

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2561**

By Delegates Crouse, Warner, Coop-Gonzalez, Hott,  
Kelly, Riley, Honaker, Cannon, Petitto, Butler, and  
Longanacre

[Introduced January 16, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to  
 2 clarifying the announcement form and eligibility requirements for becoming a candidate for  
 3 election to a public office; and establishing a deadline and the procedure by and through  
 4 which an eligibility challenge to a candidate’s qualifications to seek and hold the elected  
 5 office sought may be brought.

*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 who is eligible for and who seeks to hold an office or political party position  
 2 to be filled by election in any primary or general election held under the provisions of this chapter  
 3 must be registered to vote and shall file a certificate of announcement declaring his or her  
 4 candidacy for the nomination or election to 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 the  
 16 second Monday in January before the primary election day and not later than the last Saturday in  
 17 January before the primary election day and must be received before midnight, eastern standard

18 time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that  
19 hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the  
20 Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to  
21 be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day  
22 of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until  
23 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day  
24 of a political filing period from 9:00 a.m. until 12:00 p.m.

25 (d) The certificate of announcement shall be on a form prescribed by the Secretary of State  
26 on which the candidate shall make a sworn statement before a notary public or other officer  
27 authorized to administer oaths, ~~containing~~ that the candidate is legally qualified to seek and hold  
28 the office sought. The certificate of announcement shall contain the following information:

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

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

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

33 (4) The county of residence and a statement that the candidate is a current resident and  
34 legally qualified registered voter of that county; and the magisterial district of residence for  
35 candidates elected from magisterial districts or under magisterial district limitations;

36 (5) The specific address designating the location at which the candidate resides at the time  
37 of filing, including number and street or rural route and box number and city, state, and zip 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 the  
42 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 ballot;  
45 or a statement that the candidate prefers to remain "uncommitted";

46 (8) A statement that the person filing the certificate of announcement is a candidate for the  
47 office in good faith and meets all of the constitutional and statutory qualifications to seek and hold  
48 the office sought;

49 (9) An exhaustive list of the constitutional and statutory qualifications for all statewide,  
50 legislative, and county offices; and

51 ~~(9)~~(10) The words "subscribed and sworn to before me this \_\_\_\_\_ day of  
52 \_\_\_\_\_, 20\_\_\_\_" and a space for the signature of the officer giving the oath.

53 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may  
54 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a  
55 certified copy of the voter's registration record of the candidate showing that the candidate was  
56 registered as a voter in a party other than the one named in the certificate of announcement during  
57 the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed  
58 formal complaint of violation of this section and the certified copy of the voter's registration record  
59 of the candidate are filed with the officer receiving that candidate's certificate of announcement no  
60 later than 10 days following the close of the filing period, the candidate may not be refused  
61 certification for this reason: *Provided, however*, That any eligibility challenge brought against a  
62 candidate based on constitutional or statutory qualifications to seek and hold the office sought  
63 shall be brought no later than the deadline to withdraw as a candidate pursuant to §3-5-11 of this  
64 code, or otherwise shall be brought after an election pursuant to the procedures set forth in §3-5-  
65 20 or §3-7-1 et seq. of this code relating to primary and general election contests.

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

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

78 (h) A person may not be a candidate for more than one office or office division at any  
79 election: *Provided*, That a candidate for an office may also be a candidate for President of the  
80 United States, for membership on political party executive committees or for delegate to a political  
81 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan  
82 office in an election held concurrently with the primary election may be appointed under the  
83 provisions of §3-5-19 of this code to fill a vacancy on the general ballot.

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

NOTE: The purpose of this bill is to clarify the announcement form and eligibility requirements for becoming a candidate for election to a public office; and to establish a deadline and the procedure by and through which an eligibility challenge to a candidate's qualifications to seek and hold the elected office sought may be brought.

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