

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2692

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STORCH

[Introduced January 28, 2019; Referred
to the Committee on Government Organization.]

1 A BILL to amend and reenact §3-5-7 and §3-5-24 of the Code of West Virginia, 1931, as amended,
2 all relating to primary elections and procedures; and providing that the filing date for
3 nomination certificates may be the same for independent and third party candidates as for
4 recognized political parties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

1 (a) Any person:

2 (1) Who is eligible and seeks to hold an office or political party position to be filled by
3 election in any primary or general election held under the provisions of this chapter shall file a
4 certificate of announcement declaring his or her candidacy for the nomination or election to the
5 office; or

6 (2) Who is designated, defined or qualified under this code as an independent or third
7 party candidate for purposes of a primary or general election, shall file a certificate of
8 announcement declaring his or her candidacy for the nomination or election to the office.

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

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

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

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

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

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

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

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

34 (3) The legal name of the candidate and the exact name the candidate desires to appear
35 on the ballot, subject to limitations prescribed in §3-5-13 of this code;

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

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

42 (6) For partisan elections, the name of the candidate's political party and a statement that
43 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the
44 candidate's current registration as a voter affiliated with that party; and (B) has not been registered

45 as a voter affiliated with any other political party for a period of sixty days before the date of filing
46 the announcement;

47 (7) For candidates for delegate to national convention, the name of the presidential
48 candidate to be listed on the ballot as the preference of the candidate on the first convention
49 ballot; or a statement that the candidate prefers to remain “uncommitted”;

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

52 (9) The words “subscribed and sworn to before me this _____ day of _____,
53 20____” and a space for the signature of the officer giving the oath.

54 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
55 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
56 certified copy of the voter’s registration record of the candidate showing that the candidate was
57 registered as a voter in a party other than the one named in the certificate of announcement during
58 the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed
59 formal complaint of violation of this section and the certified copy of the voter’s registration record
60 of the candidate are filed with the officer receiving that candidate’s certificate of announcement
61 no later than ten days following the close of the filing period, the candidate may not be refused
62 certification for this reason.

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

67 (g) Any candidate for delegate to a national convention may change his or her statement
68 of presidential preference by notifying the Secretary of State by letter received by the Secretary
69 of State no later than the third Tuesday following the close of candidate filing. When the rules of
70 the political party allow each presidential candidate to approve or reject candidates for delegate

71 to convention who may appear on the ballot as committed to that presidential candidate, the
72 presidential candidate or the candidate's committee on his or her behalf may file a list of approved
73 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any
74 candidate for delegate who is disapproved by the presidential candidate.

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

81 (i) A candidate who files a certificate of announcement for more than one office or division
82 and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the
83 close of the filing period may not be certified by the Secretary of State or placed on the ballot for
84 any office by the board of ballot commissioners.

**§3-5-24. Filing of nomination certificates; time; location; fees; effect of failure to timely file
or pay fee.**

1 (a) All certificates nominating candidates for office under §3-5-23 of this code shall be filed
2 not later than August 1 preceding the November general election: *Provided*, That for municipal or
3 other elections not held in conjunction with regular state and county general elections, certificates
4 shall be filed not later than ninety days before the date of the election, unless otherwise provided
5 by charter, ordinance or code: *Provided, however*, That if a candidate is designated or defined or
6 qualified under this code as an independent or third party candidate for purposes of a primary or
7 general election, then the filing of a certificate of announcement declaring his or her candidacy
8 for the nomination or election, shall be filed in accordance with §3-5-7 of the code.

9 (b) The nomination certificate required by this section and §3-5-23 of this code shall be
10 filed:

11 (1) In the case of a candidate to be voted for by the voters of the entire state or by any
12 subdivision of the state other than a single county, with the Secretary of State;

13 (2) In the case of all candidates for county and magisterial district offices, including all
14 offices to be filled by the voters of a single county, with the clerk of the county commission; and

15 (3) In the case of candidates for election in a municipality, with the recorder or other official
16 designated by charter or ordinance to perform election responsibilities.

17 (c) Each candidate shall pay the filing fee required by section eight of this article, at the
18 time of the filing of the nomination certificate.

19 (d) If any nomination certificate is not timely filed or if the filing fee is not timely paid, the
20 certificate may not be received by the Secretary of State, the clerk of the county commission or
21 the recorder or other official designated by charter or ordinance to perform municipal election
22 responsibilities, as the case may be.

23 (e) This section is inapplicable to nonpartisan elections.

NOTE: The purpose of this bill is to provide that the filing date for nomination certificates for candidates for primary and general elections be the same for independent and third party candidates as for recognized political parties.

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