

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Originating**

## **House Bill 4725**

(BY DELEGATES LANE, HANSHAW, MCCUSKEY,  
FLEISCHAUER, AZINGER, SHAFFER, SOBONYA, DEEM,  
FLUHARTY, SKINNER AND MANCHIN)

[Originating in the Committee on the Judiciary;  
reported on February 24, 2016.]



1 A BILL to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, all relating  
 2 to providing the procedures for the filling of vacancies in the offices of justices of the  
 3 Supreme Court of Appeals, circuit judge, family court judge or magistrate and making  
 4 certain clarifications.

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

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-3. Vacancies in offices of state officials, United States Senators, Justices and judges, and magistrates**

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer,  
 2 Attorney General, Commissioner of Agriculture, or in any office created or made elective to be  
 3 filled by the voters of the entire state, is filled by the Governor of the state by appointment and  
 4 subsequent election to fill the remainder of the term, if required by section one of this article.

5 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals,  
 6 judge of a circuit court or judge of a family court is filled by the Governor of the state by  
 7 appointment and, if the unexpired term be for a period of more than two years, by a subsequent  
 8 election to fill the remainder of the term, as required by subsection (d) of this section. If an  
 9 election is required under subsection (d) of this section, the Governor, circuit court or the chief  
 10 judge thereof in vacation, is responsible for the proper proclamation by order and notice  
 11 required by section one of this article.

12 (c) Any vacancy in the office of magistrate is appointed according to the provisions of  
 13 section six, article one, chapter fifty of this code, and, if the unexpired term be for a period of  
 14 more than two years, by a subsequent election to fill the remainder of the term, as required by  
 15 subsection (d) of this section.

16 (d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge  
 17 of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before  
 18 a general election, and the affected term of office ends on the thirty-first day of December

19 following the ~~succeeding~~ general election two years later, the person appointed to fill the  
20 vacancy shall continue in office until the completion of the term.

21 (2) When the vacancy occurs before the close of the candidate filing period for the  
22 primary election, and, if the unexpired term be for a period of greater than two years, the  
23 vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the  
24 primary election, and the appointment shall continue until a successor is elected and certified.

25 (3) When the vacancy occurs after the close of candidate filing for the primary election  
26 and not later than eighty-four days before the general election, and, if the unexpired term be for  
27 a period of greater than two years, the vacancy shall be filled by election in a nonpartisan  
28 judicial election held concurrently with the general election, and the appointment shall continue  
29 until a successor is elected and certified.

30 (e) When an election to fill a vacancy is required to be held at the general election  
31 according to the provisions of subsection (d) of this section, a special candidate filing period  
32 shall be established. Candidates seeking election to any unexpired term for Justice of the  
33 Supreme Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall  
34 file a certificate of announcement and pay the filing fee no earlier than the first Monday in  
35 August and no later than seventy-seven days before the general 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.