

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 638 Session of 2017

INTRODUCED BY SIMMONS, KAUFFMAN, CALTAGIRONE, GROVE, GILLEN, ROTHMAN, COX, GABLER AND METCALFE, FEBRUARY 27, 2017

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 13, 2018

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled
2 "An act concerning elections, including general, municipal,
3 special and primary elections, the nomination of candidates,
4 primary and election expenses and election contests; creating
5 and defining membership of county boards of elections;
6 imposing duties upon the Secretary of the Commonwealth,
7 courts, county boards of elections, county commissioners;
8 imposing penalties for violation of the act, and codifying,
9 revising and consolidating the laws relating thereto; and
10 repealing certain acts and parts of acts relating to
11 elections," in district election officers, further providing
12 for election officers to be sworn; in dates of elections and
13 primaries and special elections, further providing for
14 affidavits of candidates; in nomination of candidates,
15 further providing for petition may consist of several sheets
16 and affidavit of circulator, for affidavits of candidates,
17 for examination of nomination petitions, certificates and
18 papers and return of rejected nomination petitions,
19 certificates and papers, for vacancy in party nomination by
20 failure to pay filing fee or for failure to file loyalty
21 oath, for affidavits of candidates, for filling of certain
22 vacancies in public office by means of nomination
23 certificates and nomination papers and for substituted
24 nominations to fill certain vacancies for a November
25 election; in ballots, further providing for form and printing
26 of ballots; in returns of primaries and elections, further
27 providing for manner of computing irregular ballots; and <--
28 replacing references to "justice of the peace" with
29 "magisterial district judge." JUDGE"; AND REMOVING REFERENCES <--
30 TO THE "TRAFFIC COURT OF PHILADELPHIA."

31 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Sections 406, 630.1, 909, 910, 976, 978.1, 981.1,  
3 993(a) and (b), 998(a) and (b), 1004 and 1405 of the act of June  
4 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election  
5 Code, are amended to read:

6 Section 406. Election Officers to Be Sworn.--All judges,  
7 inspectors, clerks of election and machine inspectors shall,  
8 before entering upon their duties at any primary or election, be  
9 duly sworn in the presence of each other and of the watchers and  
10 overseers, if any. The judge shall first be sworn by the  
11 minority inspector or by a magistrate, alderman or [justice of  
12 the peace] magisterial district judge, and the inspectors,  
13 clerks and machine inspectors shall then be sworn by the judge.  
14 Each of them shall forthwith sign in duplicate the oath taken by  
15 him upon forms to be furnished by the county board, and the same  
16 shall be attested by the officer who administered the oath.

17 Section 630.1. Affidavits of Candidates.--Each candidate for  
18 any State, county, city, borough, incorporated town, township,  
19 school district or poor district office, or for the office of  
20 United States Senator or Representative in Congress, selected as  
21 provided in section 630 of this act, shall file with the  
22 nomination certificate an affidavit stating--(a) his residence,  
23 with street and number, if any, and his post-office address; (b)  
24 his election district, giving city, borough, town or township;  
25 (c) the name of the office for which he consents to be a  
26 candidate; (d) that he is eligible for such office; (e) that he  
27 will not knowingly violate any provision of this act, or of any  
28 law regulating and limiting election expenses and prohibiting  
29 corrupt practices in connection therewith; (f) unless he is a  
30 candidate for judge of a court of common pleas[, ] OR the <--

1 Philadelphia Municipal Court [or the Traffic Court of <--  
2 Philadelphia, for for the office of school board in a district <--  
3 where that office is elective] or for the office of [justice of  
4 the peace] magisterial district judge, that he is not a  
5 candidate for the same office of any party or political body  
6 other than the one designated in such certificate; (g) that he  
7 is aware of the provisions of section 1626 of this act requiring  
8 election and post-election reporting of campaign contributions  
9 and expenditures; and (h) that he is not a candidate for an  
10 office which he already holds, the term of which is not set to  
11 expire in the same year as the office subject to the affidavit.

12 Section 909. Petition May Consist of Several Sheets;  
13 Affidavit of Circulator.--Said nomination petition may be on one  
14 or more sheets, and different sheets must be used for signers  
15 resident in different counties. If more than one sheet is used,  
16 they shall be bound together when offered for filing if they are  
17 intended to constitute one petition, and each sheet shall be  
18 numbered consecutively beginning with number one, at the foot of  
19 each page. In cases of petitions for delegate or alternate  
20 delegate to National conventions, each sheet shall contain a  
21 notation indicating the presidential candidate to whom he is  
22 committed or the term "uncommitted." Each sheet shall have  
23 appended thereto the affidavit of the circulator of each sheet,  
24 setting forth--(a) that he or she is a qualified elector duly  
25 registered and enrolled as a member of the designated party of  
26 the State, or of the political district, as the case may be,  
27 referred to in said petition, unless said petition relates to  
28 the nomination of a candidate for a court of common pleas, for  
29 the Philadelphia Municipal Court [or for the Traffic Court of <--  
30 Philadelphia] or for [justice of the peace] magisterial district <--

1 judge, in which event the circulator need not be a duly  
2 registered and enrolled member of the designated party; (b) his  
3 residence, giving city, borough or township, with street and  
4 number, if any; (c) that the signers thereto signed with full  
5 knowledge of the contents of the petition; (d) that their  
6 respective residences are correctly stated therein; (e) that  
7 they all reside in the county named in the affidavit; (f) that  
8 each signed on the date set opposite his name; and (g) that, to  
9 the best of affiant's knowledge and belief, the signers are  
10 qualified electors and duly registered and enrolled members of  
11 the designated party of the State, or of the political district,  
12 as the case may be.

13 Section 910. Affidavits of Candidates.--Each candidate for  
14 any State, county, city, borough, incorporated town, township,  
15 ward, school district, poor district, election district, party  
16 office, party delegate or alternate, or for the office of United  
17 States Senator or Representative in Congress, shall file with  
18 his nomination petition his affidavit stating--(a) his  
19 residence, with street and number, if any, and his post-office  
20 address; (b) his election district, giving city, borough, town  
21 or township; (c) the name of the office for which he consents to  
22 be a candidate; (d) that he is eligible for such office; (e)  
23 that he will not knowingly violate any provision of this act, or  
24 of any law regulating and limiting nomination and election  
25 expenses and prohibiting corrupt practices in connection  
26 therewith; (f) unless he is a candidate for judge of a court of  
27 common pleas[, ] OR the Philadelphia Municipal Court [or the <--  
28 Traffic Court of Philadelphia, ~~for~~ for the office of school <--  
29 director in a district where that office is elective] or for the  
30 office of [justice of the peace] magisterial district judge that

1 he is not a candidate for nomination for the same office of any  
2 party other than the one designated in such petition; (g) if he  
3 is a candidate for a delegate, or alternate delegate, member of  
4 State committee, National committee or party officer, that he is  
5 a registered and enrolled member of the designated party; (h) if  
6 he is a candidate for delegate or alternate delegate the  
7 presidential candidate to whom he is committed or the term  
8 "uncommitted"; (i) that he is aware of the provisions of section  
9 1626 of this act requiring pre-election and post-election  
10 reporting of campaign contributions and expenditures; and (j)  
11 that he is not a candidate for an office which he already holds,  
12 the term of which is not set to expire in the same year as the  
13 office subject to the affidavit. In cases of petitions for  
14 delegate and alternate delegate to National conventions, the  
15 candidate's affidavit shall state that his signature to the  
16 delegate's statement, as hereinafter set forth, if such  
17 statement is signed by said candidate, was affixed to the sheet  
18 or sheets of said petition prior to the circulation of same. In  
19 the case of a candidate for nomination as President of the  
20 United States, it shall not be necessary for such candidate to  
21 file the affidavit required in this section to be filed by  
22 candidates, but the post-office address of such candidate shall  
23 be stated in such nomination petition.

24 Section 976. Examination of Nomination Petitions,  
25 Certificates and Papers; Return of Rejected Nomination  
26 Petitions, Certificates and Papers.--When any nomination  
27 petition, nomination certificate or nomination paper is  
28 presented in the office of the Secretary of the Commonwealth or  
29 of any county board of elections for filing within the period  
30 limited by this act, it shall be the duty of the said officer or

1 board to examine the same. No nomination petition, nomination  
2 paper or nomination certificate shall be permitted to be filed  
3 if--(a) it contains material errors or defects apparent on the  
4 face thereof, or on the face of the appended or accompanying  
5 affidavits; or (b) it contains material alterations made after  
6 signing without the consent of the signers; or (c) it does not  
7 contain a sufficient number of signatures as required by law;  
8 Provided, however, That the Secretary of the Commonwealth or the  
9 county board of elections, although not hereby required so to  
10 do, may question the genuineness of any signature or signatures  
11 appearing thereon, and if he or it shall thereupon find that any  
12 such signature or signatures are not genuine, such signature or  
13 signatures shall be disregarded in determining whether the  
14 nomination petition, nomination paper or nomination certificate  
15 contains a sufficient number of signatures as required by law;  
16 or (d) in the case of nomination petitions, if nomination  
17 petitions have been filed for printing the name of the same  
18 person for the same office, except the office of judge of a  
19 court of common pleas[, ] OR the Philadelphia Municipal Court [or <--  
20 the Traffic Court of Philadelphia†, or the office of school <--  
21 director in districts where that office is elective] or the  
22 office of [justice of the peace] magisterial district judge upon  
23 the official ballot of more than one political party; or (e) in  
24 the case of nomination papers, if the candidate named therein  
25 has filed a nomination petition for any public office for the  
26 ensuing primary, or has been nominated for any such office by  
27 nomination papers previously filed; or (f) if the nomination  
28 petitions or papers are not accompanied by the filing fee or  
29 certified check required for said office; or (g) in the case of  
30 nomination papers, the appellation set forth therein is

1 identical with or deceptively similar to the words used by any  
2 existing party or by any political body which has already filed  
3 nomination papers for the same office, or if the appellation set  
4 forth therein contains part of the name, or an abbreviation of  
5 the name or part of the name of an existing political party, or  
6 of a political body which has already filed nomination papers  
7 for the same office. The invalidity of any sheet of a nomination  
8 petition or nomination paper shall not affect the validity of  
9 such petition or paper if a sufficient petition or paper remains  
10 after eliminating such invalid sheet. The action of said officer  
11 or board in refusing to receive and file any such nomination  
12 petition, certificate or paper, may be reviewed by the court  
13 upon an application to compel its reception as of the date when  
14 it was presented to the office of such officer or board:

15 Provided, however, That said officer or board shall be entitled  
16 to a reasonable time in which to examine any petitions,  
17 certificates or papers, and to summon and interrogate the  
18 candidates named therein, or the persons presenting said  
19 petitions, certificates or papers, and his or their retention of  
20 same for the purpose of making such examination or interrogation  
21 shall not be construed as an acceptance or filing.

22 Upon completion of any examination, if any nomination  
23 petition, certificate or paper is found to be defective, it  
24 shall forthwith be rejected and returned to the candidate or one  
25 of the candidates named therein, together with a statement of  
26 the reasons for such rejection:

27 Provided further, That no nomination petition, nomination  
28 paper or nomination certificate shall be permitted to be filed,  
29 if the political party or political body referred to therein  
30 shall be composed of a group of electors whose purposes or aims,

1 or one of whose purposes or aims, is the establishment, control,  
2 conduct, seizure or overthrow of the Government of the  
3 Commonwealth of Pennsylvania or the United States of America by  
4 the use of force, violence, military measure or threats of one  
5 or more of the foregoing. The authority to reject such  
6 nomination petition, paper or certificate for this reason shall,  
7 when filed with the Secretary of the Commonwealth, be vested in  
8 a committee composed of the Governor, the Attorney General and  
9 the Secretary of the Commonwealth, and when filed with any  
10 county board of elections shall be vested in such board. If in  
11 such case the committee or board, as the case may be, shall  
12 conclude that the acceptance of such nomination petition, paper  
13 or certificate should be refused, it shall within two days of  
14 the filing of such nomination petition, paper or certificate fix  
15 a place and a time five days in advance for hearing the matter,  
16 and notice thereof shall be given to all parties affected  
17 thereby. At the time and place so fixed the committee or board,  
18 as the case may be, shall hear testimony, but shall not be bound  
19 by technical rules of evidence. The testimony presented shall be  
20 stenographically recorded and made a part of the record of the  
21 committee or board. Within two days after such hearing the  
22 committee or board, if satisfied upon competent evidence that  
23 the said nomination petition, paper or certificate is not  
24 entitled to be accepted and filed, it shall announce its  
25 decision and immediately notify the parties affected thereby.  
26 Failure to announce decision within two days after such hearing  
27 shall be conclusive that such nomination petition, paper or  
28 certificate has been accepted and filed. The decision of said  
29 committee or board in refusing to accept and file such  
30 nomination petition, paper or certificate may be reviewed by the



1 court upon an application to compel its reception as of the date  
2 when presented to the Secretary of the Commonwealth or such  
3 board. The application shall be made within two days of the time  
4 when such decision is announced. If the application is properly  
5 made, any judge of said court may fix a time and place for  
6 hearing the matter in dispute, of which notice shall be served  
7 with a copy of said application upon the Secretary of the  
8 Commonwealth or the county board of elections, as the case may  
9 be. At the time so fixed, the court, or any judge thereof  
10 assigned for the purpose, shall hear the case de novo. If after  
11 such hearing the said court shall find that the decision of the  
12 committee or the board was erroneous, it shall issue its mandate  
13 to the committee or board to correct its decision and to accept  
14 and file the nomination paper, petition or certificate. From any  
15 decision of the court an appeal may be taken within two days  
16 after the entry thereof. It shall be the duty of the said court  
17 to fix the hearing and to announce its decision within such  
18 period of time as will permit the Secretary of the Commonwealth  
19 or the county board of elections to permit the names of the  
20 candidates affected by the court's decision to be printed on the  
21 ballot, if the court should so determine.

22 Section 978.1. Vacancy in Party Nomination by Failure to Pay  
23 Filing Fee or for Failure to File Loyalty Oath.--Every person  
24 nominated at any primary election as the candidate of any  
25 political party for any office, other than a borough, town,  
26 township, school district or poor district office, or the office  
27 of [justice of the peace] magisterial district judge, or  
28 constable, who has not paid the filing fee required by section  
29 nine hundred thirteen of this act, as amended, for the filing of  
30 a nomination petition for such office, or who has not filed the

1 loyalty oath required by section 14, act of December 22, 1951  
2 (P.L.1726), known as the "Pennsylvania Loyalty Act," as last  
3 amended June 19, 1961 (P.L.446), shall pay the amount of such  
4 fee to and file such oath with the Secretary of the  
5 Commonwealth, or the county board of elections, as the case may  
6 be, at least eighty-five (85) days previous to the day of the  
7 general or municipal election at which such candidate's name  
8 would appear on the ballot. Failure to pay such fee or file such  
9 oath within the time herein prescribed shall result in a vacancy  
10 in such party nomination. Such vacancy shall be filled in the  
11 manner hereinafter provided for the filling of such vacancies  
12 happening by reason of the death or withdrawal of any candidate.

13 Section 981.1. Affidavits of Candidates.--Each candidate for  
14 any State, county, city, borough, incorporated town, township,  
15 ward, school district, poor district or election district  
16 office, or for the office of United States Senator or  
17 Representative in Congress, selected as provided in sections 979  
18 and 980 of this act, shall file with the substituted nomination  
19 certificate an affidavit stating--(a) his residence, with street  
20 and number, if any, and his post-office address; (b) his  
21 election district, giving city, borough, town or township; (c)  
22 the name of the office for which he consents to be a candidate;  
23 (d) that he is eligible for such office; (e) that he will not  
24 knowingly violate any provision of this act, or of any law  
25 regulating and limiting election expenses and prohibiting  
26 corrupt practices in connection therewith; (f) unless he is a  
27 candidate for judge of a court of common pleas[, ] OR the <--  
28 Philadelphia Municipal Court [or the Traffic Court of <--  
29 Philadelphia, for for the office of school board in a district <--  
30 where that office is elective] or for the office of [justice of

1 the peace] magisterial district judge, that he is not a  
2 candidate for the same office of any party or political body  
3 other than the one designated in such certificate; (g) that he  
4 is aware of the provisions of section 1626 of this act requiring  
5 election and post-election reporting of campaign contributions  
6 and expenditures; and (h) that he is not a candidate for an  
7 office which he already holds, the term of which is not set to  
8 expire in the same year as the office subject to the affidavit.

9 Section 993. Filling of Certain Vacancies in Public Office  
10 by Means of Nomination Certificates and Nomination Papers.--(a)  
11 In all cases where a vacancy shall occur for any cause in an  
12 elective public office, including that of judge of a court of  
13 record, at a time when such vacancy is required by the  
14 provisions of the Constitution or the laws of this Commonwealth  
15 to be filled at the ensuing election but at a time when  
16 nominations for such office cannot be made under any other  
17 provision of this act, nominations to fill such vacancies shall  
18 be made by political parties in accordance with party rules  
19 relating to the filling of vacancies by means of nomination  
20 certificates in the form prescribed in section nine hundred  
21 ninety-four of this act, and by political bodies by means of  
22 nomination papers in accordance with the provisions of sections  
23 nine hundred fifty-one, nine hundred fifty-two and nine hundred  
24 fifty-four of this act. No such nomination certificate shall  
25 nominate any person who has already been nominated by any other  
26 political party or by any political body for the same office  
27 unless such person is a candidate for the office of judge of a  
28 court of common pleas[, ] OR the Philadelphia Municipal Court [or <--  
29 the Traffic Court of Philadelphia, for for the office of school <--  
30 director in districts where that office is elective] or for the

1 office of [justice of the peace] magisterial district judge. No  
2 such nomination papers shall nominate any person who has already  
3 been nominated by any political party or by any other political  
4 body for any office to be filled at the ensuing November  
5 election, unless such person is a candidate for the office of  
6 judge of a court of common pleas[, ] OR the Philadelphia <--  
7 Municipal Court [or the Traffic Court of Philadelphia, for for <--  
8 the office of school director in districts where that office is  
9 elective] or for the office of [justice of the peace]  
10 magisterial district judge.

11 (b) Said nomination certificates and nomination papers for  
12 State public offices and judges of courts of records shall be  
13 filed in the office of the Secretary of the Commonwealth at  
14 least fifty (50) days prior to a general or municipal election,  
15 as the case may be. Nomination certificates and nomination  
16 papers for public offices in counties, cities, boroughs, towns,  
17 townships, wards and school districts and for the offices of  
18 aldermen and [justices of the peace] magisterial district judges  
19 shall be filed in the office of the county board of elections at  
20 least fifty (50) days prior to a municipal election.

21 \* \* \*

22 Section 998. Substituted Nominations to Fill Certain  
23 Vacancies for a November Election.--(a) Any vacancy happening  
24 or existing in any party nomination made in accordance with the  
25 provisions of section nine hundred ninety-three of this act for  
26 a November election by reason of the death or withdrawal of any  
27 candidate may be filled by a substituted nomination made by such  
28 committee as is authorized by the rules of the party to make  
29 nominations in the event of vacancies on the party ticket, in  
30 the form prescribed by section nine hundred ninety-four of this

1 act. But no substituted nomination certificate shall nominate  
2 any person who has already been nominated by any other political  
3 party or by any political body for the same office, unless such  
4 person is a candidate for the office of judge of a court of  
5 common pleas[, ] OR the Philadelphia Municipal Court [or the <--  
6 Traffic Court of Philadelphia, ~~for~~ for the office of school <--  
7 director in districts where that office is elective] or for the  
8 office of [justice of the peace] magisterial district judge.

9 (b) In case of the death or withdrawal of any candidate  
10 nominated by a political body for an election, the committee  
11 named in the original nomination papers may nominate a  
12 substitute in his place by filing a substituted nomination  
13 certificate in the form and manner prescribed by section nine  
14 hundred eighty of this act. In the case of a vacancy caused by  
15 the death of any candidate, said nomination certificate shall be  
16 accompanied by a death certificate properly certified. No  
17 substituted nomination certificate shall nominate any person who  
18 has already been nominated by any political party or by any  
19 other political body for any office to be filled at the ensuing  
20 November election, unless such person is a candidate for the  
21 office of judge of a court of common pleas[, ] OR the <--  
22 Philadelphia Municipal Court [or the Traffic Court of <--  
23 Philadelphia, ~~for~~ for the office of school director in districts <--  
24 where that office is elective] or for the office of [justice of  
25 the peace] magisterial district judge.

26 \* \* \*

27 Section 1004. Form of Ballots; Printing Ballots; Stubs;  
28 Numbers.--From the lists furnished by the Secretary of the  
29 Commonwealth under the provisions of sections 915 and 984, and  
30 from petitions and papers filed in their office, the county

1 election board shall print the official primary and election  
2 ballots in accordance with the provisions of this act: Provided,  
3 however, That in no event, shall the name of any person  
4 consenting to be a candidate for nomination for any one office,  
5 except the office of judge of a court of common pleas[, ] OR the <--  
6 Philadelphia Municipal Court [or the Traffic Court of <--  
7 Philadelphia, for the office of school director in districts <--  
8 where that office is elective] or the office of [justice of the  
9 peace] magisterial district judge be printed as a candidate for  
10 such office upon the official primary ballot of more than one  
11 party. All ballots for use in the same election district at any  
12 primary or election shall be alike. They shall be at least six  
13 inches long and four inches wide, and shall have a margin  
14 extending beyond any printing thereon. They shall be printed  
15 with the same kind of type (which shall not be smaller than the  
16 size known as "brevier" or "eight point body") upon white paper  
17 of uniform quality, without any impression or mark to  
18 distinguish one from another, and with sufficient thickness to  
19 prevent the printed matter from showing through. Each ballot  
20 shall be attached to a stub, and all the ballots for the same  
21 election district shall be bound together in books of fifty, in  
22 such manner that each ballot may be detached from its stub and  
23 removed separately. The ballots for each party to be used at a  
24 primary shall be bound separately. The stubs of the ballots  
25 shall be consecutively numbered, and in the case of primary  
26 ballots, the number shall be preceded by an initial or  
27 abbreviation designating the party name. The number and initial  
28 or abbreviation which appears upon the stub shall also be  
29 printed in the upper right hand corner of the back of the  
30 ballot, separated from the remainder of the ballot by a diagonal

1 perforated line so prepared that the upper right hand corner of  
2 the back of the ballot containing the number may be detached  
3 from the ballot before it is deposited in the ballot box and  
4 beside that corner shall also be printed, "Remove numbered stub  
5 immediately before depositing your ballot in ballot box."

6 Section 1405. Manner of Computing Irregular Ballots.--The  
7 county board, in computing the votes cast at any primary or  
8 election, shall compute and certify votes cast on irregular  
9 ballots exactly as such names were written, stamped, affixed to  
10 the ballot by sticker, or deposited or affixed in or on  
11 receptacles for that purpose, and as they have been so returned  
12 by the election officers. In the primary the Secretary of the  
13 Commonwealth shall not certify the votes cast on irregular  
14 ballots for any person for a National office including that of  
15 the President of the United States, United States Senator and  
16 Representative in Congress; or for any State office including  
17 that of Governor and Lieutenant Governor, Auditor General, State  
18 Treasurer, Senator and Representative in the General Assembly,  
19 justices and judges of courts of record or for any party office  
20 including that of delegate or alternate delegate to National  
21 conventions and member of State committee unless the total  
22 number of votes cast for said person is equal to or greater than  
23 the number of signatures required on a nomination petition for  
24 the particular office. In the primary the county board shall not  
25 certify the votes cast on irregular ballots for any person for a  
26 [justice of the peace] magisterial district judge, constable,  
27 National, State, county, city, borough, town, township, ward,  
28 school district, election or local party office unless the total  
29 number of votes cast for said person is equal to or greater than  
30 the number of signatures required on a nomination petition for

1 the particular office.

2 Section 2. This act shall take effect in 60 days.