

## CHAPTER 123

## (HB 97)

AN ACT relating to elections.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 118.176 is amended to read as follows:

- (1) A "bona fide" candidate means one who is seeking nomination in a primary or election in a ***special or regular***~~general~~ election according to law.
- (2) The bona fides of any candidate seeking nomination or election in a primary, ***special, or regular***~~general~~ election may be questioned by any qualified voter entitled to vote for ~~the~~<sup>such</sup> candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides. An action regarding the bona fides of any candidate seeking nomination or election in a primary, ***special, or regular***~~general~~ election may be commenced at any time prior to the ***regular***~~general~~ election. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. If the Circuit Judge of the circuit in which the proceeding is filed is disqualified or absent from the county or is ***herself or*** himself a candidate, the proceeding may be presented to, heard and determined by the Circuit Judge of any adjoining judicial circuit.
- (3) In any action or proceeding under this section the burden of proof as to the bona fides of a candidate shall be on the person challenging the bona fides of a candidate.
- (4) If the court finds the candidate is not a bona fide candidate it ~~shall~~<sup>must</sup> so order, and certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers filed with the board of elections or the court may refuse recognition or relief in a mandatory or injunctive way. The order of the Circuit Court shall be entered on the order book of the court and shall be subject to a motion to set aside in the Court of Appeals. The motion shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions, except that the motion ~~shall~~<sup>must</sup> be made before the court or judge within five (5) days after the entry of the order in the Circuit Court, and may be heard and tried upon the original papers, and the order of the Court of Appeals or judge thereof shall be final.
- (5) No person shall approach the Circuit Judge for the purpose or view of influencing his ***or her*** decision on the motion pending before ~~the Circuit Judge~~<sup>him</sup> or to be tried by him ***or her***.

➔Section 2. KRS 118.315 is amended to read as follows:

- (1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him or her, complying with the provisions of subsection (2) of this section. No person whose registration status is as a registered member of a political party shall be eligible to election as an independent, ***or political organization, or political group*** candidate, nor shall any person be eligible to election as an independent, ***or political organization, or political group*** candidate whose registration status was as a registered member of a political party on January 1 immediately preceding the regular election for which the person seeks to be a candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(7), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.
- (2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Signatures for a petition of nomination for a candidate seeking any office, excluding President of the United States in accordance with KRS 118.591(1), shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or

for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer or board of education member, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include the date he or she affixes the signature, address of residence, and date of birth. Failure of a voter to include the signature affixation date, date of birth, and address of residence shall result in the signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he or she shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his or her signature is affixed.

- (3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.
- (4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

➔Section 3. KRS 118.365 is amended to read as follows:

- (1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. The certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.
- (2) Petitions of nomination for candidates for city offices except as provided in KRS 83A.047, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of regular elections for the offices sought.
- (3) Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file the statements required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the regular election for the office sought.
- (4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the election of the person in nomination.
- (5) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of ~~regular-general~~ elections for the offices sought. Certificates of nomination shall be filed with the Secretary of State or county clerk, as required by law, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of ~~regular-general~~ elections for the offices sought. The filing of petitions of nomination for independent, *or political organization, or political group* candidates shall not be accepted by the Secretary of State or the county clerk if the candidate has not filed a statement-of-candidacy form as required by KRS 118.367.
- (6) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which there is an election for President and Vice President of the United States

and not later than the Friday following the first Tuesday in September preceding the date fixed by law for the election of the electors.

- (7) Petitions for recall elections or elections on public questions shall be filed as required with the county clerk not later than the second Tuesday in August preceding the day fixed by law for holding a **regular**~~[general]~~ election.
- (8) Petitions of any kind named in this section, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which ~~[such]~~ papers are permitted to be filed.

➔Section 4. KRS 118.367 is amended to read as follows:

- (1) An independent, **or political organization, or political group** candidate required to file nomination papers pursuant to KRS 118.365(5) shall be required to file a statement-of-candidacy form with the same office at which nomination papers are filed. Candidates for federal office and candidates for mayor or legislative body in cities of the second to sixth class participating in partisan elections shall not be required to file a statement-of-candidacy form. The statement-of-candidacy form shall be filed not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than April 1 preceding the day fixed by law for holding of **regular**~~[general]~~ elections for the offices sought. If the office in which the statement-of-candidacy form is to be filed is closed on April 1, the form may be filed on the next business day. The statement-of-candidacy form shall be filed no later than 4 p.m. local time when filed on the last day on which papers are permitted to be filed. No person shall file a statement-of-candidacy form for more than one (1) public office during an election cycle.
- (2) The statement-of-candidacy form shall be prescribed by the State Board of Elections. The statement-of-candidacy form shall be signed by the candidate upon filing. No charge shall be assessed for the filing of a statement-of-candidacy form. The Secretary of State and county clerks shall examine the statement-of-candidacy form of each candidate who files the form to determine if there is an error. If an error has occurred, the candidate shall be notified by certified mail within twenty-four (24) hours.

➔Section 5. KRS 118.375 is amended to read as follows:

If a vacancy occurs in any elective office less than one hundred thirty-four (134) days before the primary or at any time after the primary, but not less than **three (3) months**~~[one hundred six (106) days]~~ before the **regular**~~[general]~~ election, independent, **or political organization, or political group** candidates may file their petitions at the time and place provided~~[for]~~ in KRS 118.365, subject to the restrictions concerning party registration and candidacy provided in KRS 118.315(1).

➔Section 6. KRS 118.760 is amended to read as follows:

Nominations by political parties, as defined in KRS 118.015, to fill vacancies at special elections shall be made in **the**~~[such]~~ manner~~[as may be]~~ determined by the governing authority of the party in the territory in which the election is to be held. **An independent, or political organization, or political group candidate may be nominated at a special election by a petition of electors qualified to vote for him or her. The independent, or political organization, or political group candidate shall not be a registered member of a political party prior to the filing of the petition as prescribed in KRS 118.770. The form of the petition and the required number of signatures on the petition are set forth in KRS 118.315(2).**

➔Section 7. KRS 118.770 is amended to read as follows:

When a writ of election or proclamation is issued to fill a vacancy as prescribed in KRS 118.710, 118.720, or 118.730, independent, **or political organization, or political group** petitions and certificates of nomination may be filed twenty-eight (28) days before the day of election, and if filed with the Secretary of State shall be immediately certified by him **or her** to the proper county clerks.

➔Section 8. KRS 118.775 is amended to read as follows:

A successful candidate in a special election held for the purpose of filling a vacancy in any elective office shall take office immediately upon certification of the election results by the State Board of Elections **or the county board of elections in which the special election was held**, and administration of the oath of office.

➔Section 9. KRS 118A.100 is amended to read as follows:

- (1) Candidates for an unexpired term of a judicial office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in KRS 118A.060 if the vacancy occurs not later than the second Tuesday in January preceding the primary. If the vacancy occurs on or after that date, the election to fill the unexpired term shall be held in accordance with the procedures described in this section and Section 152 of the Constitution of Kentucky.
- (2) If in a regular election for judicial office no candidates nominated as provided in KRS 118A.060 are available due to death, incapacity, or withdrawal, and the candidates have not been replaced as provided in KRS 118A.060, the election to fill the regular term shall be conducted in the manner prescribed in subsections (3) through (11) of this section.
- (3) Each candidate shall file a petition for ~~*nomination*~~~~[candidate]~~ with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the election for the unexpired term will be held and not later than the second Tuesday in August preceding the day fixed by law for holding the regular election for the unexpired term. ***The petition shall be sworn to by the candidate and by not less than two (2) registered voters from the district or circuit from which he or she seeks nomination, before an officer authorized to administer an oath. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot.*** The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (4) The petition for ~~*nomination*~~~~[candidate]~~ shall be in the form prescribed by the State Board of Elections. ***The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.*** Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (5) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (6) The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (7) Not later than the ~~*date set forth in KRS 118.215*~~~~[second Monday after the filing deadline for the regular election in a year in which there is no election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President and Vice President of the United States,]~~ and after the order of names on the ballot has been determined as required in subsection (6) of this section, the Secretary of State shall:
  - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for ~~*nomination*~~~~[candidate]~~ filed with ~~*the Secretary of State*~~~~[him]~~; and
  - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (8) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (9) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the absentee ballots for the regular election the names of the candidates for offices of the Court of Justice.
- (10) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in~~[such]~~ a manner *so* that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.

- (11) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

➔Section 10. KRS 118A.190 is amended to read as follows:

- (1) The State Board of Elections shall issue certificates of nomination or election for all primary and regular elections as provided in this section.
- (2) Following a primary or regular election, the board of elections of each county shall make out duplicate certificates of the total number of votes received by each candidate, by circuit or district, and numbered division thereof if divisions exist. ***The certificate of the total number of votes shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the primary or regular election***~~[The board shall deliver these certificates to the county clerk].~~ The clerk shall keep one (1) of the certificates in his ***or her*** office and, within three (3) days of their receipt from the board, shall forward the other certificate by mail to the Secretary of State who shall deliver it to the State Board of Elections.
- (3) ~~[When all the returns are received by ]~~The State Board of Elections~~[, the board]~~ shall meet to count and tabulate the votes received by the different candidates as certified to the Secretary of State ***no later than the third Monday after the primary or regular election***.~~[If all returns have not been received by the third Monday after the primary or regular election, the board shall, nevertheless, proceed with its duties at that time.]~~ When the board certifies the results of a primary or regular election~~[on the basis of incomplete returns]~~, the right to contest the election ***or primary*** shall not be impaired. A majority of the members of the board shall constitute a quorum and may act. The board shall prepare the certificates of nomination or election in the office of the board, from the returns made. The certificates shall be in writing and in duplicate, and shall be signed by the board members. The board shall forward the original certificate, by mail, to the ***nominated or*** elected candidate, unless he ***or she*** has failed to comply with KRS Chapter 121. The duplicate shall be retained in the office of the board.
- (4) Certificates of nomination for a judicial office shall be issued to the two (2) candidates receiving the highest number of votes, except that if more than two (2) candidates are found to have received the highest and an equal number of votes for the same office or if two (2) or more candidates are found to have received the second highest and an equal number of votes for the same office, the election shall be determined by lot in ***the***~~[such]~~ manner~~[as]~~ the board directs, in the presence of not less than three (3) other persons.
- (5) The certificate of election for a judicial office shall be issued to the candidate receiving the highest number of votes, except that if two (2) or more candidates are found to have received the highest and an equal number of votes for the same office, the election shall be determined by lot in ***the***~~[such]~~ manner~~[as]~~ the board directs, in the presence of not less than three (3) other persons.

**Signed by Governor April 12, 2010**