ENROLLED

House Bill No. 4
(Originating in the Committee on the Judiciary)

[Passed February 14, 1964; in effect from passage.]

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, seven, eight, thirteen and twenty, article five of said chapter; and to amend and reenact section five, article ten of said chapter, relating to the establishment, duties, functioning and election of delegate district executive committees and to the filling of vacancies in the membership of the house of delegates where delegate districts are involved.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that sections four, seven, eight, thirteen and twenty, article five of said chapter be amended and reenacted; and that section five, article ten of said chapter be amended and reenacted, all to read as follows:

**Article 1. General Provisions and Definitions.**

**Section 9. Political Party Committees; How Composed; Organization.**—At the May primary election in the year one thousand nine hundred sixty-four and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large.

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the senatorial district in which such
county is situated and of the delegate district in which such county is situated if such county be situated in a delegate district. At the same time such voters in each magisterial district of the county shall elect one male and one female member of the party's county executive committee and, in any county containing a city of ten thousand or more in population, such voters of each ward of such city within the county shall elect one male and one female member of such county party executive committee in addition to the members thereof chosen from the magisterial district or districts in which such city is situated.

All members of executive committees, selected for each political division as herein provided, shall reside within the county, district, or ward from which chosen.

The term of office of all members of executive committees so elected shall begin on the first day of June, following said May primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the
unexpired term. Vacancies in the party's executive committee of a congressional district, senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which such vacancy exists, and shall be for the unexpired term.

As soon as possible after the first day of June, following the election of the new executive committees, as herein provided, they shall convene within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees, or by any member of the new executive committee in the event there is no corresponding outgoing executive committee, and proceed to select a chairman, a treasurer, and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices.

**Article 5. Primary Elections and Nominating Procedures.**

**Section 4. Nomination of Candidates in Primary Elections.**—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, of each judicial circuit of West Virginia, of each county, and of each magisterial district 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.

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 committee-men 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 office, except that candidates for the office of commis-
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26 sioner of the county court shall be nominated and elected
27 in accordance with the provisions of section twenty-three
28 of article eight of the constitution of this state and that
29 members of county boards of education shall be elected
30 at primary elections in accordance with the provisions
31 of section six of this article.
32
33 In case of tie votes between candidates for party nom-
34 inations or elections in primary elections, the choice of
35 the political party shall be determined by lot by the exe-
36 cutive committee of the party for the political division
37 in which such persons are candidates.

Sec. 7. Filing Announcements of Candidacies; Re-
2 quirements.—Any person who is eligible to hold an of-
3 fice (including that of member of any political party
4 executive committee) shall file with the secretary of
5 state, if it be an office to be filled by the voters of
6 more than one county, or with the clerk of the cir-
7 cuit court, if it be for an office to be filled by the
8 voters of a county or subdivision less than a county,
9 a certificate declaring himself a candidate for the nomi-
nation for such office; which certificate shall be in form
or effect as follows:

I, __________________, hereby certify that I am a candidate
for the nomination for the office of __________________ to
represent the __________________ party, and desire my name
printed on the official ballot of said party to be voted at
the primary election to be held on the __________ day of
______________, 19____; that I am a legally qualified voter
of the county of ____________________, state of West Virginia;
that my residence is number ______ of ____________
street in the city (or town) of ____________ in ____________
county in said state; that I am eligible to hold the said
office; that I am a member of and affiliated with said
political party; that I am a candidate for said office in
good faith.

______________________________
Candidate

Signed and acknowledged before me this ________ day of

______________, 19______.

______________________________
Signature and official title of
person before whom signed.
Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

No person may be a candidate for nomination for office in any political party unless it be openly known that such person is a bona fide member of such party.

Such certificate shall be filed with the secretary of state or the clerk of the circuit court, as the case may be, not earlier than the first Monday in January next preceding the primary election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour: Provided, That during the calendar year of one thousand nine hundred sixty-four, in event (a) that section one and section two, or either of them (in whole or in part), of article two of chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said article two having been enacted by chapter one hundred fifty-eight of the acts of the Legislature of West Virginia, for the
year one thousand nine hundred sixty-three, regular session, relating to the apportionment of membership in the Legislature, are declared unconstitutional by the supreme court of appeals of West Virginia, and (b) that thereafter the Legislature enacts legislation reapportioning said Legislature prior to the primary election for the year one thousand nine hundred sixty-four the announcements of candidacies for membership in the state senate and membership in the house of delegates which were properly filed on or before February one, one thousand nine hundred sixty-four, by any persons under the provisions of this section, shall be considered valid and sufficient announcements of candidacies for such offices in the counties or districts wherein such candidates reside at the time said certificates of candidacies were filed for membership in the Legislature representing the particular counties, delegate districts or senatorial districts for which filed, as the case may be, or which are created in such apportionment legislation as may hereafter be adopted during the year one thousand nine hundred sixty-four, prior to the primary election: Provided, however,
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That in event such apportionment legislation is hereafter adopted during the year one thousand nine hundred sixty-four prior to the primary election wherein delegate districts are established, the circuit clerks of all counties within such established delegate districts shall immediately transfer all certificates of candidacy for membership in the house of delegates, together with the filing fees therefor, to the secretary of state: Provided further, that notwithstanding the provisions of section nine, article five of this chapter and any other provision of this chapter requiring an earlier date or time, the secretary of state shall arrange the names of all candidates who have filed announcements with him and who are entitled to have their names printed on any political party ballot for the offices of state senator and member of the house of delegates and shall certify the same to the several clerks of the circuit courts prior to the week next following the second Saturday in the month of March, in the year one thousand nine hundred sixty-four.

Notwithstanding the provisions of the preceding paragraph of this section, for the primary election in the year
one thousand nine hundred sixty-four any person who is
eligible to be a member of a party's delegate district
executive committee and who desires to be a candidate
therefor shall file with the clerk of the circuit court of
the county of which he is a resident, a certificate declar-
ing himself a candidate for election to his party's execu-
tive committee of the delegate district of which the county
of his residence is a part not later than the twenty-ninth
day of February, one thousand nine hundred sixty-four,
and said certificate must be received before midnight,
eastern standard time, of that day or, if mailed, shall be
postmarked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every per-
son who becomes a candidate for nomination for or elec-
tion 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:

(a) 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 repre-
sentatives, for governor and for all other state elective
offices shall pay a fee equivalent to one per cent of the annual salary of the office for which the candidate announces;

(b) A candidate for the office of judge of a circuit court and judge of any court of record of limited jurisdiction shall pay a fee equivalent to one per cent of the total annual salary of the office paid from any and all sources for which the candidate announces;

(c) A candidate for member of the house of delegates shall pay a fee of fifteen dollars, and a candidate for state senator shall pay a fee of thirty dollars;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county court and member of the county board of education shall pay a fee equivalent to one per cent of the annual salary of the office for which the candidate announces: Provided, however, That the fee in no case shall be less than five dollars. A candidate for any other county office shall pay a fee of five dollars;

(e) A candidate for justice of the peace in districts having a population of five thousand or less shall pay a
fee of ten dollars; in districts having a population of more
than five thousand and not more than twenty-five thou-
sand, fifteen dollars; and in districts having more than
twenty-five thousand population, each candidate shall
pay a fee of twenty-five dollars;
(f) A candidate for constable in districts having a
population of five thousand or less shall pay a fee of five
dollars; in districts having a population of more than
five thousand and not more than twenty-five thousand,
ten dollars; and in all other districts fifteen dollars;
(g) Delegates to the national convention of any po-
litical party shall pay the following filing fees:
A candidate for delegate-at-large shall pay a fee of
twenty dollars; and a candidate for delegate from a con-
gressional district shall pay a fee of ten dollars;
(h) Candidates for members of political executive
committees and other political committees shall pay the
following filing fees:
A candidate for member of a state executive com-
mitee of any political party shall pay a fee of ten dol-
lars; a candidate for member of a county executive
committee of any political party shall pay a fee of one dollar; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of one dollar.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the circuit court, and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the secretary of state at the time of filing their certificates of announcement, and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by such clerk from such 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 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.

Sec. 13. Form and Contents of Ballots.—Official pri-
mary ballot shall contain at the left of each column of
names of candidates, a perpendicular column, and shall
be so printed as to leave a square at the left of each
name on the ballot.

On such primary ballot, the names of candidates for
president of the United States, for United States senator,
for representative in congress, and for delegates to the
national convention of the party, shall be placed in the
first column of candidates; the names of candidates for
all state offices, and all other offices to be filled by the
voters of a political division greater than a county, in-
cluding the state executive committee, in the second
column; the names of all candidates for county offices,
including members of the house of delegates and con-
gressional, senatorial, and delegate district executive
committees, shall be placed in the third column; and the
names of all candidates for office in the magisterial dis-
tricts shall be placed in the fourth column.
The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

The secretary of state, or the circuit court clerk, as the case may be, shall arrange the names of the candidates to be printed on the ballot in alphabetical order, according to the surname, under the title of the respective offices upon the ballot.

A separate ballot, in connection with a primary election, for election of members of county board of education, shall be printed in bold type, under the caption, "Nonpartisan Ballot for Election of Members of the ________________ County Board of Education." The names of the candidates for election to the county board of education, and the number of candidates for which each voter is entitled to vote shall be printed beneath the caption, without reference to political party affiliation, and without designation as to a particular term of office.

In printing each set of ballots the position of the names of the candidates shall be changed in each office division as many times as there are candidates in that office divi-
As nearly as possible an equal number of ballots shall be printed after each change. In making the change of position, the printer shall take the line of type containing the first name in the office division concerned and place it at the bottom of the list of names in that division and move up the column so that the name that before was second shall be first after the change. After the ballots are printed they shall be kept in separate piles, one pile for each change in position, and shall then be gathered by taking one from each pile. Sample ballots shall be in the same form as the official ballot, but the order of the names thereon need not be alternated.

All ballots used in primary elections shall be printed on paper conforming as nearly as practicable in weight, texture, and color to the samples furnished by the secretary of state, and the paper shall be sufficiently thick so that the printing cannot be discernible from the back. On the back of the ballot shall be printed in black ink, and in plain legible, black face pica type, the name of the political party as contained in the heading or "Nonpartisan Board of Education," as the case may be, followed by
the word “ballot.” Under this designation shall be printed two black lines followed by the words “poll clerks.”

Sec. 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 con-
solidate 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.

Article 10. Filling Vacancies.

Section 5. Vacancies in State Legislature.—Any va-
cency in the office of state senator or member of the
house of delegates shall be filled by appointment by the
governor, in each instance from a list of three legally
qualified persons submitted by the county party execu-
tive committee in the case of a member of the house of
delegates who is elected from a county that is not situ-
ated in a delegate district, by the party executive com-
mittee of the delegate district in the case of a mem-
ber of the house of delegates who is elected from such
delegate district, and by the party executive com-
mittee of the state senatorial district in the case of
a state senator, of the party with which the person holding the office immediately preceding the vacancy was affiliated, and of the county, delegate district or state senatorial district, respectively, in which he resided at the time of his election or appointment. The appointment to fill a vacancy in the house of delegates shall be for the unexpired term. If the unexpired term in the office of the state senator be for less than two years and two months, the appointment shall be for the unexpired term. If the unexpired term be for a period longer than two years and two months, the appointment shall be until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of state senator shall be given by the governor by proclamation and shall be published once a week for two successive weeks prior to the date of the election, in two newspapers having the largest and second largest circulation, and of opposite party politics, published in each county in the senatorial district.
Nominations for candidates to fill such vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of governor to be voted for at a general election. The state senatorial district executive committee of the political party shall discharge the duties incident to state senator nominations devolving upon the party state executive committee in nominating a candidate for a state office.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 19th day of February, 1964.

Governor