

1 **ENROLLED**

2 **H. B. 2628**

3
4 (By Delegates Rowe, Shott, Lane, Guthrie, Pushkin, Byrd
5 Manchin, Skinner, Deem, Lynch and B. White)

6
7 [Passed March 12, 2015; in effect ninety days from passage.]

8
9 AN ACT to amend and reenact §3-5-7 and §3-5-19 of the Code of West Virginia, 1931, as amended,
10 all relating to filling vacancies in nominations; changing the first date to file certificates of
11 announcement to the first Monday after January 1; and changing the date by which party
12 executive committees may fill vacancies in nomination caused by the failure of a candidate
13 to file for an office.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §3-5-7 and §3-5-19 of the Code of West Virginia, 1931, as amended, be amended and
16 reenacted, all to read as follows:

17 **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

18 **§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when**
19 **section applicable.**

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

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

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

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

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

11 (c) The certificate of announcement shall be filed with the proper officer not earlier than the
12 first Monday after January 1 next preceding the primary election day, and not later than the last
13 Saturday in January next preceding the primary election day, and must be received before midnight,
14 eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal
15 Service before that hour. This includes the offices of justice of the Supreme Court of Appeals,
16 circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and
17 division basis at the primary election.

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

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

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

1 (3) The legal name of the candidate and the exact name the candidate desires to appear on
2 the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

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

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

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

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

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

18 (9) The words "subscribed and sworn to before me this _____ day of _____,
19 20____" and a space for the signature of the officer giving the oath.

20 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
21 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
22 certified copy of the voter's registration record of the candidate showing that the candidate was

1 registered as a voter in a party other than the one named in the certificate of announcement during
2 the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed
3 formal complaint of violation of this section and the certified copy of the voter's registration record
4 of the candidate are filed with the officer receiving that candidate's certificate of announcement no
5 later than ten days following the close of the filing period, the candidate may not be refused
6 certification for this reason.

7 (f) The certificate of announcement shall be subscribed and sworn to by the candidate before
8 some officer qualified to administer oaths, who shall certify the same. Any person who knowingly
9 provides false information on the certificate is guilty of false swearing and shall be punished in
10 accordance with section three, article nine of this chapter.

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

19 (h) A person may not be a candidate for more than one office or office division at any
20 election: *Provided*, That a candidate for an office may also be a candidate for President of the United
21 States, for membership on political party executive committees or for delegate to a political party
22 national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in

1 an election held concurrently with the primary election may be appointed under the provisions of
2 section nineteen of this article to fill a vacancy on the general ballot.

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

7 **§3-5-19. Vacancies in nominations; how filled; fees.**

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

11 (1) Each appointment made under this section shall be made by the executive committee of
12 the political party for the political division in which the vacancy occurs: *Provided*, That if the
13 executive committee holds a duly called meeting in accordance with section nine, article one of this
14 chapter but fails to make an appointment or fails to certify the appointment of the candidate to the
15 proper filing officer within the time required, the chairperson of the executive committee may make
16 the appointment not later than two days following the deadline for the executive committee.

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

1 office.

2 (3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or
3 by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing
4 pursuant to the provisions of section eleven of this article, a nominee may be appointed by the
5 executive committee and certified to the proper filing officer no later than the Thursday preceding
6 the primary election.

7 (4) If a vacancy in nomination is caused by the disqualification of a candidate and the
8 vacancy occurs not later than eighty-four days before the general election, a nominee may be
9 appointed by the executive committee and certified to the proper filing officer not later than seventy-
10 eight days before the general election. A candidate may be determined ineligible if a written request
11 is made by an individual with information to show a candidate's ineligibility to the State Election
12 Commission no later than eighty-four days before the general election explaining grounds why a
13 candidate is not eligible to be placed on the general election ballot or not eligible to hold the office,
14 if elected. The State Election Commission shall review the reasons for the request. If the
15 commission finds the circumstances warrant the disqualification of the candidate, the commission
16 may authorize appointment by the executive committee to fill the vacancy. Upon receipt of the
17 authorization a nominee may be appointed by the executive committee and certified to the proper
18 filing officer no later than seventy-eight days before the general election.

19 (5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy
20 occurs not later than eighty-four days before the general election, a nominee may be appointed by
21 the executive committee and certified to the proper filing officer no later than seventy-eight days
22 before the general election.

1 (6) If a vacancy in nomination is caused by the withdrawal of the candidate no later than
2 eighty-four days before the general election due to extenuating personal circumstances which will
3 prevent the candidate from serving in the office if elected and if the candidate or the chairperson of
4 the executive committee for the political division applies in writing to the State Election
5 Commission no later than eighty-four days before the general election for permission to remove the
6 candidate's name from the general election ballot, the State Election Commission shall review the
7 reasons for the request. If the commission finds the circumstances warrant the withdrawal of the
8 candidate, the commission shall authorize appointment by the executive committee to fill the
9 vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee
10 and certified to the proper filing officer no later than seventy-eight days before the general election.

11 (7) If a vacancy in nomination is caused by the death of the candidate occurring no later than
12 twenty-five days before the general election, a nominee may be appointed by the executive
13 committee and certified to the proper filing officer no later than twenty-one days following the date
14 of death or no later than twenty-two days before the general election, whichever date occurs first.

15 (b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a
16 partisan office or position other than political party executive committee, which creates an unexpired
17 term for a position which would not otherwise appear on the ballot in the general election, and the
18 vacancy occurs after the close of candidate filing for the primary election but not later than
19 eighty-four days before the general election, a nominee of each political party may be appointed by
20 the executive committee and certified to the proper filing officer no later than seventy-eight days
21 before the general election. Appointments shall be filed in the same manner as provided in
22 subsection (a) of this section, except that the filing fee shall be paid before the appointment is

1 complete.

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