

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2857

By Delegates Holstein, Foster, Steele, Keaton, and

Forsht

[Introduced January 20, 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 giving individuals seeking to run for public office a 10-day right to appeal to the Supreme
 3 Court of Appeals the decisions of the Secretary of State not to verify the potential
 4 candidates' certificates of announcements.

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 file a certificate of announcement declaring his or her candidacy for the nomination or election to
 4 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 the following information:

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

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

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

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

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

37 (6) For partisan elections, the name of the candidate's political party and a statement that
38 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the
39 candidate's current registration as a voter affiliated with that party; and (B) has not been registered
40 as a voter affiliated with any other political party for a period of 60 days before the date of filing the
41 announcement;

42 (7) For candidates for delegate to national convention, the name of the presidential
43 candidate to be listed on the ballot as the preference of the candidate on the first convention ballot;
44 or a statement that the candidate prefers to remain "uncommitted";

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

47 (9) The words "subscribed and sworn to before me this _____ day of _____,
48 20____" and a space for the signature of the officer giving the oath.

49 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
50 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
51 certified copy of the voter's registration record of the candidate showing that the candidate was
52 registered as a voter in a party other than the one named in the certificate of announcement during
53 the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed
54 formal complaint of violation of this section and the certified copy of the voter's registration record
55 of the candidate are filed with the officer receiving that candidate's certificate of announcement no
56 later than 10 days following the close of the filing period, the candidate may not be refused
57 certification for this reason.

58 (1) The Secretary of State shall, upon receipt of certificates of announcements, verify the
59 party registration, residency, and correct district.

60 (2) The Supreme Court of Appeals has original jurisdiction over appeals from the decision
61 of the Secretary of State's refusal to certify a candidacy for public office.

62 (3) An applicant who is denied certification of his or her candidacy may appeal this decision
63 to the Supreme Court of Appeals within 10 days of the decision from the Secretary of State.

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

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

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

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

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

NOTE: The purpose of this bill is to give a 10-day right to appeal to the Supreme Court of Appeals a Secretary of State decision to not certify a candidacy.

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