

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2798

BY DELEGATES O'NEAL, SHOTT, HANSHAW, SOBONYA

AND OVERINGTON

[Introduced March 6, 2017; 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; to clarify
 2 provisions relating to candidates unaffiliated with a political party as it relates to certificates
 3 of announcement, preventing candidates from a political party from using the provisions
 4 of the section to seek candidacy for office.

Be it enacted by the Legislature of West Virginia:

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

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
 5 section twenty-four of this article.

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 twenty-five.
30 The number of signatures shall be equal to not less than one percent of the entire vote cast at the
31 last preceding general election for any statewide, congressional or presidential candidate, but in
32 no event shall the number be less than twenty-five. Where two or more nominations may be made
33 for the same office, the total of the votes cast at the last preceding general election for the
34 candidates receiving the highest number of votes on each ticket for the office shall constitute the
35 entire vote. A signature on a certificate may not be counted unless it be that of a duly registered
36 voter of the county, district or other political division represented by the office sought wherein the
37 certificate 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 is registered and affiliated with a
63 recognized political party as defined in section eight, article one of this chapter may not become
64 a candidate for political office by virtue of the nomination certificate process outlined herein.

65 ~~(f)~~ (g) In addition to penalties prescribed elsewhere for violation of this chapter, any person
66 violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be
67 fined not more than \$1,000, or confined in jail not more than one year, or both fined and
68 imprisoned: *Provided*, That a criminal penalty may not be imposed upon anyone who signs a
69 nomination certificate and votes in the primary election held after the date the certificate was

70 signed.

NOTE: The purpose of this bill is to clarify provisions relating to candidates unaffiliated with a political party as it relates to certificates of announcement, preventing potential candidates registered as members of a political party from using the provisions of the section to seek candidacy for office.

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