

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/21/11

A Bill

HOUSE BILL 2061

5 By: Representative Post
6

For An Act To Be Entitled

8 AN ACT TO REQUIRE AND REGULATE THE USE OF A CRIMINAL
9 BACKGROUND CHECK FOR CANDIDATES FOR PUBLIC OFFICE;
10 AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO REQUIRE AND REGULATE THE USE OF A
15 CRIMINAL BACKGROUND CHECK FOR CANDIDATES
16 FOR PUBLIC OFFICE.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 *SECTION 1. Arkansas Code § 7-6-102 is amended to read as follows:*

22 *7-6-102. Political practices pledge – Penalty for falsification*

23 *(a)(1) Candidates for political party nominations for state or*
24 *district offices shall file with the Secretary of State and candidates for*
25 *county, municipal, or township offices shall file with the county clerk of*
26 *the county during the filing period set out in § 7-7-203 for the preferential*
27 *primary election a pledge in writing stating that they are familiar with the*
28 *requirements of §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-103, 7-6-104, and*
29 *this section and will comply in good faith with their terms.*

30 *(2) Persons seeking nomination as independent candidates and*
31 *school district candidates shall file the political practices pledge at the*
32 *time of filing the petition for nomination.*

33 *(3) Independent candidates for municipal office shall file the*
34 *political practices pledge with the county clerk at the time of filing the*
35 *petition for nomination.*

36 *(4) Persons who wish to be write-in candidates shall file the*



1 *political practices pledge at the time of filing the notice to be a write-in*
2 *candidate.*

3 *(5) Nonpartisan judicial candidates paying filing fees in*
4 *accordance with § 7-10-103(b) shall file the political practices pledge at*
5 *the time of filing for office.*

6 *(6) Nonpartisan judicial candidates filing by petition in*
7 *accordance with § 7-10-103(c) shall file the political practices pledge at*
8 *the time of filing the petition.*

9 *(b) All political practices pledge forms for state or district offices*
10 *and county, municipal, or township offices shall be required to contain the*
11 *following additional pledge:*

12 *“I hereby certify that I have never been convicted of a any felony or a*
13 *misdemeanor crime of embezzlement of public money, bribery, or forgery in*
14 *Arkansas or in any other jurisdiction outside of Arkansas.”*

15 *(c) Any person who has been convicted of a any felony or a misdemeanor*
16 *crime of embezzlement of public money, bribery, or forgery and signs the*
17 *pledge stating that he or she has not been convicted of a any felony or a*
18 *misdemeanor crime of embezzlement of public money, bribery, or forgery shall*
19 *be guilty of a Class D felony.*

20 *(d) For purposes of this section, a person shall be qualified to be a*
21 *candidate for a state, district, county, municipal, and township office and*
22 *may certify that he or she has never been convicted of a any felony or a*
23 *misdemeanor crime of embezzlement of public money, bribery, or forgery if his*
24 *or her record was expunged in accordance with §§ 16-93-301 – 16-93-303, or a*
25 *similar expunction statute in another state, provided, the candidate presents*
26 *a certificate of expunction from the court that convicted the prospective*
27 *candidate.*

28 *(e)(1) The name of a candidate who fails to sign and file the pledge*
29 *shall not appear on the ballot.*

30 *(2)(A) However, within five (5) days from which the pledge is*
31 *required to be filed, the Secretary of State or the county clerk shall notify*
32 *by certified mail that requires a return receipt signed by the candidate*
33 *those candidates who have failed to file a signed political practice pledge.*
34 *The notice shall include a copy of the written pledge required by this*
35 *section.*

36 *(B) Failure of the state or district candidate to file*

1 with the Secretary of State or of the county, municipal, or township
2 candidate to file with the county clerk within twenty (20) days of receipt or
3 refusal of this notice shall prevent the candidate's name from appearing on
4 the ballot.

5
6 SECTION 2. Arkansas Code § 7-7-103, concerning filing as an
7 independent candidate, is amended to add an additional subsection to read as
8 follows:

9 (c)(1)(A) If an independent candidate qualifies to have his or her
10 name placed on the ballot under subsections (a) and (b) of this section, the
11 independent candidate shall be required to apply to the Identification Bureau
12 of the Department of Arkansas State Police for a state and national criminal
13 background check to be conducted by the Identification Bureau and the Federal
14 Bureau of Investigation.

15 (B) The independent candidate shall apply for the criminal
16 background check within three (3) days of qualifying to have his or her name
17 placed on the ballot.

18 (2) The criminal background check shall conform to applicable
19 federal standards and shall include the taking of fingerprints.

20 (3) The independent candidate shall sign a release of
21 information to the Secretary of State or county clerk, as the case may be,
22 and shall be responsible for the payment of any fee associated with the
23 criminal background check.

24 (4)(A) Upon completion of the criminal background check, the
25 Identification Bureau shall forward to the Secretary of State or the county
26 clerk, as the case may be, all releasable information obtained concerning the
27 independent candidate.

28 (B) The information provided to the Secretary of State or
29 the county clerk, as the case may be, under subdivision (c)(4)(A) of this
30 section shall be available for public inspection and copying.

31 (d)(1) The Secretary of State or the county clerk, as the case may be,
32 shall not certify an independent candidate who, as determined by a review of
33 the criminal background check conducted under subsection (a) of this section,
34 has been convicted of:

35 (A) Any felony; or

36 (B) A misdemeanor crime of embezzlement of public money,

1 bribery, or forgery.

2 (2) The name of an independent candidate who is not certified
3 under subdivision (d)(1) of this section shall not appear on the ballot.

4
5 SECTION 3. Arkansas Code § 7-7-203(d), concerning the certification of
6 candidates for preferential primary elections, is amended to read as follows:

7 (d)(1)(A) At least seventy (70) days before the preferential primary
8 election, the Secretary of State shall certify to the various county
9 committees and to the various county boards of election commissioners a list
10 of the names of all candidates who have filed party certificates with the
11 Secretary of State within the time required by law.

12 (B) The Secretary of State shall not certify a candidate
13 until receiving the results of a criminal background check under § 7-7-206.

14 (2)(A) At least seventy (70) days before the preferential
15 primary election, the county clerk shall certify to the county committees and
16 to the county board of election commissioners a list of the names of all
17 candidates who have filed party certificates with the county clerk within the
18 time required by law.

19 (B) The county clerk shall not certify a candidate until
20 receiving the results of a criminal background check under § 7-7-206.

21
22 SECTION 4. Arkansas Code § 7-7-205(e)(3), concerning candidates of new
23 political parties, is amended to read as follows:

24 (3)(A) Nominated candidates shall file a political practice
25 pledge with the Secretary of State or county clerk, as the case may be, no
26 later than sixty (60) days prior to the general election.

27 (B)(i)(a) A nominated candidate who files a political
28 practice pledge with the Secretary of State or county clerk, as the case may
29 be, shall be required to apply to the Identification Bureau of the Department
30 of Arkansas State Police for a state and national criminal background check
31 to be conducted by the Identification Bureau and the Federal Bureau of
32 Investigation.

33 (b) The nominated candidate shall apply for
34 the criminal background check within three (3) days of filing his or her
35 political practice pledge.

36 (ii) The criminal background check shall conform to

1 applicable federal standards and shall include the taking of fingerprints.

2 (iii) The nominated candidate shall sign a release
3 of information to the Secretary of State or county clerk, as the case may be,
4 and shall be responsible for the payment of any fee associated with the
5 criminal background check.

6 (iv)(a) Upon completion of the criminal background
7 check, the Identification Bureau shall forward to the Secretary of State or
8 the county clerk, as the case may be, all releasable information obtained
9 concerning the nominated candidate.

10 (b) The information provided to the Secretary
11 of State or the county clerk, as the case may be, under subdivision
12 (e)(3)(B)(iv)(a) of this section shall be available for public inspection and
13 copying.

14 (C)(i) The Secretary of State or the county clerk, as the
15 case may be, shall not certify a nominated candidate who, as determined by a
16 review of the criminal background check conducted under subdivision (e)(3)(B)
17 of this section, has been convicted of:

18 (a) Any felony; or

19 (b) A misdemeanor crime of embezzlement of
20 public money, bribery, or forgery.

21 (ii) The name of a nominated candidate who is not
22 certified under subdivision (e)(3)(C)(i) of this section shall not appear on
23 the ballot.

24
25 SECTION 5. Arkansas Code Title 7, Chapter 7, Subchapter 2 is amended
26 to add an additional section to read as follows:

27 7-7-206. Criminal background checks.

28 (a)(1)(A) A candidate who files a party certificate by the filing
29 deadline with the Secretary of State or county clerk, as the case may be,
30 shall be required to apply to the Identification Bureau of the Department of
31 Arkansas State Police for a state and national criminal background check to
32 be conducted by the Identification Bureau and the Federal Bureau of
33 Investigation.

34 (B) The candidate shall apply for the criminal background
35 check within three (3) days of filing his or her party certificate.

36 (2) The criminal background check shall conform to applicable

1 federal standards and shall include the taking of fingerprints.

2 (3) The candidate shall sign a release of information to the
3 Secretary of State or county clerk, as the case may be, and shall be
4 responsible for the payment of any fee associated with the criminal
5 background check.

6 (4)(A) Upon completion of the criminal background check, the
7 Identification Bureau shall forward to the Secretary of State or the county
8 clerk, as the case may be, all releasable information obtained concerning the
9 candidate.

10 (B) The information provided to the Secretary of State or
11 the county clerk, as the case may be, under subdivision (a)(4)(A) of this
12 section shall be available for public inspection and copying.

13 (b)(1) The Secretary of State or the county clerk, as the case may be,
14 shall not certify under § 7-7-203(d) a candidate who, as determined by a
15 review of the criminal background check conducted under subsection (a) of
16 this section, has been convicted of:

17 (A) Any felony; or

18 (B) A misdemeanor crime of embezzlement of public money,
19 bribery, or forgery.

20 (2) The name of a candidate who is not certified under
21 subdivision (b)(1) of this section shall not appear on the ballot.

22
23 *SECTION 6. Arkansas Code § 7-7-304(a) and (b), concerning names to be*
24 *included on ballots, is amended to read as follows:*

25 *(a)(1) Not less than seventy (70) days before each preferential*
26 *primary election, the Secretary of State shall certify to all county boards*
27 *of election commissioners full lists of the names of all candidates who have*
28 *filed party certificates with him or her to be placed on the ballots in their*
29 *respective counties at the preferential primary election.*

30 *(2) A name of a person shall not be certified and shall not be*
31 *placed on the ballot if prior to the certification a candidate:*

32 *(A) Notifies the Secretary of State in writing, signed by*
33 *the candidate and acknowledged before an officer authorized to take*
34 *acknowledgements, of his or her desire to withdraw as a candidate for the*
35 *office or position; ~~or~~*

36 *(B) Dies; or*

