

1 **H. B. 2771**

2
3 (By Delegates Howell (By Request) Evans, A., Rowan,
4 Espinosa, Ireland, Shott, Miller, Frich, Hamrick,
5 Cooper and Arvon)
6

7 [Introduced March 1, 2013; referred to the
8 Committee on the Judiciary.]
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10 A BILL to amend and reenact §3-5-23 of the Code of West Virginia,
11 1931, as amended, relating to elections; nomination
12 certificates for minor party or independent nominations; and
13 requiring candidates to certify the office sought by a notary
14 public prior to obtaining signatures of registered voters.

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

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

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

19 **§3-5-23. Certificate nominations; requirements and control;**
20 **penalties.**

21 (a) Groups of citizens having no party organization may
22 nominate candidates who are not already candidates in the primary
23 election for public office otherwise than by conventions or primary
24 elections. In that case, the candidate or candidates, jointly or
25 severally, shall file a nomination certificate in accordance with

1 the provisions of this section and the provisions of section
2 twenty-four of this article.

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

11 State of West Virginia, County of, ss:

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

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

22

23 Clerk, county commission of

24 County.

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

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

1 office sought wherein the certificate was presented.

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

12 The Secretary of State shall prescribe the form and content of
13 the nomination certificates to be used for soliciting signatures:
14 Provided, That the form shall require the candidate to designate
15 the office sought and that the designation be certified by a notary
16 public prior to obtaining signatures of registered voters.

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

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

24 (e) The Secretary of State, or the clerk of the county

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

NOTE: The purpose of this bill is to provide that the forms used for nomination certificates for minor party or independent nominations require candidates to certify the office sought by a notary public prior to obtaining signatures of registered voters.

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