

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENROLLED**

**House Bill 4434**

BY DELEGATES SHOTT AND HANSHAW

[Passed March 7, 2018; in effect ninety days from passage.]



1 AN ACT to amend and reenact §3-5-23 of the Code of West Virginia, 1931, as amended, to  
 2 prohibit any person from becoming a candidate for political office by virtue of the  
 3 nomination-certificate process when he or she, at the time of the filing of the nomination  
 4 certificate or certificates, is registered and affiliated with a recognized political party as  
 5 defined in §3-1-8 of this code or when he or she was a candidate for nomination by a  
 6 recognized political party as defined in §3-1-8 of this code but failed to win the nomination  
 7 of his or her party.

*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. All candidates nominated by the

43 signing of the certificates shall have their names placed on the official ballot as candidates, as if  
44 otherwise nominated under the provisions of this chapter.

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

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

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

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

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

66         (g) For the purposes of this section, any person who was a candidate for nomination by a  
67 recognized political party as defined in §3-1-8 of this code may not, after failing to win the

68 nomination of his or her political party, become a candidate for the same political office by virtue  
69 of the nomination-certificate process as set forth in this section.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2018.

.....  
*Governor*