

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 599

BY SENATORS TARR, HAMILTON, HARDESTY, IHLENFELD,

ROMANO, RUCKER, BOSO, AND SYPOLT

[Introduced February 13, 2019; Referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-5-2, §3-5-7, and §3-5-8 of the Code of West Virginia, 1931, as
 2 amended, all relating to the selection process of delegates to national political party
 3 conventions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

1 (a) At the primary election to be held in the year ~~one thousand nine hundred ninety-two,~~
 2 2020 and in each fourth year thereafter, there shall be elected by the voters of each political party
 3 of the state, in accordance with a plan adopted by the state party, persons to be delegates to the
 4 national convention of the party to be held next after the date of such primary.

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

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

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

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

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

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

42 ~~(5) The number of persons which each of the congressional districts in the state are~~
43 ~~entitled to elect as delegates to the national convention of the political party shall be apportioned~~
44 ~~among the congressional districts in the same proportion to the total number of delegates to the~~

45 party's national convention elected in all congressional districts in the state as the population of
46 the congressional district bears to the total population of the state based upon the census of
47 population taken by the bureau of the census of the United States Department of Commerce in
48 the year one thousand nine hundred ninety, and in every tenth year thereafter.

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

53 ~~(e) Unless and until a Each political party of the state has adopted shall adopt and certified~~
54 ~~certify a plan for the election selection of delegates to the national convention of the party and~~
55 ~~filed shall file the plan with the Secretary of State on or before August 1 of the year preceding the~~
56 ~~election. there shall be elected by the voters of the political party of the state at the primary election~~
57 ~~to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter,~~
58 ~~the number of persons to which the party is entitled as delegates-at-large, and by the voters of~~
59 ~~each political party in each congressional district in the state the number of delegates to which~~
60 ~~the district is entitled. The persons receiving the highest number of votes in the state as delegates-~~
61 ~~at-large, to the number to which the state is entitled, shall be elected delegates. The persons~~
62 ~~receiving the highest number of votes as delegates in any congressional district, to the number~~
63 ~~to which the district is entitled, shall be elected delegates. Each delegate so elected shall then~~
64 ~~appoint an individual to serve as alternate delegate, and shall by registered letter notify the~~
65 ~~Secretary of State of such appointment within forty days after the primary election~~

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

1 (a) Any person who is eligible and seeks to hold an office or political party position to be

2 filled by election in any primary or general election held under the provisions of this chapter shall
3 file a certificate of announcement declaring his or her candidacy for the nomination or election to
4 the office.

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

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

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

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

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

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

- 28 (1) The date of the election in which the candidate seeks to appear on the ballot;
- 29 (2) The name of the office sought; the district, if any; and the division, if any;
- 30 (3) The legal name of the candidate and the exact name the candidate desires to appear
31 on the ballot, subject to limitations prescribed in §3-5-13 of this code;
- 32 (4) The county of residence and a statement that the candidate is a legally qualified voter
33 of that county; and the magisterial district of residence for candidates elected from magisterial
34 districts or under magisterial district limitations;
- 35 (5) The specific address designating the location at which the candidate resides at the
36 time of filing, including number and street or rural route and box number and city, state, and zip
37 code;
- 38 (6) For partisan elections, the name of the candidate's political party and a statement that
39 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the
40 candidate's current registration as a voter affiliated with that party; and (B) has not been registered
41 as a voter affiliated with any other political party for a period of 60 days before the date of filing
42 the announcement;
- 43 ~~(7) For candidates for delegate to national convention, the name of the presidential~~
44 ~~candidate to be listed on the ballot as the preference of the candidate on the first convention~~
45 ~~ballot; or a statement that the candidate prefers to remain "uncommitted"~~
- 46 ~~(8)~~ (7) A statement that the person filing the certificate of announcement is a candidate for
47 the office in good faith;
- 48 ~~(9)~~ (8) The words "subscribed and sworn to before me this _____ day of _____,
49 20____" and a space for the signature of the officer giving the oath.
- 50 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
51 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
52 certified copy of the voter's registration record of the candidate showing that the candidate was
53 registered as a voter in a party other than the one named in the certificate of announcement during

54 the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed
55 formal complaint of violation of this section and the certified copy of the voter's registration record
56 of the candidate are filed with the officer receiving that candidate's certificate of announcement
57 no later than 10 days following the close of the filing period, the candidate may not be refused
58 certification for this reason.

59 (f) The certificate of announcement shall be subscribed and sworn to by the candidate
60 before some officer qualified to administer oaths, who shall certify the same. Any person who
61 knowingly provides false information on the certificate is guilty of false swearing and shall be
62 punished in accordance with §3-9-3 of this code.

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

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

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

80 ballot for any office by the board of ballot commissioners.

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

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

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

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

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

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

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

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

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

25 ~~(6)~~ (5) Candidates for members of political executive committees and other political
26 committees shall pay the following filing fees:

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

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

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

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

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

NOTE: The purpose of this bill is to amend the selection process by which delegates are selected to attend national political party conventions.

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