

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2753**

BY DELEGATE WILSON AND BIBBY

[Introduced January 30, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-5-23 of the Code of West Virginia, 1931, as amended, relating  
2 to permitting stand-in candidates for gubernatorial and presidential contests.

*Be it enacted by the Legislature of West Virginia:*

**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 nominate candidates who are not  
2 already candidates in the primary election for public office otherwise than by conventions or  
3 primary elections. In that case, the candidate or candidates, jointly or severally, shall file a  
4 nomination certificate in accordance with the provisions of this section and the provisions of §3-  
5 5-24 of this code.

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

11 State of West Virginia, County of ....., ss:

12 This certifies that the holder of this credential is hereby authorized to solicit and canvass  
13 duly registered voters residing in ..... (here place the county, district or other political  
14 division represented by the office sought) to sign a certificate purporting to nominate  
15 ..... (here place name of candidate heading list on certificate) for the office of  
16 ..... and others, at the general election to be held on ....., 20.....

17 Given under my hand and the seal of my office this ..... day of .....,  
18 20.....

19 .....

20 Clerk, county commission of ..... County.

21 The clerk of each county commission, upon proper application made as herein provided,

22 shall issue such credentials and shall keep a record thereof.

23 (c) The certificate shall be personally signed by duly registered voters, in their own proper  
24 handwriting or by their marks duly witnessed, who must be residents within the county, district, or  
25 other political division represented by the office sought wherein the canvass or solicitation is made  
26 by the person or persons duly authorized. The signatures need not all be on one certificate. The  
27 number of signatures shall be equal to not less than one percent of the entire vote cast at the last  
28 preceding general election for the office in the state, district, county, or other political division for  
29 which the nomination is to be made, but in no event shall the number be less than 25. The number  
30 of signatures shall be equal to not less than one percent of the entire vote cast at the last  
31 preceding general election for any statewide, congressional, or presidential candidate, but in no  
32 event shall the number be less than 25. Where two or more nominations may be made for the  
33 same office, the total of the votes cast at the last preceding general election for the candidates  
34 receiving the highest number of votes on each ticket for the office shall constitute the entire vote.  
35 A signature on a certificate may not be counted unless it be that of a duly registered voter of the  
36 county, district, or other political division represented by the office sought wherein the certificate  
37 was presented.

38 (d) The certificates shall state the name and residence of each of the candidates; that he  
39 or she is legally qualified to hold the office; that the subscribers are legally qualified and duly  
40 registered as voters and desire to have the candidates placed on the ballot; and may designate,  
41 by not more than five words, a brief name of the party which the candidates represent and may  
42 adopt a device or emblem to be printed on the official ballot. Stand-in candidates will be permitted  
43 for gubernatorial and presidential contests. All candidates nominated by the signing of the  
44 certificates shall have their names placed on the official ballot as candidates, as if otherwise  
45 nominated under the provisions of this chapter.

46 The Secretary of State shall prescribe the form and content of the nomination certificates  
47 to be used for soliciting signatures.

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

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

53 (e) The Secretary of State, or the clerk of the county commission, as the case may be,  
54 may investigate the validity of the certificates and the signatures thereon. If, upon investigation,  
55 there is doubt as to the legitimacy and the validity of certificate, the Secretary of State may ask  
56 the Attorney General of the state, or the clerk of the county commission may ask the prosecuting  
57 attorney of the county, to institute a quo warranto proceeding against the nominee by certificate  
58 to determine his or her right to the nomination to public office and upon request being made, the  
59 Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of  
60 the county commission shall, at the request of the Secretary of State or the clerk of the circuit  
61 court, compare the information from any certificate to the county voter registration records in order  
62 to assist in determining the validity of any certificates.

63 (f) For the purposes of this section, any person who, at the time of the filing of the  
64 nomination certificate or certificates, is registered and affiliated with a recognized political party  
65 as defined in §3-1-8 of this code may not become a candidate for political office by virtue of the  
66 nomination-certificate process as set forth in this section.

67 (g) For the purposes of this section, any person who was a candidate for nomination by a  
68 recognized political party as defined in §3-1-8 of this code may not, after failing to win the  
69 nomination of his or her political party, become a candidate for the same political office by virtue  
70 of the nomination-certificate process as set forth in this section.

71 (h) In addition to penalties prescribed elsewhere for violation of this chapter, any person  
72 violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be  
73 fined not more than \$1,000, or confined in jail not more than one year, or both fined and confined:

- 74 *Provided*, That a criminal penalty may not be imposed upon anyone who signs a nomination  
75 certificate and votes in the primary election held after the date the certificate was signed.

NOTE: The purpose of this bill is to permit stand-in candidates for gubernatorial and presidential contests.

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