

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2179**

BY DELEGATE HOWELL

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]



1 A BILL to amend and reenact §3-1-9 and §3-1-35 of the Code of West Virginia, 1931, as amended;  
2 and to amend said code by adding thereto a new section, designated §3-5-14a, all relating  
3 to procedures permitting voters who have not registered an affiliation with a particular  
4 political party to vote in the primary election for that party under certain circumstances;  
5 requiring a determination by political parties and notice to the Secretary of State;  
6 specifying which ballots may be provided to voters in primary elections; requiring the  
7 posting of notices; specifying the form and preparation of lists of eligible parties; providing  
8 for assistance to impaired voters; and prohibiting improper influence by poll workers.

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

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

**§3-1-9. Political party committees; how composed; organization; determination for open primary voting.**

1 (a) Every fourth year at the primary election, the voters of each political party in each state  
2 senatorial district shall elect four members consisting of two male members and two female  
3 members of the state executive committee of the party. In state senatorial districts containing two  
4 or more counties, not more than two elected committee members shall be residents of the same  
5 county: *Provided*, That at each election the votes shall be tallied from highest to lowest without  
6 regard to gender or county of residence. The two candidates with the highest votes shall be  
7 elected first and the other candidates shall be qualified based on vote tallies, gender and county  
8 of residence. Upon completion of the canvass, the clerk of the county commission from each  
9 county shall send the results of the election of members of each state executive committee and  
10 certificates of announcement, if any, to the Secretary of State. Upon certification of the election  
11 results, the Secretary of State shall make known to each state executive committee, the members  
12 elected to such committee and the vacancies, if any. The committee, when convened and  
13 organized as herein provided, shall appoint three additional members of the committee from the  
14 state at large which shall constitute the entire voting membership of the state executive

15 committee: *Provided, however,* That if it chooses to do so, the committee may by motion or  
16 resolution and in accordance with party rules, may expand the voting membership of the  
17 committee. When senatorial districts are realigned following a decennial census, members of the  
18 state executive committee previously elected or appointed shall continue in office until the  
19 expiration of their terms. Appointments made to fill vacancies on the committee until the next  
20 election of executive committee members shall be selected from the previously established  
21 districts. At the first election of executive committee members following the realignment of  
22 senatorial districts, members shall be elected from the newly established districts.

23 (b) At the primary election, the voters of each political party in each county shall elect one  
24 male and one female member of the party's executive committee of the congressional district, of  
25 the state senatorial district and of the delegate district in which the county is situated, if the county  
26 is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass,  
27 the clerk of the county commission from each county shall send the results of the election of  
28 members of each congressional district, state senatorial district and delegate district executive  
29 committee of each party to the Secretary of State. Upon certification of the election results, the  
30 Secretary of State shall make known to each state executive committee the members elected to  
31 each congressional district, state senatorial district and delegate district executive committee and  
32 the vacancies, if any. Upon receipt, the state executive committee shall make known any  
33 vacancies to the applicable county executive committee for the purpose of filling said vacancies  
34 as provided in subsection (f) of this section. When districts are realigned following a decennial  
35 census, members of an executive committee previously elected in a county to represent that  
36 county in a congressional or multicounty senatorial or delegate district executive committee shall  
37 continue to represent that county in the appropriate newly constituted multicounty district until the  
38 expiration of their terms: *Provided,* That the county executive committee of the political party shall  
39 determine which previously elected members will represent the county if the number of

40 multicounty state senatorial or delegate districts in the county is decreased; and shall appoint  
41 members to complete the remainder of the term if the number of districts is increased.

42 (c) At the same time the voters of the county in each magisterial district or executive  
43 committee district, as the case may be, shall elect one male and one female member of the party's  
44 county executive committee except that in counties having three executive committee districts,  
45 there shall be elected two male and two female members of the party's executive committee from  
46 each magisterial or executive committee district. Upon completion of the canvass, the clerk of the  
47 county commission from each county shall send the results of the election of members of the  
48 county executive committee of each party along with the certificates of announcement to the  
49 Secretary of State. Upon certification of the election results, the Secretary of State shall make  
50 known to each state executive committee the members elected to the county committee and the  
51 vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies  
52 to the applicable county executive committee for the purpose of filling said vacancies as provided  
53 in subsection (f) of this section.

54 (d) For the purpose of complying with the provisions of this section, the county commission  
55 shall create the executive committee districts. The districts shall not be fewer than the number of  
56 magisterial districts in the county, nor shall they exceed in number the following: 40 for counties  
57 having a population of 100,000 persons or more; 30 for counties having a population of 50,000 to  
58 100,000; 20 for counties having a population of 20,000 to 50,000; and the districts in counties  
59 having a population of less than 20,000 persons shall be coextensive with the magisterial districts.

60 (e) The executive committee districts shall be as nearly equal in population as practicable  
61 and shall each be composed of compact, contiguous territory. The county commissions shall  
62 change the territorial boundaries of the districts as required by the increase or decrease in the  
63 population of the districts as determined by a decennial census. The changes must be made  
64 within two years following the census.

65 (f) All members of executive committees, selected for each political division as herein  
66 provided, shall reside within the county or district from which chosen. The term of office of all  
67 members of executive committees elected at the primary election in the year 2010 will begin on  
68 July 1, following the primary election and continue for four years thereafter, except as provided in  
69 subsection (g) of this section. Vacancies in the state executive committee shall be filled by the  
70 members of the committee for the unexpired term. Vacancies in the party's executive committee  
71 of a congressional district, state senatorial district, delegate district or county shall be filled by the  
72 party's executive committee of the county in which the vacancy exists for the unexpired term.

73 (g) As soon as possible after the certification of the election of the new executive  
74 committees, as herein provided, the newly elected executive committee shall convene an  
75 organizational meeting within their respective political divisions, on the call of the chair of the  
76 corresponding outgoing executive committee or by any member of the new executive committee  
77 in the event there is no corresponding outgoing executive committee. During the first meeting the  
78 new executive committee shall select a chair, a treasurer and a secretary and other officers as  
79 they may desire. Each of the officers shall, for their respective committees, perform the duties  
80 that usually appertain to his or her office. The organizational meeting may be conducted prior to  
81 July 1, but must occur after the certification of the election of the new executive committees. If the  
82 organizational meeting is conducted prior to July 1, the new committee shall serve out the  
83 remainder of the outgoing committee's term and is authorized to conduct official business. A  
84 current listing of all executive committees' members shall be filed with the Secretary of State by  
85 the end of July of each year. Vacancies in any executive committee shall be filled by the  
86 appropriate executive committee as provided in subsection (f) of this section no later than 60 days  
87 after the vacancy occurs. The chair of each executive committee shall submit an updated  
88 committee list to the Secretary of State within 10 days of a change occurring. Executive committee  
89 membership lists shall include at least the member's name, full address, employer, telephone  
90 number and term information. An appointment to fill a vacancy does not take effect if the executive

91 committee does not submit the updated list to the Secretary of State within the allotted time period.  
92 If the executive committee fails to submit the updated list within the allotted time period, it must  
93 make another appointment pursuant to the provisions of this section and resubmit the updated  
94 list in a timely manner. If a vacancy on an executive committee is not filled within the 60-day  
95 period prescribed by this section, the chair of the appropriate executive committee, as provided  
96 in subsection (f) of this section, shall name someone to fill the vacancy. If the chair of a county  
97 executive committee fails to fill a vacancy in a congressional district, state senatorial district or  
98 delegate district executive committee, and the failure to fill such vacancy prohibits said committee  
99 from conducting official business, the chair of the party's state executive committee shall fill such  
100 vacancy.

101 (h) Any meeting of any political party executive committee shall be held only after public  
102 notice and notice to each member is given according to party rules and shall be open to all  
103 members affiliated with the party. Meetings shall be conducted according to party rules, all official  
104 actions shall be made by voice vote and minutes shall be maintained and shall be open to  
105 inspection by members affiliated with the party.

106 (i) In January of every even-numbered year, each political party state executive committee  
107 shall determine whether it will permit unaffiliated voters to vote that party's primary election ballot  
108 if requested. If a party's state executive committee decides to allow voters who have not registered  
109 an affiliation with any party to vote that party's ballot in the primary election, the state executive  
110 committee shall notify the Secretary of State of its determination by the last day of January of that  
111 year. If the state executive committee does not notify the Secretary of State by this date, only  
112 voters who have registered, or otherwise duly designated an affiliation with that party, may vote  
113 the ballot of that party in primary elections until the next even-numbered year.

**§3-1-35. Ballots to be furnished voters.**

1 In general and special elections the ballots for all voters of an election precinct shall be  
2 the same. In primary elections the ballot of the voter's political party at that election in that precinct

3 shall be furnished to the voter together with separate ballots, if any, on any nonpartisan candidates  
4 and any public questions submitted to the voters generally at such primary election. In the event  
5 the voter is lawfully registered as "independent" or as an adherent of a political party not appearing  
6 has not registered a party affiliation on any primary election ballot to be voted in his precinct, he  
7 the voter shall not, in a primary election, be given or entitled to vote any party ballot but shall be  
8 furnished may request a ballot from any party that permits voting at primary elections by voters  
9 who are not affiliated with any party and the voter shall be provided a ballot for the political party  
10 requested, together with any separate ballots to be voted thereat on nonpartisan candidates and  
11 public questions. In no event, however, may a voter receive or vote a ballot for more than one  
12 political party at a primary election.

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

### **§3-5-14a. Required notice at voting places; list of eligible parties; provision for the visually impaired.**

1 (a) At every voting place where a primary election is conducted, the commissioners of  
2 elections shall post cards of instruction at places inside and outside of the voting place, as  
3 provided in §3-1-20 of this code, bearing a notice that if a voter has not registered an affiliation  
4 with any political party, then the voter may request a partisan ballot from a party that permits  
5 nonmembers of its party to vote in a primary election.

6 (b) For each voting place in a county, the board of ballot commissioners of that county  
7 shall prepare a written list, based upon information provided by the Secretary of State, of political  
8 parties that permit unaffiliated voters to vote for the party's candidates in a primary election. The  
9 list shall only provide the names of the parties allowing open primary voting and those names  
10 shall be placed in order of the total number of votes cast for that party's candidates in the state of  
11 West Virginia in the most recently preceding presidential general election.

12 (c) If a voter, upon entering the voting place, states that he or she is not affiliated with any  
13 party and that voter requests to vote a partisan ballot, then the voter shall be provided with the

14 list described in subsection (b) of this section and the voter may request a ballot for one of the  
15 parties appearing on the list.

16 (d) If a voter at a polling place requests assistance in reading or indicates that he or she  
17 is visually impaired, an election commissioner in the presence of the other election commissioners  
18 at the voting place, may read the notice required in subsection (a) of this section aloud for the  
19 voter and if the voter requests the list of eligible parties, then an election commissioners in the  
20 presence of the other election commissioners at the voting place, may read the list aloud for the  
21 voter.

22 (e) During a primary election, an election commissioner or clerk may not, in any manner,  
23 request, suggest to, seek to persuade or induce a voter to select a particular party ballot from any  
24 party authorizing an open primary ballot.

25 (f) An election commissioner shall inquire whether a voter unaffiliated with a recognized  
26 political party desires to vote a partisan or non-partisan ballot: *Provided*, that an election  
27 commissioner may not make any reference to any particular party ballot during such inquiry.

NOTE: The purpose of this bill is to require notification to voters at polling places in primary elections that they may request and use a ballot for one of the major political parties if the voter is not affiliated with any party or if the voter is registered with a party that does not have candidates on a ballot for that polling area. This codifies the process that has been in place allowing nonmembers of a political party to request that party's partisan ballot at a primary election.

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