

1 **Senate Bill No. 331**

2 (By Senator Palumbo)

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4 [Introduced January 27, 2015; referred to the Committee on the Judiciary.]
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9 A BILL to amend and reenact §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as
10 amended, all relating to withdrawal of candidates for office and filling vacancies; requiring
11 the Secretary of State to create a notarized statement of withdrawal form; setting certain
12 deadlines for the filing of a notarized statement of withdrawal form in order to have one's
13 name removed from ballot; setting deadline for when the Secretary of State shall certify
14 names of general election candidates to counties; prohibiting certification of the name of a
15 candidate who filed a timely notarized statement of withdrawal; clarifying process for
16 determining candidate is disqualified; removing the State Election Commission from process
17 of voluntary withdrawal of candidates; authorizing executive committee to replace a
18 candidate who files a timely notarized statement of withdrawal and whose name would have
19 otherwise appeared on the general election ballot; and setting and adjusting certain deadlines.

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

21 That §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as amended, be
22 amended and reenacted, all to read as follows:

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

2 **§3-5-11. Withdrawals; filling vacancies in candidacy; publication.**

3 (a) A candidate who has filed a certificate of announcement and wishes to withdraw and
4 decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal
5 on a form provided by the Secretary of State with the same officer with whom the certificate of
6 announcement was filed. ~~If the statement of withdrawal is received not later than the third Tuesday~~
7 ~~following the close of candidate filing, the name of a candidate who files that statement of~~
8 ~~withdrawal may not be printed on the ballot. No candidate who files a statement of withdrawal after~~
9 ~~that time may have his or her name removed from the ballot. If the notarized statement of withdrawal~~
10 ~~is received by the proper officer by the deadlines set forth in subsection (b) of this section then the~~
11 ~~candidate's withdrawal is final, and his or her name shall not be certified as a candidate nor printed~~
12 ~~on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in~~
13 ~~subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name shall~~
14 ~~remain on the ballot.~~

15 (b) Deadlines for withdrawing as a candidate:

16 (1) For primary or special primary elections: The notarized statement of withdraw must be
17 received by the same officer with whom the certificate of announcement was filed by the close of
18 business of that officer not later than the third Tuesday following the close of the candidate filing
19 period.

20 (2) For general or special general elections: The notarized statement of withdrawal must be
21 received by the same officer with whom the certificate of announcement was filed by the close of
22 business of that officer not later than eighty-four days before the general election.

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

6 ~~(c)~~ (d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot
7 caused by failure of any person of a party to file for each available seat of each available office, the
8 executive committee of the party for the political division within which such candidate was to be
9 voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate
10 named to the appropriate filing officer. Certification of the appointment by the executive committee
11 or its chair, the candidate's certificate of announcement and the filing fee must be received by the
12 appropriate filing officer as follows: For an appointment by an executive committee, no later than
13 the second Friday following the close of filing, for an appointment by its chair, no later than the third
14 Tuesday following the close of filing. A candidate appointed to fill a vacancy on the ballot under
15 this subsection shall have his or her name printed on the primary ballot for that party.

16 **§3-5-18. Disposition of certificates of results.**

17 (a) The certificates of the board of canvassers made pursuant to the preceding section shall
18 be by them disposed of as follows: One of the certificates showing the votes received by each
19 candidate of each party for each office to be filled by the voters of a political division greater than
20 a county, including members of the state Executive Committee, shall be filed with the Secretary of
21 State, and preserved in his or her office, and a copy thereof filed in the office of the clerk of the
22 county commission of the county of such board, to be preserved by the clerk, and which shall be

1 open to public inspection; one certificate showing the votes received by each candidate of each party
2 for each office to be filled by the voters of the county or magisterial district within such county,
3 including members of the county executive committee, shall be filed with the clerk of the county
4 commission, and preserved in his or her office. If requested, the board of canvassers shall furnish
5 to the county chairman of each political party a certificate showing the number of votes received by
6 each of the candidates of such party in the county or any magisterial district therein.

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

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

20 **§3-5-19. Vacancies in nominations; how filled; fees.**

21 **(a)** If any vacancy occurs in the party nomination of candidates for office nominated at the
22 primary election or by appointment under the provisions of section eleven of this article, the

1 vacancies may be filled, subject to the following requirements and limitations:

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

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

15 (3) If a vacancy in nomination ~~is~~ will be caused by the failure of a candidate to file for an
16 office, or by withdrawal of a candidate no later than the third Tuesday following the close of
17 candidate filing pursuant to the provisions of section eleven of this article, a nominee may be
18 appointed by the executive committee and certified to the proper filing officer no later than thirty
19 days after the last day to file a certificate of announcement pursuant to section seven of this article.

20 (4) If a vacancy in nomination is caused by the disqualification of a candidate and the
21 vacancy occurs not later than eighty-four days before the general election, a nominee may be
22 appointed by the executive committee and certified to the proper filing officer not later than seventy-

1 eight days before the general election. A candidate may be determined ~~ineligible~~ disqualified if a
2 written request is made by an individual with information to show a candidate's ineligibility to the
3 State Election Commission no later than eighty-four days before the general election explaining
4 grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to
5 hold the office, if elected. The State Election Commission shall review the reasons for the request.
6 If the commission finds the circumstances warrant the disqualification of the candidate, the
7 commission ~~may~~ shall authorize appointment by the executive committee to fill the vacancy. Upon
8 receipt of the authorization a nominee may be appointed by the executive committee and certified
9 to the proper filing officer no later than seventy-eight days before the general election.

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

14 (6) If a vacancy in nomination is caused by the ~~withdrawal of the candidate no later than~~
15 ~~eighty-four days before the general election due to extenuating personal circumstances which will~~
16 ~~prevent the candidate from serving in the office if elected and if the candidate or the chairperson of~~
17 ~~the executive committee for the political division applies in writing to the State Election~~
18 ~~Commission no later than eighty-four days before the general election for permission to remove the~~
19 ~~candidate's name from the general election ballot, the State Election Commission shall review the~~
20 ~~reasons for the request. If the commission finds the circumstances warrant the withdrawal of the~~
21 ~~candidate, the commission shall authorize appointment by the executive committee to fill the~~
22 ~~vacancy. Upon receipt of the authorization, a nominee~~ timely filing of a notarized statement of

1 withdrawal, according to section eleven of this article, of a candidate whose name would otherwise
2 appear on the general election ballot, a replacement on the general election ballot may be appointed
3 by the executive committee and certified to the proper filing officer no later than seventy-eight days
4 before the general election.

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

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

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

NOTE: The purpose of this bill is to require the Secretary of State to create a notarized statement of withdrawal form. The bill sets certain deadlines for the filing of a notarized statement of withdrawal form in order to have one's name removed from the ballot. The bill sets a deadline for when the Secretary of State shall certify the names of the general election candidates to the counties. The bill prohibits the certification of the name of a candidate who filed a timely notarized statement of withdrawal. The bill clarifies the process for determining a candidate is disqualified. The bill removes the State Election Commission from the process of voluntary withdrawal of candidates. The bill authorizes an executive committee to replace a candidate who files a timely notarized statement of withdrawal and whose name would have otherwise appeared on the general election ballot. The bill sets and adjusts certain deadlines.

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