

H. B. 3012

(By Delegates Frich, Lane, Shott, Rowan,
Householder, Sobonya, McCuskey, Ireland,
Border, Gearheart and Pasdon)

[Introduced March 20, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §3-1-16 of the Code of West Virginia,
1931, as amended; to amend and reenact §3-4A-11a of said code;
to amend and reenact §3-5-4 and §3-5-13a of said code; and to
amend and reenact §51-1-1 of said code, all relating to the
nonpartisan election of justices to the Supreme Court of
Appeals beginning in 2014; providing for a nonpartisan
judicial office on the voting ballot; and setting forth how
the justices are to be selected in the primary and general
elections.

Be it enacted by the Legislature of West Virginia:

That §3-1-16 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; that §3-4A-11a of said code be amended
and reenacted; that §3-5-4 and §3-5-13a of said code be amended and
reenacted; and that §51-1-1 of said code be amended and reenacted,
all to read as follows:

CHAPTER 3. ELECTIONS.

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

2 **§3-1-16. Election of state officers.**

3 At the general election to be held in the year 1968, and in
4 every fourth year thereafter, there shall be elected a Governor,
5 Secretary of State, Treasurer, Auditor, Attorney General and
6 Commissioner of Agriculture. At the general election in the year
7 1968, and in every second year thereafter, there shall be elected
8 a member of the State Senate for each senatorial district, and a
9 member or members of the House of Delegates of the state from each
10 county or each delegate district. At the general election to be
11 held in the year 1968, and in every twelfth year thereafter, there
12 shall be elected one ~~judge~~ justice of the Supreme Court of Appeals,
13 and at the general election to be held in the year 1972, and in
14 every twelfth year thereafter, two ~~judges~~ justices of the Supreme
15 Court of Appeals, and at the general election to be held in the
16 year 1976, and in every twelfth year thereafter, two ~~judges~~
17 justices of the Supreme Court of Appeals. Beginning with the
18 primary election held in the year 2014, the election of justices of
19 the Supreme Court of Appeals shall be on a nonpartisan basis.

20 **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

21 **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity**
22 **to be printed, ballot stub numbers.**

23 (a) The board of ballot commissioners in counties using

1 ballots upon which votes may be recorded by means of marking with
2 electronically sensible ink or pencil and which marks are tabulated
3 electronically shall cause the ballots to be printed or displayed
4 upon the screens of the electronic voting system for use in
5 elections.

6 (b)(1) For the primary election, the heading of the ballot,
7 the type faces, the names and arrangement of offices and the
8 printing of names and arrangement of candidates within each office
9 are to conform as nearly as possible to the provisions of sections
10 thirteen and thirteen-a, article five of this chapter.

11 (2) For the general election, the heading of the ballot, the
12 straight ticket positions, the instructions to straight ticket
13 voters, the type faces, the names and arrangement of offices and
14 the printing of names and the arrangement of candidates within each
15 office are to conform as nearly as possible to the provisions of
16 section two, article six of this chapter, except as otherwise
17 provided in this article.

18 (3) Nonpartisan elections for Board of Education, and
19 effective with the primary election held in the year 2014 and
20 thereafter, the nonpartisan offices of Justice of the Supreme Court
21 of Appeals, and any question to be voted upon are to be separated
22 from the partisan ballot and separately headed in display type with
23 a title clearly identifying the purpose of the election and
24 constituting a separate ballot wherever a separate ballot is

1 required under the provisions of this chapter.

2 (4) Both the face and the reverse side of the ballot may
3 contain the names of candidates only if means to ensure the secrecy
4 of the ballot are provided and lines for the signatures of the poll
5 clerks on the ballot are printed on a portion of the ballot which
6 is deposited in the ballot box and upon which marks do not
7 interfere with the proper tabulation of the votes.

8 (5) The arrangement of candidates within each office is to be
9 determined in the same manner as for other electronic voting
10 systems, as prescribed in this chapter. On the general election
11 ballot for all offices, and on the primary election ballot only for
12 those offices to be filled by election, except delegate to national
13 convention, lines for entering write-in votes are to be provided
14 below the names of candidates for each office, and the number of
15 lines provided for any office shall equal the number of persons to
16 be elected, or three, whichever is fewer. The words "WRITE-IN, IF
17 ANY" are to be printed, where applicable, directly under each line
18 for write-ins. The lines are to be opposite a position to mark the
19 vote.

20 (c) Except for electronic voting systems that utilize screens
21 upon which votes may be recorded by means of a stylus or by means
22 of touch, the primary election ballots are to be printed in the
23 color of ink specified by the Secretary of State for the various
24 political parties, and the general election ballot is to be printed

1 in black ink. For electronic voting systems that utilize screens
2 upon which votes may be recorded by means of a stylus or by means
3 of touch, the primary ballots and the general election ballot are
4 to be printed in black ink. All ballots are to be printed, where
5 applicable, on white paper suitable for automatic tabulation and
6 are to contain a perforated stub at the top or bottom of the
7 ballot, which is to be numbered sequentially in the same manner as
8 provided in section thirteen, article five of this chapter, or are
9 to be displayed on the screens of the electronic voting system upon
10 which votes are recorded by means of a stylus or touch. The number
11 of ballots printed and the packaging of ballots for the precincts
12 are to conform to the requirements for paper ballots provided in
13 this chapter.

14 (d) In addition to the official ballots, the ballot
15 commissioners shall provide all other materials and equipment
16 necessary to the proper conduct of the election.

17 **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

18 **§3-5-4. Nomination of candidates in primary elections.**

19 (a) At each primary election, the candidate or candidates of
20 each political party for all offices to be filled at the ensuing
21 general election by the voters of the entire state, of each
22 congressional district, of each state senatorial district, of each
23 delegate district, of each judicial circuit of West Virginia, of
24 each county, and of each magisterial district in the state shall be

1 nominated by the voters of the different political parties, except
2 that no presidential elector shall be nominated at a primary
3 election.

4 (b) In primary elections a plurality of the votes cast shall
5 be sufficient for the nomination of candidates for office. Where
6 only one candidate of a political party for any office in a
7 political division, including party committeemen and delegates to
8 national conventions, is to be chosen, or where a judicial circuit
9 has two or more circuit judges and one circuit judge is to be
10 chosen for each numbered division within the circuit, the candidate
11 receiving the highest number of votes therefor in the primary
12 election shall be declared the party nominee for such office.
13 Where two or more such candidates are to be chosen in the primary
14 election, the candidates constituting the proper number to be so
15 chosen who shall receive the highest number of votes cast in the
16 political division in which they are candidates shall be declared
17 the party nominees and choices for such offices, except that:

18 (1) Candidates for the office of commissioner of the county
19 commission shall be nominated and elected in accordance with the
20 provisions of section ten, article nine of the Constitution of the
21 State of West Virginia and the requirements of section one-b,
22 article one, chapter seven;

23 (2) Members of county boards of education shall be elected at
24 primary elections in accordance with the provisions of sections

1 five and six of this article;

2 (3) Candidates for the House of Delegates shall be nominated
3 and elected in accordance with the residence restrictions provided
4 in section two, article two, chapter one of this code; ~~and~~

5 (4) In judicial circuits having numbered divisions, each
6 numbered division shall be tallied separately and the candidate in
7 each division receiving a plurality of the votes cast shall be
8 declared the party nominee for the office in that numbered
9 division; and

10 (5) Justices of the Supreme Court of Appeals shall be
11 nominated and elected on a nonpartisan basis in the following
12 manner: The election of Justices of the Supreme Court of Appeals
13 shall proceed at the primary election in which those receiving the
14 highest number of votes up to a number equaling two candidates for
15 each vacancy shall contest one another for the office or offices in
16 the general election.

17 (c) In case of tie votes between candidates for party
18 nominations or elections in primary elections, the choice of the
19 political party shall be determined by the executive committee of
20 the party for the political division in which such persons are
21 candidates.

22 **§3-5-13a. Order of offices and candidates on the ballot; uniform**
23 **drawing date.**

24 (a) The order of offices for state and county elections on all

1 ballots within the state shall be as prescribed herein. When the
 2 office does not appear on the ballot in an election, then it shall
 3 be omitted from the sequence. When an unexpired term for an office
 4 appears on the ballot along with a full term, the unexpired term
 5 shall appear immediately below the full term.

6 NATIONAL TICKET: President (and Vice President in the general
 7 election), United States Senator, member of the United States House
 8 of Representatives

9 STATE TICKET: Governor, Secretary of State, Auditor,
 10 Treasurer, Commissioner of Agriculture, Attorney General, ~~Justice~~
 11 ~~of the Supreme Court of Appeals~~, State Senator, member of the House
 12 of Delegates, circuit judge in multicounty districts, family court
 13 judge in multicounty districts, any other multicounty office, state
 14 executive committee

15 NONPARTISAN JUDICIAL OFFICES: Justice of the Supreme Court of
 16 Appeals

17 COUNTY TICKET: Circuit judge in single-county districts,
 18 family court judge in single-county districts, clerk of the circuit
 19 court, county commissioner, clerk of the county commission,
 20 prosecuting attorney, sheriff, assessor, magistrate, surveyor,
 21 congressional district executive committee, senatorial district
 22 executive committee in multicounty districts, delegate district
 23 executive committee in multicounty districts

24 NATIONAL CONVENTION: Delegate to the national convention --

1 at-large, delegate to the national convention -- congressional
2 district

3 DISTRICT TICKET: County executive committee

4 (b) Except for office divisions in which no more than one
5 person has filed a certificate of announcement, the arrangement of
6 names for all offices shall be determined by lot according to the
7 following provisions:

8 (1) On the fourth Tuesday following the close of the candidate
9 filing, beginning at nine o'clock a. m., a drawing by lot shall be
10 conducted in the office of the clerk of the county commission in
11 each county. Notice of the drawing shall be given on the form for
12 the certificate of announcement and no further notice shall be
13 required. The clerk of the county commission shall superintend and
14 conduct the drawing and the method of conducting the drawing shall
15 be prescribed by the Secretary of State.

16 (2) Except as provided herein, the position of each candidate
17 within each office division shall be determined by the position
18 drawn for that candidate individually: *Provided*, That if fewer
19 candidates file for an office division than the total number to be
20 nominated or elected, the vacant positions shall appear following
21 the names of all candidates for the office.

22 (3) Candidates for delegate to national convention who have
23 filed a commitment to a candidate for president shall be listed
24 alphabetically within the group of candidates committed to the same

1 candidate for president and uncommitted candidates shall be listed
 2 alphabetically in an uncommitted category. The position of each
 3 group of committed candidates and uncommitted candidates shall be
 4 determined by lot by drawing the names of the presidential
 5 candidates and for an uncommitted category.

6 (4) A candidate or the candidate's representative may attend
 7 the drawings.

8 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

9 **ARTICLE 1. SUPREME COURT OF APPEALS.**

10 **§51-1-1. Justices.**

11 The Supreme Court of Appeals shall consist of five justices,
 12 elected and qualified according to the Constitution and the laws of
 13 this state, any three of whom shall constitute a quorum. Beginning
 14 with the primary election in 2014, justices shall be elected on a
 15 nonpartisan basis.

NOTE: The purpose of this bill is to elect justices to the Supreme Court of Appeals beginning on a nonpartisan basis beginning in 2014. The bill provides for a nonpartisan judicial office on the voting ballot. The bill sets forth how the justices are to be selected in the primary and general elections.

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