

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2707

BY DELEGATES NELSON, FLUHARTY, SHOTT, ELLINGTON,

QUEEN, MILEY, HORNBUCKLE, BYRD, COOPER, J. KELLY

AND FLEISCHAUER

[Introduced January 28, 2019; Referred

to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §1-2-2d; to amend and reenact §3-1-16 of said code; to amend and reenact
 3 §3-5-4 and §3-5-13 of said code; and to amend and reenact §3-6-2 of said code, all
 4 relating to requiring that in every delegate district having two or more delegates there shall
 5 be numbered divisions corresponding to the number of delegates in each delegate district;
 6 and providing for ballots.

Be it enacted by the Legislature of West Virginia:

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2d. Divisions.

1 For election purposes beginning in 2020, in every delegate district having two or more
 2 delegates there shall be numbered divisions corresponding to the number of delegates in each
 3 delegate district. Each delegate shall be elected at large from the entire delegate district. In each
 4 numbered division of a delegate district, the candidates for nomination or election shall be voted
 5 upon and the votes cast for the candidates in each division shall be tallied separately from the
 6 votes cast for candidates in other numbered divisions within the delegate district. The candidate
 7 receiving the highest number of the votes cast within a numbered division shall be nominated or
 8 elected, as the case may be.

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. At
6 the primary election and the general election held in the year 2020, and every second year
7 thereafter, the nomination and election of members of the House of Delegates in every delegate
8 district having two or more delegates shall be by numbered division as provided in §1-2-2d of this
9 code.

10 (b) At the time of the primary election to be held in the year 2016, and every 12th year
11 thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of
12 the primary election to be held in 2020, and every 12th year thereafter, two justices of the
13 Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every
14 12th year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary
15 election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be
16 on a nonpartisan basis and by division as set forth more fully in §3-5-1 *et seq.* of this code.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

1 (a) At each primary election, the candidate or candidates of each political party for all
2 offices to be filled at the ensuing general election by the voters of the entire state, of each
3 congressional district, of each state senatorial district, of each delegate district, and of each
4 county in the state shall be nominated by the voters of the different political parties, except that
5 no presidential elector shall be nominated at a primary election.

6 (b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of
7 candidates for office. Where only one candidate of a political party for any office in a political
8 division, including party committeemen and delegates to national conventions, is to be chosen
9 the candidate receiving the highest number of votes therefor in the primary election shall be
10 declared the party nominee for such office. Where two or more such candidates are to be chosen
11 in the primary election, the candidates constituting the proper number to be so chosen who shall
12 receive the highest number of votes cast in the political division in which they are candidates shall

13 be declared the party nominees and choices for such offices, except that:

14 (1) Candidates for the office of commissioner of the county commission shall be nominated
15 and elected in accordance with the provisions of section ten, article nine of the Constitution of the
16 State of West Virginia and the requirements of §7-1-1b of this code;

17 (2) Members of county boards of education shall be elected at primary elections in
18 accordance with the provisions of §3-5-5 and §3-5-6 of this code;

19 (3) Candidates for the House of Delegates shall be nominated and elected in accordance
20 with the residence restrictions provided in §1-2-2 of this code, and in every delegate district having
21 two or more delegates, by numbered division as provided in §1-2-2d of this code.

22 (c) In case of tie votes between candidates for party nominations or elections in primary
23 elections, the choice of the political party shall be determined by the executive committee of the
24 party for the political division in which such persons are candidates.

§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 officer shall commence with the words "Nonpartisan Ballot of Election
11 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 less than
34 two candidates may be elected and the number of available seats are to be specified and the
35 names of the candidates are to be printed without reference to political party affiliation and without
36 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, and
39 the names of the candidates on a ballot for House of Delegates in a delegate district having two

40 or more delegates are to be printed by numbered division as provided in §1-2-2d.

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

47 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic
48 means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code
49 and under the same headings as prescribed in §3-5-13a(3)(A) of this code. The number of pages,
50 columns or rows, where applicable, may be modified to meet the limitations of ballot size and
51 composition requirements subject to approval by the Secretary of State.

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

66 ballot so as it is centered among the respective columns.

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

71 (4) (A) The name of every candidate certified by the Secretary of State or the board of
72 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the
73 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State,
74 the name of each candidate is to appear in the form set out by the candidate on the certificate of
75 announcement, but in no case may the name misrepresent the identity of the candidate nor may
76 the name include any title, position, rank, degree or nickname implying or inferring any status as
77 a member of a class or group or affiliation with any system of belief.

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

83 (C) The arrangement of names within each office must be determined as prescribed in §3-
84 5-13a of this code.

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

90 (5) When an insufficient number of candidates has filed for a party to make the number of
91 nominations allowed for the office or for the voters to elect sufficient members to the board of

92 education or to executive committees, the vacant positions on the ballot shall be filled with the
93 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to
94 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of
95 board of education or for election to any party executive committee. A line shall separate each
96 candidate from every other candidate for the same office. Notwithstanding any other provision of
97 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant
98 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced
99 with a brief detailed description, approved by the Secretary of State, indicating that there are no
100 candidates listed for the vacant positions.

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

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

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

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

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this section are to contain:

2 (1) The name and ticket of each party which is a political party under the provisions of §3-
3 1-8 of this code;

4 (2) The name chosen as the party name by each group of citizens which has secured
5 nomination for two or more candidates by petition under the provisions of §3-5-23 of this code;
6 and

7 (3) The names of every candidate for any office to be voted for at the election whose
8 nomination in the primary election, nomination by petition or nomination by appointment to fill a
9 vacancy on the ballot has been certified and filed according to law and no others.

10 (b) The provisions of §3-5-13(2)(C) and §3-5-13(2)(D); §3-5-13(3); §3-5-13(4)(A) and §3-
11 5-13(4)(B); and §3-5-13(6), §3-5-13(7), §3-5-13(8), and §3-5-13(9), all of this code pertaining to
12 the preparation and form of primary election ballots shall likewise apply to general election ballots.

13 (c) (1) For all ballot systems, the ballot heading is to be in display type and contain the
14 words "Official Ballot, General Election" and the name of the county and the month, day and year
15 of the election.

16 (2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages
17 as required by the particular voting system, the party emblem and the name of each party as
18 prescribed in §3-6-2(a) of this code.

19 (3) The party whose candidate for president received the highest number of votes at the
20 last preceding presidential election is to be placed in the left, or first column, row or page, as is

21 appropriate to the voting system. The party which received the second highest vote is to be next
22 and so on. Any groups or third parties which did not have a candidate for president on the ballot
23 in the previous presidential election are to be placed in the sequence in which the final certificates
24 of nomination by petition were filed.

25 (4) For all ballots, any columns, rows or sections in which the ticket of one party appears
26 are to be clearly separated from the other columns, rows or sections by a heavy line or other clear
27 division. For each party, the offices are to be arranged in the order prescribed in §3-5-13a of this
28 code under the appropriate tickets, which are to be headed "National Ticket", "State Ticket" and
29 "County Ticket". The number of pages, columns or rows, where applicable, may be modified to
30 meet the limitations of ballot size and composition requirements, subject to approval by the
31 Secretary of State.

32 (d) The arrangement of names within each office for all ballot systems is to be as follows:

33 (1) In elections for presidential electors, the names of the candidates for president and
34 vice president of each party are to be placed beside a brace with a single voting position, so that
35 a vote for any presidential candidate is a vote for the electors of the party for which the candidates
36 were named.

37 (2) The order of names of candidates for any office or division for which more than one is
38 to be elected is determined as prescribed in §3-5-13a of this code: *Provided*, That the drawing by
39 lot is to be conducted on the 70th day next preceding the date of the general election, beginning
40 at 9:00 a.m.

41 (3) In any office where more than one person is to be elected, the names of the candidates
42 for the office are to be staggered so that no two candidates for that office appear directly opposite
43 any other candidate: ~~as shown in the example below~~ *Provided*, That if the voting system cannot
44 accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is
45 accurately tabulated. However, each candidate shall be separated by a thin line to distinguish
46 between each candidate.

47

48 ~~For House of Delegates~~ _____ ~~For House of Delegates~~

49 ~~First Delegate District~~ _____ ~~First Delegate District~~

50 ~~(Vote For Not More Than Two)~~ _____ ~~(Vote For Not More Than Two)~~

51 ~~SUSAN B. ANTHONY~~

52 ~~City (County)~~

53 ~~JOHN ADAMS~~

54 ~~City (County)~~

55 ~~ABRAHAM LINCOLN~~

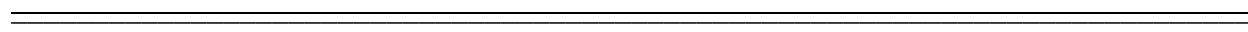
56 ~~City (County)~~

57

58 ~~JAMES MONROE~~

59 ~~City (County)~~

60



61 (4) Each voting system is to provide a means for voters to vote for any person whose
62 name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers,
63 tapes, labels or other means of writing in the name of a candidate which does not interfere with
64 the tabulation of the ballot.

65 (A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a
66 blank square and a blank line equal to the space which would be occupied by the name of the
67 candidate is to be placed under the proper office for each vacancy in nomination and for an office
68 for which more than one is to be elected, any vacancy is to appear after any other candidates for
69 the office. If no write-in lines are included on the ballot, specific instructions are to be added to
70 the top of the ballot notifying the voter that a write-in vote may be cast by writing the name and
71 office on any location on the front of the ballot.

72 (B) In machine and electronically tabulated ballot systems in which write-in votes must be

73 made in a place other than on the ballot, if there is a vacancy in nomination leaving fewer
74 candidates in any party than can be elected to that office, the words "No Candidate Nominated"
75 are to be printed in the space that would be occupied by the name of the candidate and for an
76 office for which more than one is to be elected, any vacancy is to appear after any other
77 candidates for the office. Notwithstanding any other provision of this code, if there are multiple
78 vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be
79 filled with the words "No Candidate Filed" may be replaced with a brief detailed description,
80 approved by the Secretary of State, indicating that there are no candidates listed for the vacant
81 positions.

82 (5) In a general election in any county in which unexpired terms of the board of education
83 are to be filled by election, a separate section or page of the ballot is to be set off by means clearly
84 separating the nonpartisan ballot from the ballot for the political party candidates and is to be
85 headed "Nonpartisan Board of Education".

86 (e) Any constitutional amendment is to be placed following all offices, followed by any
87 other issue upon which the voters are to cast a vote. The heading for each amendment or issue
88 is to be printed in large, bold type according to the requirements of the resolution authorizing the
89 election.

90 (f) The board of ballot commissioners may not place any issue on the ballot for election
91 which is not specifically authorized under the West Virginia Constitution or statutes or which has
92 not been properly ordered by the appropriate governmental body charged with calling the election.

93 (g) A ballot may not offer a voter the option of voting a straight party ticket by one mark or
94 punch.

NOTE: The purpose of this bill is to require that for nomination and election to the House of Delegates, in every delegate district having two or more delegates there shall be numbered divisions corresponding to the number of delegates in each delegate district.

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