

108TH CONGRESS
2D SESSION

H. R. 5390

To amend title 3, United States Code, to revise the procedures for Presidential succession in the case of the death, resignation, removal from office, inability, or failure to qualify of the President, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2004

Mr. SHERMAN introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend title 3, United States Code, to revise the procedures for Presidential succession in the case of the death, resignation, removal from office, inability, or failure to qualify of the President, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Presidential Succession
5 Act of 2004”.

6 **SEC. 2. PRESIDENTIAL SUCCESSION.**

7 Section 19 of title 3, United States Code, is amended
8 to read as follows:

1 **“§ 19. Vacancy in offices of both President and Vice**
2 **President; officers eligible to Act**

3 “(a) IN GENERAL.—

4 “(1) USE OF SUCCESSION LIST.—Except as
5 provided in paragraph (2), if, by reason of death,
6 resignation, removal from office, inability, or failure
7 to qualify, there is neither a President nor Vice
8 President to discharge the powers and duties of the
9 office of President, then the highest individual on
10 the succession list who is eligible to the office of
11 President under the Constitution, not under dis-
12 ability to discharge the powers and duties of the of-
13 fice of President, and not disqualified under sub-
14 section (e), shall act as President.

15 “(2) SPECIAL RULE IF NO PRESIDENT OR VICE
16 PRESIDENT IS ELECTED PRIOR TO BEGINNING OF
17 TERM.—

18 “(A) IN GENERAL.—If, at the time fixed
19 for the beginning of the term of the President,
20 a President has not been chosen or the Presi-
21 dent elect has failed to qualify, and a Vice
22 President has not been chosen or the Vice
23 President elect has failed to qualify—

24 “(i) the Speaker of the House of Rep-
25 resentatives shall act as President; or

1 “(ii) if the Speaker of the House of
2 Representatives does not qualify, the ma-
3 jority leader of the Senate shall act as
4 President.

5 “(B) NO NOMINATION OF VICE PRESI-
6 DENT.—An individual acting as President
7 under this paragraph may not nominate any in-
8 dividual to serve as Vice President.

9 “(3) DETERMINATION OF INABILITY TO
10 SERVE.—For purposes of this subsection, an indi-
11 vidual may not be considered to be unable to serve
12 as President or Vice President unless—

13 “(A) the individual or an individual legally
14 authorized to act on the individual’s behalf files
15 a statement with the Supreme Court of the
16 United States that the individual is unable to
17 carry out the powers and duties of the office;
18 and

19 “(B) the Supreme Court certifies that the
20 statement is correct.

21 “(b) TERMINATION OF SERVICE.—An individual act-
22 ing as President under this section shall continue to so
23 act until the expiration of the then current Presidential
24 term except that—

1 “(1) if the individual’s service as President
2 under this section results in whole or in part from
3 the failure of both the President-elect and the Vice-
4 President-elect to qualify, the individual shall act
5 only until a President or Vice President qualifies;

6 “(2) if the individual’s service as President
7 under this section results in whole or in part from
8 the inability of the President or Vice President, the
9 individual shall act only until the removal of the dis-
10 ability of one of such individuals; and

11 “(3) if the individual’s service as President
12 under this section results from the application of
13 subsection (a)(2), the individual shall act only until
14 a President or Vice President has been chosen or
15 qualifies (as the case may be).

16 “(c) SUCCESSION LIST DESCRIBED.—

17 “(1) IN GENERAL.—Subject to paragraph (2),
18 for purposes of this section, the term ‘succession list’
19 means the following list:

20 “(A) The Secretary of State, the Secretary
21 of the Treasury, the Secretary of Defense, the
22 Attorney General, the Secretary of the Interior,
23 the Secretary of Agriculture, the Secretary of
24 Commerce, the Secretary of Labor, the Sec-
25 retary of Health and Human Services, the Sec-

retary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, and the Secretary of Homeland Security.

“(B) The United States Ambassadors to the following (in the following order):

“(i) The United Nations.

“(ii) The United Kingdom of Great Britain and Northern Ireland.

“(iii) The French Republic.

“(iv) The Russian Federation.

“(v) The People’s Republic of China.

“(2) REQUIRING APPOINTMENT BY PRESIDENT.—

“(A) IN GENERAL.—For purposes of paragraph (1) and except as provided in subparagraphs (B) and (C), an individual shall not be considered to hold any office referred to in such paragraph unless the individual was appointed to the office by the President whom the individual would succeed pursuant to this section.

“(B) SPECIAL RULE FOR INDIVIDUALS APPOINTED BY FORMER PRESIDENT SUCCEEDED BY VICE PRESIDENT.—For purposes of sub-

1 paragraph (A), if the President who appointed
2 an individual to an office referred to in para-
3 graph (1) no longer serves as President by rea-
4 son of death, resignation, removal from office,
5 inability, or failure to qualify, the individual
6 shall be deemed to have been appointed to the
7 office by the individual succeeding that Presi-
8 dent if the successor President served as the
9 Vice President of that President.

10 “(C) SPECIAL RULE FOR INDIVIDUALS
11 SUGGESTED OR APPROVED BY PRESIDENT-
12 ELECT.—For purposes of subparagraph (A), if
13 an individual who holds an office referred to in
14 paragraph (1) was appointed by a sitting Presi-
15 dent, the individual shall be deemed to have
16 been appointed by the President-elect if—

17 “(i) the individual was appointed pur-
18 suant to a suggestion by the President-
19 elect so that the individual may begin serv-
20 ing in the office immediately upon the in-
21 auguration of the President-elect (as de-
22 scribed in paragraph (3)); or

23 “(ii) if the President-elect notifies the
24 Clerk of the House of Representatives and
25 the Secretary of the Senate that the Presi-

1 dent-elect approves the appointment of the
2 individual to the office for purposes of
3 paragraph (1).

4 “(3) SENSE OF CONGRESS REGARDING SUBMIS-
5 SION OF NOMINEES SUGGESTED BY PRESIDENT-
6 ELECT.—It is the sense of Congress that, prior to
7 the inauguration of a President-elect—

8 “(A) the President-elect should submit to
9 the sitting President suggestions for nominees
10 to the offices referred to in the succession list;

11 “(B) the sitting President should submit to
12 the Senate the nominations of the individuals
13 suggested by the President-elect; and

14 “(C) the Senate should confirm the ap-
15 pointment of the nominees submitted by the sit-
16 ting President so that such individuals may
17 begin serving in the offices involved immediately
18 upon the inauguration of the President-elect.

19 “(d) SPECIAL RULE IF NO INDIVIDUAL IS ON SUC-
20 CESSION LIST.—

21 “(1) IN GENERAL.—If, by reason of death, res-
22 ignation, removal from office, inability, or failure to
23 qualify, there is neither a President nor Vice Presi-
24 dent to discharge the powers and duties of the office

1 of President, and if there is no individual on the suc-
2 cession list—

3 “(A) the Speaker of the House of Rep-
4 resentatives or the minority leader of the House
5 of Representatives, as designated by the Presi-
6 dent-elect in the most recent notice filed under
7 paragraph (2), shall act as President; or

8 “(B) if the Speaker or minority leader does
9 not qualify, the majority leader of the Senate or
10 the minority leader of the Senate, as designated
11 by the President-elect in the most recent notice
12 filed under paragraph (2), shall act as Presi-
13 dent.

14 “(2) DESIGNATION BY PRESIDENT-ELECT.—
15 Prior to taking office, the President-elect shall file
16 with the Clerk of the House of Representatives and
17 the Secretary of the Senate a notice designating
18 whether the Speaker or the minority leader of the
19 House of Representatives, and whether the majority
20 leader or minority leader of the Senate, should act
21 as President pursuant to this subsection, and may
22 file a revised version of the notice at any time, in-
23 cluding after taking office.

24 “(e) RESIGNATION FROM CURRENT OFFICE.—An in-
25 dividual is disqualified to discharge the powers and duties

1 of the office of President for purposes of this section un-
2 less such individual, at the time that such powers and du-
3 ties devolve upon the individual, meets the following re-
4 quirements:

5 “(1) In the case of the Speaker of the House
6 of Representatives under subsection (a)(2)(A) or
7 subsection (d)(1), the individual resigns the office of
8 Speaker and (in the case of an individual who is a
9 Member of the House of Representatives) the office
10 of Member of the House of Representatives.

11 “(2) In the case of the minority leader of the
12 House of Representatives under subsection (d)(1),
13 the individual resigns the office of Member of the
14 House of Representatives.

15 “(3) In the case of the majority leader of the
16 Senate under subsection (a)(2)(B) or subsection
17 (d)(2), or the minority leader of the Senate under
18 subsection (d)(2), the individual resigns the office of
19 Senator.

20 “(4) In the case of an individual described in
21 subsection (c), the individual resigns the office by
22 virtue of the holding of which the individual qualifies
23 to act as President.

24 “(f) APPLICATION OF PROCEDURES TO INDIVIDUALS
25 ACTING AS PRESIDENT UNDER THIS SECTION.—The rule

1 of subsection (a) shall also apply in the case of the death,
 2 resignation, removal from office, or inability of an indi-
 3 vidual acting as President under this section if, by reason
 4 of death, resignation, removal from office, inability, or fail-
 5 ure to qualify, there is no Vice President to discharge the
 6 powers and duties of the office of President.

7 “(g) NOMINATION OF VICE PRESIDENT.—Except as
 8 provided in subsection (a)(2)(B), an individual acting as
 9 President under this section shall promptly nominate a
 10 Vice President upon any vacancy in the office of Vice
 11 President.

12 “(h) COMPENSATION.—During the period that any
 13 individual acts as President under this section, the individ-
 14 ual’s compensation shall be at the rate then provided by
 15 law in the case of the President.”.

16 **SEC. 3. SENSE OF CONGRESS REGARDING VOTES BY ELEC-**
 17 **TORS AFTER DEATH OR INCAPACITY OF**
 18 **NOMINEES.**

19 It is the sense of Congress that—

20 (1) during a Presidential election year, the 2
 21 nominees of each political party for the office of
 22 President and Vice President should jointly an-
 23 nounce and designate on or before the first Monday
 24 in September the individuals for whom the electors
 25 of President and Vice President who are pledged to

1 vote for such nominees should give their votes for
2 such offices in the event that such nominees are de-
3 ceased or permanently incapacitated prior to the
4 date of the meeting of the electors of each State
5 under section 7 of title 3, United States Code;

6 (2) in the event a nominee for President is de-
7 ceased or permanently incapacitated prior to the
8 date referred to in paragraph (1) (but the nominee
9 for Vice President of the same political party is not
10 deceased or permanently incapacitated), the electors
11 of President who are pledged to vote for the nominee
12 should give their votes to the nominee of the same
13 political party for the office of Vice President, and
14 the electors of Vice President who are pledged to
15 vote for the nominee for Vice President should give
16 their votes to the individual designated for such of-
17 fice by the nominees under paragraph (1);

18 (3) in the event a nominee for Vice President
19 is deceased or permanently incapacitated prior to the
20 date referred to in paragraph (1) (but the nominee
21 for President of the same political party is not de-
22 ceased or permanently incapacitated), the electors of
23 Vice President who are pledged to vote for such
24 nominee should give their votes to the individual des-

1 ignated for such office by the nominees under para-
2 graph (1);

3 (4) in the event that both the nominee for
4 President and the nominee for Vice President of the
5 same political party are deceased or permanently in-
6 capacitated prior to the date referred to in para-
7 graph (1), the electors of President and Vice Presi-
8 dent who are pledged to vote for such nominees
9 should vote for the individuals designated for each
10 such office by the nominees under paragraph (1);
11 and

12 (5) political parties should establish rules and
13 procedures consistent with the procedures described
14 in the preceding paragraphs, including procedures to
15 obtain written pledges from electors to vote in the
16 manner described in such paragraphs.

17 **SEC. 4. SENSE OF CONGRESS REGARDING STATUS OF**
18 **PRESIDENT-ELECT.**

19 It is the sense of Congress that, for purposes of the
20 twentieth amendment to the Constitution, the President-
21 elect is the individual receiving the requisite number of
22 votes cast by the electors at the meeting of the electors
23 held pursuant to clause 3 of section 1 of article II of the
24 Constitution.

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