

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

SENATE BILL NO. 274

(By Senator Tucker)

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PASSED March 8, 1986

In Effect 90 days from Passage



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Senate Bill No. 274

(BY SENATOR TUCKER)

[Passed March 8, 1986; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-three, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the first day of August before a general election as the deadline for presidential and vice presidential candidates to file nomination certificates; requiring that those soliciting or providing signatures for these certificates must reside within the political division represented by the office sought and must give oral notice that signing the certificate forfeits the right to vote in the corresponding primary election; removing the requirement that candidates must designate their party and its emblem; and requiring the secretary of state to prescribe the certificates.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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

2 nominate candidates for public office otherwise than by
3 conventions or primary elections. In such case, the
4 candidate or candidates, jointly or severally, shall file a
5 declaration with the secretary of state if the office is to be
6 filled by the voters of more than one county, or with the
7 clerk of the circuit court of the county if the office is to be
8 filled by the voters of one county or political subdivision
9 thereof; such declaration to be filed at least thirty days
10 prior to the time of filing the certificate provided by section
11 twenty-four of this article: *Provided*, That the deadline for
12 filing the certificate for persons seeking ballot access as a
13 candidate for the office of president or vice president shall
14 be filed not later than the first day of August preceding the
15 general election. At the time of filing of such declaration
16 each candidate shall pay the filing fee required by law, and
17 if such declaration is not so filed or the filing fee so paid, the
18 certificate shall not be received by the secretary of state, or
19 clerk of the circuit court, as the case may be.

20 (b) The person or persons soliciting or canvassing
21 signatures of duly qualified voters on such certificate or
22 certificates, may solicit or canvass duly registered voters
23 residing within the county, district, or other political
24 division represented by the office sought, but must first
25 obtain from the clerk of the county commission credentials
26 which must be exhibited to each voter canvassed or
27 solicited, which credentials may be in the following form or
28 effect:

29 State of West Virginia, County of, ss:

30 This certifies that, a duly registered
31 voter of this State; whose post-office address is,
32 is hereby authorized to solicit and canvass duly registered
33 voters residing in (here place the county, district
34 or other political division represented by the office sought)
35 to sign a certificate purporting to nominate
36 (here place name of candidate heading list on certificate) for
37 the office of and others, at the general election
38 to be held on, 19

39 Given under my hand and the seal of my office this
40 day of, 19

41
42 Clerk, County Commission of County.

43 The clerk of each county commission, upon proper

44 application made as herein provided, shall issue such
45 credentials and shall keep a record thereof.

46 (c) The certificate shall be personally signed by duly
47 registered voters, in their own proper handwriting or by
48 their marks duly witnessed, who must be residents within
49 the county, district or other political division represented
50 by the office sought wherein such canvass or solicitation is
51 made by the person or persons duly authorized. Such
52 signatures need not all be on one certificate. The number of
53 such signatures shall be equal to not less than one percent of
54 the entire vote cast at the last preceding general election for
55 the office in the state, district, county or other political
56 division for which the nomination is to be made, but in no
57 event shall the number be less than twenty-five. Where two
58 or more nominations may be made for the same office, the
59 total of the votes cast at the last preceding general election
60 for the candidates receiving the highest number of votes on
61 each ticket for such office shall constitute the entire vote.
62 No signature on such certificate shall be counted unless it
63 be that of a duly registered voter of the county, district or
64 other political division represented by the office sought
65 wherein such certificate was presented. It shall be the duty
66 of those soliciting signatures to read to each voter whose
67 signature is solicited the statement written on the
68 certificate which gives notice that no person signing such
69 certificate shall vote at any primary election to be held to
70 nominate candidates for office to be voted for at the election
71 to be held next after the date of signing such certificate.

72 (d) Such certificates shall state the name and residence
73 of each of such candidates; that he is legally qualified to
74 hold such office; that the subscribers are legally qualified
75 and duly registered as voters and desire to vote for such
76 candidates; and may designate, by not more than five
77 words, a brief name of the party which such candidates
78 represent and may adopt a device or emblem to be printed
79 on the official ballot. All candidates nominated by the
80 signing of such certificates shall have their names placed on
81 the official ballot as candidates, as if otherwise nominated
82 under the provisions of this chapter.

83 The secretary of state shall prescribe the form and
84 content of the nomination certificates to be used for
85 soliciting signatures. The content shall include the

86 language to be used in giving written and oral notice to each
87 voter that signing of the nominating certificate forfeits that
88 voter's right to vote in the corresponding primary election.

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

92 (e) The secretary of state, or the clerk of the circuit
93 court, as the case may be, may investigate the validity of
94 such certificates and the signatures thereon, and if upon
95 such investigation there may be doubt as to the legitimacy
96 and the validity of such certificate, he may request the
97 attorney general of the state, or the prosecuting attorney of
98 the county, to institute a quo warranto proceeding against
99 the nominee or nominees by certificate to determine his or
100 their right to such nomination to public office, and upon
101 request being made, the attorney general or prosecuting
102 attorney shall institute such quo warranto proceeding.

103 (f) Any person violating the provisions hereof, in
104 addition to penalties prescribed elsewhere for violation of
105 this chapter, shall be guilty of a misdemeanor, and, upon
106 conviction, shall be fined not more than one thousand
107 dollars, or confined in the county jail for not more than one
108 year, or both, in the discretion of the court.

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

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Idd C. Smith
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Don Tonkinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *25th*
March
day of 1986.

Arch A. Shivers Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/86

Time 12:31p.m.

RECEIVED

1986 MAR 26 PM 4: 27

OFFICE OF THE
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86