

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 828

[Introduced February 16, 2024; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §3-5-2 and §3-5-21 of the Code of West Virginia, 1931, as amended,
 2 all relating to political party procedure and authority to select delegates to its national
 3 convention; and to political party conventions for nomination of presidential electors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-2. Delegates to national conventions; alternate delegates.

1 ~~(a) At the primary election to be held in the year one thousand nine hundred ninety-two,~~
 2 ~~and in each fourth year thereafter, there shall be elected by the voters of each political party of the~~
 3 ~~state, in accordance with a plan adopted by the state party, persons to be delegates to the national~~
 4 ~~convention of the party to be held next after the date of such primary~~ Each political party shall
 5 elect, select, allocate, and bind delegates and alternate delegates to the national convention of
 6 their respective political party in a manner not inconsistent with the national rules of their political
 7 party.

8 ~~(b) The plan adopted by each political party of the state shall state the method, subject to~~
 9 ~~compliance with their national party rules and not inconsistent with the provisions of this chapter,~~
 10 ~~for the election of persons in each congressional district of the state as delegates to the national~~
 11 ~~convention of the party, for the election or selection of persons in each congressional district of the~~
 12 ~~state as alternate delegates to the national convention of the party and for the selection of all~~
 13 ~~remaining delegates and alternate delegates allocated to the party in their national convention.~~
 14 ~~Not less than one hundred twenty~~ 120 ~~days before the primary election to be held in the year one~~
 15 ~~thousand nine hundred ninety-two~~ 2024, ~~and in every fourth year thereafter, the governing body of~~
 16 ~~each political party of the state shall certify the plan adopted by the party under signature of the~~
 17 ~~state party chairman and file the plan with the Secretary of State. Any questions regarding whether~~
 18 ~~such plan was rightfully adopted by the party shall be resolved by the party based upon party rules.~~

19 ~~(c) The plan adopted by each political party of the state shall, to the extent permissible~~
 20 ~~under their national party rules, provide for the following:~~

21 ~~(1) The voters of each political party shall elect in each congressional district the number of~~
22 ~~persons as delegates to the national convention of the party to which the district is entitled.~~

23 ~~(2) If the rules of the national political party do not require the apportionment of delegates~~
24 ~~on the basis of their commitment for president, the persons receiving the highest number of votes~~
25 ~~as delegates in any congressional district to the number to which the district is entitled, shall be~~
26 ~~elected delegates. After the election of delegates in each congressional district to the number to~~
27 ~~which the district is entitled, the persons receiving the next highest votes in each congressional~~
28 ~~district and having qualified, as may be provided in the plan adopted by the party, shall be elected~~
29 ~~as alternate delegates to the number of alternate delegates to which the district is entitled.~~

30 ~~(3) If the rules of the national political party require that the percentage of votes cast for the~~
31 ~~various presidential candidates determine the apportionment of committed candidates to be~~
32 ~~elected as delegates or alternates, regardless of whether such committed candidates received the~~
33 ~~highest number of votes, then the plan adopted by the political party of the state shall prescribe the~~
34 ~~number of delegates and alternates to be elected under such apportionment, the method by which~~
35 ~~the apportionment shall be made, and the method by which the Secretary of State shall determine~~
36 ~~which delegates and alternates are elected. A committed candidate for delegate to national~~
37 ~~convention is one whose preference for particular presidential candidate appears on the ballot.~~

38 ~~(4) In the event the number of persons elected in the primary election in a congressional~~
39 ~~district is less than the number to which the district is entitled as delegates and alternate delegates~~
40 ~~to the national convention of the political party, the governing body of the political party of the state~~
41 ~~shall appoint persons from the congressional district to serve as delegates or alternate delegates~~
42 ~~to the national convention of the party unless the rules of the party otherwise provide.~~

43 ~~(5) The number of persons which each of the congressional districts in the state are~~
44 ~~entitled to elect as delegates to the national convention of the political party shall be apportioned~~
45 ~~among the congressional districts in the same proportion to the total number of delegates to the~~
46 ~~party's national convention elected in all congressional districts in the state as the population of the~~

47 congressional district bears to the total population of the state based upon the census of
48 population taken by the bureau of the census of the United States Department of Commerce in the
49 year one thousand nine hundred ninety, and in every tenth year thereafter.

50 (d) ~~The official primary ballot at the primary election to be held in the year one thousand~~
51 ~~nine hundred ninety two, and in every fourth year thereafter shall, following the names of all~~
52 ~~candidates for delegates to the national convention of the party, contain the words "For election in~~
53 ~~accordance with the plan adopted by the party and filed with the Secretary of State."~~

54 (e) ~~Unless and until a political party of the state has adopted and certified a plan for the~~
55 ~~election of delegates to the national convention of the party and filed the plan with the Secretary of~~
56 ~~State, there shall be elected by the voters of the political party of the state at the primary election to~~
57 ~~be held in the year one thousand nine hundred ninety two, and in each fourth year thereafter, the~~
58 ~~number of persons to which the party is entitled as delegates at large, and by the voters of each~~
59 ~~political party in each congressional district in the state the number of delegates to which the~~
60 ~~district is entitled. The persons receiving the highest number of votes in the state as delegates at~~
61 ~~large, to the number to which the state is entitled, shall be elected delegates. The persons~~
62 ~~receiving the highest number of votes as delegates in any congressional district, to the number to~~
63 ~~which the district is entitled, shall be elected delegates. Each delegate so elected shall then~~
64 ~~appoint an individual to serve as alternate delegate, and shall by registered letter notify the~~
65 ~~Secretary of State of such appointment within forty days after the primary election~~

**§3-5-21. Party conventions to nominate presidential electors; candidates; organization;
duties.**

1 (a) Each political party shall elect, select, allocate, and bind delegates and alternate
2 delegates to the national presidential electors shall be nominated by a state convention or by the
3 state executive committee of each political party in a manner governed and prescribed by the rules
4 of that state executive committee. ~~Candidates for presidential electors shall be nominated by the~~
5 ~~delegated representatives of the political party assembled in a state convention to be held during~~

6 ~~the months of June, July or August next preceding any general election at which presidential~~
7 ~~electors are to be elected. The state executive committee of the political party, by resolution, shall~~
8 ~~designate the place and fix the date of the convention, shall prescribe the number of delegates~~
9 ~~thereto, and shall apportion the delegates among the several counties of the state in proportion to~~
10 ~~the vote cast in the state for the party's candidate for Governor at the last preceding general~~
11 ~~election at which a Governor was elected. The state executive committee shall also ascertain and~~
12 ~~designate all offices for which candidates are to be nominated at the convention.~~

13 ~~At least sixty days prior to the date fixed for holding any state convention, the chairman of~~
14 ~~the party's state executive committee shall cause to be delivered to the party's county executive~~
15 ~~committee in each county of the state a copy of the resolutions fixing the time and place for holding~~
16 ~~the state convention and prescribing the number of delegates from each county to the convention.~~
17 ~~Within ten days after receipt of the copy of the resolutions, the party executive committee of each~~
18 ~~county shall meet and, by resolution, shall apportion the delegates to the state convention among~~
19 ~~the several magisterial districts of the county, on a basis of the vote received in the county by the~~
20 ~~candidate of the party for Governor at the last preceding general election at which a Governor was~~
21 ~~elected, but in such apportionment of county delegates each magisterial district shall be entitled to~~
22 ~~at least one delegate to the state convention. The party's county executive committee shall call a~~
23 ~~meeting of the members of the political party in mass convention in the county, which meeting shall~~
24 ~~be held at least thirty days prior to the date fixed for the state convention and at which meeting the~~
25 ~~members of the political party in each magisterial district shall elect the number of delegates to~~
26 ~~which the district is entitled in the state convention.~~

27 ~~The meeting place in the county shall be as central and convenient as can reasonably be~~
28 ~~selected, and all recognized members of the political party shall be entitled to participate in any~~
29 ~~mass convention and in the selection of delegates. Notice of the time and place of holding the~~
30 ~~county mass convention and of the person who shall act as temporary chairman thereof shall be~~
31 ~~given by publication as a Class II-O legal advertisement in compliance with the provisions of article~~

32 ~~three, chapter fifty-nine of this code, and the publication area for the publication shall be the~~
33 ~~county. The first publication shall be made not more than fifteen days and the second publication~~
34 ~~shall be made not less than five days prior to the date fixed for holding the convention. The notice~~
35 ~~published shall specify the number of delegates which each magisterial district in the county is~~
36 ~~entitled to elect to the state convention.~~

37 ~~Upon assembling, the mass convention of the county, shall choose a chairman and a~~
38 ~~secretary, who, within five days after the holding of the convention, shall certify to the chairman of~~
39 ~~the state executive committee of the political party and the chairman of the county committee of~~
40 ~~the political party, the names and addresses of the parties selected as delegates to the state~~
41 ~~convention.~~

42 ~~If, after the election, a vacancy exists for a delegate from any magisterial district, the~~
43 ~~party's county executive committee, within ten days after the mass convention, shall appoint a~~
44 ~~member of the political party in the magisterial district to fill the vacancy, and shall certify the~~
45 ~~appointment to the chairman of the state executive committee of the political party.~~

46 ~~All contests over the selection of delegates to conventions shall be heard and determined~~
47 ~~by the party executive committee of the county from which the delegates are chosen, and the~~
48 ~~county executive committee shall, upon written petition of any contest, meet for a hearing and~~
49 ~~make a determination within ten days after the holding of a county mass convention. The circuit~~
50 ~~court of the county and the Supreme Court of Appeals of the state shall have concurrent original~~
51 ~~jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive~~
52 ~~committee in any contest.~~

53 ~~The delegates chosen and certified by and from the several magisterial districts in the~~
54 ~~state and, in the event of any contest, those prevailing in the contest, shall make up the state~~
55 ~~convention. The number present of those entitled to participate in any convention shall cast the~~
56 ~~entire vote to which the county is entitled in the convention, and it shall require a majority vote to~~
57 ~~nominate any candidate for office.~~

58 ~~All nominations made at state conventions shall be certified within fifteen days thereafter,~~
59 ~~by the chairman and the secretary of the convention, to the Secretary of State, who shall certify~~
60 ~~them to the clerk of the circuit court of each county concerned, and the names of the persons so~~
61 ~~nominated shall be printed upon the regular ballot to be voted at the ensuing general election,~~
62 ~~except that the names of the presidential elector candidates shall not be printed thereon.~~

63 ~~The delegates to any state convention may formulate and promulgate the party platform or~~
64 ~~declaration of party principles as to them shall seem advisable.~~

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NOTE: The purpose of this bill is to clarify political party procedure and authority to select delegates to its national convention; and to political party conventions for nomination of presidential electors.

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