

## **IC 3-12**

# **ARTICLE 12. ASCERTAINING RESULTS OF ELECTIONS**

## **IC 3-12-1**

### **Chapter 1. Rules for Counting Ballots**

#### **IC 3-12-1-1**

##### **Intent of voter primary factor to consider in determining voter's choice on ballot**

Sec. 1. Subject to sections 5, 6, 8, 9, 9.5, and 13 of this chapter, the primary factor to be considered in determining a voter's choice on a ballot is the intent of the voter. If the voter's intent can be determined on the ballot or on part of the ballot, the vote shall be counted for the affected candidate or candidates or on the public question. However, if it is impossible to determine a voter's choice of candidates on a part of a ballot or vote on a public question, then the voter's vote concerning those candidates or public questions may not be counted.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.328.*

#### **IC 3-12-1-1.2**

##### **Chapter establishes standards to define vote**

Sec. 1.2. (a) This chapter is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what will be counted as a vote on a paper ballot, optical scan voting system, or electronic voting system.

(b) The standards in this chapter apply to counting votes on every voting system, except where specific standards applicable only:

- (1) to a type of voting system are provided under IC 3-12-2, IC 3-12-3, or IC 3-12-3.5; and
- (2) in a recount or contest proceeding are provided under IC 3-12-6, IC 3-12-8, IC 3-12-11, or IC 3-12-12.

*As added by P.L.209-2003, SEC.180.*

#### **IC 3-12-1-1.5**

##### **"Election officer" defined**

Sec. 1.5. As used in this chapter, "election officer" means a person employed or appointed by the state, a political subdivision, or a political party to perform a duty under this title.

*As added by P.L.3-1987, SEC.329.*

#### **IC 3-12-1-1.7**

##### **Write-in votes**

Sec. 1.7. (a) The following provisions govern the counting of write-in votes:

- (1) Except as provided in subsection (b), only votes cast for declared write-in candidates shall be counted and certified.
- (2) The name of a candidate, written on the space reserved for write-in voting, is not considered a distinguishing mark that

would invalidate a ballot under section 3 of this chapter. However, the name or office of a candidate written in a place on the ballot other than the place reserved for write-in voting may not be counted for that office.

(3) A write-in vote for an office is void if the voter attempts to cast the vote by a means other than printing the name of the candidate in ink or lead pencil. The use of stickers, labels, rubber stamps, or other similar device is not permitted.

(4) An abbreviation, a misspelling, or other minor variation in the form of the name of a candidate or an office shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.

(5) Write-in votes for each write-in candidate shall be counted separately using the tally sheets provided by the county election board.

(b) This subsection does not apply to an office for which more than one (1) individual may be nominated or elected within the same election district. A write-in vote cast for an individual whose name appears on the ballot as a candidate for that office shall be counted as a vote for the candidate.

*As added by P.L.4-1991, SEC.110. Amended by P.L.3-1993, SEC.177; P.L.3-1997, SEC.338.*

#### **IC 3-12-1-2**

##### **Ballot void if not properly endorsed; absentee ballots**

Sec. 2. (a) This section does not apply to absentee ballots.

(b) The whole ballot may not be counted, subject to section 12 of this chapter, if the ballot is not endorsed with the initials of the poll clerks.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.330.*

#### **IC 3-12-1-3**

##### **Ballot void if it bears distinguishing mark or mutilation**

Sec. 3. The whole ballot is void if the ballot bears any distinguishing mark (other than a voting mark) or a mutilation made by the voter or an election officer with the intent to enable a person to determine who cast the marked or mutilated ballot.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.331.*

#### **IC 3-12-1-4**

##### **Ballot void for extrinsic act; erasures**

Sec. 4. (a) The whole ballot is void if a voter does any act extrinsic to the ballot, such as enclosing any paper or other article in the folded ballot, with the intent to enable a person to determine that the voter cast the ballot.

(b) An erasure by a voter does not make the whole ballot void unless made with the intent to enable a person to determine who cast the ballot, but it does not register a vote for the elected office, political party office, or public question for which it is made.

*As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.34;*

*P.L.3-1987, SEC.332.*

**IC 3-12-1-5**

**Voting mark on or in voting square**

Sec. 5. A voting mark made by a voter on or in a voting square at the left of a candidate's name shall be counted as a vote for the candidate.

*As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.35.*

**IC 3-12-1-6**

**Voting mark on or in voting square; public questions**

Sec. 6. A voting mark made by a voter on or in a voting square following the word "Yes" or the word "No" before a public question shall be counted as indicated.

*As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.36.*

**IC 3-12-1-7**

**Straight party ticket voting; counting multiple votes**

Sec. 7. (a) This subsection applies whenever a voter:

- (1) votes a straight party ticket; and
- (2) votes only for one (1) or more individual candidates who are all of the same political party as the straight ticket vote.

The straight ticket vote shall be counted and the individual candidate votes may not be counted.

(b) This subsection applies whenever:

- (1) a voter has voted a straight party ticket for the candidates of one (1) political party;
- (2) only one (1) person may be elected to an office; and
- (3) the voter has voted for one (1) individual candidate for the office described in subdivision (2) who is:
  - (A) a candidate of a political party other than the party for which the voter voted a straight ticket; or
  - (B) an independent candidate for the office.

If the voter has voted for one (1) individual candidate for the office described in subdivision (2), the individual candidate vote for that office shall be counted, the straight party ticket vote for that office may not be counted, and the straight party ticket votes for other offices on the ballot shall be counted.

(c) This subsection applies whenever:

- (1) a voter has voted a straight party ticket for the candidates of one (1) political party; and
- (2) the voter has voted for more individual candidates for the office than the number of persons to be elected to that office.

The individual candidate votes for that office may not be counted, the straight party ticket vote for that office may not be counted, and the straight party ticket votes for other offices on the ballot shall be counted.

(d) This subsection applies whenever:

- (1) a voter has voted a straight party ticket for the candidates of one (1) political party;

- (2) more than one (1) person may be elected to an office; and
- (3) the voter has voted for individual candidates for the office described in subdivision (2) who are:

- (A) independent candidates;
- (B) candidates of a political party other than the political party for which the voter cast a straight party ticket under subdivision (1); or
- (C) a combination of candidates described in clauses (A) and (B).

The individual votes cast by the voter for the office for the independent candidates and the candidates of a political party other than the political party for which the voter cast a straight party ticket shall be counted. The straight party ticket vote cast by that voter for that office shall be counted unless the total number of votes cast for the office by the voter, when adding the voter's votes for the individual candidates for the office and the voter's straight party ticket votes for the office, is greater than the number of persons to be elected to the office. If the total number of votes cast for the office is greater than the number of persons to be elected to the office, the straight party ticket votes for the office may not be counted. The straight party ticket votes for other offices on the voter's ballot shall be counted.

(e) This subsection applies whenever:

- (1) a voter has voted a straight party ticket for the candidates of one (1) political party;
- (2) more than one (1) person may be elected to an office; and
- (3) the voter has voted for individual candidates for the office described in subdivision (2) who are:

- (A) independent candidates or candidates of a political party other than the political party for which the voter cast a straight party ticket under subdivision (1); and
- (B) candidates of the same political party for which the voter cast a straight party ticket under subdivision (1).

The individual votes cast by the voter for the office for the independent candidates and the candidates of a political party other than the political party for which the voter cast a straight party ticket shall be counted. The individual votes cast by the voter for the office for the candidates of the same political party for which the voter cast a straight party ticket may not be counted. The straight party ticket vote cast by that voter for that office shall be counted unless the total number of votes cast for the office by the voter, when adding the voter's votes for the individual candidates for the office and the voter's straight party ticket vote for the office is greater than the number of persons to be elected to the office. If the total number of votes cast for the office is greater than the number of persons to be elected to the office, the straight party ticket votes for that office may not be counted. The straight party ticket votes for other offices on the voter's ballot shall be counted.

(f) If a voter votes a straight party ticket for more than one (1) political party, the whole ballot is void with regard to all candidates

nominated by a political party or designated as independent candidates on the ballot. However, the voter's vote for a school board candidate or on a public question shall be counted if otherwise valid under this chapter.

(g) If a voter does not vote a straight party ticket and the number of votes cast by that voter for the candidates for an office are less than or equal to the number of openings for that office, the individual candidates votes shall be counted.

(h) If a voter does not vote a straight party ticket and the number of votes cast by that voter for an office exceeds the number of openings for that office, none of the votes concerning that office may be counted.

*As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.37; P.L.3-1993, SEC.178; P.L.3-1997, SEC.339; P.L.164-2006, SEC.124.*

### **IC 3-12-1-7.5**

#### **Write-in votes; straight party ticket or multiple votes**

Sec. 7.5. (a) If a voter votes a straight party ticket for at least one (1) office for which only one (1) person may be elected and writes in the name of a candidate, the straight party ticket vote shall be counted for all offices except the offices for which a write-in vote was cast. The write-in vote shall be counted if the voter's intent can be determined.

(b) If a voter votes a straight party ticket for an office for which at least two (2) people may be elected and writes in the name of a candidate, the straight party vote for that office may not be counted unless:

- (1) fewer candidates appear on the party's ticket than may be elected; and
- (2) the voter has not written in a number of names that, when added to the straight party candidate's name, would be greater than the number of seats available for that office.

(c) If a voter votes for one (1) individual candidate for an office for which only one (1) person may be elected and also writes in the name of another candidate for the same office, neither vote may be counted.

(d) If a voter votes for at least one (1) individual candidate for an office for which at least two (2) people may be elected and also writes in the name of at least one (1) candidate, the vote for that office may not be counted unless the number of individual votes cast for the office, when added to the number of write-in votes cast for that office, is less than or equal to the number of seats available for that office.

(e) If a voter votes an individual or a straight party vote for a candidate for an office and also writes in the name of the same candidate for the same office, only one (1) vote for that candidate may be counted.

*As added by P.L.4-1991, SEC.111.*

### **IC 3-12-1-8**

#### **Voting mark on political party device circle**

Sec. 8. A voting mark made by a voter on or in a circle containing a political party device shall be counted as a vote for each candidate of that political party on that ballot.

*As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.38; P.L.3-1987, SEC.333.*

### **IC 3-12-1-9**

#### **Voting mark touching circle or square; counting**

Sec. 9. (a) A voting mark that touches a circle or a square shall be counted as if it were on or in the circle or square.

(b) A voting mark that:

- (1) does not touch a circle or square; and
- (2) is not on or in the circle or square;

may not be counted.

*As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.39; P.L.3-1987, SEC.334.*

### **IC 3-12-1-9.5**

#### **Remake of damaged or defective ballot card; conditions**

Sec. 9.5. (a) This section applies to counting votes cast on ballot cards.

(b) This subsection applies to a ballot card that:

- (1) has been cast in a precinct whose votes are being recounted by a local recount commission or the state recount commission;
- (2) is damaged or defective so that it cannot properly be counted by automated tabulating machines; and
- (3) cannot be counted for the office subject to the recount due to the damage or defect.

The ballot card shall be remake only if the conditions in subdivisions (1) through (3) exist.

*As added by P.L.3-1987, SEC.335. Amended by P.L.58-2005, SEC.26; P.L.221-2005, SEC.100.*

### **IC 3-12-1-10**

#### **Void ballot**

Sec. 10. A ballot on which a voter writes:

- (1) the voter's name;
- (2) the voter's initials;
- (3) a number; or
- (4) a symbol (such as a star, circle, parallel lines, dots, or any combination of such symbols), if written with the intent to enable a person to determine who cast the ballot;

is void.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.336.*

### **IC 3-12-1-11**

#### **Primary election; application of chapter**

Sec. 11. In applying this chapter to a primary election, the voting

square includes the voting space at the left of the name of a candidate on the primary ballot.

*As added by P.L.5-1986, SEC.8.*

### **IC 3-12-1-12**

#### **Application to votes cast by any method; counting vote made invalid by mistake or inadvertence of election officer**

Sec. 12. (a) This section applies to votes cast by any method.

(b) Except as provided in section 13 of this chapter, a ballot that has been marked and cast by a voter in compliance with this title but may otherwise not be counted solely as the result of the act or failure to act of an election officer may nevertheless be counted in a proceeding under IC 3-12-6, IC 3-12-8, or IC 3-12-11 unless evidence of fraud, tampering, or misconduct affecting the integrity of the ballot is presented by a party to the proceeding.

(c) The act or failure to act by an election officer is not by itself evidence of fraud, tampering, or misconduct affecting the integrity of the ballot.

*As added by P.L.7-1986, SEC.3. Amended by P.L.3-1987, SEC.337; P.L.8-1992, SEC.29.*

### **IC 3-12-1-13**

#### **Absentee ballots; necessary endorsements**

Sec. 13. (a) This section applies only to absentee ballots.

(b) The whole ballot may not be counted unless the ballot is endorsed with the initials of:

(1) the two (2) members of the absentee voter board in the office of the circuit court clerk under IC 3-11-4-19 or IC 3-11-10-26; or

(2) the two (2) appointed members of the county election board (or their designated representatives) under IC 3-11-4-19.

*As added by P.L.3-1987, SEC.338.*

### **IC 3-12-1-14**

#### **Counting of vote cast for candidate who ceases to be candidate**

Sec. 14. (a) This section does not apply to a vote:

(1) cast for president or vice president of the United States under IC 3-10-4-6; or

(2) described by section 15 of this chapter.

(b) A vote cast for a candidate who ceases to be a candidate may not be counted as a vote for a successor candidate selected under IC 3-13-1 or IC 3-13-2.

*As added by P.L.5-1989, SEC.63.*

### **IC 3-12-1-15**

#### **Vote cast for one straight party ticket**

Sec. 15. (a) This section applies to a vote cast for one (1) straight party ticket that includes a candidate for election to office who:

(1) ceases to be a candidate; and

(2) is succeeded by a candidate selected under IC 3-13-1 or

IC 3-13-2.

(b) A vote cast in the election for the original nominee is considered a vote cast for the successor.

*As added by P.L.5-1989, SEC.64.*

### **IC 3-12-1-16**

#### **Vote cast for "no candidate" or "candidate deceased"**

Sec. 16. (a) This section applies when:

(1) a ballot:

(A) contains pasters applied under IC 3-11-3-29.5(a) to cover the name of an individual who is no longer a candidate; or

(B) is reprinted under IC 3-11-3-29.5(c) to omit the name of an individual who is no longer a candidate; and

(2) the candidate vacancy is filled following the application of the pasters or the reprinting of the ballots.

(b) A vote cast on the ballot where the statement "NO CANDIDATE" or "CANDIDATE DECEASED" appears is considered a vote cast for the successor candidate.

*As added by P.L.38-1999, SEC.57.*

### **IC 3-12-1-17**

#### **Absentee ballot received from overseas voter; arrival time; when to count**

Sec. 17. (a) This section applies only to an absentee ballot sent by mail.

(b) Notwithstanding IC 3-11-10-14 and IC 3-11.5-4-10, an absentee ballot received from an overseas voter is not considered as arriving too late if both of the following apply:

(1) The absentee ballot envelope is postmarked not later than the date of the election.

(2) The absentee ballot is received not later than the deadline for counting provisional ballots under IC 3-11.7-5-1.

(c) If the postmark on the absentee ballot envelope is unclear, the county election board, by unanimous vote of the entire membership of the board, determines the postmark date. If the board is unable to determine the postmark date, the absentee ballot may not be counted.

*As added by P.L.164-2006, SEC.125.*

### **IC 3-12-1-18**

#### **Federal write-in absentee ballot cast in primary election by absent uniformed services voter or overseas voter; voter actions that void ballot**

Sec. 18. (a) This section applies to a federal write-in absentee ballot cast in a primary election as provided in IC 3-11-4-12.5(b)(1) by an absent uniformed services voter or overseas voter.

(b) If a voter does any of the following, the voter's vote is void:

(1) The voter votes for more than one (1) candidate, and the candidates are not on the official primary ballot of the same political party.

(2) The voter votes for a candidate who is not on the official primary ballot of any political party.

(3) The voter votes for a candidate who is on the official primary ballot of a political party, but the voter does not indicate the office for which the candidate seeks to be nominated.

(c) If the voter votes for a political party, but the voter does not vote for any individual candidates who are on that political party's official primary ballot, the voter's vote is void.

*As added by P.L.66-2010, SEC.28.*

### **IC 3-12-1-19**

#### **Federal write-in absentee ballot cast in general, municipal, or special election by absent uniformed services voter or overseas voter; counting votes**

Sec. 19. (a) This section applies to a federal write-in absentee ballot cast in a general election, municipal election, or special election as provided in IC 3-11-4-12.5(b)(2) by an absent uniformed services voter or overseas voter.

(b) If a voter designates a candidate by writing in the name of a political party on the ballot, the voter's vote shall be counted for all candidates of that political party on the ballot.

(c) If a voter writes an abbreviation, misspelling, or other minor variation instead of the correct name of a candidate or a political party, the voter's vote shall be counted if the intent of the voter can be determined.

*As added by P.L.66-2010, SEC.29.*