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HB 2981

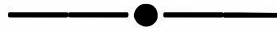
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2009 MAY -8 PM 3:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



ENROLLED

House Bill No. 2981

(By Delegates Fleischauer, Hatfield, Staggers,
Doyle, Shook, Moore, Klempa, Brown,
Susman, Frazier and Longstreth)



Passed April 11, 2009

In Effect Ninety Days from Passage

E N R O L L E D

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H. B. 2981

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES FLEISCHAUER, HATFIELD, STAGGERS,
DOYLE, SHOOK, MOORE, KLEMPA, BROWN,
SUSMAN, FRAZIER AND LONGSTRETH)

[Passed April 11, 2009;in effect ninety days from passage.]

AN ACT to amend and reenact §3-5-7, §3-5-23 and §3-5-24 of the Code of West Virginia, 1931, as amended, all relating to elections generally, requiring candidates for the Senate and House of Delegates to file announcement of candidacy with the Secretary of State; reducing number of signatures needed for nomination of third-party candidates; making filing deadline for the nomination of candidates August 1; eliminating requirement that persons signing nomination certificate state a desire to vote for nominated candidate; permitting duly registered voters who sign nomination certificates to vote in the corresponding primary election; establishing the date by which the filing fee must be paid; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §3-5-7, §3-5-23 and §3-5-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

1 (a) Any person who is eligible and seeks to hold an office
2 or political party position to be filled by election in any
3 primary or general election held under the provisions of this
4 chapter shall file a certificate of announcement declaring his
5 or her candidacy for the nomination or election to the office.

6 (b) The certificate of announcement shall be filed as
7 follows:

8 (1) Candidates for the House of Delegates or the State
9 Senate and any other office or political position to be filled
10 by the voters of more than one county shall file a certificate
11 of announcement with the Secretary of State;

12 (2) Candidates for an office or political position to be
13 filled by the voters of a single county or a subdivision of a
14 county, except for candidates for the House of Delegates or
15 State Senate, shall file a certificate of announcement with the
16 clerk of the county commission;

17 (3) Candidates for an office to be filled by the voters of
18 a municipality shall file a certificate of announcement with
19 the recorder or city clerk.

20 (c) The certificate of announcement shall be filed with
21 the proper officer not earlier than the second Monday in
22 January next preceding the primary election day, and not later
23 than the last Saturday in January next preceding the primary
24 election day, and must be received before midnight, eastern
25 standard time, of that day or, if mailed, shall be postmarked
26 by the United States Postal Service before that hour.

27 (d) The certificate of announcement shall be on a form
28 prescribed by the Secretary of State on which the candidate
29 shall make a sworn statement before a notary public or other
30 officer authorized to administer oaths, containing the
31 following information:

32 (1) The date of the election in which the candidate seeks
33 to appear on the ballot;

34 (2) The name of the office sought; the district, if any; and
35 the division, if any;

36 (3) The legal name of the candidate and the exact name
37 the candidate desires to appear on the ballot, subject to
38 limitations prescribed in section thirteen, article five of this
39 chapter;

40 (4) The county of residence and a statement that the
41 candidate is a legally qualified voter of that county; and the
42 magisterial district of residence for candidates elected from
43 magisterial districts or under magisterial district limitations;

44 (5) The specific address designating the location at which
45 the candidate resides at the time of filing, including number
46 and street or rural route and box number and city, state and
47 zip code;

48 (6) For partisan elections, the name of the candidate's
49 political party and a statement that the candidate: (A) Is a
50 member of and affiliated with that political party as
51 evidenced by the candidate's current registration as a voter
52 affiliated with that party; and (B) has not been registered as
53 a voter affiliated with any other political party for a period of
54 sixty days before the date of filing the announcement;

55 (7) For candidates for delegate to national convention, the
56 name of the presidential candidate to be listed on the ballot as
57 the preference of the candidate on the first convention ballot;
58 or a statement that the candidate prefers to remain
59 "uncommitted";

60 (8) A statement that the person filing the certificate of
61 announcement is a candidate for the office in good faith;

62 (9) The words "subscribed and sworn to before me this
63 _____ day of _____, 20____" and a space for the
64 signature of the officer giving the oath.

65 (e) The Secretary of State or the board of ballot
66 commissioners, as the case may be, may refuse to certify the
67 candidacy or may remove the certification of the candidacy
68 upon receipt of a certified copy of the voter's registration
69 record of the candidate showing that the candidate was
70 registered as a voter in a party other than the one named in
71 the certificate of announcement during the sixty days
72 immediately preceding the filing of the certificate: *Provided,*
73 That unless a signed formal complaint of violation of this
74 section and the certified copy of the voter's registration
75 record of the candidate are filed with the officer receiving
76 that candidate's certificate of announcement no later than ten
77 days following the close of the filing period, the candidate
78 may not be refused certification for this reason.

79 (f) The certificate of announcement shall be subscribed
80 and sworn to by the candidate before some officer qualified
81 to administer oaths, who shall certify the same. Any person
82 who knowingly provides false information on the certificate
83 is guilty of false swearing and shall be punished in
84 accordance with section three, article nine of this chapter.

85 (g) Any candidate for delegate to a national convention
86 may change his or her statement of presidential preference by

87 notifying the Secretary of State by letter received by the
88 Secretary of State no later than the third Tuesday following
89 the close of candidate filing. When the rules of the political
90 party allow each presidential candidate to approve or reject
91 candidates for delegate to convention who may appear on the
92 ballot as committed to that presidential candidate, the
93 presidential candidate or the candidate's committee on his or
94 her behalf may file a list of approved or rejected candidates
95 for delegate and the Secretary of State shall list as
96 "uncommitted" any candidate for delegate who is
97 disapproved by the presidential candidate.

98 (h) A person may not be a candidate for more than one
99 office or office division at any election: *Provided*, That a
100 candidate for an office may also be a candidate for President
101 of the United States, for membership on political party
102 executive committees or for delegate to a political party
103 national convention.

104 (i) A candidate who files a certificate of announcement
105 for more than one office or division and does not withdraw,
106 as provided by section eleven, article five of this chapter,
107 from all but one office prior to the close of the filing period
108 may not be certified by the Secretary of State or placed on the
109 ballot for any office by the board of ballot commissioners.

110 (j) The provisions of this section enacted during the
111 regular session of the Legislature in the year 1991 shall apply
112 to the primary election held in the year 1992 and every
113 primary election held thereafter. The provisions of this
114 section enacted during the regular session of the Legislature
115 in the year 2009 shall apply to the primary election held in
116 the year 2010 and every primary election held thereafter.

**§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 be
 14 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 the
55 certificate was presented.

56 (d) The certificates shall state the name and residence of
57 each of the candidates; that he or she is legally qualified to
58 hold the office; that the subscribers are legally qualified and
59 duly registered as voters and desire to have the candidates
60 placed on the ballot; and may designate, by not more than
61 five words, a brief name of the party which the candidates
62 represent and may adopt a device or emblem to be printed on

63 the official ballot. All candidates nominated by the signing
64 of the certificates shall have their names placed on the
65 official ballot as candidates, as if otherwise nominated under
66 the provisions of this chapter.

67 The Secretary of State shall prescribe the form and
68 content of the nomination certificates to be used for soliciting
69 signatures.

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

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

77 (e) The Secretary of State, or the clerk of the county
78 commission, as the case may be, may investigate the validity
79 of the certificates and the signatures thereon. If, upon
80 investigation, there is doubt as to the legitimacy and the
81 validity of certificate, the Secretary of State may ask the
82 Attorney General of the state, or the clerk of the county
83 commission may ask the prosecuting attorney of the county,
84 to institute a quo warranto proceeding against the nominee by
85 certificate to determine his or her right to the nomination to
86 public office and upon request being made, the Attorney
87 General or prosecuting attorney shall institute the quo
88 warranto proceeding. The clerk of the county commission
89 shall, at the request of the Secretary of State or the clerk of
90 the circuit court, compare the information from any
91 certificate to the county voter registration records in order to
92 assist in determining the validity of any certificates.

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


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

§3-5-24. Filing of nomination certificates; time.

1 (a) All certificates nominating candidates for office under
2 the preceding section shall be filed, in the case of a candidate
3 to be voted for by the voters of the entire state or by any
4 subdivision of the state other than a single county, with the
5 Secretary of State, and in the case of all candidates for county
6 and magisterial district offices, including all offices to be
7 filled by the voters of a single county, with the clerk of the
8 county commission, not later than August 1 preceding the
9 general election.

10 (b) Each candidate shall pay the filing fee required by
11 section eight of this article, at the time of the filing of the
12 nomination certificate. If any nomination certificate is not
13 timely filed or if the filing fee is not timely paid, the
14 certificate may not be received by the Secretary of State, or
15 by the clerk of the county commission, as the case may be.

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

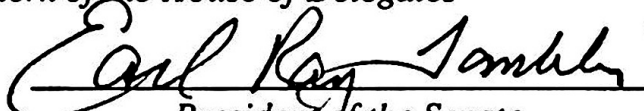
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within enrolled this the 5th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY 5 2009

Time 2:50pm