

Senate Bill No. 322

(By Senators Kessler (Acting President), Plymale, Laird, Beach,
Wills and Klempa)

[Introduced January 27, 2011; referred to the Committee on the
Judiciary; ;and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §3-1D-1, relating to
the agreement among states to elect the President by national
popular vote.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §3-1D-1, to read as
follows:

**ARTICLE 1D. AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY
NATIONAL POPULAR VOTE.**

**§3-1D-1. Agreement among the states to elect the president by
national popular vote; form of compact.**

The agreement among the states to elect the president by
national popular vote is enacted into law and entered into with all

1 other jurisdictions legally joining in the agreement in the form
2 substantially as follows:

3 **ARTICLE I. MEMBERSHIP.**

4 Any State of the United States and the District of Columbia
5 may become a member of this agreement by enacting this agreement.

6 **ARTICLE II. RIGHT OF THE PEOPLE IN MEMBER STATES TO VOTE FOR
7 PRESIDENT AND VICE PRESIDENT.**

8 Each member state shall conduct a statewide popular election
9 for president and vice president of the United States.

10 **ARTICLE III. MANNER OF APPOINTING PRESIDENTIAL ELECTORS IN MEMBER
11 STATES.**

12 Prior to the time set by law for the meeting and voting by the
13 presidential electors, the chief election official of each member
14 state shall determine the number of votes for each presidential
15 slate in each state of the United States and in the District of
16 Columbia in which votes have been cast in the statewide popular
17 election and shall add the votes together to produce a "national
18 popular vote total" for each presidential slate. The chief
19 election official of each member state shall designate the
20 presidential slate with the largest national popular vote total as
21 the "national popular vote winner."

22 The presidential elector certifying official of each member
23 state shall certify the appointment in that official's own state of
24 the elector slate nominated in that state in association with the

1 national popular vote winner.

2 At least six days before the day fixed by law for the meeting
3 and voting by the presidential electors, each member state shall
4 make a final determination of the number of popular votes cast in
5 the state for each presidential slate and shall communicate an
6 official statement of the determination within twenty-four hours to
7 the chief election official of each other member state. The chief
8 election official of each member state shall treat as conclusive an
9 official statement containing the number of popular votes in a
10 state for each presidential slate made by the day established by
11 federal law for making a state's final determination conclusive as
12 to the counting of electoral votes by Congress.

13 In event of a tie for the national popular vote winner, the
14 presidential elector certifying official of each member state shall
15 certify the appointment of the elector slate nominated in
16 association with the presidential slate receiving the largest
17 number of popular votes within that official's own state. If, for
18 any reason, the number of presidential electors nominated in a
19 member state in association with the national popular vote winner
20 is less than or greater than that state's number of electoral
21 votes, the presidential candidate on the presidential slate that
22 has been designated as the national popular vote winner has the
23 power to nominate the presidential electors for that state and that
24 state's presidential elector certifying official shall certify the
25 appointment of the nominees. The chief election official of each

1 member state shall immediately release to the public all vote
2 counts or statements of votes as they are determined or obtained.
3 This article governs the appointment of presidential electors in
4 each member state in any year in which this agreement is, on July
5 20, in effect in states cumulatively possessing a majority of the
6 electoral votes.

7 **ARTICLE IV. OTHER PROVISIONS.**

8 This agreement takes effect when states cumulatively
9 possessing a majority of the electoral votes have enacted this
10 agreement in substantially the same form and the enactments by the
11 states have taken effect in each state. Any member state may
12 withdraw from this agreement, except that a withdrawal occurring
13 six months or less before the end of a president's term does not
14 become effective until a president or vice president has been
15 qualified to serve the next term. The chief executive of each
16 member state shall promptly notify the chief executive of all other
17 states of when this agreement has been enacted and has taken effect
18 in that official's state, when this state has withdrawn from this
19 agreement and when this agreement takes effect generally. This
20 agreement terminates if the electoral college is abolished. If any
21 provision of this agreement is held invalid, the remaining
22 provisions are not affected.

23 **ARTICLE V. DEFINITIONS.**

24 For purposes of this agreement:

25 "Chief executive" means the Governor of a State of the United

1 States or the Mayor of the District of Columbia;

2 "Elector slate" means a slate of candidates who have been
3 nominated in a state for the position of presidential elector in
4 association with a presidential slate;

5 "Chief election official" means the state official or body
6 that is authorized to certify the total number of popular votes for
7 each presidential slate;

8 "Presidential elector" means an elector for President and
9 Vice President of the United States;

10 "Presidential elector certifying official" means the state
11 official or body that is authorized to certify the appointment of
12 the state's presidential electors;

13 "Presidential slate" means a slate of two persons, the first
14 of whom has been nominated as a candidate for President of the
15 United States and the second of whom has been nominated as a
16 candidate for Vice President of the United States, or any legal
17 successors to those persons, regardless of whether both names
18 appear on the ballot presented to the voter in a particular state;

19 "State" means a State of the United States and the District of
20 Columbia; and

21 "Statewide popular election" means a general election in which
22 votes are cast for presidential slates by individual voters and
23 counted on a statewide basis.

NOTE: The purpose of this bill is to enter West Virginia into an interstate compact known as the Agreement Among the states to Elect the President by National Popular Vote. Under the compact, the state agrees to award its electoral votes to the presidential ticket that receives the most popular votes in all fifty states and the District of Columbia. The compact goes into effect when states cumulatively possessing a majority of the electoral votes have joined the compact.

This article is new; therefore, strike-throughs and underscoring have been omitted.