

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 233

By Senator Smith

[Introduced January 11, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-5-5 of the Code of West Virginia, 1931, as amended, relating to
 2 the nomination and election of candidates for U.S. Congress; setting forth legislative
 3 findings and purpose; defining terms; setting forth residency requirements for candidacy;
 4 establishing early filing window for candidates; authorizing the Secretary of State to
 5 investigate the validity of candidate’s residency; providing for legal standing and defense
 6 of statute; and setting forth rule-making authority and penalties.

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-5. Nomination and election of candidates for United States Congress.

1 Repealed.

2 (a) Legislative findings and purpose. —The Legislature finds that it is consistent with the
 3 requirements of the West Virginia Constitution that no person shall be a candidate appearing on
 4 the ballot for nomination or election for House of Representatives in the United States Congress
 5 without having been a resident of the congressional district for one-year next preceding his
 6 election. To the extent that any subsection, subdivision, provision, clause, or phrase of this section
 7 or the application thereof to any person or circumstance is held unconstitutional or invalid, or in the
 8 event that a non-resident of a congressional district office is permitted to appear on the ballot for
 9 nomination or election to such office, the supplemental purpose of this section is to ensure that
 10 information about a candidate's residency status is clearly available to voters as such elections.

11 (b) Definitions. — As used in this section, the following words and terms shall have the
 12 following meaning:

13 (1) "Congressional district" means a specific geographic area that is permitted to elect a
 14 member of the U.S. House of Representatives under the laws of this state and pursuant to Article I,
 15 Section 2 of the U.S. Constitution;

16 (2) "Established Congressional district" means a district with geographic boundaries the
 17 have remained fixed and unaltered by law for a period of at least 24 months prior to an election;

18 (3) "New Congressional district" means a district with geographic boundaries established
19 for a period of at less than 24 months prior to an election;

20 (4) "Resident of Congressional district" means a person who, upon the date of an election
21 for nomination or election to represent a Congressional district, has established and maintained a
22 primary residence within the geographic boundaries of that Congressional district for the
23 preceding:

24 (A) Three months for a new Congressional district; or

25 (B) Twelve months for an Established Congressional district: *Provided*, That for purposes
26 of the primary, nominating or general elections of 2024, a required residency period shall not begin
27 prior to the effective date of this legislation.

28 (c) *Residence requirement for candidacy.*— No person in this state shall be eligible to
29 appear upon a ballot in any primary or general election as a printed candidate to secure a seat for
30 House of Representatives in the Congress of the United States who has not previously
31 established and maintained a primary residence within the Congressional district from which he or
32 she is to be elected in accordance with the requirements of this section. For purposes of this
33 section:

34 (1) In order to appear on the ballot in a primary election to be nominated to represent a
35 Congressional district, a candidate shall with the Secretary of State a certificate of announcement
36 in accordance with §3-5-7 of this code and certifying their present status as a resident of the
37 applicable Congressional district with a present intention to remain a resident for the duration of
38 his or her candidacy, and, if ultimately elected, for the full term of the office sought.

39 (2) In order to appear on the ballot in a general election to represent a Congressional
40 district, a person who was not already a certified candidate in the primary election shall file a
41 certificate of announcement or nomination certificate, as required by the provisions of this chapter,
42 certifying their present status as a resident of the applicable Congressional district with a present
43 intention to remain a resident for the duration of his or her candidacy and, if elected, for the full

44 term of the office sought.

45 (3) A person shall not be considered to have "established and maintained a primary
46 residence" within a Congressional district unless such person is legally domiciled within the district
47 for the purposes of voting and taxation for the entirety of the required residency period.

48 (d) Applicability. —The provisions of this section shall be effective upon passage and shall
49 apply to any person who files for a seat for House of Representatives in the Congress of the United
50 States for either the primary or general election held in the year 2024 and every primary and
51 general election held thereafter. Notwithstanding any other provision of this code to the contrary,
52 the following provisions shall apply for the purposes of effectuating any nomination or election for
53 House of Representatives in the United States Congress during the 2024 election year:

54 (1) Any candidate may file to appear on the ballot in a primary election seeking a
55 nomination to be elected to represent a Congressional district at the 2024 general election, or to
56 otherwise appear on the ballot in the general election as provided for in §3-5-1 et seq. of this code,
57 beginning 12 months prior to the date of the primary election or at the time of the effective date of
58 this code, whichever is later;

59 (2) Any and all persons who file to appear on the ballot during this early filing window must
60 certify that they meet the residency requirements of §3-5-5(c) of this code prior to the primary or
61 general election;

62 (3) The Secretary of State may investigate the validity of any candidate's residency
63 certification and if the person does not meet the residency requirements of this section, he or she
64 may be prohibited from filing to appear as a candidate;

65 (4) Any person who is prohibited from filing to appear as a candidate for nomination or
66 election to represent a Congressional district due to a lack of residency shall have immediate
67 standing to challenge this legislation by filing a civil action in the courts of this state against the
68 Secretary of State on the federal question of whether it amounts to an unconstitutional qualification
69 to a congressional office;

70 (5) Any elector shall also have standing to enforce this section by filing a civil action in the
71 courts of this state against the Secretary of State in the event that a non-resident candidate is
72 permitted to file to seek a nomination or election to represent the elector's Congressional district;

73 (6) Any legal challenge filed pursuant to §3-5-5(d)(4) or (5) of this code shall be heard and
74 determined in accordance with the court proceedings set forth in §3-1-45 of this code;

75 (7) The Attorney General shall vigorously defend any and all challenged portions of this
76 section, in the courts of this state or of the United States, as an exercise of an important and
77 fundamental state interest. In any action commenced in a court of this state, any elector residing
78 within the Congressional district of the applicable office, or either or both chambers of the
79 Legislature, should be deemed to have standing to be party to such litigation, and should be
80 permitted by the court to intervene if they are not already parties to such litigation; and

81 (8) In the event that, on the date that ballots must be printed for either a primary or general
82 election, a non-resident candidate has been permitted to appear on the ballot for an election to
83 represent a Congressional district in accordance with any order of a court of competent jurisdiction
84 on the basis that this section does or may conflict with federal law, the Secretary of State shall
85 ensure that one of the following ballot notations shall appear parenthetically where applicable next
86 to the names of all candidates for the Congressional district:

87 (A) "Resident of this district at least one year prior to the election" for candidates in an
88 established Congressional district who can so certify;

89 (B) "Resident of this district at least three months prior to the election" for candidates in a
90 new Congressional district who can so certify; or,

91 (C) "Unable to determine residency in district prior to this election."

92 (e) *Rulemaking.* – The Secretary of State shall propose for promulgation in accordance
93 with §29A-3-1 *et seq.* of this code emergency and legislative rules necessary to effectuate the
94 purposes of this section.

95 (f) *Penalties.* – Any person who knowingly submits false information on a residency

96 certification to establish residency for purposes of securing a seat for House of Representatives in
97 the Congress of the United States shall be ineligible to appear as a printed candidate on a ballot in
98 any election for any public office for a period of five years from the date of the false submission.
99 (g) Severability. – If any provision of this section, or the application thereof to any person or
100 circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this
101 section, and to this end the provisions of this section are declared to be severable.

NOTE: The purpose of this bill is to establish residency requirements for candidates seeking nomination and election to United States Congress.

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