

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 464

By Senators Smith, Chapman, Grady, Phillips,

Takubo, Tarr, Taylor, Weld, and Woelfel

[Introduced January 16, 2024; referred

to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §3-5-5; and to amend and reenact §3-5-13 of said code, all relating to the
3 nomination and election of candidates for U.S. Congress; setting forth legislative findings
4 and purpose; defining terms; setting forth residency requirements for candidacy; providing
5 for legal standing to enforce and defend statute; establishing penalties; and clarifying the
6 form and content of the ballot for an election to represent a congressional district.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES

§3-5-5. Nomination and election of candidates for United States Congress.

1 (a) Legislative findings and purpose. —The Legislature finds that it is consistent with the
2 requirements of the West Virginia Constitution that no person shall be a candidate appearing on
3 the ballot for nomination or election for House of Representatives in the United States Congress
4 without having been a resident of the congressional district for one-year next preceding his or her
5 election. To the extent that any subsection, subdivision, provision, clause, or phrase of this section
6 or the application thereof to any person or circumstance is held unconstitutional or invalid, or in the
7 event that a non-resident of a congressional district office is permitted to appear on the ballot for
8 nomination or election to such office, the supplemental purpose of this section is to ensure that
9 information about a candidate’s residency status is clearly available to voters at such elections.

10 (b) Definitions. — As used in this section, the following words and terms shall have the
11 following meaning:

12 (1) "Congressional district" means a specific geographic area that is permitted to elect a
13 member of the U.S. House of Representatives under the laws of this state and pursuant to Article I,
14 Section 2 of the U.S. Constitution;

15
16 (2) "Resident of Congressional district" means a person who has established and
17 maintained a primary residence within the geographic boundaries of that Congressional district for

18 one year next preceding his or her election.

19 (c) Residence requirement for candidacy.— No person in this state shall be eligible to
20 appear upon a ballot in any primary or general election as a printed candidate to secure a seat for
21 House of Representatives in the Congress of the United States who has not previously
22 established and maintained a primary residence within the Congressional district from which he or
23 she is to be elected for at least one year next preceding his or her election in accordance with the
24 requirements of this section. For purposes of this section:

25 (1) In order to appear on the ballot in a primary election to be nominated to represent a
26 Congressional district, a candidate shall file with the Secretary of State a certificate of
27 announcement in accordance with §3-5-7 of this code and certifying their present status as a
28 resident of the applicable Congressional district with a present intention to remain a resident for
29 the duration of his or her candidacy, and, if ultimately elected, for the full term of the office sought.

30 (2) In order to appear on the ballot in a general election to represent a Congressional
31 district, a person who was not already a certified candidate in the primary election shall file a
32 certificate of announcement or nomination certificate, as required by the provisions of this chapter,
33 certifying their present status as a resident of the applicable Congressional district with a present
34 intention to remain a resident for the duration of his or her candidacy and, if elected, for the full
35 term of the office sought.

36 (3) A person shall not be considered to have "established and maintained a primary
37 residence" within a Congressional district unless such person is legally domiciled within the district
38 for the purposes of voting for the entirety of the required residency period.

39 (d) Applicability. —The provisions of this section shall apply to any person who files for a
40 seat for House of Representatives in the Congress of the United States for either the primary or
41 general election held in the year 2026 and every primary and general election held thereafter:

42 (1) Any and all persons who file to appear on the ballot for a seat for House of
43 Representatives in the Congress of the United States must certify, in accordance with §3-5-5(c)(2)

44 and §3-5-7 of this code, that they meet the residency requirements of §3-5-5(c) of this code prior to
45 the primary or general election;

46 (2) Any elector shall have standing to enforce this section, by mandamus or in any other
47 manner in the courts of this state, against the Secretary of State in the event that a candidate
48 failing to meet the residency requirements of this section is permitted to file to seek a nomination or
49 election to represent the elector's Congressional district: *Provided*, That any pre-election eligibility
50 challenge shall be brought and resolved no later than 30 days after the last day to file a certificate
51 of announcement for any candidate seeking nomination or election to represent the elector's
52 Congressional district, or no later than 78 days before the general election for any candidate
53 nominated at the primary election or other nominations by a political party in accordance with §3-5-
54 1, *et seq.* of this code.

55 (3) Any person who is prohibited from filing to appear as a candidate for nomination or
56 election to represent a Congressional district due to a lack of residency shall have immediate
57 standing in the courts of this state to challenge this legislation by filing a civil action in the courts of
58 this state against the Secretary of State on the federal question of whether it amounts to an
59 unconstitutional qualification to a congressional office;

60 (4) Any legal challenge filed in the courts of this state pursuant to §3-5-5(d)(2) or (3) of this
61 code shall be heard and determined in accordance with the court proceedings set forth in §3-1-45
62 of this code;

63 (5) The Attorney General shall vigorously defend any and all challenged portions of this
64 section, in the courts of this state or of the United States, as an exercise of an important and
65 fundamental state interest. In any action commenced in a court of this state, any elector residing
66 within the Congressional district of the applicable office, or either or both chambers of the
67 Legislature, should be deemed to have standing to be party to such litigation, and should be
68 permitted by the court to intervene if they are not already parties to such litigation; and

69 (6) For every primary and general election held in the year after the reapportionment of the

70 counties of this state into Congressional districts following a decennial census, a candidate must
 71 actually reside in the new district he or she seeks to serve by the day of the general election
 72 immediately following the reapportionment.

73 (f) *Penalties.* – Any person who knowingly provides false information on a certificate to
 74 establish residency for purposes of securing a seat for House of Representatives in the Congress
 75 of the United States is guilty of false swearing, punishable in accordance with §3-9-3 of this code,
 76 and shall be ineligible to appear as a printed candidate on a ballot in any election for any public
 77 office for a period of five years from the date of the false submission.

78 (g) *Severability.* – If any provision of this section, or the application thereof to any person or
 79 circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this
 80 section, and to this end the provisions of this section are declared to be severable.

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

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

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

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

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

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine
 13 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot
 14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the

15 candidates for the Supreme Court of Appeals shall be printed by division without references to
16 political party affiliation or registration.

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

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

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

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

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

41 designation as to a particular term of office.

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

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

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

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

67 with the name of the magisterial district and the words "Vote for One" printed below the name of
68 the office: *Provided*, That the office title and applicable instructions may span the width of the ballot
69 so as it is centered among the respective columns.

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

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

81 (B) The city of residence of every candidate, the state of residence of every candidate
82 residing outside the state, the county of residence of every candidate for an office on the ballot in
83 more than one county and the magisterial district of residence of every candidate for an office
84 subject to magisterial district limitations are to be printed in lower case letters beneath the names
85 of the candidates: *Provided*, That in the event that a candidate is permitted to appear on the ballot
86 for an election to represent a Congressional district in accordance with an order of a court of
87 competent jurisdiction on the basis that the provisions of §3-5-5 of this code may conflict with
88 federal law, then the following ballot notation shall appear parenthetically where applicable next to
89 the name of the candidate for the Congressional district: "Residency in district undetermined prior
90 to this election."

91 (C) The arrangement of names within each office must be determined as prescribed in §3-
92 5-13a of this code.

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to establish residency requirements for candidates seeking nomination and election to United States Congress.

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