisions

### *Duties to the Legislature*

W. Va. Const. Art. 6 §16: The Secretary of State shall record and file the oaths of senators and delegates.

### *Duties to the Executive Department*

Art. 7 §1: The Secretary of State shall have a term of four (4) years; shall reside and keep public records at the seat of government during tenure; and shall perform such duties as may be prescribed by law.

Art. 7 §2: The Secretary of State shall be elected at the time and place prescribed by law.

Art. 7 §3: The Secretary of State shall, immediately at the organization of the House, and before proceeding to business, open and publish the returns of every election for the executive department, in the presence of a majority of each house of the Legislature.

## West Virginia Code Provisions

### *Subdivisions of the State*

#### Senatorial Districts

W. Va. Code §1-2-1: The Secretary of State may establish rules and regulations to implement the provisions governing senatorial districts.

### *Elections*

#### Elections in General

Code §3-1-2a: The Secretary of State's Office shall hold and conduct a biannual election training session for municipal elections.

Code §3-1-3a: The Secretary of State may make, amend, and rescind rules, regulations, orders, and instructions, and prescribe registration and voting procedures, forms, lists and records, as may be necessary for West Virginia to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970.

Code §3-1-7: The Secretary of State may approve a precinct change made by a county commission no later than sixty (60) days prior to an election.

Code §3-1-9: The Secretary of State shall, upon certification of primary election results, notify each state executive committee of the members elected to the state executive committee, congressional district, state senatorial district, delegate district, county committee, and any vacancies.

Code §3-1-16: A Secretary of State shall be elected at the general election of 1968, and

every fourth (4<sup>th</sup>) year thereafter.

Code §3-1-20: The Secretary of State shall prescribe voter instruction cards for preparing and casting provisional ballots, to be distributed by the board of ballot commissioners.

Code §3-1-21: The Secretary of State shall provide ballots necessary for conducting all statewide special elections ordered by the Legislature.

Code §3-1-21a: The Secretary of State shall prescribe a form for a certificate of authorization; shall issue a certificate of authorization to print ballots; may deny noncompliant applications for such certificate; and shall provide a list of all vendors authorized to print ballots to all county clerks in the state.

Code §3-1-30a: The Secretary of State may prescribe the form for oaths of election commissioners and poll clerks.

Code §3-1-32: The Secretary of State shall prescribe waiting-voter permits.

Code §3-1-34: The Secretary of State shall provide county clerks and poll workers with voter identity affidavit forms; shall prescribe a form for an oath to be signed by an election commissioner or other person who assists a voter in voting; shall prescribe a List of Assisted Voters form and provide it to county clerks; and may authorize a county clerk to dispose of oaths, affirmations, and such list for public inspection at a given time other than the default twenty-two (22) months.

Code §3-1-41: The Secretary of State shall establish a free access system through a phone number or online website that allows those who cast provisional ballots to find out whether their votes were counted and, if not, the reason the vote was not counted.

Code §3-1-44: The Secretary of State shall audit all special election expenses; shall prepare and transmit expense forms to all county commissions for special elections; shall, once he or she determines all expenses by the counties were reasonable and necessary, request the necessary warrants from the State Auditor to be drawn on the State Treasurer; shall mail the warrants to vendors of the special election services, supplies, and facilities; and, may set maximum rates of compensation of the election officials.

Code §3-1-46: The Secretary of State shall work with the State Election Commission to produce one (1) or more audio-visual programs which explain and illustrate procedures for conducting elections, duties of election officials, and methods of voting on voting systems in the state; shall distribute one (1) copy of such program to each county clerk of the state; shall determine the cash amount for such clerks to charge in lending the program to other organizations; shall update the program to fit the election laws of the state; and shall conduct a training session every two (2) years for county clerks.

Code §3-1-48: The Secretary of State shall use expenditures from the State Election

Fund to administer the requirements of the federal Help America Vote Act of 2002, with the approval of the State Election Commission; shall provide forms for county commissions to request such loans and, if necessary, a waiver for the requirements to obtain such loans; shall propose emergency and legislative rules to implement this section; and may compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission for the repayment of such loans.

Code §3-1-50: The Secretary of State shall establish and maintain a state-based administrative complaint procedure for complaints concerning election violations.

Code §3-1-51: The Secretary of State shall investigate whether fraudulent voting occurred when a voter identity affidavit has been executed and a letter has been mailed to the voter, but the mail is undeliverable or the voter notifies the clerk that he or she did not vote; and shall, **beginning July 1, 2019, and each year thereafter**, report to the Joint Committee on the Judiciary and the Joint Committee on Government and Finance detailing such investigations.

### **State Election Commission**

Code §3-1A-1: The State Election Commission is made up of the Secretary of State, and four (4) persons appointed by the Governor, by and with the consent of the Senate.

Code §3-1A-4: The Secretary of State may call a meeting of the State Election Commission. The meeting place of the State Election Commission is the Secretary of State's Office in the State Capitol.

Code §3-1A-6: This section outlines the powers and duties of the Secretary of State and the exercise of powers by appointees:

- (a) The Secretary of State shall be the chief election official in the state; shall have the authority, after consulting with the State Election Commission, to make, amend, and rescind orders and establish legislative rules as necessary.
- (b) The Secretary of State shall have authority to require collection and report of statistical information, and to require other reports by county commissions, county clerks, and circuit court clerks.
- (c) The Secretary of State shall advise with election officials; furnish to election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules issued or established thereunder; investigate the administration of election laws, frauds, and irregularities in any registration or election; report violations of election laws to the appropriate prosecuting officials; and prepare an annual report.
- (d) The Secretary of State shall have the power to administer oaths and

affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records, and other evidence, and set the time and place for hearing any matters relating to the administration or the rules established by the State Election Commission or by the Secretary of State. In case of disobedience to a subpoena or subpoena duces tecum, the Secretary of State may invoke the aid of any circuit court in requiring the attendance, evidence, and testimony of witnesses and the production of papers, books, records, registration records, and other evidence.

- (e) The Secretary of State shall have the power, after consultation with the Secretary of the Department of Military Affairs and Public Safety, to implement emergency procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot, and to uphold the integrity of an election in the event of natural disaster declared by the Governor of this state, terrorist attack, war, or general emergency, if any of which occur during or immediately before an election.
- (f) The Secretary of State may appoint persons to exercise the Secretary of State's powers and duties at his or her discretion, but the Secretary of State shall be responsible for their acts.

Code §3-1A-8: The Secretary of State may allow an investigator to carry a firearm and concealed weapon while performing official duties if he or she has a license to carry and has obtained and maintained firearms training and certification equivalent to that which is required of members of the state police.

#### **Code of Fair Campaign Practices**

Code §3-1B-5: The Secretary of State shall give an individual who files his or her pre-candidacy statement, certificate of announcement, nominating petition, and other paper evidencing an intention to be a candidate for public office, or when an individual files the statement of organization of a political committee, a form containing the text of the Code of Fair Campaign Practices.

Code §3-1B-6: The Secretary of State shall, in consultation with the State Election Commission, prescribe the forms containing the text of the Code; and shall supply the forms to circuit clerks, county clerks, and municipal clerks or recorders in quantities and at times requested by the clerks.

Code §3-1B-7: The Secretary of State shall retain completed Code forms filed with him or her for public inspection until one hundred eighty (180) days after a general election.

### Accessible Voting Technology

Code §3-1C-4: The Secretary of State certifies any upgrades or replacements to existing voting equipment or voting systems; and certifies any voting mechanisms that provide nonvisual access to blind or visually impaired voters.

### Voter Registration

Code §3-2-3: This section outlines the state's authority relating to voter registration and the role of chief election official:

- (a) The Secretary of State shall have general supervision of voter registration procedures and practices and the maintenance of state voter registration records; shall have authority to require reports and investigate violations to ensure the proper conduct of voter registration; and may make changes in the voter registration data necessary to comply with list maintenance requirements, after sending notice to the involved county clerk by certified mail.
- (b) The Secretary of State shall implement a single, uniform, official, centralized, interactive, computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns each voter a unique identifier.
- (c) The Secretary of State is the chief election official responsible for the coordination of this state's responsibilities under the National Voter Registration Act of 1993. The Secretary of State shall have general supervision of voter registration procedures and practices at agencies and locations providing such services as required; and shall have the authority to propose procedural, interpretive, and legislative rules for establishing applications for registration, transmitting applications, reporting and maintaining records required by the provisions of this article, and for developing, implementing, and applying other provisions of this article.

Code §3-2-4: The Secretary of State has authority over county clerks and shall supervise the performance of their deputies, employees, and registrars.

Code §3-2-4a: The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive, computerized voter registration database of every legally registered voter that meets the requirements of this section.

Code §3-2-5: The Secretary of State shall prescribe all state forms for voter registration, in compliance with the National Voter Registration Act of 1993; is authorized to establish secure electronic voter registration system procedures; shall prescribe printing specifications of each type of voter registration application and such application portion



of any form that is part of a combined agency form; and shall submit the specifications of such application by mail for statewide bidding for a contract period beginning September 1 of each odd-numbered year and continuing for two (2) calendar years.

Code §3-2-6: The Secretary of State may designate entities other than county clerks that may receive applications from an approved electronic voter registration system.

Code §3-2-6a: The Secretary of State shall prescribe the method by which a person can prove his or her employment out of the country for extended time to register to vote; and shall prescribe procedures for adding persons to the lists of registered voters who are eligible for extended time to register to vote in person.

Code §3-2-7: The Secretary of State may establish procedures for transferring a voter's signature stored in the database of another state agency with an electronic voter registration system.

Code §3-2-8: The Secretary of State shall issue guidelines for the approval of voter registration programs for eligible students in high schools.

Code §3-2-10: The Secretary of State shall make state mail registration forms available for distribution; shall keep a record of all requests for two hundred (200) or more forms; shall require the entity or organization to provide their contact information on a form prescribed by the Secretary of State; and may limit the distribution to a reasonable amount per group.

Code §3-2-11: The Secretary of State shall cooperate with the Division of Motor Vehicles to systematically compare citizenship status and information; shall take steps to cancel noncitizen voter registration applications; shall notify county clerks of the submission of noncitizen voter registration applications within twenty-four (24) hours of discovery; shall remove and file any voter registration or change of address forms that have not been signed by the applicant; shall forward completed, signed applications to the appropriate county clerk within five (5) days of receipt; shall maintain such voter registration forms; shall establish procedures to protect the confidentiality of information obtained from the Division of Motor Vehicles; and shall propose rules to implement the requirements of this section.

Code §3-2-12: The Secretary of State may use moneys credited to the Combined Voter Registration and Driver Licensing Fund in certain ways detailed in this section; and shall establish rules to provide for the administration of such fund.

Code §3-2-13: This section outlines which agencies may provide voter registration services; the designation of responsible employees; forms; prohibitions; and privacy:

- (c) The Secretary of State shall, in conjunction with a designated representative of each of the appropriate state agencies, review the programs and offices

established and operating with state funds, which administer or provide public assistance or services to persons with disabilities; and shall establish an emergency rule pursuant to the provisions of Chapter 29A of the W. Va. Code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the National Voter Registration Act of 1993.

- (d) The Secretary of State shall, in each even-numbered year, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by subsection (c). The Secretary of State shall periodically review and revise, if necessary, the legislative rule designating the specific agencies required to provide voter registration services.
- (f) The Secretary of State may request notice of the designation of state agency employees who will conduct voter registration services. The Secretary of State shall provide biannual training for local coordinators.
- (h) The Secretary of State, in conjunction with those agencies designated to provide voter registration services, shall prescribe the form or portion of the appropriate agency form required by the National Voter Registration Act of 1993, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote.

Code §3-2-14: The Secretary of State shall establish procedural rules governing the duties and training of agency employees responsible for providing voter registration services in compliance with the National Voter Registration Act of 1993; shall, upon receipt of registration forms from an agency, remove and file any forms that have not been signed by the applicant; and shall forward completed, signed applications to the appropriate county clerk within five (5) days of receipt.

Code §3-2-21: The Secretary of State shall prescribe the assignment and confidential record of assigned system identification or authorized user code for each person appointed to add, change, or transfer voter registration information within the statewide voter registration database; and shall prescribe how voter registration records are to be entered and maintained in the statewide voter registration database.

Code §3-2-25: The Secretary of State shall provide for the comparison of data records in all counties; shall, based on the comparison, prepare a list for each county of voters who have appeared to register in that county or dually register in another county as well; shall send that list to the corresponding clerks to check against their voter rolls; may provide for the comparison of data records of counties with the data records of the Division of Motor Vehicles, the registrar of vital statistics, and with the data records of any other state agency that maintains records of residents of the state; shall contract

with an authorized vendor of the United States Postal Service to perform a change of address comparison; shall return to each county the identified matches of the county voter registration records and the postal service change of address records; and shall prescribe a form by which any voter designated as inactive will be required to affirm his or her current residence address, upon appearing at the polls to vote.

Code §3-2-26: The Secretary of State prescribes the notice to be sent along with a confirmation notice sent to a registered voter, when that voter appears to have moved or to have become ineligible to vote.

Code §3-2-28: The Secretary of State may challenge the registration of any registered voter; shall prescribe a form for voter registration challenges; and shall mail such form to the registrant with return receipt requested.

Code §3-2-29: The Secretary of State shall establish rules for the specific retention times and procedures required for original voter registration records; and may require that records be delivered to a specified location for processing at state expense, if he or she determines any records to be destroyed by a county clerk are of sufficient historical value that microfilm or other permanent data storage is desirable.

Code §3-2-30: The Secretary of State shall make voter lists available for sale, subject to certain limitations.

### **Absentee Voting**

Code §3-3-2: The Secretary of State shall prescribe the form for a mail-in absentee ballot application.

Code §3-3-2a: The Secretary of State shall prescribe the criteria for community voting locations for early voting; and shall propose rules as necessary to establish such criteria.

Code §3-3-2b: The Secretary of State shall prescribe a form for applications for placement on the special absentee voting list.

Code §3-3-3: The Secretary of State shall prescribe which items are to be printed and provided to each person voting an absentee ballot in person.

Code §3-3-3a: The Secretary of State shall prescribe a form for absent voter's ballot applications.

Code §3-3-4: The Secretary of State shall prescribe a form for a voter identity affidavit and a "List of Assisted Voters."

Code §3-3-5: The Secretary of State shall prescribe the items to be received by an absentee voter in order to vote; shall establish a waiver of privacy form; and shall comply with the Federal Voting Assistance Program of the United States Department of

Defense by transmitting the ballots to the county clerks when two (2) individuals of opposite political parties are available to process the ballots.

Code §3-3-5b: The Secretary of State may prepare a form for a statement allowing a voter to qualify for a special write-in absentee ballot.

Code §3-3-5c: The Secretary of State shall prescribe emergency absentee ballot applications and establish application criteria.

Code §3-3-6: The Secretary of State may prescribe a form for making an affidavit for a person providing assistance in voting an absent voter's ballot by mail.

Code §3-3-9: The Secretary of State shall issue the instructions for making a notation that a blank absent voter's ballot has been destroyed in the presence of the voter by a poll clerk in a polling place so that the voter may vote on that Election Day.

Code §3-3-10: The Secretary of State shall prescribe forms for challenging an absent voter's ballot.

Code §3-3-11: The Secretary of State may prescribe the record that will contain all ballots delivered or marked in person for the purpose of absentee voting.

Code §3-3-12: The Secretary of State shall make, amend, and rescind rules, regulations, orders, and instructions, and prescribe forms, lists, and records, and the consolidation of forms, lists, and records as may be necessary to provide for an effective, efficient, and orderly administration of the absentee voter law of this state; shall establish necessary rules and regulations to implement the Uniformed and Overseas Citizens Absentee Voting Act of 1986; shall forward a copy of the Act to all officials designated to supervise and conduct absentee voting; and may establish special procedures to allow absentee voting for registered voters who would otherwise be unable to vote in the election.

### **Electronic Voting Systems**

Code §3-4A-8: The Secretary of State shall set a date, time, and place for a meeting of the State Election Commission to consider an application for an electronic voting system; and shall mail notice of the hearing to each member of the Commission.

Code §3-4A-9: The Secretary of State shall approve direct-recording electronic voting machines with a mandatory paper copy; and may promulgate rules to implement or enforce provisions related to such voting machines.

Code §3-4A-9a: The Secretary of State shall propose rules to ensure that any ballot-marking voting system employed by a county is publicly tested prior to use in an election.

Code §3-4A-9b: The Secretary of State shall propose rules in accordance with the

provisions of this section pertaining to precinct ballot scanning devices.

Code §3-4A-11a: The Secretary of State shall specify the color of the ink to be printed on primary election ballots for the various political parties.

Code §3-4A-27: The Secretary of State shall establish the procedures for handling and tabulating ballots and tallying write-in votes.

### **Primary Elections and Nominating Procedures**

Code §3-5-2: The Secretary of State shall determine the method by which delegates and alternates are elected in the case of a national convention where the rules of the national party require that the percentage of votes cast for the various presidential candidates determine the apportionment of committed candidates to be elected as delegates or alternates.

Code §3-5-7: The Secretary of State shall prescribe a form for a certificate of announcement for a candidate; may refuse to certify a candidacy or may remove certification if the candidate is registered with a different party than the one he or she has named in the certificate; shall list as “uncommitted” any candidate for a delegate to a national convention who is disapproved by the presidential candidate; and may not certify candidates who file for more than one (1) office or division and fail to withdraw.

Code §3-5-8: The Secretary of State shall deposit moneys received from fees paid by candidates for filing certificates of announcement into certain funds.

Code §3-5-8a: The Secretary of State shall prescribe the oaths and forms required for a candidate who is unable to pay a filing fee and submits to a petition process.

Code §3-5-9: The Secretary of State shall arrange the names of all candidates who have filed a certificate of announcement or who are entitled to have their names on any political party ballot; shall file such in his or her office; shall post a duplicate of the certificate in a visible place in his or her office until after the primary election; shall ascertain which candidates are to appear on the primary election ballots in the counties; shall notify the county clerks of such; and shall transmit certificates to the county clerks.

Code §3-5-10: The Secretary of State shall prescribe the form and manner of each county’s official list of offices and candidates for each office which will appear on the primary election ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election.

Code §3-5-11: The Secretary of State shall provide a form for a statement of withdrawal for candidates who have filed a certificate of announcement and wish to withdraw the certificate and decline to stand as a candidate for office.

Code §3-5-12: The Secretary of State shall choose the color of the paper for each party's ballot in primary elections; shall notify all county clerks of the colors chosen; and shall choose a different color for each party's ballot.

Code §3-5-13: The Secretary of State has the authority to approve ballot size and composition modifications to the official ballots for the primary election; and has the authority to approve a brief detailed description for vacant positions for which no candidate has filed.

Code §3-5-13a: The Secretary of State office shall be listed after the Governor office and before the Auditor office on the State Ticket. The Secretary of State shall prescribe the method of conducting the drawing by lot in the county clerk's office of each county for the arrangement of names on a ballot where more than one (1) person has filed a certificate of announcement.

Code §3-5-15: The Secretary of State shall prescribe a form for the certificates of result to be filled out by county clerks during the primary election.

Code §3-5-18: The Secretary of State shall certify the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to be placed on the official ballot in the general election as the nominee for that party; shall certify all candidates nominated by political parties or groups or citizens not constituting a political party; and may not certify any person who has filed a notarized statement of withdrawal in time.

Code §3-5-21: The Secretary of State shall certify nominations made at state conventions to the county clerk of each county concerned; and shall print the names of the nominees on the regular ballot to be voted at the ensuing general election, except for the presidential elector candidates.

Code §3-5-23: The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures; may investigate the validity of such signatures; and may, if doubtful of the validity, ask the Attorney General to institute a quo warranto proceeding against the nominee by certificate.

Code §3-5-24: The Secretary of State may not receive any nomination certificate that has not met the deadline for filing or paying the fee.

### **Conduct and Administration of Elections**

Code §3-6-2: The Secretary of State is authorized to approve ballot size and composition modifications to the official ballots of the general election; and is authorized to approve a brief detailed description for vacant positions for which no candidate has filed.

Code §3-6-3: The Secretary of State shall prescribe the form and manner by which the ballot commissioners of each county shall prepare an official list of offices and nominees

for each office which will appear on the general election ballot.

Code §3-6-4a: The Secretary of State shall prescribe the form for write-in candidates' certificates of announcement; and shall post the names of all official write-in candidates for offices on the ballot in more than one (1) county and certify the name of each official write-in candidate to the appropriate county clerks.

Code §3-6-5: The Secretary of State may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the Secretary of State shall preserve the right to vote by a write-in vote for those candidates who have filed and been certified as official write-in candidates.

Code §3-6-8: The Secretary of State shall prescribe a form for certificates of result to be filled out by election officials under oath once the results during a primary election are determined.

Code §3-6-9: The Secretary of State shall, for offices on the ballot in more than one (1) county, notify the county clerks of each relevant county when the final county has made a public declaration of the results of the election.

Code §3-6-11: The Secretary of State shall deliver certificates of the board of canvassers to the Senate on the first (1<sup>st</sup>) day of the next ensuing session, together with a list of persons appearing thereby to be elected, in the case of a recount; and shall deliver such certificates to the speaker of the House of Delegates on the first (1<sup>st</sup>) day of the next session of the Legislature, if there is no recount.

### **Contested Elections**

Code §3-7-1: If the election of Secretary of State is contested, the contestant shall give notice to the person contested within ten (10) days after the election is certified, and, within ten (10) days after, the return notice shall be given to the contestant. The parties shall finish taking depositions within forty (40) days after the notice is delivered. The depositions shall be transmitted to the clerk of the House of Delegates.

Code §3-7-3: Where the election of Secretary of State is contested, the case shall be heard and decided by a special court by the methods provided in this section.

### **Regulation and Control of Elections**

Code §3-8-2: The Secretary of State shall prescribe a disclosure statement and report forms for candidates to file relating to election receipts and expenditures; shall promptly prepare indices setting forth all independent expenditures separately; may establish rules relating to filing a disclosure statement by facsimile device or electronic mail; shall make any document filed electronically accessible to the public on the Internet within twenty-four (24) hours of receipt; and may establish rules to set

guidelines for the administration of this section.

Code §3-8-2a: The Secretary of State shall file and retain verified financial statements from any inaugural committee, financial agent, or representative of an applicable committee as public record for no less than six (6) years; shall prescribe a form for inaugural committees to contribute amounts received in excess of the amount expended for an inaugural event to any educational, cultural, or charitable organization, or to the Governor's Mansion Fund; and shall file and retain such records as public records for no less than six (6) years.

Code §3-8-2b: The Secretary of State shall make disclosure of electioneering communications statements available to the public online within five (5) days after receipt; and shall propose rules to implement this section.

Code §3-8-2c: The Secretary of State shall file and retain verified financial statements from a party headquarters committee, financial agent, or similar representative as public records for no less than six (6) years; and shall propose rules to implement the provisions of this section.

Code §3-8-5b: Financial statements filed by or on behalf of candidates for Secretary of State shall be filed electronically by the means of an Internet program that has been established by the Secretary of State on forms or in a format prescribed by the Secretary of State. The current Secretary of State shall post the sworn financial statements on the Internet within ten (10) days from their filing date.

Code 3-8-5c: The Secretary of State shall prescribe the manner in which financial statements, independent expenditure reports, and electioneering communication reports are to be filed

Code §3-8-6: The Secretary of State may determine what other ways copies of financial statement forms shall be furnished aside from through county clerks; shall receive, endorse and file all complete, compliant statements; and shall preserve such statements for five (5) years and then may destroy them, if not required to preserve them further by order of any court.

Code §3-8-7: The Secretary of State shall give notice of any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn statement or files an incomplete or inaccurate statement to the prosecuting attorney of the county where the person resides or is located; shall publish online a list of all persons required to file statements with the Secretary of State's office who filed statements after the deadline, and shall retain late activity for the previous five (5) years up to the current year; may assess a civil penalty to such persons; may negotiate and enter into settlement agreements for the payment of civil penalties; may review and audit any filed statement; and shall provide for written notice to such persons of their



noncompliance.

### **Unauthorized Presence in Polling Places**

Code §3-9-6: Full-time employees of the Secretary of State's Office, respective county offices of the county clerk, or the county prosecutor may enter or otherwise disturb the polling place.

### **Filling Vacancies**

Code §3-10-1: The Secretary of State may authorize the means by which a notarized declaration of candidacy and the related filing fee shall be filed. The drawing for the primary election ballot position for statewide, multicounty and legislative offices will take place at the Secretary of State's Office.

Code §3-10-3: A vacancy in the Office of the Secretary of State is filled by the Governor by appointment and subsequent election for the remainder of the term.

Code §3-10-9: The Secretary of State shall audit all expenses of a special election; shall prepare and transmit expense forms to all county commissions; shall, once he or she determines all expenses by the counties were reasonable and necessary, request the necessary warrants from the State Auditor to be drawn on the State Treasurer; and shall mail the warrants to vendors of the special election services, supplies, and facilities.

### **Amendments to the State Constitution**

Code §3-11-2: The Secretary of State shall supply missing titles or summaries in resolutions from the Legislature; shall certify such to ballot commissioners of each county; and shall, when numbers are not designated by the Legislature, number the amendments consecutively in accordance with the dates of their final submission by the Legislature.

Code §3-11-3: The Secretary of State shall have each proposed amendment published as a Class I legal advertisement at least three (3) months before the election in a newspaper in every county of the state in which a newspaper is printed.

Code §3-11-5: The Secretary of State shall file and preserve certificates from election commissioners for a constitutional amendment until the day on which the result of the election in the state is to be ascertained.

Code §3-11-6: The Secretary of State shall ascertain and declare the election results for an amendment to the State Constitution by proclamation published as a Class I-0 legal advertisement in two (2) newspapers printed at the seat of government.

**Supreme Court of Appeals Public Campaign Financing Pilot Program**

Code §3-12-13: The Secretary of State shall prescribe the form for reporting all exploratory and qualifying contributions made to candidates' campaigns during the immediately preceding month; and shall do the same for reporting periodic financial statements detailing all funds received, expended, or obligated during specified periods.

Code §3-12-14: The Secretary of State shall carry out the duties of this article relating to the State Election Commission and complete the following as applicable:

- (a) Prescribe forms for reports, statements, notices, and other documents required by this article;
- (b) Prepare and publish information about this article and provide it to potential candidates and citizens of this state;
- (c) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to comply with this article and to explain the duties of candidates and others participating in elections under this article;
- (d) Propose rules as may be necessary for the administration of this article;
- (e) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;
- (f) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;
- (g) Ensure public access to the campaign finance reports required pursuant to this article, and whenever possible, use electronic means for the reporting, storing and display of the information; and
- (h) Prepare a voters' guide for the general public listing the names of each candidate seeking election to the Supreme Court of Appeals and post copies of the guide on his or her website as soon as may be practical. The Secretary of State shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates in the guide.

To fulfill his or her responsibilities under this article, the Secretary of State may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require, by subpoena, the production of any books, papers, records, or other items material to the performance of their duties or the exercise of their powers.

***Duties to the Governor and Executive Department***

Code §5-1-8: The Secretary of State shall affix the state seal on warrants for arrest signed by the Governor.

Code §5-1-10: The Secretary of State shall affix the state seal on warrants issued by the Governor for the return of fugitives from West Virginia.

Code §5-1-19: The Secretary of State shall attest the issuance of temporary loans to the Treasury by the Governor; and may sign and attest such by facsimile signature.

Code §5-1-26: The Secretary of State shall forward a certified copy of any orders, rules, or regulations issued in a fuel emergency, within five (5) days after filing in the Secretary of State's Office, to the clerk of the county court of each county; and the Secretary of State's Office shall alone constitute constructive notice to any person affected by such order, rule, or regulation.

Code §5-2-1: The Secretary of State shall be the keeper of the seals of the state, keep a journal of executive proceedings, arrange and preserve all records and papers belonging to the executive department, be charged with the clerical duties of that department, and render to the Governor, in the dispatch of the executive business, such service as he or she may require.

Code §5-2-2: The Secretary of State may administer any oath to be lawfully taken within the state, unless otherwise provided by law.

Code §5-2-3: The Secretary of State shall provide for the storage and retention of essential records filed in the Secretary of State's Office for the period specified by law or legislative rule; shall propose rules for legislative approval necessary to implement this section; may destroy original paper copies under certain conditions outlined in this section; shall have authority to determine the retention period for nonessential records; may transfer to the division of archives and history those records of the Secretary of State as may be identified as having primarily historic value; and shall not be required to destroy original records immediately upon the expiration of the retention period.

Code §5-2-4: The Secretary of State shall maintain a website with certain county information and shall update the website annually with certain information as provided in this section.

Code §5-4-1: The Secretary of State shall be on the Board of Public Works.

Code §5-4-2: The Secretary of State shall act as secretary of the Board; and shall keep a record of official acts and complete other duties as prescribed by the Board.

Code §5-6-8: The Secretary of State shall attest the issuance of state building revenue bonds from the State Building Commission of West Virginia.

## ***Duties to Officers***

### **Public Officers**

Code §6-1-6: The Office of the Secretary of State shall preserve certificates of oaths of all officers, excluding those for magisterial district and county officers, judges of courts of limited jurisdiction, members of boards of education and school officers of any district or independent school district, and municipal officers.

Code §6-2-6: The Secretary of State shall give \$25,000 in bonds to be approved by the Governor.

Code §6-2-9: The bond of the Secretary of State shall be filed and recorded in the office of the Auditor and a certified copy thereof in the Secretary of State's Office.

Code §6-5-1: The Secretary of State's term begins on the first (1<sup>st</sup>) Monday after the second (2<sup>nd</sup>) Wednesday of January after his or her election.

Code §6-5-4: The Secretary of State shall reside at the seat of government during his or her term of office, and keep there the public records, books, and papers pertaining to the Office of the Secretary of State; and shall vacate the Office upon removal.

Code §6-7-2: The salary of the Secretary of State is \$95,000 per year.

Code §6-9A-3: The Secretary of State shall retain copies of all public notices of meetings filed for ten (10) years; may establish procedural rules governing the electronic filing of meeting notices; and shall publish the notices on the Secretary of State's website.

Code §6-9A-12: The Secretary of State shall provide a copy of the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article, as compiled by the Attorney General, to all elected public officials within their respective jurisdictions.

Code §6B-2-3: The Secretary of State shall publish and index advisory opinions made by the Ethics Commission in the West Virginia Code of State Rules.

### **County Commissions and Officers**

Code §7-1-3rr: The Secretary of State shall obtain the following information each year: a list of each elected county official by title, with the name of the elected official, the office contact information for each county office holder, and the website address of the county commission website, if any.

**Public Services****Taxation**

Code §11-6-23: The Secretary of State shall preserve the list of delinquent taxpayers in his or her office; and shall give written notice, within ten (10) days after filing the list, to each of the delinquent taxpayers at his or her last known post-office address, and upon the failure of any delinquent taxpayer to pay the taxes within thirty (30) days from the mailing of the notice.

Code §11-10-5u: The Secretary of State shall make the State Register of persons making retail sales of tobacco plants available for inspection and copying.

Code §11-10-11: The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation with business in this state until receipt of a certificate from the Tax Commissioner stating that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

Code §11-12-75: The Secretary of State shall issue to corporations holding more than ten thousand (10,000) acres of land in this state a certificate stating the amount of tax paid and the number of acres on which paid, and the number of acres the corporation is thereby entitled to hold; shall collect the proper amount of tax from such corporation; shall issue to the corporation a certificate reciting the number of acres the corporation may hold and the amount of tax paid to him or her; shall report moneys received to the Auditor; and, upon being satisfied that the assignee corporation has conformed to the assignment filing requirements, shall issue a certificate authorizing such corporation to hold the same number of acres the original licensee was authorized to hold.

Code §11-12C-3: This section outlines the payment and collection of tax; deposit of money; and return received:

- (a) The Secretary of State shall collect corporate license tax for the first (1<sup>st</sup>) year before issuing a certificate of incorporation or authority to do business when applied for. If the application is made on or after the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) month before the beginning of the next license tax year, and before the first (1<sup>st</sup>) day of the license tax year, the Secretary of State shall collect the tax for the full year beginning on the first (1<sup>st</sup>) day of the next license tax year in addition to the initial tax, together with the statutory attorney fee.
- (b) The Secretary of State shall deposit the first year license tax he or she receives with half in the General Revenue Fund and half in the Service Fees and Collections Account.

- (c) The Secretary of State shall, upon request of any person, disclose: the address of the corporation's principal office; the names and addresses of its officers and directors; the name and mailing address of the person on whom notice of process may be served; the name and address of each subsidiary of the corporation and the corporation's parent corporation; the county or county code in which the principal office address or mailing address of the company is located; and the business class code.
- (d) The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database.

Code §11-12C-5: The Secretary of State shall dedicate sufficient resources from certain funds to provide the services required for the annual collection of attorney-in-fact fees.

Code §11-12C-7: The Secretary of State shall make a monthly report to the Tax Commissioner for the preceding month, in which he or she shall provide details related to the issuance of certificates to corporations and a statement of all moneys received.

Code §11-15A-22: The Secretary of State shall, upon receipt and certification of an order from the Tax Commissioner to do so, revoke the permit authorizing the corporation to do business in this state; and shall issue a new permit only when the corporation has obtained from the Tax Commissioner an order finding that the corporation has complied with its obligations.

Code §11-16-10: The Secretary of State shall notify the Alcohol Beverage Control Commissioner if at any time a foreign brewing corporation is no longer qualified to transact business in the state.

### **Public Moneys and Security**

Code §12-3-11: The Secretary of State shall promulgate rules concerning out-of-state travel for his or her office.

Code §12-8-5: The Secretary of State shall attest the issuance of bonds by executive order of the Governor; and may sign and attest such by facsimile signature.

### **Public Safety**

Code §15-6-4: The Secretary of State is the secretary of the State Armory Board.

Code §15-6-7: The Secretary of State shall attest and sign bonds issued by the State Armory Board.

Code §15-7-7: The Secretary of State shall inform the Governor, the Director of the Office of Emergency Services, the Clerk of the House concerned, and all emergency interim successors of all emergency interim successor designations, removals, and

changes, in order of succession.

### Public Health

Code §16-13D-5: The Secretary of State shall declare a wastewater authority organized, upon the approval of the Public Service Commission and filing with the Secretary of State's Office, and give it the appropriate corporate name.

### Roads and Highways

Code §17-3-1a: The Secretary of State shall make the Joint Committee on Government and Finance's annual audit of the State Road Commission available to the public in his or her office.

Code §17-3A-6: The Secretary of State shall make the Joint Committee on Government and Finance's annual audit of the Industrial Access Road Fund available to the public in his or her office.

Code §17-17-19: The Secretary of State shall attest bonds issued by the Commissioner of Highways and signed by the Governor.

Code §17-17A-3: The Secretary of State shall attest by facsimile signature the Governor's execution of special obligation notes from the Commissioner of Highways.

### Education

Code §18-2-16a: The Secretary of State shall attest the issuance of bonds or notes from the State Board of Education to construct certain buildings and facilities.

Code §18-9D-8: The Secretary of State shall attest the issuance of bonds for the School Building Authority.

Code §18-11-25: The Secretary of State shall attest the issuance of bonds from the West Virginia University Board of Regents for the financing of parking facilities or areas.

Code §18-11A-3: The Secretary of State shall attest the issuance of revenue bonds for West Virginia University capital improvements.

Code §18-11B-4: The Secretary of State shall attest the issuance of revenue bonds for West Virginia University's facilities, buildings, and structures.

Code §18-11D-1: The Secretary of State shall attest the issuance of bonds or notes for West Virginia University's facility improvements.

Code §18-11E-1: The Secretary of State shall attest the issuance of bonds or notes for Marshall University's facility improvements.

Code §18-12A-3: The Secretary of State shall attest the issuance of revenue bonds for

Marshall University capital improvements.

Code §18-12B-4: The Secretary of State shall attest the issuance of revenue bonds for state institutions of higher education capital improvements.

Code §18-23-16: The Secretary of State shall attest the issuance of bonds for state institutions of higher education's dorms, facilities, and parking areas.

Code §18B-10-8: The Secretary of State shall attest the issuance of revenue bonds for higher education capital improvements.

### **Agriculture**

Code §19-21A-14: The Secretary of State shall issue to the supervisors of a discontinuing or reforming conservation district a certificate of discontinuance and shall record the certificate in an appropriate book of record in his or her office.

### **Natural Resources**

Code §20-5-5: The Secretary of State shall attest the issuance of revenue bonds from the Director of the Division of Natural Resources for park development.

Code §20-5K-3: The Secretary of State shall prescribe the form of the petition for public participation in determining whether a commercial infectious medical waste facility may be permitted to locate in a certain county or not.

## **Labor**

### **Unemployment Compensation**

Code §21A-5-16: The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation admitted to do business in this state, until notified by the Tax Commissioner that all payments, interest, and penalties thereon against any such corporation which is an employer under this chapter have been paid or that a provision satisfactory to the Commissioner has been made.

Code §21A-5-17c: In the event any such summons and complaint (related to the service of process on a nonresident employer) is so served on the Secretary of State, he or she shall immediately cause one (1) of the copies of the summons and complaint to be sent by registered or certified mail, return receipt requested, to the employer at the latter's last known or reasonably ascertainable address; and shall append undeliverable mail to the original summons and complaint and shall file it in the clerk's office of the court from which said process issued.

Code §21A-8A-3: The Secretary of State shall attest the issuance of revenue bonds or notes from Department of Employment Security Commissioner to repay federal government funds.



### **Environmental Resources**

Code §22-15A-18: The Secretary of State shall prescribe the form of the petition for establishing a comprehensive recycling program for solid waste in any county of the state.

Code §22C-4A-3: The Secretary of State shall prescribe the form of the petition for a referendum for approval of a conversion of a Class B facility to a Class A facility.

Code §22C-4A-4: The Secretary of State shall prescribe the form of the petition for approval of an increase in the maximum allowable monthly tonnage of Class A facilities.

Code §22C-6-3: The Secretary of State shall prescribe the form of the petition for public participation in determining whether a commercial hazardous waste management facility may be permitted to locate in a certain county or not.

### **Workers' Compensation**

Code §23-2-5A: The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation admitted to do business in this state, until notified by the Worker's Compensation Commission that all payments, interest and penalties thereon against the corporation which is an employer under this chapter have been paid or that provision satisfactory to the Commission has been made for payment.

### **Public Service Commission**

Code §24-2-4E: The Secretary of State's Office shall maintain financing statements related to security interests in environmental control property and any sale, assignment, or transfer of environmental control property.

Code §24-2-4F: The Secretary of State's Office shall maintain financing statements related to security interest in consumer rate relief property.

## ***Administration of General Information***

### **Interstate Compact on Mental Health**

Code §27-14-5: The Secretary of State shall transmit duly authenticated copies of this article on the Interstate Compact on Mental Health to the Governor of each state, the Attorney General and the Secretary of State for the United States, and the Council of State Governments.

### **Commission on Interstate Cooperation**

Code §29-1B-8: The Secretary of State shall index interstate compact documents and make them available upon request of any person during normal business hours.

### **Solicitation of Charitable Funds**

Code §29-19-5: The Secretary of State shall deposit half of all fees and moneys collected from charitable organizations into the State General Revenue Fund and the other half into the Service Fees and Collections Account; shall dedicate resources from that fund to provide the services required in this article; and may extend the annual filing due date for registration statements or reports.

Code §29-19-9: The Secretary of State shall prescribe forms for the registration of professional fund-raising counsel and professional solicitors; shall deposit half of all fees and moneys from such registration into the State General Revenue Fund and the other half into the Service Fees and Collections Account; and shall examine each application for approval or rejection, unless he or she appoints a designee to do so.

Code §29-19-10: The Secretary of State shall make registration statements and applications, reports, professional fund-raising counsel contracts, or professional solicitor contracts available to the public in his or her office; and may prescribe the conditions by which they may be inspected.

Code §29-19-12: The Secretary of State may enter into reciprocal agreements with any other state to exchange information about charitable organizations, professional fund-raising counsel, and professional solicitors; may accept information filed by such entities with another state in lieu of the information required to be filed according to this article.

Code §29-19-14: The Secretary of State shall send a notice and copy of a service of process issued to a charitable organization, professional fund-raising counsel, or professional solicitor in the state upon whom has been served by a nonresident charitable organization, professional fund-raising counsel, or professional solicitor who solicits contributions from people in West Virginia.

Code §29-19-15: The Secretary of State may investigate any charitable organization, professional fund-raising counsel, or professional solicitor to determine whether such entity has violated the provisions of this article or has filed any application or other information containing false or misleading statements; and may bring court action against such entity.

Code §29-19-15a: The Secretary of State may institute a class action for the recovery of damages in a representative capacity on behalf of any person entitled to bring an action under this article pertaining to charitable organizations.

Code §29-19-15b: The Secretary of State shall dedicate sufficient resources from the Charitable Organization Fund or other funds to provide services required in this article.

### **State Administrative Procedures Act**

Code §29A-1-3: The Secretary of State shall record executive orders in the State Register

when and to the extent the Governor deems suitable.

Code §29A-2-1: The Secretary of State shall establish and maintain the State Register and offer copies for subscription and public distribution.

Code §29A-2-2: The Office of the Secretary of State shall have a State Register.

Code §29A-2-3: The Secretary of State shall receive and file certain information in the State Register as detailed in this section.

Code §29A-2-6: The Secretary of State shall prescribe the standard size, format, numbering, and indexing for rules to be filed in the State Register, and may prescribe procedural or interpretive rules to clarify and interpret the provisions in this section; shall refuse to file rules that do not comply with the provisions of this section or rules issued pursuant to this section; and may exempt an agency, board or commission from filing associated documents to rules if the Secretary of State determines that the electronic filing requirement would not be possible and would be unreasonably burdensome for the filer.

Code §29A-2-7: The Secretary of State shall offer public access to the State Register and the Code of State Rules, which will also be available on the Secretary of State's website; shall index all materials filed in the State Register; shall post each update of the Code of State Rules on the website; may propose rules to change procedures in this section; shall deposit half of all fees and amounts collected for the sale of the State Register, the Code of State Rules, or other data into the State General Revenue Fund; shall dedicate resources from that fund to provide services required in this section; and may waive the fee for persons unable to access the electronic version of the documents.

Code §29A-3-13: The Secretary of State shall note the effective date of an authorized legislative rule; and shall promptly publish the rule in the Code of State Rules.

Code §29A-3-15: The Secretary of State shall publish a notice of emergency rule filings in the State Register and may approve or disapprove the rule.

Code §29A-3-15a: The Secretary of State shall review emergency rules and amendments to emergency rules to determine if he or she approves or disapproves the rule; and may make further investigation into the rule.

Code §29A-3-15b: The Secretary of State may institute a petition against the determination of the Attorney General on his or her approval or disapproval of an emergency rule or an amendment to an emergency rule.

Code §29A-3-19: The Secretary of State shall notify an agency that has established a rule at least eighteen (18) months prior to that rule's expiration date.

Code §29A-3A-8: The Secretary of State shall note the failure of an agency to file a

notice of adoption for a legislative exempt, procedural, or interpretive rule related to higher education in the State Register.

Code §29A-3A-9: The Secretary of State shall note the failure of the Higher Education Policy Commission to file a notice of adoption for a legislative exempt, procedural, or interpretive rule in the State Register.

Code §29A-3A-14: The Secretary of State shall note the effective date of an authorized and established legislative rule for higher education in the State Register; and shall file such rule in the State Register in lieu of the proposed rule previously filed.

Code §29A-3A-16: The Secretary of State may disapprove an emergency rule promulgated by the Legislative Oversight Commission on Education Accountability.

Code §29A-3A-16a: The Secretary of State shall review an emergency rule filed by the Higher Education Policy Commission to issue a decision as to whether or not the rule should be approved or disapproved; and may make further investigation into the rule.

Code §29A-3A-20: The Secretary of State shall notify the Higher Education Policy Commission at least eighteen (18) months prior to each of their established rules' sunset date.

Code §29A-3B-8: The Secretary of State shall note the failure of the State Board of Education to file a notice of adoption for a legislative exempt, procedural, or interpretive rule in the State Register.

### **Freedom of Information Act**

Code §29B-1-3: The Secretary of State shall maintain an electronic database of notices of Freedom of Information Act (FOIA) requests; and shall provide a form on the website for use by a public body to report the results of the FOIA request.

Code §29B-1-3a: The Secretary of State shall propose rules relating to the creation and maintenance of a publicly accessible database on the Secretary of State's website, the establishment of forms and procedures for submission of information to the Secretary of State, and other procedures and policies consistent with this section.

## ***Business and Licensing***

### **Professions and Occupations**

Code §30-2-5a: The Secretary of State, upon notification by the West Virginia State Bar of its approval, may issue to incorporators of a legal corporation a certificate of incorporation for such corporation.

Code §30-3-15: The Secretary of State, upon receipt of a notification from the West Virginia Board of Medicine that a certificate of authorization has been issued, shall

attach that certificate to the medical or podiatry corporation application; and shall notify the incorporators that such corporation may engage in practice in the state.

Code §30-4-16: The Secretary of State, upon receipt of a notification from the West Virginia Board of Dentistry that a certificate of authorization has been issued, shall attach that certificate to the dental corporation application; and shall notify the incorporators that such corporation may engage in practice in the state.

Code §30-9-30: The Secretary of State, upon receipt of a notification from the West Virginia Board of Accountancy that a certificate of authorization has been issued, shall attach that certificate to the accounting corporation application; and shall notify the incorporators that such corporation may engage in practice in the state.

Code §30-13-17: The Secretary of State shall not issue a certificate of authority, business registration, or license to an applicant whose business includes engineering of any kind, unless the board of registration for this profession has issued to the applicant a certificate of authorization or a letter indicating eligibility to receive the certificate; and shall decline to register a trade name or service mark including the words engineer, engineering, modifications, or other derivative, except for those businesses holding the necessary certificate or authorization.

Code §30-14-9a: The Secretary of State, upon receipt of a notification from the West Virginia Board of Osteopathic Medicine that a certificate of authorization has been issued, shall attach that certificate to the osteopathic medicine and surgery corporation application; and shall notify the incorporators that such corporation may engage in practice in the state.

Code §30-18-9: The Secretary of State may renew a license for a private investigation or security guard business for a period of two (2) years upon approval of a renewal application; and may require any person to provide additional information to reflect changes in the original application or any previous renewal.

Code §30-18-10: The Secretary of State shall issue and deliver a certificate of license to a private investigation or security business that has met all application and character requirements; may propose rules necessary to administrate and enforce this article and maintain license approval, revocation, denial, suspension, or renewal; and shall require each applicant to submit to a state and national criminal history record check.

Code §30-18-13: The Secretary of State shall pay all fees collected for private investigation and security business licensure to the State Treasurer to be deposited in the General Revenue Fund.

Code §30-39-3: The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

Code §30-39-5: The Secretary of State shall accept the application and certificate of an athlete agent from another state for registration in this state, if the application from the other state contains current information from the last six (6) months, requires similar information, and was signed by the applicant under penalty of perjury.

Code §30-39-6: The Secretary of State shall issue a certificate of registration to an individual who complies with requirements in this article; may refuse to issue a certificate of registration if he or she determines that the applicant has engaged in conduct that hinders the applicant's fitness to act as an athlete agent; may make such determination with certain considerations; and shall accept the application for renewal from another state as an application for renewal in this state if it contains current information from the last six (6) months, requires similar information, and was signed by the applicant under penalty of perjury.

Code §30-39-7: The Secretary of State may suspend revoke or refuse to renew a registration for conduct that would have justified denial of registration in this article; and may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

Code §30-39-8: The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration as an athlete agent is pending.

Code §30-39-13: The Secretary of State may inspect an athlete agent's records as required in this section anytime during normal business hours.

Code §30-39-17: The Secretary of State may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of the Uniform Athlete Agents Act.

### **Corporations in General**

Code §31-2-13: The Secretary of State shall record changes to the general route or stations of a proposed railroad in his or her office, upon receipt of certification of such a change by the involved corporation.

Code §31-14-2: The Secretary of State shall prescribe the general form for the formation of a corporation.

Code §31-14-4: The Secretary of State shall issue a certificate for a charter upon receipt of an agreement of incorporation; and shall not require the payment of the license tax for such.

Code §31-14-14: The Secretary of State shall issue his or her certification of an amendment correctly made to a corporation's charter.

Code §31-18C-6: The Secretary of State shall attest, by signature, the issuance of

veterans' mortgage bonds executed by the Governor.

Code §31-18E-4: The Secretary of State shall issue the appropriate documentation indicating a land reuse jurisdiction's formation of a land reuse agency, after receipt of a binding legal ordinance.

Code §31-18E-14: The Secretary of State shall cause the dissolution of a land reuse agency to be noted on the record of incorporation.

### **Banks**

Code §31A-4-5: The Secretary of State shall prescribe the form by which incorporators shall file an agreement of incorporation with the West Virginia Board of Banking and Financial Institutions.

### **Limited Liability Companies**

Code §31B-1-105: The Secretary of State shall authorize a limited liability company to use a name not distinguishable from one (1) or more names on his or her record if the current name holder consents in a record and submits an undertaking in form to change the name so that it is distinguishable from the name applied for, or if the applicant delivers to the Secretary of State a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

Code §31B-1-106: The Secretary of State shall reserve an available name for an applicant limited liability company's exclusive use for a renewable one hundred twenty (120) day period.

Code §31B-1-108: The Secretary of State shall collect a \$25 annual report fee from every limited liability company authorized to do business in this state; shall deposit fees in the General Administrative Fees Account; shall dedicate resources from that fund to provide services required in this chapter; and shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

Code §31B-1-110: The Secretary of State, upon receipt of a statement of resignation from an agent for service of process of a limited liability company, shall mail a copy to the designated office and another to the limited liability company.

Code §31B-1-111: The Secretary of State is an agent of a limited liability company, domestic or foreign, if the company fails to appoint or maintain an agent for service of process in this state or the agent cannot with reasonable diligence be found at the agent's address. The Secretary of State, upon being served with or accepting any process, notice or demand, shall file a copy of such, endorsed as of the time of service or acceptance, send one (1) copy to the company's registered agent or, if no agent is appointed, to the company's principal office, and send the original document to the

county clerk's office from which it was issued. Once he or she has received verification that the agent or company has signed the document, the Secretary of State shall electronically notify the relevant county clerk's office. If the document was refused or undeliverable, the Secretary of State shall return the document to the county clerk's office. The Secretary of State cannot accept a process, notice or demand less than ten (10) days before the return day of such. Lastly, the Secretary of State shall keep a record of all processes, notices and demands served and shall also record the time of and the action taken regarding the service.

Code §31B-2-202: The Secretary of State's filing of a limited liability company's articles of organization is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

Code §31B-2-206: The Secretary of State shall determine the permissible medium by which articles of organization or other records are to be filed; may permit electronic delivery; shall, if the record is complete and compliant, file the record and send a receipt for the record and fees to the limited liability company; and shall send a certified copy of the record upon request and after payment of a fee.

Code §31B-2-211: The Secretary of State shall promptly notify a limited liability company, domestic or foreign, if their annual report does not contain the required information and shall return the report for correction.

Code §31B-8-809: The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if that company fails to meet certain requirements as laid out in this section.

Code §31B-8-810: The Secretary of State shall, if he or she determines that a ground exists for administratively dissolving a limited liability company, enter a record of the determination and serve the company with a copy of the record; shall dissolve the company, if it does not correct each ground of dissolution satisfactorily; and shall file the original certificate of dissolution and serve the company with a copy.

Code §31B-8-811: The Secretary of State shall cancel a certificate of dissolution and prepare a certificate of reinstatement if a limited liability company's application for reinstatement contains the accurate information required; shall file the original certificate; and shall serve a copy on the company.

Code §31B-8-812: The Secretary of State shall, if he or she denies a limited liability company's application for reinstatement following administrative dissolution, serve the company with a record that explains the reason(s) for denial.

Code §31B-9-906: The Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if such entity fails to appoint or maintain an agent designated for service of



process in this state or the agent cannot be found at his or her office; and, upon receipt of process, shall send a copy to the surviving entity.

Code §31B-10-1004: The Secretary of State shall file a limited liability company's application for a certificate of authority upon payment of all filing fees, unless he or she determines the application does not meet the filing requirements.

Code §31B-10-1005: The Secretary of State shall authorize a foreign limited liability company to use a name not distinguishable from one (1) or more names on his or her record if the current name holder consents in a record and submits an undertaking in form to change the name so that it is distinguishable from the name applied for, or if the applicant delivers to the Secretary of State a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

Code §31B-10-1006: The Secretary of State may revoke the certificate of authority of a foreign limited liability company to transact business in this state if the company fails to meet certain requirements provided in this section; may not revoke said certificate unless he or she sends notice of the revocation to the company; and shall cancel the revocation if he or she determines that an application for reinstatement is correct and contains the necessary information and shall prepare a certificate of reinstatement.

### **Credit Unions**

Code §31C-1-4: The Secretary of State shall, after filing and indexing a certificate of dissolution from an appointed liquidating agent on behalf of a credit union, forward the certificate to the West Virginia Commissioner of Banking.

Code §31C-2-2: The Secretary of State shall, upon receipt of any applicable fees, file and record the incorporation charter and return a copy of the bylaws and one of the duplicate originals of the articles of incorporation to the credit union incorporators or their representatives.

Code §31C-10-1: The Secretary of State shall, after filing and indexing a certificate of dissolution for a credit union from its board of directors or a liquidating agent, forward the certificate to the West Virginia Commissioner of Banking.

### **Business Corporations**

Code §31D-1-120: The Secretary of State may permit the electronic delivery of a document to be filed; may require one (1) exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically; and shall determine the permissible manner in which a filing tax, fee, or penalty can be paid.

Code §31D-1-121: The Secretary of State may prescribe and, upon request, furnish forms for documents required or permitted to be filed by this Act; and may adopt

procedural rules governing the form for filing with, and delivery of documents to, the Secretary of State's Office by electronic means.

Code §31D-1-122: The Secretary of State shall collect all fees required to be charged and collected for filing, service, and copying.

Code §31D-1-123: The Secretary of State may use certain means to record the date and time of filing a document relating to a corporation.

Code §31D-1-125: The Secretary of State shall file all documents delivered to him or her that satisfy the requirements of Section 120 of this article; shall, after filing, deliver a receipt for the record and fees to the affiliated domestic or foreign corporation; shall send a certified copy of the record upon request and the payment of a fee; and shall, if he or she refuses to file the document, return it to the corporation within five (5) days after receipt with a written explanation. The Secretary of State's duty to file documents under this section is ministerial.

Code §31D-1-127: All copies of documents filed in the Office of the Secretary of State and certified by him or her are to be taken by courts, public offices, and official bodies as conclusive evidence that the original document is on file with the Secretary of State.

Code §31D-1-130: The Secretary of State has the power reasonably necessary to perform the duties required of him or her by the West Virginia Business Corporation Act; and has the power and authority to propose rules to carry out and implement the provisions of this Act.

Code §31D-1-131: The Secretary of State shall establish a web-based business portal to facilitate interaction among businesses and governmental agencies in West Virginia; may develop policies and procedures with the Tax Commissioner allowing the Secretary of State to accept applications, renewals, and fees for business registration certificates; and shall establish a call center to be staffed by trained persons who are able to help businesses obtain information and services relating to compliance with state law.

Code §31D-2-203: The Secretary of State's filing of a corporation's articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in revocation or dissolution of the corporation.

Code §31D-4-401: The Secretary of State shall authorize a corporation to use a name not distinguishable from one (1) or more names on his or her record if the current name holder consents in a record and submits an undertaking in form to change the name so that it is distinguishable from the name applied for, or if the applicant delivers to the Secretary of State a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

Code §32D-4-403: The Secretary of State shall reserve an available name for an

applicant corporation's exclusive use for a nonrenewable one hundred twenty (120) day period.

Code §31D-5-503: The Secretary of State shall, after filing a statement of resignation from a corporation's registered agent, mail a copy of the filed statement to the corporation at its principal office.

Code §31D-5-504: The Secretary of State is the attorney-in-fact for and on behalf of each corporation within the West Virginia Business Corporation Act; has the authority to accept service of notice and process on behalf of each corporation; and is an agent of the corporation upon whom service of notice and process may be made in this state. The Secretary of State, upon being served with or accepting any process, notice or demand, shall file a copy of such, endorsed as of the time of service or acceptance, send one (1) copy to the corporation's registered agent or, if no agent is appointed, to the corporation's principal office, and send the original document to the county clerk's office from which it was issued. Once he or she has received verification that the agent or company has signed the document, the Secretary of State shall electronically notify the relevant county clerk's office. If the document was refused or undeliverable, the Secretary of State shall return the document to the county clerk's office.

Code §31D-10-1007: The Secretary of State may certify a corporation's restated articles of incorporation as the articles of incorporation currently in effect, without including the required statement information for restatement.

Code §31D-11-1106: The Secretary of State shall withhold the issuance of any certificate of merger where the new or surviving corporation will be a foreign corporation not qualified to conduct business in the state, until he or she receives notice from the Tax Commissioner and the Bureau of Employment Programs stating that all taxes and employment security payments due from said corporation have been paid or do not need to be paid.

Code §31D-11-1109: The Secretary of State shall issue a certificate of conversion, upon the correct filing of the articles of conversion and a payment of any prescribed fees by a domestic corporation that is converting to a domestic limited liability company.

Code §31D-14-1403: The Secretary of State shall issue a certificate of dissolution to the corporation delivering articles of dissolution upon receipt of a notice from the Tax Commissioner and Bureau of Employment Programs stating that the corporation has paid all due taxes and employment security payments or does not have to pay any taxes or make any such payments.

Code §31D-14-1420: The Secretary of State may commence a proceeding to administratively dissolve a corporation if the corporation does not meet certain requirements as laid out in this section.

Code §31D-14-1421: The Secretary of state shall serve a corporation with written notice that he or she has determined one (1) or more grounds exist for the corporation's dissolution; shall dissolve the corporation if it does not correct each ground satisfactorily; and shall file the original certificate of dissolution and serve a copy of such on the corporation.

Code §31D-14-1422: The Secretary of State shall cancel a certificate of dissolution and prepare a certificate of reinstatement, if a corporation's application for reinstatement contains the accurate information required; shall file the original certificate; and shall serve a copy on the corporation.

Code §31D-14-1423: The Secretary of State shall, if he or she denies a corporation's application for reinstatement following administrative dissolution, serve the corporation with a record that explains the reason(s) for denial.

Code §31D-14-1433: The Secretary of State shall file a certified decree of dissolution delivered from a circuit court after a hearing in which the court determines that one (1) or more grounds exists for judicial dissolution of a corporation.

Code §31D-15-1506: The Secretary of State shall authorize a foreign corporation to use a name if the current name holder consents in a record and submits an undertaking in form, or if the applicant delivers to the Secretary of State a certified copy of a court's judgment establishing the applicant's right to use the name applied for in this state.

Code §31D-15-1509: The Secretary of State shall, after filing a statement of resignation from a foreign corporation's registered agent, mail a copy of the filed statement and receipt to the corporation at its principal office.

Code §31D-15-1510: The Secretary of State is the attorney-in-fact for and on behalf of each foreign corporation within the West Virginia Business Corporation Act; has the authority to accept service of notice and process on behalf of each such corporation; and is an agent of such corporations upon whom service of notice and process may be made in this state. The Secretary of State, upon being served with or accepting any process, notice or demand, shall file a copy of such, endorsed as of the time of service or acceptance, send one (1) copy to the corporation's registered agent or, if no agent is appointed, to the corporation's principal office, and send the original document to the county clerk's office from which it was issued. Once he or she has received verification that the agent or company has signed the document, the Secretary of State shall electronically notify the relevant county clerk's office. If the document was refused or undeliverable, the Secretary of State shall return the document to the county clerk's office. For any foreign corporation not authorized to do or transact business in the state, this process stays the same, but no original document must be sent to the country clerk's office.

Code §31D-15-1520: The Secretary of State, upon receipt of process for a foreign corporation that has withdrawn from this state, shall mail a copy of the process to the corporation; and shall withhold the issuance of any certificate of withdrawal until he or she receives a notice from the Tax Commissioner and Bureau of Employment Programs stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or assessments.

Code §31D-15-1530: The Secretary of State may commence a proceeding to revoke the certificate of authority of a foreign corporation if the corporation has met at least one (1) ground for revocation outlined in this section.

Code §31D-15-1531: The Secretary of State shall serve a foreign corporation with written notice of his or her determination that one (1) or more grounds exist for revocation of such corporation's certificate of authority; may revoke said certificate if the corporation does not correct each ground for revocation satisfactorily; is the corporation's agent for service of process in any proceeding involving the corporation's actions in this state, if its certificate is revoked; and shall, upon receipt of such process, mail a copy of the process to the secretary of the corporation at its principal office.

Code §31D-15-1532: The Secretary of State shall cancel a certificate of revocation and prepare a certificate of reinstatement, if a corporation's application for reinstatement contains the accurate information required; and shall send notice of such to the corporation.

Code §31D-15-1533: The Secretary of State shall, if he or she denies a corporation's application for reinstatement following administrative revocation, notify the corporation by written notice explaining the reason(s) for denial.

### **Nonprofit Corporations**

Code §31E-1-120: The Secretary of State may permit the electronic delivery of documents to be filed that meet the requirements of this section; may require one (1) exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically; and shall determine the permissible manner in which a filing tax, fee, or penalty can be paid.

Code §31E-1-121: The Secretary of State may prescribe and, upon request, furnish forms for documents required or permitted to be filed by this Act; and may adopt procedural rules governing the form for filing with, and delivery of documents to, the Secretary of State's Office by electronic means.

Code §31E-1-122: The Secretary of State shall collect all fees required to be charged and collected for filing, service, and copying.

Code §31E-1-123: The Secretary of State may use certain means to record the date and

time of filing a document relating to a nonprofit corporation.

Code §31E-1-125: The Secretary of State shall file all documents delivered to him or her that satisfy the requirements of Section 120 of this article; shall, after filing, deliver a receipt for the record and fees to the affiliated nonprofit domestic or foreign corporation; shall send a certified copy of the record upon request and the payment of a fee; and shall, if he or she refuses to file the document, return it to the corporation within five (5) days after receipt with a written explanation. The Secretary of State's duty to file documents under this section is ministerial.

Code §31E-1-127: All copies of documents filed in the Office of the Secretary of State and certified by him or her are to be taken by courts, public offices, and official bodies as conclusive evidence that the original document is on file with the Secretary of State.

Code §31E-1-130: The Secretary of State has the power reasonably necessary to perform the duties required of him or her by the West Virginia Nonprofit Corporation Act; and has the power and authority to propose rules to carry out and implement the provisions of this Act.

Code §31E-2-203: The Secretary of State's filing of a nonprofit corporation's articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in revocation or dissolution of the corporation.

Code §31E-4-401: The Secretary of State shall authorize a nonprofit corporation to use a name not distinguishable from one (1) or more names on his or her record if the current name holder consents in a record and submits an undertaking in form to change the name so that it is distinguishable from the name applied for, or if the applicant delivers to the Secretary of State a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

Code §31E-4-403: The Secretary of State shall reserve an available name for an applicant nonprofit corporation's exclusive use for a nonrenewable one hundred twenty (120) day period.

Code §31E-5-503: The Secretary of State, after filing a statement of resignation from a nonprofit corporation's registered agent, shall mail a copy of the filed statement to the registered office if the office is not discontinued and another copy to the corporation at its principal office.

Code §31E-5-504: The Secretary of State is the attorney-in-fact for and on behalf of each nonprofit corporation within the West Virginia Nonprofit Corporation Act; has the authority to accept service of notice and process on behalf of each such corporation; and is an agent of such corporations upon whom service of notice and process may be made in this state. The Secretary of State shall, upon being served with or accepting any process, notice, or demand, file a copy of such, endorsed as of the time of service or

acceptance, send one (1) copy to the corporation's registered agent or, if no agent is appointed, to the corporation's principal office, and send the original document to the county clerk's office from which it was issued. Once he or she has received verification that the agent or company has signed the document, the Secretary of State shall electronically notify the relevant county clerk's office. If the document was refused or undeliverable, the Secretary of State shall return the document to the county clerk's office.

Code §31E-10-1006: The Secretary of State may certify a nonprofit corporation's restated articles of incorporation as the articles of incorporation currently in effect, without including the required statement information for restatement.

Code §31E-11-1103: The Secretary of State shall withhold the issuance of any certificate of merger where the new or surviving corporation will be a foreign nonprofit corporation not qualified to conduct business in the state, until he or she receives notice from the Tax Commissioner and the Bureau of Employment Programs stating that all taxes and employment security payments due from said corporation have been paid or do not need to be paid.

Code §31E-13-1303: The Secretary of State shall issue a certificate of dissolution to the nonprofit corporation delivering articles of dissolution upon receipt of a notice from the Tax Commissioner and Bureau of Employment Programs stating that the corporation has paid all due taxes and employment security payments or does not have to pay any taxes or make any such payments.

Code §31E-13-1320: The Secretary of State may commence a proceeding to administratively dissolve a nonprofit corporation if the corporation does not meet certain requirements as laid out in this section.

Code §31E-13-1321: The Secretary of State shall serve a nonprofit corporation with written notice that he or she has determined one (1) or more grounds exist for the corporation's dissolution; shall dissolve the corporation if it does not correct each ground satisfactorily; and shall file the original certificate of dissolution and serve a copy of such on the corporation.

Code §31E-13-1322: The Secretary of State shall cancel a certificate of dissolution and prepare a certificate of reinstatement if a nonprofit corporation's application for reinstatement contains the accurate information required; shall file the original certificate; and shall serve a copy on the corporation.

Code §31E-13-1323: The Secretary of State shall, if he or she denies a nonprofit corporation's application for reinstatement following administrative dissolution, serve the corporation with a record that explains the reason(s) for denial.

Code §31E-13-1333: The Secretary of State shall file a certified decree of dissolution

delivered from a circuit court after a hearing in which the court determines that one (1) or more grounds exists for judicial dissolution of a nonprofit corporation.

Code §31E-14-1402: The Secretary of State is presumed the attorney-in-fact for foreign nonprofit corporations conducting business in West Virginia without a certificate of authority.

Code §31E-14-1406: The Secretary of State shall authorize a foreign nonprofit corporation to use a name if the current name holder consents in a record and submits an undertaking in form, or if the applicant delivers to the Secretary of State a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

Code §31E-14-1409: The Secretary of State shall, after filing a statement of resignation from a foreign nonprofit corporation's registered agent, mail a copy of the filed statement and receipt to the corporation at its principal office.

Code §31E-14-1410: The Secretary of State is the attorney-in-fact for and on behalf of each foreign nonprofit corporation within the West Virginia Nonprofit Corporation Act; has the authority to accept service of notice and process on behalf of each such corporation; and is an agent of such corporations upon whom service of notice and process may be made in this state. The Secretary of State, upon being served with or accepting any process, notice or demand, shall file a copy of such, endorsed as of the time of service or acceptance, send one (1) copy to the corporation's registered agent or, if no agent is appointed, to the corporation's principal office, and send the original document to the county clerk's office from which it was issued. Once he or she has received verification that the agent or company has signed the document, the Secretary of State shall electronically notify the relevant county clerk's office. If the document was refused or undeliverable, the Secretary of State shall return the document to the county clerk's office. For any foreign nonprofit corporation not authorized to do or transact business in the state, this process stays the same, but no original document must be sent to the country clerk's office.

Code §31E-14-1420: The Secretary of State, upon receipt of process for a foreign nonprofit corporation that has withdrawn from this state, shall mail a copy of the process to such corporation; and shall withhold the issuance of any certificate of withdrawal until he or she receives a notice from the Tax Commissioner and Bureau of Employment Programs stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or assessments.

Code §31E-14-1430: The Secretary of State may commence a proceeding to revoke the certificate of authority of a foreign nonprofit corporation if the corporation has met at least one (1) ground for revocation outlined in this section.



Code §1E-14-1431: The Secretary of State shall serve a foreign nonprofit corporation with written notice of his or her determination that one (1) or more grounds exist for revocation of such corporation's certificate of authority; may revoke said certificate if the corporation does not correct each ground for revocation satisfactorily; is the corporation's agent for service of process in any proceeding involving the corporation's actions in this state, if its certificate is revoked; and shall, upon receipt of such process, mail a copy of the process to the secretary of the corporation at its principal office.

Code §31E-14-1432: The Secretary of State shall cancel a certificate of revocation and prepare a certificate of reinstatement if a nonprofit corporation's application for reinstatement contains the accurate information required; and shall send notice of such to the corporation.

Code §31E-14-1533: The Secretary of State shall, if he or she denies a nonprofit corporation's application for reinstatement following administrative revocation, notify the corporation by written notice explaining the reason(s) for denial.

### **Insurance**

Code §33-3-3: The Secretary of State shall not issue a certificate of incorporation to any insurer until the Tax Commissioner has examined the charter of such insurer and approved it.

Code §33-4-12: The Secretary of State is the attorney-of-fact for every service on a licensed insurer that is domestic, foreign, or alien and transacting insurance in this state.

Code §33-4-13: The Secretary of State shall forward a copy of a service process to the insurer defendant and shall keep a record of all process so served on him or her.

Code §33-5-5: The Secretary of State shall not file or accept an amendment to a stock insurer's articles of incorporation if the amendment will reduce authorized capital below the amount required by this chapter for the kinds of insurance thereafter to be transacted, unless the Tax Commissioner approves the amendment in writing; and the same shall be for mutual insurers, except that the amendment reduces the surplus, rather than the authorized capital.

Code §33-12C-20: The Secretary of State shall forward one (1) of the copies of the process or notice, order, pleading, or process in proceedings before the commissioner to the defendant in the court proceeding or to whom the notice, order, pleading, or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on the commissioner which shall show the day and hour of service.

Code §33-21-12: The Secretary of State may accept service of any process or notice relating to a reciprocal insurer's license; and shall file one (1) copy of the process or

notice and forward one (1) copy to the attorney and return the original with his acceptance of service or for return of service.

Code §33-22-3: The Secretary of State shall not issue a certificate of incorporation to any farmers' mutual insurance company until the Tax Commissioner has examined the charter of such insurer and approved it.

Code §33-27-3: The Secretary of State shall transmit copies of all lawful process for insurance holding company systems to such defendant.

Code §33-31-2: The Secretary of State shall be an agent of a captive insurance company upon whom any process, notice, or demand is served, and its registered agent cannot with reasonable diligence be found at the registered office of such company.

Code §33-31-6: The Secretary of State shall record both the articles of incorporation and the certificate for a captive insurance company, upon receipt of such documents and the organization fee.

Code §33-44-5: The Secretary of State shall forward a copy of the process to the implicated unauthorized insurer; and shall keep a record of processes so served upon the insurer.

## **Property**

### **Religious Property and Association Insignia**

Code §35-5A-5: The Secretary of State is the attorney-in-fact for service on a nonresident trustee of a permanent endowment care fund for a perpetual care cemetery in this state.

Code §35A-1-2: The Secretary of State shall provide blanks for applications for registration, alteration, or cancellation for various associations.

Code §35A-1-3: The Secretary of State shall keep an indexed record of the registration of associations, which record shall also show any altered or cancelled registration.

Code §35A-1-5: The Secretary of State shall, upon granting registration, issue his or her certificate to an applicant association and thereby set forth the fact of such registration.

Code §35A-1-7: The Secretary of State shall pay all fees collected under this chapter for the Names, Emblems, Etc., of Associations, Lodges, Etc. into the State Treasury.

### **Real Property**

Code §37-10-3: The Secretary of State's Office shall transfer the books containing the record of land grants, surveys, and plats to the Auditor's Office.

## Liens

Code §38-1A-7: The Secretary of State is the attorney-in-fact for service on nonresident trustees.

Code §38-1A-8: The Secretary of State shall keep one (1) copy of all process and notices delivered to him or her, with a record of the day and hour of service.

Code §38-1A-9: The Secretary of State shall send to the implicated trustee the second (2<sup>nd</sup>) copy of a process or notice; and shall send the third (3<sup>rd</sup>) copy to the county clerk issuing the process or the person giving the notice.

Code §38-5A-5: The Secretary of State shall submit a service of suggestee execution and the applicable fee upon an implicated corporation, limited liability company, or other person or entity.

Code §38-16-406: The Secretary of State shall file the certified copy of a judicial finding for a lien or other claim in the same class of records as the subject document or instrument was originally filed, and index it using the same names that were used in indexing the subject document or instrument; and may charge a filing fee of \$5.

## Records and Papers

### Written Records and Notarial Acts

Code §39-1-11: The Secretary of State's Office shall index financing, continuation, and termination statements and other statements and writings permitted under Chapter 46, according to the name of the debtor; shall disclose the assigned file number and the address of the debtor given in the respective statement or writing; shall also note the date and hour of filing and the file number on the statement or writing involved; and may remove and destroy ineffective or lapsed files from the office files.

Code §39-4-19: The Secretary of State shall approve the use of a technology for electronic record systems for notaries public, if it meets the standards established by the Secretary of State.

Code §39-4-20: The Secretary of State shall issue a commission as a notary public to an applicant for a term of five (5) years.

Code §39-4-21: The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence, or reliability to act as a notary public.

Code §39-4-22: The Secretary of State shall maintain an electronic database of notaries public.

Code §39-4-25: The Secretary of State may establish rules to implement the Revised Uniform Law on Notarial Acts; shall deposit fees collected for such in the accounts and amounts as described in this section; shall dedicate resources from such funds to provide the services of this article; and shall consider certain standards in establishing, amending, or repealing rules about notarial acts with respect to electronic records.

Code §39-4-34: The Secretary of State may maintain an action for injunctive relief in circuit court against any notary public who renders, offers to render, or holds himself or herself out as rendering any service constituting the unauthorized practice of the law.

Code §39-4-35: The Secretary of State may investigate any violations or irregularities of the Revised Uniform Law on Notarial Acts, administer oaths and affirmations and issue subpoenas and/or subpoenas duces tecum, involve the aid of any circuit court in the execution of subpoenas, and report any alleged violations of this article to the appropriate prosecuting attorney.

Code §39-4-36: The Secretary of State may destroy original records of appointments after the expiration of a notary public term, as long as he or she maintains an electronic copy of the appointment for at least ten (10) years after; and may destroy any original journals of notarial acts in his or her possession, if an electronic copy is maintained.

### **Electronic Commerce**

Code §39A-3-3: The Secretary of State shall propose rules to establish standards and processes for using electronic signatures in governmental transactions by state agencies; is designated as the certification authority and repository for all governmental agencies; shall regulate transactions and digital signature verifications; may enter into reciprocal agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions; may propose rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices; and is authorized to contract with a public or private entity to serve as certification authority for West Virginia.

Code §39A-3-4: The Secretary of State shall revoke any signature key when he or she has reason to believe the digital signature key has been stolen, fraudulently used, or otherwise compromised.

## **Commercial Transactions**

### **Uniform Commercial Code**

Code §46-9-516a: The Secretary of State shall provide a form affidavit for fraudulent record filing. Upon receipt of the affidavit, the Secretary of State shall notify the secured party of record; shall review all related documentation; may initiate an administrative action if he or she believes a fraudulent record was filed; may give heightened scrutiny

to certain records; may not charge a fee for filing an affidavit; may not return a fee paid for filing a terminated record; shall notify the secured party of record of a termination; shall refile the record along with a notice of refiling if he or she is ordered by the circuit court of Kanawha County to reinstate a terminated record; shall refile the record along with a notice of refiling if he or she is ordered by the circuit court of Kanawha County to accept a rejected record; and may request certain additional documentation from the secured party of record.

Code §46-9-523: The Secretary shall, at least weekly, offer to sell or license copies of all records filed for secured transactions and the sales of accounts and chattel paper; and will provide electronically, for purchase, any data maintained in the Secretary of State's Uniform Commercial Code (UCC) Bulk Sale Database.

Code §46-9-525: The Secretary of State shall deposit all fees and moneys collected for secured transactions and the sales of accounts and chattel paper into the accounts and in the amounts indicated in this section.

Code §46-9-526: The Secretary of State shall propose rules for legislative approval consistent with this article; and shall file office rules and practices in harmony with the rules and practices of filing offices in other jurisdictions as indicated in this section.

Code §46-9-527: The Secretary of State shall report to the Joint Committee on Government and Finance on or before July 1<sup>st</sup> each year on the operation of the filing office.

Code §46A-2-137: The Secretary of State shall file a copy of a process or notice served to him or her, with a note of the time of service or acceptance; shall send a copy to the nonresident person subject to this article with return receipt requested; shall notify the county clerk if the copy was refused or undeliverable; and shall return such mail to the clerk's office.

### **Consumer Credit and Rent-to-Own Agreements**

Code §46A-6C-4: The Secretary of State may conduct investigations and require submission of information as necessary to enforce this subsection related to credit services organizations' surety accounts.

Code §46A-6C-5: The Secretary of State may charge a filing fee of no more than \$100 for credit services organization registration statements; may not require such organization to provide additional information than present in the statement; shall deposit all fees and moneys collected in the accounts and amounts detailed in this section; and shall dedicate resources from that fund or other funds to provide the services of this article.

Code §46A-6H-8: The Secretary of State may charge a filing fee of no more than \$100 for each transferee that files a registration statement to solicit or purchase future

payments.

Code §46A-6J-4: The Secretary of State shall promulgate rules to establish a system by which any person, corporation, trade association, or partnership may register to receive notification that a state of emergency or state of preparedness has been declared, and that the provisions of this article are in effect.

Code §46B-7-1: The Secretary of State file a copy of a process or notice served to him or her, with a note of the time of service or acceptance; shall send a copy to the nonresident person subject to this article on rent-to-own agreements with return receipt requested; shall notify the county clerk if the copy was refused or undeliverable; and shall return such mail to the clerk's office.

### **Regulation of Trade**

Code §47-2-17: The Secretary of State shall dedicate resources from the General Revenue Fund to provide the services required for trademark services.

Code §47-8-4: The Secretary of State shall grant certificates of registration to any corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies who have met the registration requirements.

Code §47-9-3: The Secretary of State shall reserve an available name for use by a domestic or foreign limited partnership for one hundred twenty (120) days.

Code §47-9-4: The Secretary of State is the attorney-in-fact for limited partnerships and foreign limited partnerships who do business in the state; shall file a copy of any service of notice and process received; and shall notify the appropriate county clerk if the copy of the notice and process sent to the implicated person was refused or undeliverable.

Code §47-9-10A: The Secretary of State may administratively dissolve a noncompliant limited partnership; shall make and file his or her determination and send notice to the limited partnership; may dissolve the partnership, if it fails to correct the issue, by signing a certification of dissolution; shall file the original certificate of dissolution and serve a copy to the partnership; shall cancel the certificate of dissolution if a complete and compliant application for reinstatement is filed; and shall serve the partnership with a notice of explanation if the application for reinstatement is denied.

Code §47-9-50: The Secretary of State shall file complete applications for limited partnership registrations and deliver a receipt for the record and the fees.

Code §47-9-53A: The Secretary of State may revoke a certificate of authority of a foreign limited partnership to transact business in this state, upon failure to meet certain requirements; may not revoke the certificate unless he or she serves notice to the partnership at least sixty (60) days prior to revocation; shall cancel the certificate of revocation and prepare a certificate of reinstatement, if the partnership's application for

reinstatement contains the required information; and shall file such certificate of reinstatement and serve the partnership with a copy.

Code §47-9A-2: The Secretary of State shall file complete applications for business trust registrations and deliver a receipt for the record and the fees.

Code §47-9A-3: The Secretary of State shall file complete applications for voluntary association registrations and deliver a receipt for the record and the fees.

Code §47-9A-4: The Secretary of State shall file complete applications for business trust or voluntary association dissolutions and deliver a receipt for the record and the fees.

### **Uniform Partnership Act**

Code §47B-1-5: The Secretary of State may collect a fee for filing or providing a certified copy of statement under the Uniform Partnership Act.

Code §47B-9-6: The Secretary of State shall mail a copy of a process to the surviving foreign partnership or limited partnership when a merger takes effect.

Code §47B-10-1: The Secretary of State shall file complete applications for limited liability partnership registrations and deliver a receipt for the record and the fee; and may dissolve the partnership by commencing an administrative proceeding, notifying the partnership, and issuing a certificate of administrative dissolution; shall cancel the certificate of dissolution if a complete and compliant application for reinstatement is filed; shall serve the partnership with a notice of explanation if the application for reinstatement is denied; and may provide forms for the reinstatement of registration.

## ***Domestic Relations***

### **Marriage Officials**

Code §48-2-402: The Secretary of State shall authorize a person to officiate marriages in all counties upon receipt of the registration fee and complete application; shall establish a registry of such persons to be updated and sent periodically to all county clerks; shall designate the registrant as inactive on the registry upon the registrant's written request; shall attempt to notify registrants of their death notice or revoked authority and designate the registrant as inactive if the registrant does not reply with proof of good standing within thirty (30) days; may charge a registration fee of \$25; shall deposit that money in the Marriage Celebrants Registration Fee Administration Fund; and shall establish rules to implement these provisions.

### **Address Confidentiality Program**

Code §48-28A-103: The Secretary of State shall create an Address Confidentiality Program to be staffed by full time employees who have had background checks; may

approve an application if filed correctly; may certify the applicant as a program participant upon receipt of a properly completed application; shall send notification of a lapsing certification along with a reapplication form at least four (4) weeks prior to the certification's expiration; and shall forward mail received at the participant's designated address to the participant.

Code §48-28A-105: The Secretary of State may determine that an agency or court must use a program participant's residential address; and may request that the Division of Motor Vehicles use the designated address.

Code §48-28A-106: The Secretary of State may make a program participant's residential or mailing address available for inspection or copying under certain circumstances.

Code §48-28A-107: The Secretary of State shall make a program participant's residential or mailing address or both addresses available for inspection or copying to a person identified in a qualifying court order; or may make such addresses available for inspection or copying if the program applicant or participant's certification has been canceled due to an application violation.

Code §48-28A-108: The Secretary of State shall keep a program participant's application and supporting materials confidential and out of public record.

Code §48-28A-110: The Secretary of State is directed to propose rules to implement the provisions of this article relating to the Address Confidentiality Program.

### **Child Welfare**

Code §49-2-112: The Secretary of State shall provide a copy of the petition, together with any other information in his or her possession pertaining to the proposed corporation, to the Secretary of the Department of Health and Human Resources, before issuing a charter for the incorporation of any organization having as its purpose the receipt of children for care or for placement in family homes.

## ***Courts, Fees, and Crimes***

### **Retirement of Court Judges**

Code §51-9-8: The Secretary of State shall file a certified copy of the Governor's order to accept the resignation of a judge for retirement upon disability with the State Auditor.

Code §51-9-9: The Secretary of State shall file a certified copy of the Governor's order to accept the resignation of a judge and affirm that the judge is entitled to his or her retirement benefits with the State Auditor.

### **Writs, Process, and Order of Publication**

Code §56-3-31: The Secretary of State shall send a nonresident defendant involved in a



motor vehicle highway accident in this state a notice of service and a copy of the summons and complaint by registered or certified mail, with return receipt requested; shall notify the relative county clerk's office once the receipt is verified; and shall keep a record of all service of process and the day and hour of service of process.

Code §56-3-33: The Secretary of State shall send a nonresident defendant with an issue against a contact in this state a notice of service and a copy of the summons and complaint by registered or certified mail, with return receipt requested; shall notify the relative county clerk's office once the receipt is verified; shall return refused or undeliverable mail to the clerk's office; and shall keep a record of all service of process and the day and hour of service of process.

Code §56-3-33A: The Secretary of State shall send a nonresident defendant involved in a domestic violence or personal safety dispute in this state a notice of service and a copy of the summons and complaint by registered or certified mail, with return receipt requested; shall notify the relative county clerk's office once the receipt is verified; shall return refused or undeliverable mail to the clerk's office; and shall keep a record of all service of process and the day and hour of service of process.

Code §56-3-34: The Secretary of State shall send a nonresident defendant involved in a bail bond dispute in this state a notice of service and a copy of the summons and complaint by registered or certified mail, with return receipt requested; shall notify the relative county clerk's office once the receipt is verified; shall return refused or undeliverable mail to the clerk's office; shall pay into the State Treasury all funds from the service; and shall keep a record of all service of process and the day and hour of service of process.

### **Fees and Allowances**

Code §59-1-1: The Secretary of State shall pay to the Treasury any \$1 fee collected for use of the state seal on any certificate, credential, or commission of a public officer.

Code §59-1-2: This section outlines fees to be charged by the Secretary of State:

- (a) The Secretary of State shall charge various fees for services rendered in his or her office for filing, recording, indexing, preserving a record of, and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation, and reinstatement of business entities organized within the state.
- (b) The Secretary of State may propose rules for charges for online electronic access to database information or other information maintained by the Secretary of State.

- (d) The Secretary of State shall prepare and index records at the expense of the state and not allow them to be obtained for commercial resale without written agreement of the state.
- (e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for informing the public.
- (f) The Secretary of State shall use expenditures from the Service Fees and Collections Account in the State Treasury for the operations of the office. This section identifies certain fees of which half of each fee amount is to be deposited by the Secretary of State in the said account.
- (h) The Legislature shall appropriate funds from the General Administrative Fees Account to operate the Secretary of State's Office. The Secretary of State shall collect and deposit certain fees and service charges into said account.
- (i) The Secretary of State shall use the Prepaid Fees and Services Account to allow customers of the Secretary of State to prepay for services.

Code §59-1-2a: This section outlines annual business fees to be paid to the Secretary of State; annual report filing; and data purchasing:

- (c) The Secretary of State shall deposit received annual report fees pursuant to this section in the General Administrative Fees Account.
- (d) The Secretary of State shall provide forms for annual report filing and shall provide certain information about corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies upon the request of any person.
- (f) The Secretary of State shall deposit received annual report fees pursuant to this section in the General Administrative Fees Account.
- (g) The Secretary of State shall notify an entity of its failure to pay and the date upon which dissolution or revocation will occur if all fees are not paid in full; shall assess a bad check fee to the responsible corporation, limited partnership, limited liability company or foreign limited liability company; and shall deposit the bad check fee into the account or accounts from which the Secretary of State paid the service charge.
- (h) The Secretary of State shall assess a \$50 administrative late fee upon each corporation, limited partnership, limited liability company, and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report; shall assess a \$25 administrative late fee upon each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report; and shall deposit the first \$25,000 of fees

collected under this subsection into the General Administrative Fees Account.

- (i) The Secretary of State shall, within twenty (20) days after the close of each month, report to the Tax Commissioner on every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during the preceding month.
- (j) The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database; and shall deposit any fees received from such purchases into the General Administrative Fees Account.
- (k) The Secretary of State is authorized to collect the service fee per transaction charge, if any, for an online service from any customer who purchases data or conducts transactions through an online service.
- (l) The Secretary of State may propose rules for legislative approval as necessary to implement this article.

Code §59-1-2b: The Secretary of State shall charge certain fees as outlined in this section for data originating in the Statewide Voter Registration System; and shall communicate the hourly rate and estimate of hours needed to fulfill voter registration list and/or election data purchasing requests to the prospective buyer.

Code §59-1-4: The fees charged by the Secretary of State are the property of the State of West Virginia. The Secretary of State shall account for and pay into the State Treasury at least once every thirty (30) days all fees collected or due to the state; shall keep a complete and accurate itemized account of all fees collected by them and the nature of the services rendered for which all fees were charged and collected; and shall allow these accounts to be open to inspection and audit.

### **Crimes Against Property**

Code §61-3-49: The Secretary of State shall maintain a detailed list of scrap metal dealers and make it publicly available.

### **Fresh Pursuit**

Code §62-11-6: The Secretary of State shall certify a copy of this fresh pursuit criminal procedure article to the executive department of each of the states of the United States.

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