

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4515

BY DELEGATES ISNER, MOORE, COOPER, KESSINGER AND

WARD

[Introduced February 13, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to repeal §3-5-6a §3-5-6b, §3-5-6c, and §3-5-6d of the Code of West Virginia, 1931, as
 2 amended; to amend and reenact §3-1-16 and §3-1-17 of said code; to amend and reenact
 3 §3-4A-11a of said code; to amend and reenact §3-5-7 of said code; to amend and reenact
 4 §51-1-1 of said code; and to amend and reenact §51-2A-5 of said code, all relating to the
 5 election of justices of the Supreme Court of Appeals; circuit court judges, magistrates and
 6 family court judges at general elections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

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

6 ~~(b) At the time of the primary election to be held in the year 2016, and every twelfth year~~
 7 ~~thereafter, there shall be elected one justice of the Supreme Court of Appeals, and (1) At the time~~
 8 of the primary general election to be held in 2020, and every 12th year thereafter, two justices of
 9 the Supreme Court of Appeals shall be elected; and at the time of the primary general election to
 10 be held in 2024, and every 12th year thereafter, two justices of the Supreme Court of Appeals
 11 12th year thereafter there shall be elected one justice of the Supreme Court of Appeals. Effective
 12 with the primary general election held in the year 2016, the election of justices of the Supreme
 13 Court of Appeals shall be on a nonpartisan basis and by division. ~~as set forth more fully in article~~
 14 ~~five of this chapter.~~

15 (2) The elections shall be by numbered division corresponding to the number of justices

16 being elected. Each justice shall be elected at large from the entire state. In each nonpartisan
17 election by division for a justice of the Supreme Court of Appeals, the candidates for election in
18 each numbered division shall be tallied separately, and the board of canvassers shall declare and
19 certify the election of the eligible candidate receiving the highest numbers of votes cast within a
20 numbered division to fill any full terms.

21 (3) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie
22 vote.

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

1 (a) There shall be elected, at the time of the ~~primary~~ general election to be held in 2016
2 2024 and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled
3 to one judge, and one judge for each numbered division of the judicial circuit in those judicial
4 circuits entitled to two or more circuit judges; and at the time of the ~~primary~~ general election to be
5 held in 2016 2020, and in every fourth year thereafter, the number of magistrates prescribed by
6 law for the county. Beginning with the election held in the year 2016, an election for the purpose
7 of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall
8 be upon a nonpartisan ballot printed for the purpose.

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

15 (c) Effective with the primary election of 2016, all elections for judge of the circuit courts in
16 the respective circuits and magistrates in each county will be elected on a nonpartisan basis and
17 by division. ~~as set forth more fully in article five of this chapter~~ An election for the purpose of
18 electing circuit court judges and magistrates shall be held on the same date as the general

19 election, as provided by law, upon a nonpartisan ballot by division printed for this purpose. The
 20 candidates for election in each numbered division shall be tallied separately, and the board of
 21 canvassers shall declare and certify the election of the eligible candidate receiving the highest
 22 numbers of votes cast within a numbered division to fill any full terms. In case of a tie vote under
 23 this section, §3-6-12 of this code controls in breaking the tie vote.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

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

5 (b) (1) For the primary election, the heading of the ballot, the type faces, the names and
 6 arrangement of offices and the printing of names and arrangement of candidates within each
 7 office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

8 (2) For the general election, the heading of the ballot, the type faces, the names and
 9 arrangement of offices and the printing of names and the arrangement of candidates within each
 10 office are to conform as nearly as possible to §3-6-2 of this code, except as otherwise provided
 11 in this article.

12 (3) Effective with the primary election held in 2016 and thereafter, ~~the following~~
 13 nonpartisan elections for board of education and any question to be voted upon are to be
 14 separated from the partisan ballot and separately headed in display type with a title clearly
 15 identifying the purpose of the election and constituting a separate ballot wherever a separate
 16 ballot is required under this chapter.

17 ~~(A) Nonpartisan elections for judicial offices, by division, of:~~

18 ~~(i) Justice of the Supreme Court of Appeals;~~

19 ~~(ii) Judge of the circuit court;~~

20 ~~(iii) Family court judge; and~~

21 ~~(iv) Magistrate;~~

22 ~~(B) Nonpartisan elections for board of education; and~~

23 ~~(C) Any question to be voted upon~~

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

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

36 (c) Except for electronic voting systems that utilize screens upon which votes may be
37 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed
38 in the color of ink specified by the Secretary of State for the various political parties, and the
39 general election ballot is to be printed in black ink. For electronic voting systems that utilize
40 screens upon which votes may be recorded by means of a stylus or by means of touch, the
41 primary ballots and the general election ballot are to be printed in black ink. All ballots are to be
42 printed, where applicable, on white paper suitable for automatic tabulation and are to contain a
43 perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the

44 same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the
 45 electronic voting system upon which votes are recorded by means of a stylus or touch. The
 46 number of ballots printed and the packaging of ballots for the precincts are to conform to the
 47 requirements for paper ballots provided in this chapter.

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6a. Election of justices of the Supreme Court of Appeals.

1 [Repealed]

§3-5-6b. Election of circuit judges.

1 [Repealed]

§3-5-6c. Election of family court judges.

1 [Repealed]

§3-5-6d. Election of magistrates.

1 [Repealed]

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

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

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

6 (1) Candidates for the House of Delegates, the State Senate, circuit judge, family court
 7 judge, and any other office or political position to be filled by the voters of more than one county

8 shall file a certificate of announcement with the Secretary of State.

9 (2) Candidates for an office or political position to be filled by the voters of a single county
10 or a subdivision of a county, except for candidates for the House of Delegates, State Senate,
11 circuit judge or family court judge, shall file a certificate of announcement with the clerk of the
12 county commission.

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

15 (c) The certificate of announcement shall be filed with the proper officer not earlier than
16 the second Monday in January before the primary election day and not later than the last Saturday
17 in January before the primary election day and must be received before midnight, eastern
18 standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service
19 before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court
20 judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis
21 at the ~~primary~~ general election.

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

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

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

27 (3) The legal name of the candidate and the exact name the candidate desires to appear
28 on the ballot, subject to limitations prescribed in §3-5-13 of this code;

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

32 (5) The specific address designating the location at which the candidate resides at the

33 time of filing, including number and street or rural route and box number and city, state and zip
34 code;

35 (6) For partisan elections, the name of the candidate's political party and a statement that
36 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the
37 candidate's current registration as a voter affiliated with that party; and (B) has not been registered
38 as a voter affiliated with any other political party for a period of 60 days before the date of filing
39 the announcement;

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

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

45 (9) The words "subscribed and sworn to before me this _____ day of _____,
46 20____" and a space for the signature of the officer giving the oath.

47 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
48 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
49 certified copy of the voter's registration record of the candidate showing that the candidate was
50 registered as a voter in a party other than the one named in the certificate of announcement during
51 the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed
52 formal complaint of violation of this section and the certified copy of the voter's registration record
53 of the candidate are filed with the officer receiving that candidate's certificate of announcement
54 no later than 10 days following the close of the filing period, the candidate may not be refused
55 certification for this reason.

56 (f) The certificate of announcement shall be subscribed and sworn to by the candidate
57 before some officer qualified to administer oaths, who shall certify the same. Any person who

58 knowingly provides false information on the certificate is guilty of false swearing and shall be
59 punished in accordance with section §3-9-3 of this code.

60 (g) Any candidate for delegate to a national convention may change his or her statement
61 of presidential preference by notifying the Secretary of State by letter received by the Secretary
62 of State no later than the third Tuesday following the close of candidate filing. When the rules of
63 the political party allow each presidential candidate to approve or reject candidates for delegate
64 to convention who may appear on the ballot as committed to that presidential candidate, the
65 presidential candidate or the candidate's committee on his or her behalf may file a list of approved
66 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any
67 candidate for delegate who is disapproved by the presidential candidate.

68 (h) A person may not be a candidate for more than one office or office division at any
69 election: *Provided*, That a candidate for an office may also be a candidate for President of the
70 United States, for membership on political party executive committees or for delegate to a political
71 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan
72 office in an election held concurrently with the primary election may be appointed under the
73 provisions of §3-5-19 of this code to fill a vacancy on the general ballot.

74 (i) A candidate who files a certificate of announcement for more than one office or division
75 and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the
76 close of the filing period may not be certified by the Secretary of State or placed on the ballot for
77 any office by the board of ballot commissioners.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-1. Justices.

1 The Supreme Court of Appeals shall consist of five justices, elected and qualified

2 according to the Constitution and the laws of this state, any three of whom shall constitute a
3 quorum. Effective with the primary election of 2016, all elections for justices will be on a
4 nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held
5 for the office of justice and all elections for justice are to be held in the nonpartisan judicial election.
6 ~~as set forth in article five, chapter three of this code~~ All indications of party identification on election
7 ballots for that office shall be omitted.

ARTICLE 2A. FAMILY COURTS.

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

1 (a) Beginning with the election to be conducted in the year 2016, family court judges shall
2 be elected. In family court circuits having two or more family court judges there shall be, for
3 election purposes, numbered divisions corresponding to the number of family court judges in each
4 area. Each family court judge shall be elected at large by the entire family court circuit. In each
5 numbered division of a family court circuit, the candidates for nomination or election shall be voted
6 upon and the votes cast for the candidates in each division shall be tallied separately from the
7 votes cast for candidates in other numbered divisions within the family court circuit. The candidate
8 or candidates receiving the highest number of the votes cast within a numbered division shall be
9 nominated or elected, as the case may be. Effective with the ~~primary~~ general election of ~~2016~~
10 2024 all elections for family court judges in the respective circuits will be on a nonpartisan basis
11 by division. Beginning in 2016, there will no longer be primary elections held for family court judges
12 and all elections for family court judges are to be held in the nonpartisan judicial election. ~~as set~~
13 ~~forth in article five, chapter three of this code~~ All indications of party identification on election
14 ballots for family court judge shall be omitted.

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

17 for family court judges elected thereafter shall be for eight years.

NOTE: The purpose of this bill is to provide that the election of justices of the Supreme Court of Appeals; circuit court judges, magistrates and family court judges is at general elections.

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