

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 541

By Senators Stuart, Azinger, Smith, Taylor, and

Oliverio

[Introduced February 01, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-5-7 and §3-5-19 of the Code of West Virginia, 1931, as amended,
 2 all relating generally to election reforms; clarifying contents of certificate of announcement;
 3 clarifying timing of challenge to candidate qualifications; and limiting the authority of
 4 political parties to fill vacancies in nomination caused by voluntary withdrawal.

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 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 be registered to vote and file a certificate of announcement declaring his or her candidacy for the
 4 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 that the candidate is legally qualified to seek and hold the office
28 sought. The certificate of announcement shall ~~containing~~ 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 constitutional and statutory qualifications to seek and hold the
48 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 and 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 section nineteen of this article 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.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy occurs in the party nomination of candidates for office nominated at the
2 primary election or by appointment under the provisions of section eleven of this article, the
3 vacancies may be filled, subject to the following requirements and limitations:

4 (1) Each appointment made under this section shall be made by the executive committee
5 of the political party for the political division in which the vacancy occurs: *Provided*, That if the
6 executive committee holds a duly called meeting in accordance with §3-1-9 of this code but fails to
7 make an appointment or fails to certify the appointment of the candidate to the proper filing officer
8 within the time required, the chairperson of the executive committee may make the appointment

9 not later than two days following the deadline for the executive committee: *Provided however*, That
10 for a delegate district or senatorial district situated entirely within a single county, the county
11 executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify
12 the candidate named to the appropriate filing officer.

13 (2) Each appointment made under this section is complete only upon the receipt by the
14 proper filing officer of the certificate of appointment by the executive committee, or its chairperson,
15 as the case may be, the certificate of announcement of the candidate as prescribed in section
16 seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this
17 subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article.
18 The proper filing officer is the officer with whom the original certificate of announcement is
19 regularly filed for that office.

20 (3) ~~If a vacancy in nomination will be caused by the failure of a candidate to file for an office,~~
21 ~~or by withdrawal of a candidate no later than the third Tuesday following the close of candidate~~
22 ~~filing pursuant to the provisions of section eleven of this article, a nominee may not be appointed~~
23 ~~by the executive committee and certified to the proper filing officer no later than 30 days after the~~
24 ~~last day to file a certificate of announcement pursuant to section seven of this article: *Provided*,~~
25 ~~That in no case shall any such vacancy be filled after the date of the primary election except as~~
26 ~~otherwise provided by subdivision (6) of this subsection.~~

27 (4) If a vacancy in nomination is caused by the disqualification of a candidate and the
28 vacancy occurs not later than 84 days before the general election, a nominee may be appointed by
29 the executive committee and certified to the proper filing officer not later than 78 days before the
30 general election. A candidate may be determined disqualified if a written request is made by an
31 individual with information to show a candidate's ineligibility to the State Election Commission no
32 later than 84 days before the general election explaining grounds why a candidate is not eligible to
33 be placed on the general election ballot or not eligible to hold the office, if elected. The State
34 Election Commission shall review the reasons for the request. If the commission finds the

35 circumstances warrant the disqualification of the candidate, the commission shall authorize
36 appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a
37 nominee may be appointed by the executive committee and certified to the proper filing officer no
38 later than 78 days before the general election.

39 (5) If a vacancy in nomination is caused by the incapacity of the candidate and if the
40 vacancy occurs not later than 84 days before the general election, a nominee may be appointed by
41 the executive committee and certified to the proper filing officer no later than 78 days before the
42 general election.

43 (6) If a vacancy in nomination is caused by the timely filing of a notarized statement of
44 withdrawal due to no longer satisfying one or more eligibility requirements for the office sought,
45 according to section eleven of this article, of a candidate whose name would otherwise appear on
46 the general election ballot, a replacement on the general election ballot may be appointed by the
47 executive committee and certified to the proper filing officer no later than 78 days before the
48 general election: Provided, That a vacancy in nomination created by timely withdrawal that is
49 without cause as provided by this subdivision shall not be filed.

50 (7) If a vacancy in nomination is caused by the death of the candidate occurring no later
51 than 25 days before the general election, a nominee may be appointed by the executive
52 committee and certified to the proper filing officer no later than 21 days following the date of death
53 or no later than 22 days before the general election, whichever date occurs first.

54 (b) Except as otherwise provided in §3-10-1 *et seq.* of this code, if any vacancy occurs in a
55 partisan office or position other than political party executive committee, which creates an
56 unexpired term for a position which would not otherwise appear on the ballot in the general
57 election, and the vacancy occurs after the close of candidate filing for the primary election but not
58 later than 84 days before the general election, a nominee of each political party may be appointed
59 by the executive committee and certified to the proper filing officer no later than 78 days before the
60 general election. Appointments shall be filed in the same manner as provided in subsection (a) of

61 this section, except that the filing fee shall be paid before the appointment is complete.

62 (c) When a vacancy occurs in the board of education after the close of candidate filing for
63 the primary election but not later than 84 days before the general election, a special candidate
64 filing period shall be established. Candidates seeking election to any unexpired term for board of
65 education shall file a certificate of announcement and pay the filing fee to the clerk of the county
66 commission no earlier than the first Monday in August and no later than 77 days before the general
67 election.

68 (d) The amendments to this section enacted by the Legislature during the 2022 Regular
69 Session shall be retrospective to January 30, 2022.

NOTE: The purpose of this bill is to provide for election reforms. The bill clarifies contents of a certificate of announcement. The bill clarifies the timing of a challenge to candidate qualifications. Finally, the bill limits the authority of political parties to fill vacancies in a nomination caused by voluntary withdrawal.

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