

COMMITTEE SUBSTITUTE

FOR

H. B. 2533

(BY DELEGATES TALBOTT, CAPUTO, HUNT, BOGGS,
VARNER, SHAVER, PERRY AND FLEISCHAUER)

(Originating in the Committee on the Judiciary.)
[February 10, 2011]

A BILL to amend and reenact §3-5-23 of the Code of West Virginia, 1931, as amended, relating to nomination certificates for candidates for public office; requiring the identities of signatories to a nominating certificate for a person seeking ballot access to be made public; requiring the investigation of the validity of signatures; and the verification of signatures by the Secretary of State if the office covers more than one county.

Be it enacted by the Legislature of West Virginia:

That §3-5-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control; penalties.

1 (a) Groups of citizens having no party organization may
2 nominate candidates who are not already candidates in the
3 primary election for public office otherwise than by
4 conventions or primary elections. In that case, the candidate
5 or candidates, jointly or severally, shall file a nomination
6 certificate in accordance with the provisions of this section
7 and the provisions of section twenty-four of this article.

8 (b) The person or persons soliciting or canvassing
9 signatures of duly qualified voters on the certificate or
10 certificates, may solicit or canvass duly registered voters
11 residing within the county, district or other political division
12 represented by the office sought, but must first obtain from
13 the clerk of the county commission credentials which must
14 be exhibited to each voter canvassed or solicited, which
15 credentials may be in the following form or effect:

16 State of West Virginia, County of, ss:

17 This certifies that the holder of this credential is hereby
18 authorized to solicit and canvass duly registered voters

19 residing in (here place the county, district or
 20 other political division represented by the office sought) to
 21 sign a certificate purporting to nominate
 22 (here place name of candidate heading list on certificate) for
 23 the office of and others, at the general
 24 election to be held on, 20.....

25 Given under my hand and the seal of my office this
 26 day of, 20.....

27

28 Clerk, county commission of County.

29 The clerk of each county commission, upon proper
 30 application made as herein provided, shall issue such
 31 credentials and shall keep a record thereof.

32 (c) The certificate shall be personally signed by duly
 33 registered voters, in their own proper handwriting or by their
 34 marks duly witnessed, who must be residents within the
 35 county, district or other political division represented by the
 36 office sought wherein the canvass or solicitation is made by
 37 the person or persons duly authorized. The signatures need
 38 not all be on one certificate. The number of signatures shall
 39 be equal to not less than one percent of the entire vote cast at

40 the last preceding general election for the office in the state,
41 district, county or other political division for which the
42 nomination is to be made, but in no event shall the number be
43 less than twenty-five. The number of signatures shall be
44 equal to not less than one percent of the entire vote cast at the
45 last preceding general election for any statewide,
46 congressional or presidential candidate, but in no event shall
47 the number be less than twenty-five. Where two or more
48 nominations may be made for the same office, the total of the
49 votes cast at the last preceding general election for the
50 candidates receiving the highest number of votes on each
51 ticket for the office shall constitute the entire vote. A
52 signature on a certificate may not be counted unless it be that
53 of a duly registered voter of the county, district or other
54 political division represented by the office sought wherein
55 the certificate was presented. All certificates shall be of
56 public record and shall be made available upon request by the
57 Secretary of State or the clerk of the county commission, as
58 the case may be.

59 (d) The certificates shall state the name and residence of
60 each of the candidates; that he or she is legally qualified to

61 hold the office; that the subscribers are legally qualified and
62 duly registered as voters and desire to have the candidates
63 placed on the ballot; and may designate, by not more than
64 five words, a brief name of the party which the candidates
65 represent and may adopt a device or emblem to be printed on
66 the official ballot. All candidates nominated by the signing
67 of the certificates shall have their names placed on the
68 official ballot as candidates, as if otherwise nominated under
69 the provisions of this chapter.

70 The Secretary of State shall prescribe the form and
71 content of the nomination certificates to be used for soliciting
72 signatures.

73 Offices to be filled by the voters of more than one county
74 shall use separate petition forms for the signatures of
75 qualified voters for each county.

76 Notwithstanding any other provision of this code to the
77 contrary, a duly registered voter may sign the certificate
78 provided in this section and may vote for candidates of his or
79 her choosing in the corresponding primary election.

80 (e) The Secretary of State, or the clerk of the county
81 commission, as the case may be, ~~may~~ shall investigate the

82 validity of the certificates and the signatures thereon. If an
83 investigation of the validity of a certificate or the signatures
84 contained therein is initiated by either the Secretary of State
85 or a clerk of a county commission, it shall be the duty of the
86 Secretary of State to verify the signatures on those
87 certificates of candidates seeking an office to be filled by the
88 voters of more than one county. If, upon investigation, there
89 is doubt as to the legitimacy and the validity of certificate,
90 the Secretary of State may ask the Attorney General of the
91 state, or the clerk of the county commission may ask the
92 prosecuting attorney of the county, to institute a quo warranto
93 proceeding against the nominee by certificate to determine
94 his or her right to the nomination to public office and upon
95 request being made, the Attorney General or prosecuting
96 attorney shall institute the quo warranto proceeding. The
97 clerk of the county commission shall, at the request of the
98 Secretary of State or the clerk of the circuit court, compare
99 the information from any certificate to the county voter
100 registration records in order to assist in determining the
101 validity of any certificates.

102 (f) In addition to penalties prescribed elsewhere for
103 violation of this chapter, any person violating the provisions

104 of this section is guilty of a misdemeanor and, upon
105 conviction, shall be fined not more than \$1,000, or confined
106 in jail not more than one year, or both fined and imprisoned:
107 *Provided*, That a criminal penalty may not be imposed upon
108 anyone who signs a nomination certificate and votes in the
109 primary election held after the date the certificate was signed.