

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 639**

BY SENATORS MAYNARD AND SMITH

[Introduced March 12, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §3-4A-11a of said code; to amend and reenact §3-5-6a, §3-5-6d, §3-5-7, §3-  
 3 5-13, and §3-5-13a of said code; to amend and reenact §3-12-3, §3-12-6, §3-12-10, §3-  
 4 12-11, and §3-12-12 of said code; to amend and reenact §50-1-1 of said code; to amend  
 5 and reenact 51-1-1 of said code; and to amend and reenact §51-2A-5 of said code, all  
 6 relating to elections; removing the prohibition of party affiliation in elections for justices of  
 7 the Supreme Court of Appeals, circuit court judges, family court judges, and magistrates;  
 8 and removing the prohibition of party affiliation in elections for board of education  
 9 candidates.

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

## 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.

11 (3) Effective with the primary election held in 2016 and thereafter, the following  
 12 ~~nonpartisan~~ elections are to be separated from the ~~partisan~~ rest of the ballot and separately  
 13 headed in display type with a title clearly identifying the purpose of the election and constituting a  
 14 separate ballot wherever a separate ballot is required under this chapter:

15 (A) ~~Nonpartisan~~ Elections for judicial offices, by division, of:

16 (i) Justice of the Supreme Court of Appeals;

17 (ii) Judge of the circuit court;

18 (iii) Family court judge; and

19 (iv) Magistrate;

20 (B) ~~Nonpartisan~~ Elections for board of education; and

21 (C) Any question to be voted upon.

22 (4) Beginning in the primary election to be held in the year 2020 and in each election  
 23 thereafter, the ~~nonpartisan~~ judicial elections described in subparagraphs (i) through (iv),

24 paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket  
25 and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of  
26 this code.

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

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

39 (c) Except for electronic voting systems that utilize screens upon which votes may be  
40 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed  
41 in the color of ink specified by the Secretary of State for the various political parties, and the  
42 general election ballot is to be printed in black ink. For electronic voting systems that utilize  
43 screens upon which votes may be recorded by means of a stylus or by means of touch, the  
44 primary ballots and the general election ballot are to be printed in black ink. All ballots are to be  
45 printed, where applicable, on white paper suitable for automatic tabulation and are to contain a  
46 perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the  
47 same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the  
48 electronic voting system upon which votes are recorded by means of a stylus or touch. The  
49 number of ballots printed and the packaging of ballots for the precincts are to conform to the

50 requirements for paper ballots provided in this chapter.

51 (d) In addition to the official ballots, the ballot commissioners shall provide all other  
52 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 (a) An election for the purpose of electing a justice or justices of the Supreme Court of  
2 Appeals shall be held on the same date as the primary election, as provided by law, upon a  
3 nonpartisan ballot by division printed for this purpose. For election purposes, in each election at  
4 which shall be elected more than one justice of the Supreme Court of Appeals, the election shall  
5 be by numbered division corresponding to the number of justices being elected. Each justice shall  
6 be elected at large from the entire state.

7 (b) In each ~~nonpartisan~~ election by division for a justice of the Supreme Court of Appeals,  
8 the candidates for election in each numbered division shall be tallied separately, and the board of  
9 canvassers shall declare and certify the election of the eligible candidate receiving the highest  
10 numbers of votes cast within a numbered division to fill any full terms.

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

### **§3-5-6d. Election of magistrates.**

1 (a) An election for the purpose of electing a magistrate or magistrates by division shall be  
2 held on the same date as the primary election in their respective circuits, as provided by law, upon  
3 a nonpartisan ballot by division printed for this purpose.

4 (b) In each ~~nonpartisan~~ election by division for a magistrate, the candidates for election in  
5 each numbered division shall be tallied separately, and the board of canvassers shall declare and  
6 certify the election of the eligible candidate receiving the highest numbers of votes cast within a  
7 numbered division to fill any full terms.

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

9 vote.

**§3-5-7. Filing certificates of 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 election: *Provided*, That on the final day of a political filing period, the office of the  
22 Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk  
23 in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m.

24 until 12:00 p.m.

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

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

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

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

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

35 (5) The specific address designating the location at which the candidate resides at the  
36 time of filing, including number and street or rural route and box number and city, state, and zip  
37 code;

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

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

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

48 (9) The words "subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
49 20\_\_\_\_" and a space for the signature of the officer giving the oath.

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

59 (f) The certificate of announcement shall be subscribed and sworn to by the candidate  
60 before some officer qualified to administer oaths, who shall certify the same. Any person who  
61 knowingly provides false information on the certificate is guilty of false swearing and shall be  
62 punished in accordance with §3-9-3 of this code.

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

71 (h) A person may not be a candidate for more than one office or office division at any  
72 election: *Provided*, That a candidate for an office may also be a candidate for President of the  
73 United States, for membership on political party executive committees or for delegate to a political  
74 party national convention. ~~*Provided*, however, That an unsuccessful candidate for a nonpartisan  
75 office in an election held concurrently with the primary election may be appointed under the~~



76 ~~provisions of section nineteen of this article to fill a vacancy on the general ballot~~

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

**§3-5-13. Form and contents of ballots.**

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that  
3 used at the general election.

4 (2) The heading of every ballot is to be printed in display type. The heading is to contain  
5 a ballot title, the name of the county, the state, the words "Primary Election" and the month, day  
6 and year of the election. The ballot title of the political party ballots is to contain the words "Official  
7 Ballot of the (Name) Party" and the official symbol of the political party may be included in the  
8 heading.

9 (A) The ballot title of any separate paper ballot or portion of any electronic or voting  
10 machine ballot for all judicial officers shall commence with the words "~~Nonpartisan~~ Ballot of  
11 Election of Judicial Officers" and each such office shall be listed in the following order:

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine  
13 ballot for all justices of the Supreme Court of Appeals shall contain the words "~~Nonpartisan~~ Ballot  
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the  
15 candidates for the Supreme Court of Appeals shall be printed by division ~~without references to~~  
16 ~~political party affiliation or registration.~~

17 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting  
18 machine ballot for all circuit court judges in the respective circuits shall contain the words  
19 "~~Nonpartisan~~ Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the  
20 respective circuit court judge office shall be printed by division ~~without references to political party~~

21 ~~affiliation or registration.~~

22 (iii) The ballot title of any separate paper ballot or portion of any electronic or voting  
23 machine ballot for all family court judges in the respective circuits shall contain the words  
24 “~~Nonpartisan~~ Ballot of Election of Family Court Judge(s)”. The names of the candidates for the  
25 respective family court judge office shall be printed by division. ~~without references to political party~~  
26 ~~affiliation or registration~~

27 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting  
28 machine ballot for all magistrates in the respective circuits shall contain the words “~~Nonpartisan~~  
29 Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate  
30 office shall be printed by division. ~~without references to political party affiliation or registration~~

31 (B) The ballot title of any separate paper ballot or portion of any electronic or voting  
32 machine ballot for the Board of Education is to contain the words “~~Nonpartisan~~ Ballot of Election  
33 of Members of the \_\_\_\_\_ County Board of Education”. The districts for which fewer  
34 than two candidates may be elected and the number of available seats are to be specified and  
35 the names of the candidates are to be printed ~~without reference to political party affiliation and~~  
36 without designation as to a particular term of office.

37 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly  
38 states the purpose of the election according to the statutory requirements for that question.

39 (3)(A) For paper ballots, the heading of the ballot is to be separated from the rest of the  
40 ballot by heavy lines and the offices shall be arranged in columns with the following headings,  
41 from left to right across the ballot: “National Ticket”, “State Ticket”, “~~Nonpartisan~~ Judicial Ballot”,  
42 “County Ticket”, “Nonpartisan Ballot” in a nonpresidential election year, “District Ticket” or, in a  
43 presidential election year, “National Convention”. The columns are to be separated by heavy lines.  
44 Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

45 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic  
46 means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code

47 and under the same headings as prescribed in paragraph (A) of this subdivision. The number of  
48 pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size  
49 and composition requirements subject to approval by the Secretary of State.

50 (C) The title of each office is to be separated from preceding offices or candidates by a  
51 line and is to be printed in bold type no smaller than eight point. Below the office is to be printed  
52 the number of the district, if any, the number of the division, if any, and the words "Vote for  
53 \_\_\_\_\_" with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_"  
54 in multicandidate elections. For offices in which there are limitations relating to the number of  
55 candidates which may be nominated, elected or appointed to or hold office at one time from a  
56 political subdivision within the district or county in which they are elected, there is to be a clear  
57 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type  
58 immediately preceding the names of the candidates for those offices on the ballot in every voting  
59 system. For counties in which the number of county commissioners exceeds three and the total  
60 number of members of the county commission is equal to the number of magisterial districts within  
61 the county, the office of county commission is to be listed separately for each district to be filled  
62 with the name of the magisterial district and the words "Vote for One" printed below the name of  
63 the office: *Provided*, That the office title and applicable instructions may span the width of the  
64 ballot so as it is centered among the respective columns.

65 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For  
66 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a  
67 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular  
68 column of squares before each column of names.

69 (4)(A) The name of every candidate certified by the Secretary of State or the board of  
70 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the  
71 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State,  
72 the name of each candidate is to appear in the form set out by the candidate on the certificate of

73 announcement, but in no case may the name misrepresent the identity of the candidate nor may  
74 the name include any title, position, rank, degree or nickname implying or inferring any status as  
75 a member of a class or group or affiliation with any system of belief.

76 (B) The city of residence of every candidate, the state of residence of every candidate  
77 residing outside the state, the county of residence of every candidate for an office on the ballot in  
78 more than one county and the magisterial district of residence of every candidate for an office  
79 subject to magisterial district limitations are to be printed in lower case letters beneath the names  
80 of the candidates.

81 (C) The arrangement of names within each office must be determined as prescribed in §3-  
82 5-13a of this code.

83 (D) If the number of candidates for an office exceeds the space available on a column or  
84 ballot page and requires that candidates for a single office be separated, to the extent possible,  
85 the number of candidates for the office on separate columns or pages are to be nearly equal and  
86 clear instructions given the voter that the candidates for the office are continued on the following  
87 column or page.

88 (5) When an insufficient number of candidates has filed for a party to make the number of  
89 nominations allowed for the office or for the voters to elect sufficient members to the Board of  
90 Education or to executive committees, the vacant positions on the ballot shall be filled with the  
91 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to  
92 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of  
93 Board of Education or for election to any party executive committee. A line shall separate each  
94 candidate from every other candidate for the same office. Notwithstanding any other provision of  
95 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant  
96 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced  
97 with a brief detailed description, approved by the Secretary of State, indicating that there are no  
98 candidates listed for the vacant positions.

99 (6) In presidential election years, the words “For election in accordance with the plan  
100 adopted by the party and filed with the Secretary of State” is to be printed following the names of  
101 all candidates for delegate to national convention.

102 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the  
103 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted  
104 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens  
105 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper  
106 type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using  
107 electronically sensible ink are to meet minimum requirements of the tabulating systems and are  
108 to conform in size and weight to ensure ease in tabulation.

109 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with  
110 unique sequential numbers from one to the highest number representing the total number of  
111 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth  
112 of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

113 (9) On the back of every official ballot or ballot card the words “Official Ballot” with the  
114 name of the county and the date of the election are to be printed. Beneath the date of the election  
115 there are to be two blank lines followed by the words “Poll Clerks”.

116 (10) The face of sample paper ballots and sample ballot labels are to be like other official  
117 ballots or ballot labels except that the word “sample” is to be prominently printed across the front  
118 of the ballot in a manner that ensures the names of candidates are not obscured and the word  
119 “sample” may be printed in red ink. No printing may be placed on the back of the sample.

**§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.**

1 (a) The order of offices for state and county elections on all ballots within the state shall  
2 be as prescribed herein. When the office does not appear on the ballot in an election, then it shall  
3 be omitted from the sequence. When an unexpired term for an office appears on the ballot along  
4 with a full term, the unexpired term shall appear immediately below the full term.

5 NATIONAL TICKET: President (and Vice President in the general election), United States  
6 Senator, member of the United States House of Representatives.

7 STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of  
8 Agriculture, Attorney General, State Senator, member of the House of Delegates, any other  
9 multicounty office, state executive committee.

10 ~~NONPARTISAN~~ JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of  
11 the circuit court, family judge, magistrate.

12 COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county  
13 commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive  
14 committee, senatorial district executive committee in multicounty districts, delegate district  
15 executive committee in multicounty districts.

16 NONPARTISAN BALLOT: Nonpartisan elections for ~~board of education~~, conservation  
17 district supervisor, any question to be voted upon.

18 DISTRICT TICKET: County executive committee and board of education.

19 NATIONAL CONVENTION: Delegate to the national convention -- congressional district,  
20 delegate to the national convention -- at-large.

21 (b) Except for office divisions in which no more than one person has filed a certificate of  
22 announcement, the arrangement of names for all offices shall be determined by lot according to  
23 the following provisions:

24 (1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00  
25 a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in  
26 each county. Notice of the drawing shall be given on the form for the certificate of announcement  
27 and no further notice shall be required. The clerk of the county commission shall superintend and  
28 conduct the drawing and the method of conducting the drawing shall be prescribed by the  
29 Secretary of State.

30 (2) Except as provided herein, the position of each candidate within each office division

31 shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer  
 32 candidates file for an office division than the total number to be nominated or elected, the vacant  
 33 positions shall appear following the names of all candidates for the office.

34 (3) Candidates for delegate to national convention who have filed a commitment to a  
 35 candidate for president shall be listed alphabetically within the group of candidates committed to  
 36 the same candidate for president and uncommitted candidates shall be listed alphabetically in an  
 37 uncommitted category. The position of each group of committed candidates and uncommitted  
 38 candidates shall be determined by lot by drawing the names of the presidential candidates and  
 39 for an uncommitted category.

40 (4) A candidate or the candidate's representative may attend the drawings.

**ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC CAMPAIGN  
 FINANCING PILOT PROGRAM.**

**§3-12-3. Definitions.**

1 As used in this article, the following terms and phrases have the following meanings:

2 (1) "Candidate's committee" means a political committee established with the approval of  
 3 or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking  
 4 a particular office or to support or aid his or her nomination or election to an office in an election  
 5 cycle. If a candidate directs or influences the activities of more than one active committee in a  
 6 current campaign, those committees shall be considered one committee for the purpose of  
 7 contribution limits.

8 (2) "Certified candidate" means an individual seeking election to the West Virginia  
 9 Supreme Court of Appeals who has been certified in accordance with section ten of this article as  
 10 having met all of the requirements for receiving public campaign financing from the fund.

11 (3) "Contribution" means a gift subscription, assessment, payment for services, dues,  
 12 advance, donation, pledge, contract, agreement, forbearance or promise of money or other

13 tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other  
14 tangible thing of value to a person, made for the purpose of influencing the nomination, election  
15 or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and  
16 unconditionally rejected or returned. A contribution does not include volunteer personal services  
17 provided without compensation: *Provided*, That a nonmonetary contribution is to be considered  
18 at fair market value for reporting requirements and contribution limitations.

19 (4) "Exploratory contribution" means a contribution of no more than \$1,000 made by an  
20 individual adult, including a participating candidate and members of his or her immediate family,  
21 during the exploratory period but prior to filing the declaration of intent. Exploratory contributions  
22 may not exceed \$20,000 in the aggregate.

23 (5) "Exploratory period" means the period during which a participating candidate may raise  
24 and spend exploratory contributions to examine his or her chances of election and to qualify for  
25 public campaign financing under this article. The exploratory period begins on January 1 the year  
26 before the election in which the candidate may run for Justice of the Supreme Court of Appeals  
27 and ends on the last Saturday in January of the election year.

28 (6) "Financial agent" means any individual acting for and by himself or herself, or any two  
29 or more individuals acting together or cooperating in a financial way to aid or take part in the  
30 nomination or election of any candidate for public office, or to aid or promote the success or defeat  
31 of any political party at any election.

32 (7) "Fund" means the Supreme Court of Appeals Public Campaign Financing Fund created  
33 by section five of this article.

34 (8) "Immediate family" or "immediate family members" means the spouse, parents, step-  
35 parents, siblings and children of the participating candidate.

36 (9) "Nonparticipating candidate" means a candidate who is:

37 (A) Seeking election to the Supreme Court of Appeals;

38 (B) Is neither certified nor attempting to be certified to receive public campaign financing



39 from the fund; and

40 (C) Has an opponent who is a participating or certified candidate.

41 (10) "~~Nonpartisan~~ Judicial election campaign period" means the period beginning on the  
42 first day of the primary election filing period, as determined under §3-5-7 of this code, and ending  
43 on the day of the ~~nonpartisan~~ judicial election.

44 (11) "Participating candidate" means a candidate who is seeking election to the Supreme  
45 Court of Appeals and is attempting to be certified in accordance with section ten of this article to  
46 receive public campaign financing from the fund.

47 (12) "Person" means an individual, partnership, committee, association and any other  
48 organization or group of individuals.

49 (13) "Qualifying contribution" means a contribution received from a West Virginia  
50 registered voter of not less than \$1 nor more than \$100 in the form of cash, check or money order,  
51 made payable to a participating candidate or the candidate's committee, or in the form of an  
52 electronic payment or debit or credit card payment, received during the qualifying period.

53 (14) "Qualifying period" means the period during which participating candidates may raise  
54 and spend qualifying contributions in order to qualify to receive public campaign financing.

55 For candidates seeking to be placed on the nonpartisan judicial election ballot, the  
56 qualifying period begins on September 1 preceding the election year and ends on the last  
57 Saturday in January of the election year.

**§3-12-6. Sources of revenue for the fund.**

1 Revenue from the following sources shall be deposited in the fund:

2 (1) All exploratory and qualifying contributions in excess of the established maximums;

3 (2) Money returned by participating or certified candidates who fail to comply with this  
4 article;

5 (3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent  
6 or unobligated on the date of the ~~nonpartisan~~ judicial election for which the money was distributed;

7 (4) If a certified candidate loses, all remaining unspent or unobligated moneys;

8 (5) Civil penalties levied by the State Election Commission against candidates for  
9 violations of this article;

10 (6) Civil penalties levied by the Secretary of State pursuant to section seven, article eight  
11 of this chapter;

12 (7) Voluntary donations made directly to the fund;

13 (8) Any interest income or other return earned on the money's investment;

14 (9) On or before July 1, 2010, and for two successive years thereafter, the State Auditor  
15 shall authorize the transfer of the amount of \$1 million from the Purchasing Card Administration  
16 Fund established in §12-3-10d of this code to the fund created by this article;

17 (10) On or before July 1, 2015, the state Auditor shall authorize the transfer of the amount  
18 of \$400,000 from the Purchasing Card Administration Fund established in §12-3-10d of this code  
19 to the fund created by this article; and

20 (11) Money appropriated to the fund.

**§3-12-10. Certification of candidates.**

1 (a) To be certified, a participating candidate shall apply to the State Election Commission  
2 for public campaign financing from the fund and file a sworn statement that he or she has complied  
3 and will comply with all requirements of this article throughout the applicable campaign.

4 (b) Upon receipt of a notice from the Secretary of State that a participating candidate has  
5 received the required number and amount of qualifying contributions, the State Election  
6 Commission shall determine whether the candidate or candidate's committee:

7 (1) Has signed and filed a declaration of intent as required by section seven of this article;

8 (2) Has obtained the required number and amount of qualifying contributions as required  
9 by section nine of this article;

10 (3) Has complied with the contribution restrictions of this article;

11 (4) Is eligible, as provided in §3-5-9 of this chapter, to appear on the ~~nonpartisan~~ judicial

12 election ballot; and

13 (5) Has met all other requirements of this article.

14 (c) The State Election Commission shall process applications in the order they are  
15 received and shall verify a participating candidate's compliance with the requirements of  
16 subsection (b) of this section by using the verification and sampling techniques approved by the  
17 State Election Commission.

18 (d) The State Election Commission shall determine whether to certify a participating  
19 candidate as eligible to receive public campaign financing no later than three business days after  
20 the candidate or the candidate's committee makes his or her final report of qualifying contributions  
21 or, if a challenge is filed under subsection (g) of this section, no later than six business days after  
22 the candidate or the candidate's committee makes his or her final report of qualifying  
23 contributions. A certified candidate shall comply with this article through the ~~nonpartisan~~ judicial  
24 election campaign period.

25 (e) No later than two business days after the State Election Commission certifies that a  
26 participating candidate is eligible to receive public campaign financing under this section, the  
27 State Election Commission, acting in concert with the State Auditor's office and the State  
28 Treasurer's office, shall cause a check to be issued to the candidate's campaign depository  
29 account an amount equal to the public campaign financing benefit for which the candidate  
30 qualifies under section eleven of this article, minus the candidate's qualifying contributions, and  
31 shall notify all other candidates for the same office of its determination.

32 (f) If the candidate desires to receive public financing benefits by electronic transfer, the  
33 candidate shall include in his or her application sufficient information and authorization for the  
34 State Treasurer to transfer payments to his or her campaign depository account.

35 (g) Any person may challenge the validity of any contribution listed by a participating  
36 candidate by filing a written challenge with the State Election Commission setting forth any reason  
37 why the contribution should not be accepted as a qualifying contribution. If a contribution is

38 challenged under this subsection, the State Election Commission shall decide the validity of the  
39 challenge no later than the end of the next business day after the day that the challenge is filed,  
40 unless the State Election Commission determines that the candidate whose contribution is  
41 challenged has both a sufficient qualifying number and amount of qualifying contributions to be  
42 certified as a candidate under this section without considering the challenge. Within five business  
43 days of a challenge, the candidate or candidate's committee who listed any contribution that is  
44 the subject of a challenge may file a report with the State Election Commission of an additional  
45 contribution collected pursuant to section nine of this article for consideration as a qualifying  
46 contribution.

47 (h) A candidate's certification and receipt of public campaign financing may be revoked by  
48 the State Election Commission, if the candidate violates this article. A certified candidate who  
49 violates this article shall repay all moneys received from the fund to the State Election  
50 Commission.

51 (i) The determination of any issue before the State Election Commission is the final  
52 administrative determination. Any meetings conducted by the State Elections Commission to  
53 certify a candidate's eligibility to receive funds under this article shall not be subject the public  
54 notice and open meeting requirements of §6-9a-1 *et seq.* of this code, but the commission shall  
55 concurrently provide public notice of any decision and determination it makes which impacts the  
56 candidate's eligibility to receive funds pursuant to this article. Any person adversely affected by a  
57 decision of the State Election Commission under this article may appeal that decision to the circuit  
58 court of Kanawha County.

59 (j) A candidate may withdraw from being a certified candidate and become a  
60 nonparticipating candidate at any time with the approval of the State Election Commission. Any  
61 candidate seeking to withdraw shall file a written request with the State Election Commission,  
62 which shall consider requests on a case-by-case basis. No certified candidate may withdraw until  
63 he or she has repaid all moneys received from the fund: *Provided, That* the State Election

64 Commission may, in exceptional circumstances, waive the repayment requirement. The State  
65 Election Commission may assess a penalty not to exceed \$10,000 against any candidate who  
66 withdraws without approval.

**§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing  
Fund payments.**

1 (a) The State Election Commission, acting in concert with the State Auditor's office and  
2 the State Treasurer's office, shall have a check issued within two business days after the date on  
3 which the candidate is certified, to make payments from the fund for the ~~nonpartisan~~ judicial  
4 election campaign period available to a certified candidate.

5 In a contested ~~nonpartisan~~ judicial election, a certified candidate shall receive \$525,000  
6 in campaign financing from the fund, minus the certified candidate's qualifying contributions.

7 (b) The State Election Commission shall authorize the distribution of campaign financing  
8 moneys to certified candidates in equal amounts. The commission shall propose a legislative rule  
9 on distribution of funds.

10 (c) The State Election Commission may not authorize or direct the distribution of moneys  
11 to certified candidates in excess of the total amount of money deposited in the fund pursuant to  
12 section six of this article. If the commission determines that the money in the fund is insufficient  
13 to totally fund all certified candidates, the commission shall authorize the distribution of the  
14 remaining money proportionally, according to each candidate's eligibility for funding. Each  
15 candidate may raise additional money in the same manner as a nonparticipating candidate for  
16 the same office up to the unfunded amount of the candidate's eligible funding.

**§3-12-12. Restrictions on contributions and expenditures.**

1 (a) A certified candidate or his or her committee may not accept loans or contributions  
2 from any private source, including the personal funds of the candidate and the candidate's  
3 immediate family, during the ~~nonpartisan~~ judicial election campaign period except as permitted  
4 by this article.

5 (b) After filing the declaration of intent and during the qualifying period, a participating  
6 candidate may not spend or obligate more than he or she has collected in exploratory and  
7 qualifying contributions. After the qualifying period and through the nonpartisan judicial election  
8 campaign period, a certified candidate may spend or obligate any unspent exploratory or  
9 qualifying contributions and the moneys he or she receives from the fund under the provisions of  
10 §3-12-11 of this code.

11 (c) A participating or certified candidate may expend exploratory and qualifying  
12 contributions and funds received from the fund only for lawful election expenses as provided in  
13 §3-8-9 of this code. Moneys distributed to a certified candidate from the fund may be expended  
14 only during the nonpartisan judicial election campaign period for which funds were dispersed.  
15 Money from the fund may not be used:

- 16 (1) In violation of the law;  
17 (2) To repay any personal, family or business loans, expenditures or debts; or  
18 (3) To help any other candidate.

19 (d) A certified candidate or his or her committee shall return to the fund any unspent and  
20 unobligated exploratory contributions, qualifying contributions or moneys received from the fund  
21 within 48 hours after the date on which the candidate ceases to be certified.

22 (e) A certified candidate or his or her committee shall return to the fund any unspent or  
23 unobligated public campaign financing funds no later than five business days after the nonpartisan  
24 judicial election.

25 (f) A contribution from one person may not be made in the name of another person.

26 (g) A participating or certified candidate or his or her committee receiving qualifying  
27 contributions or exploratory contributions from a person not listed on the receipt required by  
28 sections eight and nine of this article is liable to the State Election Commission for the entire  
29 amount of that contribution and any applicable penalties.

30 (h) A certified candidate accepting any benefits under the provisions of this article shall

31 continue to comply with all of its provisions throughout the nonpartisan judicial election campaign  
 32 period.

33 (i) A participating or certified candidate or his or her financial agent shall provide the  
 34 Secretary of State with all requested campaign records, including all records of exploratory and  
 35 qualifying contributions received and campaign expenditures and obligations, and shall fully  
 36 cooperate with any audit of campaign finances requested or authorized by the State Election  
 37 Commission.

**CHAPTER 50. MAGISTRATE COURTS.**

**ARTICLE 1. COURTS AND OFFICERS.**

**§50-1-1. Magistrate court created.**

1 There is hereby created in each county of this state a magistrate court with such numbers  
 2 of magistrates for each court as are hereafter provided. There shall be elected by the voters of  
 3 each county, at the general election to be held in 1976, and in every fourth year thereafter, such  
 4 number of magistrates as is provided in section two of this article. The filing fee for the office of  
 5 magistrate shall be one percent of the annual salary. The term of magistrates shall be for four  
 6 years and shall begin on January 1, of the year following the year of election.

7 ~~Effective with the primary election of 2016, all elections for magistrates will be on a~~  
 8 ~~nonpartisan basis by division~~ Beginning in 2016, there will no longer be primary elections held for  
 9 magistrates and all elections for magistrates are to be held in the ~~nonpartisan~~ judicial election as  
 10 set forth in §3-5-1 *et seq.* of this code. ~~All indications of party identification on election ballots for~~  
 11 ~~magistrate shall be omitted~~

**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 for  
 5 the office of justice and all elections for justice are to be held in the ~~nonpartisan~~ judicial election  
 6 as set §3-5-1 *et seq.* of this code. All indications of party identification on election ballots for that  
 7 office shall be omitted.

## **ARTICLE 2A. FAMILY COURTS.**

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

8 (a) Beginning with the election to be conducted in the year 2016, family court judges shall  
 9 be elected. In family court circuits having two or more family court judges there shall be, for  
 10 election purposes, numbered divisions corresponding to the number of family court judges in each  
 11 area. Each family court judge shall be elected at large by the entire family court circuit. In each  
 12 numbered division of a family court circuit, the candidates for nomination or election shall be voted  
 13 upon and the votes cast for the candidates in each division shall be tallied separately from the  
 14 votes cast for candidates in other numbered divisions within the family court circuit. The candidate  
 15 or candidates receiving the highest number of the votes cast within a numbered division shall be  
 16 nominated or elected, as the case may be. ~~Effective with the primary election of 2016, all elections~~  
 17 ~~for family court judges in the respective circuits will be on a nonpartisan basis by division~~  
 18 Beginning in 2016, there will no longer be primary elections held for family court judges and all  
 19 elections for family court judges are to be held in the ~~nonpartisan~~ judicial election as set forth in  
 20 §3-5-1 *et seq.* of this code. ~~All indications of party identification on election ballots for family court~~  
 21 ~~judge shall be omitted.~~

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

NOTE: The purpose of this bill is to remove the prohibition on party affiliations in elections



for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates, and board of education candidates.

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