

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 332**

BY SENATORS KARNES, GRADY, SMITH, RUCKER, AND

PHILLIPS

[Originating in the Committee on the Judiciary;

reported on March 1, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §3-11A-1, §3-11A-2, §3-11A-3, §3-11A-4, and §3-11A-5, all relating to  
3 providing procedures for West Virginia to select delegates to an Article V convention for  
4 proposing amendments to the Constitution of the United States of America; defining terms;  
5 directing Legislature to establish committee of correspondence for Article V convention;  
6 authorizing participation by delegates in Article V convention only when each state has  
7 equal vote; setting forth delegate duties and responsibilities; setting forth oath for  
8 candidate for delegate or alternate; designating delegates and alternates as public officials  
9 and subject to West Virginia Governmental Ethics Act; providing for immediate recall of  
10 delegate casting unauthorized vote and replacement with alternate; directing Legislature  
11 to certify certain information to Article V convention; making violation of delegate's oath a  
12 felony; and providing criminal penalties for violation of a delegate's oath.

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

**ARTICLE 11A. AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.**

**§3-11A-1. Definitions.**

1 For the purposes of this article:  
2 “Article V convention” means a convention for proposing amendments as expressly  
3 provided in Article V of the Constitution of the United States of America.  
4 “Article V application” means a joint resolution passed by the Legislature on the same  
5 subject, or containing the same proposed amendment text, as 33 other sovereign states requiring  
6 Congress to call an Article V convention by setting the time and place.  
7 “Delegate” or “alternate” means a person selected by the Legislature or any other method  
8 provided by law to represent the State of West Virginia at an Article V convention.  
9 “Legislative instructions” mean instructions given by the Legislature to delegates and  
10 alternates before and during an Article V convention.

11 “Unauthorized amendment” means a proposed amendment that is outside the subject  
12 matter of the Article V application, the call, the commission, or any legislative instructions.

**§3-11A-2. Committee of correspondence for Article V convention.**

1 (a) The Legislature shall designate one or more legislative committees for purposes of  
2 communicating, exchanging information, and otherwise engaging in discussion and dialogue with  
3 the several states and the state’s congressional delegation regarding acts, resolutions, and issues  
4 that may be the subject of an Article V convention, and the rules, processes, potential  
5 amendments, procedures for proposing amendments, interstate compacts, common credentials,  
6 and instructions for delegates that may govern an Article V convention.

7 (b) The Legislature may vest this function in the Joint Committee on Government and  
8 Finance, in existing committees of each chamber, other legislative committees, or committees it  
9 may establish.

**§3-11A-3. Prohibition against participation in Article V convention requiring proportional representation.**

1 Delegates from West Virginia may only be authorized to attend an Article V convention for  
2 proposing amendments where each state has one equal vote. A delegate or alternate from West  
3 Virginia may not attend an Article V convention for the purpose of proposing amendments that  
4 require proportional representation of any state based on its respective populations.

**§3-11A-4. Delegate duties and responsibilities.**

1 (a) Every candidate for delegate or alternate from West Virginia to the Article V convention  
2 shall take the following oath: “I do solemnly swear or affirm that, to the best of my abilities, I will,  
3 as a delegate or alternate to an Article V convention, uphold the constitution and laws of the  
4 United States of America and the State of West Virginia. I will not vote to allow consideration of  
5 or to approve any unauthorized amendment proposed for ratification to the United States of  
6 America Constitution”.

7           (b) The Legislature, or an official or committee authorized pursuant to §3-11A-2(b) of this  
8 code, shall certify in writing to the Article V convention the delegates and alternates selected, the  
9 amendments a delegate or alternate is authorized to consider and vote to approve, the recall  
10 procedures set forth in subsection (c) of this section, and the mandatory nullification of any votes  
11 cast by a delegate or alternate on an unauthorized amendment.

12           (c) Delegates may not vote to allow consideration of, or vote to approve, an unauthorized  
13 amendment for ratification to the Constitution of the United States. Any such vote is an  
14 unauthorized vote and is void.

15           (d) Any delegate casting a vote to allow consideration or approval of an unauthorized  
16 amendment shall be immediately recalled by an official or committee authorized pursuant to §3-  
17 11A-2(b) of this code and be replaced by an alternate.

18           (e) Any delegate or alternate is a public official, as that term is defined in §6B-1-3 of this  
19 code, and is subject to the requirements of the West Virginia Governmental Ethics Act.

**§3-11A-5. Violation of oath; criminal penalty.**

1           Any delegate who violates the oath set forth in §3-11A-4 of this code is guilty of a felony  
2 and, upon conviction thereof, shall be fined not less than \$100,000 nor more than \$500,000 and  
3 be imprisoned in a state correctional facility for not more than 10 years.