

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2533**

4 (By Delegates Talbott, Hunt, Boggs, Varner,
5 Shaver, Perry and Fleischauer)

6
7 (Originating in the Committee on the Judiciary)

8 [January 17, 2012]

9
10 A BILL to amend and reenact §3-5-23 of the Code of West Virginia,
11 1931, as amended, relating to nomination certificates for
12 candidates for public office; clarifying who may be a
13 candidate; requiring the identities of signatories to a
14 nominating certificate for a person seeking ballot access to
15 be made public; requiring the investigation of the validity of
16 signatures; and the verification of signatures by the
17 Secretary of State if the office covers more than one county.

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

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

21 **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

22 **§3-5-23. Certificate nominations; requirements and control;
23 penalties.**

24 (a) Groups of citizens having no party organization may
25 nominate candidates who (1) are not already candidates in the
26 primary election; or (2) were not candidates in the primary
27 election immediately preceding the general election, for public
28 office otherwise than by conventions or primary elections. In that

1 case, the candidate or candidates, jointly or severally, shall file
2 a nomination certificate in accordance with the provisions of this
3 section and the provisions of section twenty-four of this article.

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

12 State of West Virginia, County of, ss:

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

21 Given under my hand and the seal of my office this
22 day of, 20.....

23

24 Clerk, county commission of County.

25 The clerk of each county commission, upon proper application
26 made as herein provided, shall issue such credentials and shall

1 keep a record thereof.

2 (c) The certificate shall be personally signed by duly
3 registered voters, in their own proper handwriting or by their
4 marks duly witnessed, who must be residents within the county,
5 district or other political division represented by the office
6 sought wherein the canvass or solicitation is made by the person or
7 persons duly authorized. The signatures need not all be on one
8 certificate. The number of signatures shall be equal to not less
9 than one percent of the entire vote cast at the last preceding
10 general election for the office in the state, district, county or
11 other political division for which the nomination is to be made,
12 but in no event shall the number be less than twenty-five. The
13 number of signatures shall be equal to not less than one percent of
14 the entire vote cast at the last preceding general election for any
15 statewide, congressional or presidential candidate, but in no event
16 shall the number be less than twenty-five. Where two or more
17 nominations may be made for the same office, the total of the votes
18 cast at the last preceding general election for the candidates
19 receiving the highest number of votes on each ticket for the office
20 shall constitute the entire vote. A signature on a certificate may
21 not be counted unless it be that of a duly registered voter of the
22 county, district or other political division represented by the
23 office sought wherein the certificate was presented. All
24 certificates shall be of public record and shall be made available
25 upon request by the Secretary of State or the clerk of the county
26 commission, as the case may be.

1 (d) The certificates shall state the name and residence of
2 each of the candidates; that he or she is legally qualified to hold
3 the office; that the subscribers are legally qualified and duly
4 registered as voters and desire to have the candidates placed on
5 the ballot; and may designate, by not more than five words, a brief
6 name of the party which the candidates represent and may adopt a
7 device or emblem to be printed on the official ballot. All
8 candidates nominated by the signing of the certificates shall have
9 their names placed on the official ballot as candidates, as if
10 otherwise nominated under the provisions of this chapter.

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

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

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

20 (e) The Secretary of State, or the clerk of the county
21 commission, as the case may be, ~~may~~ shall investigate the validity
22 of the certificates and the signatures thereon. If an investigation
23 of the validity of a certificate or the signatures contained
24 therein is initiated by either the Secretary of State or a clerk of
25 a county commission, it shall be the duty of the Secretary of State
26 to verify the signatures on those certificates of candidates

1 seeking an office to be filled by the voters of more than one
2 county. If, upon investigation, there is doubt as to the legitimacy
3 and the validity of certificate, the Secretary of State may ask the
4 Attorney General of the state, or the clerk of the county
5 commission may ask the prosecuting attorney of the county, to
6 institute a quo warranto proceeding against the nominee by
7 certificate to determine his or her right to the nomination to
8 public office and upon request being made, the Attorney General or
9 prosecuting attorney shall institute the quo warranto proceeding.
10 The clerk of the county commission shall, at the request of the
11 Secretary of State or the clerk of the circuit court, compare the
12 information from any certificate to the county voter registration
13 records in order to assist in determining the validity of any
14 certificates.

15 (f) In addition to penalties prescribed elsewhere for
16 violation of this chapter, any person violating the provisions of
17 this section is guilty of a misdemeanor and, upon conviction, shall
18 be fined not more than \$1,000, or confined in jail not more than
19 one year, or both fined and imprisoned: *Provided*, That a criminal
20 penalty may not be imposed upon anyone who signs a nomination
21 certificate and votes in the primary election held after the date
22 the certificate was signed.