WEST VIRGINIA CODE CHAPTER 3 ARTICLE 5

WV Legislature

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

Primary elections shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May 1986 and in each second year thereafter.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

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§3-5-1a. Time and place of holding primary elections held in the year one thousand nine hundred seventy-eight; hours polls open.

The primary election held in the year 1978 shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May 1978.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

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

(a) At the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, there shall be elected by the voters of each political party of the state, in accordance with a plan adopted by the state party, persons to be delegates to the national convention of the party to be held next after the date of such primary.

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

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

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

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

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

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

(5) The number of persons which each of the congressional districts in the state are entitled to elect as delegates to the national convention of the political party shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party's national convention elected in all congressional districts in the state as the population of the congressional district bears to the total population of the state based upon the census of population taken by the bureau of the census of the United States Department of Commerce in the year one thousand nine hundred ninety, and in every tenth year thereafter.

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

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

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§3-5-3. Presidential preference.

In presidential election years, in addition to the candidates required to be nominated at the primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section thirteen of this article, upon the filing with the Secretary of State of the certificate of announcement as provided in section seven of this article and the filing fee or petition in lieu of filing fee as provided in sections eight and eight-a of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the names and certificates of the party aspirants for the party nomination for the office of Governor.

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

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

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

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

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

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in §1-2-2 of this code.

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

(d) A person who was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code may not, after failing to win the nomination of that political party at a primary election, become a candidate of any other recognized political party for the same political office in the next succeeding general election.

(e) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.

WV Legislature

§3-5-5.

Repealed.

Acts, 1993 Reg. Sess., Ch. 43.

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§3-5-6. Election of county board of education members at primary elections.

(a) An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections, as provided by law, but upon a nonpartisan ballot printed for the purpose.

(b) No more than two members may be elected or serve from the same magisterial district. The eligibility of candidates to be declared elected for full terms of four years and for unexpired terms of two or more years based on this limitation shall be determined at the time of certification of the election.

(1) Such eligibility shall be based on the magisterial district residence of incumbent members of the board whose terms will continue beyond July 1, following the primary election.

(A) No person is eligible to be declared elected who resides in a district which has two such incumbent members.

(B) No more than one candidate is eligible to be declared elected who resides in a district which has one such incumbent member.

(C) A person with the highest number of votes may be declared elected to an unexpired term notwithstanding the fact that the person's magisterial district has two representatives serving on the board at the time of the election: Provided, That the number of representatives from that magisterial district will be less than two as of July 1, following the primary.

(2) The person declared elected to an unexpired term shall assume the duties of a member of the board of Education according to the provisions of section two, article five, chapter eighteen of this code.

(c) In each nonpartisan election for Board of Education the board of canvassers shall:

(1) Declare and certify the election of the required number of eligible candidates receiving the highest numbers of votes to fill any full terms;

(2) Declare and certify the election of the required number of eligible candidates receiving the next highest numbers of votes, after all full terms are filled, to fill any unexpired terms.

(d) It is the intent of this statute that any person declared to be elected under the preceding provisions of this section shall take office as a duly elected member or members, even though the person may not have received a majority or plurality of all votes cast at such election.

(e) In case of a tie vote for a seat on a county board of education in any primary election, the provisions of section twelve, article six of this chapter shall control in breaking the tie.

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§3-5-6a. Election of justices of the Supreme Court of Appeals.

(a) An election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose. For election purposes, in each election at which shall be elected more than one justice of the Supreme Court of Appeals, the election shall be by numbered division corresponding to the number of justices being elected. Each justice shall be elected at large from the entire state.

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

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

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§3-5-6b. Election of circuit judges.

(a) An election for the purpose of electing a circuit court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

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

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

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§3-5-6c. Election of family court judges.

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

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

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

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§3-5-6d. Election of magistrates.

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

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

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

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§3-5-6e. Election of judges of the Intermediate Court of Appeals.

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

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

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§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the county clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

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

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

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

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

(4) The county of residence and a statement that the candidate is a legally qualified voter of

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that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

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

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

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

(8) For candidates for county board of education, a statement that the candidate swears and affirms that he or she has not been convicted of an offense under §61-8A-1 *et seq.*, §61-8B-1 *et seq.,* and §61-8C-1 *et seq.* of this code in which the victim was a minor;

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

(10) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than 10 days following the close of the filing period, the candidate may not be refused certification for this reason: *Provided, however*, That prior to accepting a Certificate of Announcement for filing for an office which is elected in a partisan election, the Secretary of State's Office, clerk of the county commission, recorder or city clerk shall electronically verify a candidate's current party affiliation as subscribed and sworn to by the candidate. If a candidate's current party affiliation is not as stated on the Certificate of Announcement, the filing shall be refused.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before an officer qualified to administer oaths, who shall certify the same. Any person who

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knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

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

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of §3-5-19 of this code to fill a vacancy on the general ballot.

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

(j) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.

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§3-5-8. Filing fees and their disposition.

(a) Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(1) A candidate for president of the United States, for vice president of the United States, for United States Senator, for member of the United States House of Representatives, for Governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: Provided, That the filing fee for any candidate for president or vice president of the United States shall not exceed $2,500 commencing with the 2004 filing period;

(2) A candidate for the office of judge of a circuit court and judge of a family court shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(3) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office and a candidate for state Senator shall pay a fee of one percent of the total annual salary of the office;

(4) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary, excluding any additional compensation or commission of the office for which the candidate announces. A candidate for county board of education shall pay a fee of $25. A candidate for any other county office shall pay a fee of $10;

(5) Delegates to the national convention of any political party shall pay the following filing fees:

(A) A candidate for delegate-at-large shall pay a fee of $20; and

(B) A candidate for delegate from a congressional district shall pay a fee of $10;

(6) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

(A) A candidate for member of a state executive committee of any political party shall pay a fee of $20;

(B) A candidate for member of a county executive committee of any political party shall pay a fee of $10; and

(C) A candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of $5.

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(b) Candidates shall pay the filing fee to the election official with whom the certificate of announcement is filed according to the provisions of section seven of this article at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

(c) All moneys received by the clerk from the fees shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him or her to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs it shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for judicial or legislative offices to be filled by the voters of one county shall be apportioned to the county in which the boundaries of the district lie.

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§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.

A candidate seeking nomination to any office who is unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

The candidate shall file an oath with the appropriate office required under section eight of this article stating that he or she is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not earlier than the second Monday in January next preceding the primary election day.

Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: Provided, That the filing fee shall be waived, in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought: Provided, however, That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

No qualified voter forfeits his or her opportunity to vote in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk of the county commission may not be required to determine the validity of a greater number of signatures than that required by this section.

Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the clerk of the county commission or Secretary of State, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be prescribed by the Secretary of State.

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§3-5-9. Certification and posting of candidacies.

By the eighty-fourth day next preceding the day fixed for the primary election, the Secretary of State shall arrange the names of all candidates, who have filed announcements with him or her, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of this chapter, and shall forthwith certify the same under his or her name and the lesser seal of the state, and file the same in his or her office.

The certificate of candidates shall show: (1) The name and residence of each candidate; (2) the office for which he or she is a candidate; (3) the name of the political party of which he or she is a candidate; (4) upon what ballot his or her name is to be printed; and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his or her party, or if he or she has no preference, the word "uncommitted".

The Secretary of State shall post a duplicate of the certificate in a conspicuous place in his or her office and keep same posted until after the primary election.

Immediately upon completion of such certification, the Secretary of State shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the county commission in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in that county. He or she shall transmit the certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the seventieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty-six and every primary election held thereafter.

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§3-5-10. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official primary ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election, according to the provisions of this article and §3-4A-1 *et seq.* of this code, as appropriate to the voting system. If any ballot issue is to be voted on in the primary election, the ballot commissioners shall likewise prepare a sample official ballot for that issue according to the provisions of law authorizing the election.

(b) The facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish each sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than 65 percent of the actual size of the ballot, at the discretion of the ballot commissioners: *Provided*, That in counties where an electronic voting system has been adopted, the facsimile sample ballot may be a photographic reproduction of the absentee ballot: *Provided, however,* That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and candidates for each office which will appear on the primary election ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election. All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the

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name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference, shall be included in the list in the same order in which it appears on the ballot. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 *et seq.* of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "official list of candidates", the name of the county, the words "primary election", the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than 14 point; (B) the title of the office shall be printed in bold type no smaller than 12 point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than 10 point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than 10 point and the residence information shall be printed in type no smaller than 10 point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than 14 point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the primary election to be held in the year 2000, the ballot commissioners of any county may choose to publish a facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues instead of the official list of offices and candidates for each office

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for purposes of the last publication required before any primary election.

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§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal on a form provided by the Secretary of State with the same officer with whom the certificate of announcement was filed. If the notarized statement of withdrawal is received by the proper officer by the deadlines set forth in subsection (b) of this section, the candidate's withdrawal is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name shall remain on the ballot.

(b) Deadlines for withdrawing as a candidate:

(1) For primary or special primary elections or nonpartisan elections held in conjunction with a primary election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than the third Tuesday following the close of the candidate filing period.

(2) For general or special general elections or nonpartisan elections held in conjunction with a general election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than 84 days before the general election.

(c) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the county commission shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by the failure of any person of a particular party to file for each available seat of each available office, that vacancy may not be filled: *Provided*, That if no person in any party has filed to run for an available seat or available office by the close of the candidate filing period, the relevant party executive committee may fill the vacancy and submit the name to the appropriate filing officer no later than the third Tuesday following the close of the filing period: *Provided, however*, That if the executive committee fails to make an appointment within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee; *Provided further*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(e) No other vacancy shall be filled after the date of the primary election, except as provided

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in §3-5-19 of this code.

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§3-5-12. Official and sample ballots; color.

There shall be a separate ballot printed on different colored paper for each political party participating in the primary election and the ballot of no two parties may be of the same color or tint. The Secretary of State shall select and determine the color of the paper of the ballot of each of the parties, and shall notify the clerk of the county commission of each county thereof, at the time he or she certifies the names of the candidates of the various parties to the clerk, as herein provided.

A different color of paper shall be selected and designated by the Secretary of State for each party. The sample ballots of each party shall be of a different color than the official ballot and of a different color from one another. There shall be printed across the face of such sample ballot in large letters the words "sample ballot". No sample ballot shall be voted or counted in any election.

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

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

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

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

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

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

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of the candidates for the Intermediate Court of Appeals shall be printed by division without references to political party affiliation or registration.

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

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

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

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or registration.

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

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

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

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

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

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to

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contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

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

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

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

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

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

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

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot

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voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

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

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

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

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

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

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

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

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

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

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

DISTRICT TICKET: County executive committee.

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

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

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

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: *Provided,* That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

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

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

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§3-5-14. General provisions applicable to primary elections.

Provisions of article one of this chapter relating to ballot commissioners, election commissioners and clerks, procedures for obtaining election supplies and conducting elections, loss and replacement of election supplies, challenge of voters, leaves of absence for voting, election expenses and recount procedures shall control and govern primary elections wherever applicable.

In all other particulars, when no specific provision is made in this article for the control, conduct and government of any phase of primary elections, resort shall be had to other provisions of this chapter which may be applicable thereto and controlling thereof.

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§3-5-15. Ascertaining and certifying primary election results.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

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(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they are removed and whenever the number of ballots of a particular party shall equal the number of voters entered on the poll book for that party minus the number of provisional ballots of that party, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents thereof, and the number of excess ballots of each party shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose so as to show the number of votes received by each candidate for each office;

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign three certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, which form shall include the following oath:

We, the undersigned commissioners and poll clerks of the primary election held at precinct No. ..... of ..... district of ..... County, W.Va., on the ..... day of ....., 20..., do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ..... party, and the same is as follows:

The election officers shall enter the name of each office and the full name of each candidate on the ballot and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Two of the certificates of result of election, for each party, shall be sealed in separately addressed envelopes, furnished for that purpose, and shall be disposed of by the precinct commissioners as follows: Two of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the county commission who shall, within forty-eight hours, mail one of the sealed returns for each precinct by certified mail to the Secretary of State. The one unsealed certificate shall be posted on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be sealed in separate envelopes and the commissioners and clerks shall each sign across the seal.

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§3-5-16. Return of supplies and certificates.

Immediately after completion of the count, tabulation and the posting of the certificate of result of the primary election in each precinct, one of the commissioners or poll clerks of each party at the precinct, designated for that purpose, shall return to the clerk of the county commission the ballot boxes, registration books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns.

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§3-5-17. Canvassing and certifying returns; recount procedures.

The commissioners of the county commission, sitting as a board of canvassers, shall convene at the courthouse of the county on the fifth day following any primary election, which is not a Saturday, Sunday or legal holiday, and shall proceed to canvass the returns of the election. The procedures prescribed in section nine, article six, of this chapter relating to canvass of general election returns, shall, where adaptable, be applied in the canvass of the primary election returns. The board shall proceed to ascertain the result of the election in the county and district and election precincts and cause to be prepared and recorded in the primary election precinct record book a table or tables which show, as to each candidate of each political party for each office, the number of votes cast for him or her at each precinct and the total number cast in the entire county. The board shall then make up and enter in said record book a certificate for each political party showing, as to each candidate for each political party for each office, the total number of votes, in words and figures, cast for him or her in the entire county and the number of votes received by all the candidates of such party in such district in the following form:

The board of canvassers of the county of ..... of West Virginia, having carefully and impartially examined the returns of the primary election held in said county on the ..... day of ....., 19...., do hereby certify that in said county or district, at said election, on the official ballot of the ..... party for the office of ....., A. B. received ..... (.....) votes; C. D. received ..... (.....) votes.

And so on for each office for each political party according to the truth. When the certificates are all entered, the report shall be signed by the members of the board or by a majority of the board. Such members shall also sign separate certificates of the result of the election, within the county, for each of the offices to be filled by each political party as provided by the following section.

The provisions of article six of this chapter, relating to the recount of votes in general elections, shall, to the extent applicable, be operative in primary and other elections conducted under provisions of this article.

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§3-5-18. Disposition of certificates of results.

(a) The certificates of the board of canvassers made pursuant to the preceding section shall be by them disposed of as follows: One of the certificates showing the votes received by each candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the state Executive Committee, shall be filed with the Secretary of State, and preserved in his or her office, and a copy thereof filed in the office of the clerk of the county commission of the county of such board, to be preserved by the clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including members of the county executive committee, shall be filed with the clerk of the county commission, and preserved in his or her office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

(b) The Secretary of State shall certify by the seventy-first day next preceding the date of the general election, under the seal of the state, to the clerk of the county commission of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to have his or her name placed on the official ballot in the general election as the nominee of the party for such office. However, the certification shall include any candidates entitled to have their name placed on the official ballot in the general election as the nominee of the party following the filling of vacancies made pursuant to section nineteen of this article or other relevant state law. The Secretary of State shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.

(c) The Secretary of State may not include in the certification any person who has timely filed a notarized statement of withdrawal according to section eleven of this article.

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§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section 11 of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: *Provided*, That if the executive committee holds a duly called meeting in accordance with §3-1-9 of this code but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee: *Provided, however*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of announcement is regularly filed for that office.

(3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office or by withdrawal of a candidate, the vacancy may not be filled.(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than 78 days before the general election. A candidate may be determined disqualified if a written request is made by an individual with information to show a candidate’s ineligibility to the State Election Commission no later than 84 days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

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(6) If a vacancy in nomination is caused by the death of the candidate occurring no later than 25 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 21 days following the date of death or no later than 22 days before the general election, whichever date occurs first.

(b) Except as otherwise provided in §3-10-1 *et seq*. of this code, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than 84 days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than 84 days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than 77 days before the general election.

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§3-5-20. Election contests and court review.

Any candidate for nomination for or election to an office to be filled by the voters of the state or any political subdivision thereof or any candidate for membership on any political party executive committee, may contest the primary election before the county court of the county in which any primary election procedures, practices or results may be in issue. The procedure in such case shall be the same as that governing the contest of a general election by candidates for county offices or offices in magisterial districts. The decision of the county court upon such contest may be reviewed by the circuit court of the county and by the Supreme Court of Appeals of the state. Wherever practicable, the circuit court, on review, may, by order entered of record, consolidate and hear together any such primary election cases arising in one or more counties of the circuit, and the Supreme Court of Appeals, on further review, may likewise consolidate and hear together any such cases whenever considered practicable by the court so to do.

Any action of a political party executive committee in the discharge of any of the duties imposed upon such committee by this article, or of any board of election officials in conducting and ascertaining the result of the primary election, or of any board of canvassers in canvassing and certifying the result of the primary election for the county, may be reviewed by the circuit court of the county, upon the petition of any candidate, political committeeman or delegate voted for at such primary and affected adversely by the action of such committee, board of election officials, or board of canvassers. From the judgment of the circuit court in any such proceeding, an appeal shall lie to the Supreme Court of Appeals of the state.

Any such contest, or petition for review, of a candidate for a nomination not finally determined within ten days next preceding the date of the next election after the primary, or of a candidate for delegate to any convention within ten days next preceding the date fixed for holding the convention, shall stand dismissed, and the person shown by the face of the returns of the primary election to be nominated for any office shall be entitled to have his name printed upon the regular ballot to be voted at the election, and the person shown upon the face of the returns to have been elected as a delegate to any convention shall be entitled to sit in such convention as a delegate.

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

Presidential electors shall be nominated by each political party in a manner governed and prescribed by the rules of that state executive committee and not inconsistent with the rules of that national political party. If party rules do not provide procedures to nominate presidential electors, then candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the months of June, July, or August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and fix the date of the convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party's candidate for Governor at the last preceding general election at which a Governor was elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at the convention.

At least 60 days prior to the date fixed for holding any state convention, the chairman of the party's state executive committee shall cause to be delivered to the party's county executive committee in each county of the state a copy of the resolutions fixing the time and place for holding the state convention and prescribing the number of delegates from each county to the convention. Within 10 days after receipt of the copy of the resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for Governor at the last preceding general election at which a Governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to the state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the county, which meeting shall be held at least 30 days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which the district is entitled in the state convention.

The meeting place in the county shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any mass convention and in the selection of delegates. Notice of the time and place of holding the county mass convention and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county. The first publication shall be made not more than 15 days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of the county, shall choose a chairman and a

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secretary, who, within five days after the holding of the convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

If, after the election, a vacancy exists for a delegate from any magisterial district, the party's county executive committee, within 10 days after the mass convention, shall appoint a member of the political party in the magisterial district to fill the vacancy, and shall certify the appointment to the chairman of the state executive committee of the political party.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and the county executive committee shall, upon written petition of any contest, meet for a hearing and make a determination within 10 days after the holding of a county mass convention. The circuit court of the county and the Supreme Court of Appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

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

All nominations made at state conventions shall be certified within 15 days thereafter, by the chairman and the secretary of the convention, to the Secretary of State, who shall certify them to the clerk of the circuit court of each county concerned, and the names of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

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

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§3-5-22. Other party and group nominations; procedure.

Any political party which polled less than ten percent of the total vote cast only for Governor at the general election immediately preceding may nominate candidates and select committees by party conventions, provided such nominations are made and the certificates thereof filed within the time and in the manner provided in section twenty-four of this article, or by certificate in the same manner as groups of citizens may make nominations as provided in the following section.

No delegate or person participating in the selection of delegates under this section shall vote in any primary election held in that year.

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§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file a nomination certificate in accordance with the provisions of this section and the provisions of §3-5-24 of this code.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district, or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ....., ss:

This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters residing in ..... (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ..... (here place name of candidate heading list on certificate) for the office of ..... and others, at the general election to be held on ....., 20.....

Given under my hand and the seal of my office this ..... day of ....., 20.....

.....

Clerk, county commission of ..... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district, or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for the office in the state, district, county, or other political division for which the nomination is to be made, but in no event shall the number be less than 25. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide, congressional, or presidential candidate, but in no event shall the number be less than 25. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. A signature on a certificate

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may not be counted unless it be that of a duly registered voter of the county, district, or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to have the candidates placed on the ballot; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

Notwithstanding any other provision of this code to the contrary, a duly registered voter may sign the certificate provided in this section and may vote for candidates of his or her choosing in the corresponding primary election.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the validity of the certificates and the signatures thereon. If, upon investigation, there is doubt as to the legitimacy and the validity of certificate, the Secretary of State may ask the Attorney General of the state, or the clerk of the county commission may ask the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee by certificate to determine his or her right to the nomination to public office and upon request being made, the Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of the county commission shall, at the request of the Secretary of State or the clerk of the circuit court, compare the information from any certificate to the county voter registration records in order to assist in determining the validity of any certificates.

(f) For the purposes of this section, any person who, at the time of the filing of the nomination certificate or certificates, is registered and affiliated with a recognized political party as defined in §3-1-8 of this code may not become a candidate for political office by virtue of the nomination-certificate process as set forth in this section.

(g) For the purposes of this section, any person who was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code may not, after failing to win the nomination of his or her political party, become a candidate for the same political office by virtue of the nomination-certificate process as set forth in this section.

(h) In addition to penalties prescribed elsewhere for violation of this chapter, any person

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violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail not more than one year, or both fined and confined: Provided, That a criminal penalty may not be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

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§3-5-24. Filing of nomination certificates; time; location; fees; effect of failure to timely file or pay fee.

(a) All certificates nominating candidates for office under section twenty-three of this article shall be filed not later than August 1 preceding the November general election: Provided, That for municipal or other elections not held in conjunction with regular state and county general elections, certificates shall be filed not later than ninety days before the date of the election, unless otherwise provided by charter, ordinance or code.

(b) The nomination certificate required by this section and section twenty-three of this article shall be filed:

(1) In the case of a candidate to be voted for by the voters of the entire state or by any subdivision of the state other than a single county, with the Secretary of State;

(2) In the case of all candidates for county and magisterial district offices, including all offices to be filled by the voters of a single county, with the clerk of the county commission; and

(3) In the case of candidates for election in a municipality, with the recorder or other official designated by charter or ordinance to perform election responsibilities.

(c) Each candidate shall pay the filing fee required by section eight of this article, at the time of the filing of the nomination certificate.

(d) If any nomination certificate is not timely filed or if the filing fee is not timely paid, the certificate may not be received by the Secretary of State, the clerk of the county commission or the recorder or other official designated by charter or ordinance to perform municipal election responsibilities, as the case may be.

(e) This section is inapplicable to nonpartisan elections.

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