

Senate Bill No. 7

(By Senators Jenkins, Barnes, McCabe, Cole and Carmichael)

[Introduced February 13, 2013; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §3-1-16 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §3-4A-11a of said code;
12 to amend said code by adding thereto a new section, designated
13 §3-5-6a; to amend and reenact §3-5-7, §3-5-13 and §3-5-13a of
14 said code; and to amend said code by adding thereto a new
15 section, designated §3-6-2a, all relating to electing Justices
16 of the Supreme Court of Appeals on a nonpartisan basis;
17 establishing the timing and frequency of election; setting
18 forth the ballot design and printing; requiring the election
19 of Justices of the Supreme Court of Appeals be separate from
20 a partisan ballot; filing the announcement of candidacies;
21 permitting withdrawal of announcement of candidacies;
22 refunding paid filing fees; and setting forth the ballot
23 content and form.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §3-1-16 of the Code of West Virginia, 1931, as amended,
3 be amended and reenacted; that §3-4A-11a of said code be amended
4 and reenacted; that said code be amended by adding thereto a new
5 section, designated §3-5-6a; that §3-5-7, §3-5-13 and §3-5-13a of
6 said code be amended and reenacted; and that said code be amended
7 by adding thereto a new section, designated §3-6-2a, all to read as
8 follows:

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

10 **§3-1-16. Election of state officers.**

11 (a) At the general election to be held in the year 1968, and
12 in every fourth year thereafter, there shall be elected a Governor,
13 Secretary of State, Treasurer, Auditor, Attorney General, and
14 Commissioner of Agriculture. At the general election in the year
15 1968, and in every second year thereafter, there shall be elected
16 a member of the state Senate for each senatorial district, and a
17 member or members of the House of Delegates of the state from each
18 county or each delegate district. At the general election to be
19 held in the year 1968, and ~~in~~ every twelve ~~year~~ years thereafter,
20 there shall be elected one ~~judge~~ Justice of the Supreme Court of
21 Appeals, and at the general election to be held in the year 1972,
22 and ~~in~~ every twelve ~~year~~ years thereafter, two ~~judges~~ Justices of
23 the Supreme Court of Appeals, and at the general election to be

1 held in the year 1976, and ~~in~~ every twelve ~~year~~ years thereafter,
2 two ~~judges~~ Justices of the Supreme Court of Appeals.

3 (b) Effective with the general election held in the year 2014,
4 the election of Justices of the Supreme Court of Appeals shall be
5 held on a nonpartisan basis.

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

7 **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity**
8 **to be printed, ballot stub numbers.**

9 (a) The board of ballot commissioners in counties using
10 ballots upon which votes may be recorded by means of marking with
11 electronically sensible ink or pencil and which marks are tabulated
12 electronically shall cause the ballots to be printed or displayed
13 upon the screens of the electronic voting system for use in
14 elections.

15 (b) (1) For the primary election, the heading of the ballot,
16 the type faces, the names and arrangement of offices and the
17 printing of names and arrangement of candidates within each office
18 are to conform as nearly as possible to the provisions of sections
19 thirteen and thirteen-a, article five of this chapter.

20 (2) For the general election, the heading of the ballot, the
21 straight ticket positions, the instructions to straight ticket
22 voters, the type faces, the names and arrangement of offices and
23 the printing of names and the arrangement of candidates within each

1 office are to conform as nearly as possible to the provisions of
2 section two, article six of this chapter, except as otherwise
3 provided in this article.

4 (3) Nonpartisan elections for board of education, Justices for
5 the Supreme Court of Appeals and any question to be voted upon are
6 to be separated from the partisan ballot and separately headed in
7 display type with a title clearly identifying the purpose of the
8 election and constituting a separate ballot wherever a separate
9 ballot is required under the provisions of this chapter.

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

16 (5) The arrangement of candidates within each office is to be
17 determined in the same manner as for other electronic voting
18 systems, as prescribed in this chapter. On the general election
19 ballot for all offices, and on the primary election ballot only for
20 those offices to be filled by election, except delegate to national
21 convention, lines for entering write-in votes are to be provided
22 below the names of candidates for each office, and the number of
23 lines provided for any office shall equal the number of persons to

1 be elected, or three, whichever is fewer. The words "WRITE-IN, IF
2 ANY" are to be printed, where applicable, directly under each line
3 for write-ins. The lines are to be opposite a position to mark the
4 vote.

5 (c) Except for electronic voting systems that utilize screens
6 upon which votes may be recorded by means of a stylus or by means
7 of touch, the primary election ballots are to be printed in the
8 color of ink specified by the Secretary of State for the various
9 political parties, and the general election ballot is to be printed
10 in black ink. For electronic voting systems that utilize screens
11 upon which votes may be recorded by means of a stylus or by means
12 of touch, the primary ballots and the general election ballot are
13 to be printed in black ink. All ballots are to be printed, where
14 applicable, on white paper suitable for automatic tabulation and
15 are to contain a perforated stub at the top or bottom of the
16 ballot, which is to be numbered sequentially in the same manner as
17 provided in section thirteen, article five of this chapter, or are
18 to be displayed on the screens of the electronic voting system upon
19 which votes are recorded by means of a stylus or touch. The number
20 of ballots printed and the packaging of ballots for the precincts
21 are to conform to the requirements for paper ballots provided in
22 this chapter.

23 (d) In addition to the official ballots, the ballot

1 commissioners shall provide all other materials and equipment
2 necessary to the proper conduct of the election.

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

4 **§3-5-6a. Election of Justices of the Supreme Court of Appeals.**

5 (a) An election for the purpose of electing a justice or
6 Justices of the Supreme Court of Appeals shall be held on the same
7 date as the general election, as provided by law, but upon a
8 nonpartisan ballot printed for this purpose.

9 (b) In each nonpartisan election for a justice or Justices of
10 the Supreme Court of Appeals, the board of canvassers shall declare
11 and certify the election of the required number of eligible
12 candidates receiving the highest numbers of votes to fill any full
13 terms.

14 (c) It is the intent of this section that any person declared
15 to be elected under this section shall take office as a duly
16 elected justice, even though the person received a plurality of all
17 votes cast at such election.

18 (d) In case of a tie vote under this section, the provisions
19 of section twelve, article six of this chapter shall control in
20 breaking the tie.

21 **§3-5-7. Filing announcements of candidacies; requirements;**
22 **withdrawal of candidates when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office or
2 political party position to be filled by election in any primary or
3 general election held under the provisions of this chapter shall
4 file a certificate of announcement declaring his or her candidacy
5 for the nomination or election to the office.

6 (b) The certificate of announcement shall be filed as follows:

7 (1) Candidates for the House of Delegates or the state Senate
8 and any other office or political position to be filled by the
9 voters of more than one county shall file a certificate of
10 announcement with the Secretary of State.

11 (2) Candidates for an office or political position to be
12 filled by the voters of a single county or a subdivision of a
13 county, except for candidates for the House of Delegates or state
14 Senate, shall file a certificate of announcement with the clerk of
15 the county commission.

16 (3) Candidates for an office to be filled by the voters of a
17 municipality shall file a certificate of announcement with the
18 recorder or city clerk.

19 (c) Except for the offices of Justices of the Supreme Court of
20 Appeals, which are to be filled on a nonpartisan basis beginning at
21 the general election held in the year 2014, the certificate of
22 announcement shall be filed with the proper officer not earlier
23 than the second Monday in January next preceding the primary

1 election day, and not later than the last Saturday in January next
2 preceding the primary election day, and must be received before
3 midnight, eastern standard time, of that day or, if mailed, shall
4 be postmarked by the United States Postal Service before that hour.
5 The office of Justices of the Supreme Court of Appeals, beginning
6 in the year 2014, shall be filled on a nonpartisan basis at the
7 general election. The certificate of announcement shall be filed
8 with the authorized election official not later than the second
9 Tuesday in May, and must be received before midnight, eastern
10 standard time, of that day or, if mailed, shall be postmarked by
11 the United States Postal Service before midnight, eastern standard
12 time, of that day. All certificates of announcement for the office
13 of Justices of the Supreme Court of Appeals, which were filed not
14 earlier than the second Monday in January next preceding the
15 primary election day, and not later than the last Saturday in
16 January next preceding the primary election day, and were received
17 before midnight, eastern standard time, of that day or, if mailed,
18 were postmarked by the United States Postal Service before that
19 hour, may be withdrawn on or before midnight, eastern standard
20 time, of the second Tuesday in May, in accordance with section
21 eleven, article five of this chapter, with a full refund of any
22 filing fees paid or, if not withdrawn, shall be effective for
23 purposes of the nonpartisan election for such offices to be held on

1 general election day.

2 (d) The certificate of announcement shall be on a form
3 prescribed by the Secretary of State on which the candidate shall
4 make a sworn statement before a notary public or other officer
5 authorized to administer oaths, containing the following
6 information:

7 (1) The date of the election in which the candidate seeks to
8 appear on the ballot;

9 (2) The name of the office sought; the district, if any; and
10 the division, if any;

11 (3) The legal name of the candidate and the exact name the
12 candidate desires to appear on the ballot, subject to limitations
13 prescribed in section thirteen, article five of this chapter;

14 (4) The county of residence and a statement that the candidate
15 is a legally qualified voter of that county; and the magisterial
16 district of residence for candidates elected from magisterial
17 districts or under magisterial district limitations;

18 (5) The specific address designating the location at which the
19 candidate resides at the time of filing, including number and
20 street or rural route and box number and city, state and zip code;

21 (6) For partisan elections, the name of the candidate's
22 political party and a statement that the candidate: (A) Is a
23 member of and affiliated with that political party as evidenced by

1 the candidate's current registration as a voter affiliated with
2 that party; and (B) has not been registered as a voter affiliated
3 with any other political party for a period of sixty days before
4 the date of filing the announcement;

5 (7) For candidates for delegate to national convention, the
6 name of the presidential candidate to be listed on the ballot as
7 the preference of the candidate on the first convention ballot; or
8 a statement that the candidate prefers to remain "uncommitted";

9 (8) A statement that the person filing the certificate of
10 announcement is a candidate for the office in good faith;

11 (9) The words "subscribed and sworn to before me this _____
12 day of _____, 20____" and a space for the signature of the
13 officer giving the oath.

14 (e) The Secretary of State or the board of ballot
15 commissioners, as the case may be, may refuse to certify the
16 candidacy or may remove the certification of the candidacy upon
17 receipt of a certified copy of the voter's registration record of
18 the candidate showing that the candidate was registered as a voter
19 in a party other than the one named in the certificate of
20 announcement during the sixty days immediately preceding the filing
21 of the certificate: *Provided*, That unless a signed formal
22 complaint of violation of this section and the certified copy of
23 the voter's registration record of the candidate are filed with the

1 officer receiving that candidate's certificate of announcement no
2 later than ten days following the close of the filing period, the
3 candidate may not be refused certification for this reason.

4 (f) The certificate of announcement shall be subscribed and
5 sworn to by the candidate before some officer qualified to
6 administer oaths, who shall certify the same. Any person who
7 knowingly provides false information on the certificate is guilty
8 of false swearing and shall be punished in accordance with section
9 three, article nine of this chapter.

10 (g) Any candidate for delegate to a national convention may
11 change his or her statement of presidential preference by notifying
12 the Secretary of State by letter received by the Secretary of State
13 no later than the third Tuesday following the close of candidate
14 filing. When the rules of the political party allow each
15 presidential candidate to approve or reject candidates for delegate
16 to convention who may appear on the ballot as committed to that
17 presidential candidate, the presidential candidate or the
18 candidate's committee on his or her behalf may file a list of
19 approved or rejected candidates for delegate and the Secretary of
20 State shall list as "uncommitted" any candidate for delegate who is
21 disapproved by the presidential candidate.

22 (h) A person may not be a candidate for more than one office
23 or office division at any election: *Provided*, That a candidate for

1 an office may also be a candidate for President of the United
2 States, for membership on political party executive committees or
3 for delegate to a political party national convention.

4 (I) A candidate who files a certificate of announcement for
5 more than one office or division and does not withdraw, as provided
6 by section eleven, article five of this chapter, from all but one
7 office prior to the close of the filing period may not be certified
8 by the Secretary of State or placed on the ballot for any office by
9 the board of ballot commissioners.

10 (j) The provisions of this section enacted during the regular
11 session of the Legislature in the year 1991 shall apply to the
12 primary election held in the year 1992 and every primary election
13 held thereafter. The provisions of this section enacted during the
14 regular session of the Legislature in the year 2009 shall apply to
15 the primary election held in the year 2010 and every primary
16 election held thereafter.

17 **§3-5-13. Form and contents of ballots.**

18 The face of every primary election ballot shall conform as
19 nearly as practicable to that used at the general election.

20 (1) The heading of every ballot is to be printed in display
21 type. The heading is to contain a ballot title, the name of the
22 county, the state, the words "Primary Election" and the month, day
23 and year of the election. The ballot title of the political party

1 ballots is to contain the words "Official Ballot of the (Name)
2 Party" and the official symbol of the political party may be
3 included in the heading. The ballot title of any separate paper
4 ballot or portion of any electronic or voting machine ballot for
5 the board of education is to contain the words "Nonpartisan Ballot
6 of Election of Members of the _____ County Board of
7 Education". The districts for which less than two candidates may
8 be elected and the number of available seats are to be specified
9 and the names of the candidates are to be printed without reference
10 to political party affiliation and without designation as to a
11 particular term of office. The ballot title of any separate paper
12 ballot or portion of any electronic or voting machine ballot for
13 the Supreme Court of Appeals shall contain the words "Nonpartisan
14 Ballot of Election of Justice(s) of the Supreme Court of Appeals of
15 West Virginia." The names of the candidates for the Supreme Court
16 of Appeals shall be printed without references to political party
17 affiliation or registration. Any other ballot or portion of a
18 ballot on a question is to have a heading which clearly states the
19 purpose of the election according to the statutory requirements for
20 that question.

21 (2) (A) For paper ballots, the heading of the ballot is to be
22 separated from the rest of the ballot by heavy lines and the
23 offices shall be arranged in columns with the following headings,

1 from left to right across the ballot: "National Ticket", "State
2 Ticket", "County Ticket" and, in a presidential election year,
3 "National Convention" or, in a nonpresidential election year,
4 "District Ticket". The columns are to be separated by heavy lines.
5 Within the columns, the offices are to be arranged in the order
6 prescribed in section thirteen-a of this article.

7 (B) For voting machines, electronic voting devices and any
8 ballot tabulated by electronic means, the offices are to appear in
9 the same sequence as prescribed in section thirteen-a of this
10 article and under the same headings as prescribed in subsection (a)
11 of this section. The number of pages, columns or rows, where
12 applicable, may be modified to meet the limitations of ballot size
13 and composition requirements subject to approval by the Secretary
14 of State.

15 (C) The title of each office is to be separated from preceding
16 offices or candidates by a line and is to be printed in bold type
17 no smaller than eight point. Below the office is to be printed the
18 number of the district, if any, the number of the division, if any,
19 and the words "Vote for _____" with the number to be nominated
20 or elected or "Vote For Not More Than _____" in multicandidate
21 elections. For offices in which there are limitations relating to
22 the number of candidates which may be nominated, elected or
23 appointed to or hold office at one time from a political

1 subdivision within the district or county in which they are
2 elected, there is to be a clear explanation of the limitation, as
3 prescribed by the Secretary of State, printed in bold type
4 immediately preceding the names of the candidates for those offices
5 on the ballot in every voting system. For counties in which the
6 number of county commissioners exceeds three and the total number
7 of members of the county commission is equal to the number of
8 magisterial districts within the county, the office of county
9 commission is to be listed separately for each district to be
10 filled with the name of the magisterial district and the words
11 "Vote for One" printed below the name of the office: *Provided,*
12 That the office title and applicable instructions may span the
13 width of the ballot so as it is centered among the respective
14 columns.

15 (D) The location for indicating the voter's choices on the
16 ballot is to be clearly shown. For paper ballots, other than those
17 tabulated electronically, the official primary ballot is to contain
18 a square formed in dark lines at the left of each name on the
19 ballot, arranged in a perpendicular column of squares before each
20 column of names.

21 (3) (A) The name of every candidate certified by the Secretary
22 of State or the board of ballot commissioners is to be printed in
23 capital letters in no smaller than eight point type on the ballot

1 for the appropriate precincts. Subject to the rules promulgated by
2 the Secretary of State, the name of each candidate is to appear in
3 the form set out by the candidate on the certificate of
4 announcement, but in no case may the name misrepresent the identity
5 of the candidate nor may the name include any title, position,
6 rank, degree or nickname implying or inferring any status as a
7 member of a class or group or affiliation with any system of
8 belief.

9 (B) The city of residence of every candidate, the state of
10 residence of every candidate residing outside the state, the county
11 of residence of every candidate for an office on the ballot in more
12 than one county and the magisterial district of residence of every
13 candidate for an office subject to magisterial district limitations
14 are to be printed in lower case letters beneath the names of the
15 candidates.

16 (C) The arrangement of names within each office must be
17 determined as prescribed in section thirteen-a of this article.

18 (D) If the number of candidates for an office exceeds the
19 space available on a column or ballot page and requires that
20 candidates for a single office be separated, to the extent
21 possible, the number of candidates for the office on separate
22 columns or pages are to be nearly equal and clear instructions
23 given the voter that the candidates for the office are continued on

1 the following column or page.

2 (4) When an insufficient number of candidates has filed for a
3 party to make the number of nominations allowed for the office or
4 for the voters to elect sufficient members to the board of
5 education or to executive committees, the vacant positions on the
6 ballot shall be filled with the words "No Candidate Filed":
7 *Provided*, That in paper ballot systems which allow for write-ins to
8 be made directly on the ballot, a blank line shall be placed in any
9 vacant position in the office of board of education or for election
10 to any party executive committee. A line shall separate each
11 candidate from every other candidate for the same office.
12 Notwithstanding any other provision of this code, if there are
13 multiple vacant positions on a ballot for one office, the multiple
14 vacant positions which would otherwise be filled with the words "No
15 Candidate Filed" may be replaced with a brief detailed description,
16 approved by the Secretary of State, indicating that there are no
17 candidates listed for the vacant positions.

18 (5) In presidential election years, the words "For election in
19 accordance with the plan adopted by the party and filed with the
20 Secretary of State" is to be printed following the names of all
21 candidates for delegate to national convention.

22 (6) All paper ballots are to be printed in black ink on paper
23 sufficiently thick so that the printing or marking cannot be

1 discernible from the back: *Provided*, That no paper ballot voted
2 pursuant to the provisions of 42 U.S.C. §1973, *et seq.*, the
3 Uniformed and Overseas Citizens Absentee Voting Act of 1986, or
4 Federal write-in absentee ballot may be rejected due to paper type,
5 envelope type, or notarization requirement. Ballot cards and paper
6 for printing ballots using electronically sensible ink are to meet
7 minimum requirements of the tabulating systems and are to conform
8 in size and weight to ensure ease in tabulation.

9 (7) Ballots are to contain perforated tabs at the top of the
10 ballots and are to be printed with unique sequential numbers from
11 one to the highest number representing the total number of ballots
12 printed. On paper ballots, the ballot is to be bordered by a solid
13 line at least one sixteenth of an inch wide and the ballot is to be
14 trimmed to within one-half inch of that border.

15 (8) On the back of every official ballot or ballot card the
16 words "Official Ballot" with the name of the county and the date of
17 the election are to be printed. Beneath the date of the election
18 there are to be two blank lines followed by the words "Poll
19 Clerks".

20 (9) The face of sample paper ballots and sample ballot labels
21 are to be like other official ballots or ballot labels except that
22 the word "sample" is to be prominently printed across the front of
23 the ballot in a manner that ensures the names of candidates are not

1 obscured and the word "sample" may be printed in red ink. No
2 printing may be placed on the back of the sample.

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

5 (a) The order of offices for state and county elections on all
6 ballots within the state shall be as prescribed herein. When the
7 office does not appear on the ballot in an election, then it shall
8 be omitted from the sequence. When an unexpired term for an office
9 appears on the ballot along with a full term, the unexpired term
10 shall appear immediately below the full term.

11 NATIONAL TICKET: President (and Vice President in the general
12 election), United States Senator, member of the United States House
13 of Representatives

14 STATE TICKET: Governor, Secretary of State, Auditor,
15 Treasurer, Commissioner of Agriculture, Attorney General, ~~Justice~~
16 ~~of the Supreme Court of Appeals~~, State Senator, member of the House
17 of Delegates, circuit judge in multicounty districts, family court
18 judge in multicounty districts, any other multicounty office, state
19 executive committee

20 COUNTY TICKET: Circuit judge in single-county districts,
21 family court judge in single-county districts, clerk of the circuit
22 court, county commissioner, clerk of the county commission,
23 prosecuting attorney, sheriff, assessor, magistrate, surveyor,

1 congressional district executive committee, senatorial district
2 executive committee in multicounty districts, delegate district
3 executive committee in multicounty districts

4 NATIONAL CONVENTION: Delegate to the national convention --
5 at-large, delegate to the national convention -- congressional
6 district

7 DISTRICT TICKET: County executive committee.

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

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

20 (2) Except as provided herein, the position of each candidate
21 within each office division shall be determined by the position
22 drawn for that candidate individually: *Provided*, That if fewer
23 candidates file for an office division than the total number to be

1 nominated or elected, the vacant positions shall appear following
2 the names of all candidates for the office.

3 (3) Candidates for delegate to national convention who have
4 filed a commitment to a candidate for president shall be listed
5 alphabetically within the group of candidates committed to the same
6 candidate for president and uncommitted candidates shall be listed
7 alphabetically in an uncommitted category. The position of each
8 group of committed candidates and uncommitted candidates shall be
9 determined by lot by drawing the names of the presidential
10 candidates and for an uncommitted category.

11 (4) A candidate or the candidate's representative may attend
12 the drawings.

13 **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

14 **§3-6-2a. General election ballots for election of Justices of the**
15 **Supreme Court of Appeals.**

16 The general election ballot shall contain a separate section
17 listing the names of candidates for Justice of the Supreme Court,
18 clearly separate and apart from the listing of the names on the
19 ballot for political party candidates for partisan offices, and
20 shall include a heading of: "Nonpartisan Ballot of Election of
21 Justice(s) of the Supreme Court of Appeals of West Virginia" with
22 the names of all candidates for that nonpartisan election listed

1 thereunder with no other offices listed in that section or that
2 ballot as appropriate.

NOTE: The purpose of this bill is to elect Supreme Court Justices on a nonpartisan basis. The bill establishes the timing and frequency of election. The bill sets forth the ballot design and printing. The bill requires the election of Justices of the Supreme Court of Appeals be separate from a partisan ballot. The bill nonpartisan election of justices. The bill sets forth filing announcement of candidacies. The bill permits withdrawal of announcement of candidacies. The bill allows for the refunding paid filing fees. The bill sets forth the ballot content and form.

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

§3-5-6a and §3-6-2a are new; therefore, strike-throughs and underscoring have been omitted.