

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2858

By Delegates Holstein, Barnhart, Foster, Steele,

Cannon, Keaton, Forsht, and smith

[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 filing of announcements of candidacies for political office; clarifying that the deadline for
3 filing is based upon the date of receipt by the receiving authority.

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 physically received before midnight, eastern
18 standard time, of that day, ~~or, if mailed, shall be postmarked by the United States Postal Service~~
19 ~~before that hour~~ regardless of the means or manner of delivery. This includes the offices of Justice

20 of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge,
21 family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the
22 primary election: *Provided*, That on the final day of a political filing period, the office of the
23 Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk in
24 all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until
25 12:00 p.m.

26 (d) The certificate of announcement shall be on a form prescribed by the Secretary of State
27 on which the candidate shall make a sworn statement before a notary public or other officer
28 authorized to administer oaths, containing 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 legally qualified voter of
34 that county; and the magisterial district of residence for candidates elected from magisterial
35 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;

48 (9) The words "subscribed and sworn to before me this _____ day of _____,
49 20____" and a space for the signature of the officer giving the oath.

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

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

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

71 (h) A person may not be a candidate for more than one office or office division at any

72 election: *Provided*, That a candidate for an office may also be a candidate for President of the
73 United States, for membership on political party executive committees or for delegate to a political
74 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan
75 office in an election held concurrently with the primary election may be appointed under the
76 provisions of section 19 of this article to fill a vacancy on the general ballot.

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

NOTE: The purpose of this bill is to establish a single, uniform deadline for delivery of certificates of announcement of candidacy, regardless of the means of delivery.

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