

REPUBLIC OF SOUTH AFRICA

ELECTORAL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary
of Bill and prior notice of its introduction published in Government Gazette No. 45716 of
31 December 2021)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Electoral Act, 1998, so as to insert certain definitions consequential to the expansion of this Act to include independent candidates as contesters to elections in the National Assembly and provincial legislatures; to provide that registered parties must submit a declaration confirming that all its candidates are registered to vote in the region or province where an election will take place; to provide for the nomination of independent candidates to contest elections in the National Assembly or provincial legislatures; to provide for the requirements and qualifications which must be met by persons who wish to be registered as independent candidates; to provide the procedure to follow for a non-compliant nomination of an independent candidate; to provide for the inspection of copies of lists of independent candidates and accompanying documents; to provide for objections to independent candidates; to provide for the inclusion of a list of independent candidates entitled to contest elections; to provide that independent candidates are bound by the Electoral Code of Conduct; to provide for the return of a deposit to independent candidates in certain circumstances; to amend Schedule 1; to substitute Schedule 1A; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 73 of 1998, as amended by section 1 of Act 18 of 2013 and section 7 of Act 4 of 2021

1. Section 1 of the Electoral Act, 1998 (Act No. 73 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended—

(a) by the insertion after the definition of “agent” of the following definition:

“**‘candidate’** means a person contesting an election, or a person nominated on a list of a political party contesting an election, as the context requires;”;

(b) by the insertion after the definition of “Commission” of the following definition:

“**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;”;

(c) by the insertion after the definition of “identity document” of the following definition:

“**‘independent candidate’** means a person contesting an election and who is not nominated on a list of a political party;”;

- (d) by the insertion after the definition of “list of candidates” of the following definition:
- “‘list of independent candidates’** means the list of independent candidates referred to in sections 31D and 31F;”;
- (e) by the insertion after the definition of “presiding officer” of the following definitions:
- “‘province’** means a province referred to in section 103 of the Constitution;
- ‘region’** means the territorial area of a province;”.

Amendment of section 27 of Act 73 of 1998, as amended by section 10 of Act 4 of 2021

2. Section 27 of the principal Act is hereby amended by the insertion in subsection (2) of the following paragraph after paragraph (c):

“(cA) declaration, signed by each candidate appearing on the party’s regional list of candidates or provincial list of candidates referred to in Schedule 1A, confirming that he or she is registered to vote within the region or province in which the election will take place;”.

Amendment of section 28 of Act 73 of 1998, as amended by section 11 of Act 1 of 2019 and section 11 of Act 4 of 2021

3. Section 28 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections respectively:

“(1) If a registered party that has submitted a list of candidates has not fully complied with section 27(2)(a), (b), (cA), (d) or section 27(4), the chief electoral officer must notify that party of its non-compliance.

(2) The notification must be given in the prescribed manner by not later than the relevant date stated in the election timetable, and must indicate that the party has an opportunity to comply with section 27(2)(a), (b), (cA), (d) or section 27(4), by not later than the relevant date stated in the election timetable.”.

Insertion of Part 3A in Chapter 3 in Act 73 of 1998

4. The following Part is inserted in Chapter 3 of the principal Act after Part 3:

“Part 3A

Independent candidates

Nomination of independent candidate

31A. (1) A person may be nominated to contest an election as an independent candidate in a region for the National Assembly or for a provincial legislature if that person is—

- (a) ordinarily resident in the region or province concerned; and
- (b) registered as a voter on the segment of the voters’ roll for the region or province concerned.

(2) Provided the other provisions of this Act are complied with, a person nominated in terms of subsection (1) stands as an independent candidate in that election.

Requirements and qualifications for independent candidates to contest elections

31B. (1) A person may contest an election as an independent candidate only if that person is nominated on a prescribed form and that form is submitted to the Commission by not later than a date stated in the timetable for the election and complies with the requirements of subsection (3).

(2) The prescribed nomination form must be submitted in the prescribed manner by not later than the relevant date stated in the election timetable.

(3) The following must be attached to a nomination when it is submitted:

- (a) A completed prescribed form, with at least the prescribed minimum number of signatures of voters whose names appear on the segment of the voters' roll for the region or province in which the candidate is standing for election;
- (b) a deposit equal to a prescribed amount, if any, payable in the prescribed form and manner;
- (c) a prescribed undertaking, signed by the candidate, to be bound by the Code;
- (d) a prescribed declaration, signed by the candidate, that he or she is not disqualified from standing for election in terms of the Constitution or any applicable legislation;
- (e) a prescribed declaration, signed by the candidate, confirming that his or her residential address is situated within the region or province in which the election will take place that he or she intends contesting;
- (f) a prescribed declaration, signed by the candidate, confirming that he or she has not been a member of any political party for at least three months preceding the date of the nomination; and
- (g) a recent photograph of the candidate in such form as may be prescribed.

(4) The Commission may in the form and manner as may be prescribed request—

- (a) an acceptance of nomination signed by the candidate; and
- (b) a copy of the identity card or that page of the candidate's identity document on which the candidate's photo, name and identity number appear.

(5) The Commission must accept a nomination submitted to it and allow the nominated person to stand as a candidate in the election if the provisions of section 31A and this section have been complied with.

Non-compliance

31C. (1) If the nomination of an independent candidate does not fully comply with section 31B(3)(a), (c), (d), (e), (f), (g) or section 31B(4), the chief electoral officer must notify the nominated person of the non-compliance.

(2) The notification must be given in the prescribed manner by not later than the relevant date stated in the election timetable, and must indicate that the nominated person has an opportunity to comply with section 31B(3) (a), (c), (d), (e), (f), (g) or section 31B(4), by not later than the relevant date stated in the election timetable.

(3) If a person has been nominated both as an independent candidate and by one or more parties for an election—

- (a) the chief electoral officer must, where possible, in writing, notify the person and such party or parties who have nominated such person about such state of affairs by no later than the relevant date and time stated in the election timetable; and
- (b) the party or parties to whom notice has been given in terms of paragraph (a) may, by not later than the relevant date and time stated in the election timetable, substitute such a candidate.

Inspection of copies of lists of independent candidates and accompanying documents

31D. (1) By not later than the relevant date stated in the election timetable, the chief electoral officer must—

- (a) compile a draft list of independent candidates; and

- (b) give notice that copies of the draft list of independent candidates and accompanying documents submitted in terms of section 31B, as amended and supplemented in terms of section 31C, will be available for inspection.
- (2) The notice referred to in subsection (1)(b) must be—
- (a) published in the *Government Gazette*; and
- (b) publicised in the media considered appropriate by the chief electoral officer so as to ensure wide publicity of the lists.
- (3) The notice referred to in subsection (1)(b) must state, and the chief electoral officer must ensure, that for the relevant period stated in the election timetable—
- (a) copies of the lists for—
- (i) an election of the National Assembly, will be available for inspection at the Commission's head office, a place in each province designated in the notice and the office of each municipality in the country; and
- (ii) an election of a provincial legislature, will be available for inspection at the Commission's head office, a place in the province designated in the notice and the office of each municipality in that province; and
- (b) copies of the documents accompanying the lists are available for inspection at the Commission's head office.
- (4) Any person may inspect a copy of the draft list of independent candidates and accompanying documents referred to in subsection (1).
- (5) The chief electoral officer must provide a certified copy of, or extract from, the draft list of independent candidates or document referred to in subsection (1), to any person who has paid the prescribed fee.

Objections to independent candidates

- 31E.** (1) Any person, including the chief electoral officer, may object to the nomination of an independent candidate on the following grounds:
- (a) The nominated candidate is not qualified to stand in the election;
- (b) the nominated candidate has failed to submit the prescribed acceptance of nomination signed by the candidate as contemplated in section 31B(4); or
- (c) there is no prescribed undertaking, signed by the nominated candidate, that the candidate is bound by the Code.
- (2) The objection must be made to the Commission in the prescribed manner by not later than the relevant date stated in the election timetable, and must be served on the nominated candidate.
- (3) The Commission must decide the objection, and must notify the objector and the nominated candidate of the decision in the prescribed manner by not later than the relevant date stated in the election timetable.
- (4) The objector, or the nominated candidate, may appeal against the decision of the Commission to the Electoral Court in the prescribed manner and by not later than the relevant date stated in the election timetable.
- (5) The Electoral Court must consider and decide the appeal and notify the parties to the appeal and the chief electoral officer of the decision in the prescribed manner and by not later than the relevant date stated in the election timetable.
- (6) If the Commission or the Electoral Court decides that a candidate's nomination does not comply with section 31B, the Commission or the Electoral Court may allow the nominated candidate an opportunity to comply with that section.

List of independent candidates entitled to contest election

- 31F.** (1) By not later than the relevant date stated in the election timetable, the chief electoral officer must—