

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 332

BY SENATORS KARNES, GRADY, SMITH, RUCKER, AND

PHILLIPS

[Introduced February 18, 2021; referred
to the Committee on the Judiciary]

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 thirty-three other sovereign states
 6 requiring 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 congressional delegation regarding acts, resolutions and issues that may
4 be the subject of an Article V convention, and the rules, processes, potential amendments,
5 procedures for proposing amendments, interstate compacts, common credentials and
6 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 or other legislative committee or committees it
9 may establish.

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

1 Delegates from West Virginia are only authorized to attend an Article V convention for
2 proposing amendments where each state has one equal vote. No delegate or alternate from West
3 Virginia may attend an Article V convention for the purpose of proposing amendments that require
4 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) Any delegate casting a vote to allow consideration or approval of an unauthorized
13 amendment shall be immediately recalled by an official or committee authorized pursuant to §3-
14 11A-2(b) of this code and be replaced by an alternate.

15 (d) Delegates may not vote to allow consideration of, or vote to approve, an unauthorized
16 amendment for ratification to the Constitution of the United States. Any such vote is an
17 unauthorized vote and is void.

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 contained in this article is guilty of a felony and, upon
2 conviction thereof, shall be fined not less than \$100,000 nor more than \$500,000 and be
3 imprisoned in a state correctional facility not less than ten years.

NOTE: The purpose of this bill is to provide a procedure for West Virginia to select delegates to an Article V Convention for proposing amendments to the Constitution of the United States of America. The bill defines terms. The bill sets forth delegate duties and responsibilities. The bill provides a felony criminal penalty for violation of a delegate's oath.

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