

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1852 Session of
1977

INTRODUCED BY A. K. HUTCHINSON, ABRAHAM, COHEN, DUMAS, KNEPPER,
HONAMAN, GREENLEAF, SCHWEDER, SIRIANNI, WIGGINS, NOYE AND
STAIRS, NOVEMBER 15, 1977

REFERRED TO COMMITTEE ON STATE GOVERNMENT, NOVEMBER 15, 1977

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," redefining "political party" and "political body"
12 and providing for the filing of oaths and papers by
13 candidates for office.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Subsection (d) of section 801, act of June 3,
17 1937 (P.L.1333, No.320), known as the "Pennsylvania Election
18 Code," amended July 28, 1941 (P.L.526, No.213), is amended to
19 read:

20 Section 801. Definition of Political Parties and Political
21 Bodies.--

22 * * *

23 (d) Provided, however, That the words "political party" and

1 the words "political body", as hereinabove defined, shall not
2 include any political party, political organization or political
3 body composed of a group of electors[, whose purposes or aims,
4 or one of whose purposes or aims, is the establishment, control,
5 conduct, seizure or overthrow of the Government of the
6 Commonwealth of Pennsylvania or the United States of America by
7 the use of force, violence, military measures, or threats of one
8 or more of the foregoing] which advocates the use of force or
9 violation of law, where such advocacy is both directed to
10 inciting or producing imminent lawless action and will
11 foreseeably incite or produce such action.

12 Section 2. The act is amended by adding a section to read:

13 Section 910.1. Oaths of Candidates.--Each candidate for any
14 State, county, city, borough, incorporated town, township, ward,
15 school district, poor district, election district, party office
16 or party delegate shall file with his nomination petition an
17 affidavit in the following form:

18 I.....do solemnly swear (or affirm)
19 that during the course of this election I shall not advocate the
20 use of force or violation of law so as to foreseeably incite or
21 produce imminent lawless action.

22 Section 3. Section 976 of the act, amended July 28, 1941
23 (P.L.526, No.213) and first paragraph amended June 27, 1974
24 (P.L.413, No.146), is amended to read:

25 Section 976. Examination of Nomination Petitions,
26 Certificates and Papers; Return of Rejected Nomination
27 Petitions, Certificates and Papers.--When any nomination
28 petition, nomination certificate or nomination paper is
29 presented in the office of the Secretary of the Commonwealth or
30 of any county board of elections for filing within the period

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

1 existing party or by any political body which has already filed
2 nomination papers for the same office, or if the appellation set
3 forth therein contains part of the name, or an abbreviation of
4 the name or part of the name of an existing political party, or
5 of a political body which has already filed nomination papers
6 for the same office. The invalidity of any sheet of a nomination
7 petition or nomination paper shall not affect the validity of
8 such petition or paper if a sufficient petition or paper remains
9 after eliminating such invalid sheet. The action of said officer
10 or board in refusing to receive and file any such nomination
11 petition, certificate or paper, may be reviewed by the court [of
12 common pleas of the proper county] upon an application [for a
13 writ of mandamus] to compel its reception as of the date when it
14 was presented to the office of such officer or board: Provided,
15 however, That said officer or board shall be entitled to a
16 reasonable time in which to examine any petitions, certificates
17 or papers, and to summon and interrogate the candidates named
18 therein, or the persons presenting said petitions, certificates
19 or papers, and his or their retention of same for the purpose of
20 making such examination or interrogation shall not be construed
21 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

1 aims, or one of whose purposes or aims, is the establishment,
2 control, 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] which advocates the use of force or
6 violation of law, where such advocacy is both directed to
7 inciting or producing imminent lawless action and will
8 foreseeably incite or produce such action. The authority to
9 reject such nomination petition, paper or certificate for this
10 reason shall, when filed with the Secretary of the Commonwealth,
11 be vested in a committee composed of the Governor, the Attorney
12 General and the Secretary of the Commonwealth, and when filed
13 with any county board of elections shall be vested in such
14 board. If in such case the committee or board, as the case may
15 be, shall conclude that the acceptance of such nomination
16 petition, paper or certificate should be refused, it shall
17 within two days of the filing of such nomination petition, paper
18 or certificate fix a place and a time five days in advance for
19 hearing the matter, and notice thereof shall be given to all
20 parties affected thereby. At the time and place so fixed the
21 committee or board, as the case may be, shall hear testimony,
22 but shall not be bound by technical rules of evidence. The
23 testimony presented shall be stenographically recorded and made
24 a part of the record of the committee or board. Within two days
25 after such hearing the committee or board, if satisfied upon
26 competent evidence that the said nomination petition, paper or
27 certificate is not entitled to be accepted and filed, it shall
28 announce its decision and immediately notify the parties
29 affected thereby. Failure to announce decision within two days
30 after such hearing shall be conclusive that such nomination

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

28 Section 4. Section 978.1 of the act, amended August 13, 1963
29 (P.L.707, No.379), is amended to read:

30 Section 978.1. Vacancy in Party Nomination by Failure to Pay

1 Filing Fee or for Failure to File [Loyalty] Oath.--Every person
2 nominated at any primary election as the candidate of any
3 political party for any office, other than a borough, town,
4 township, school district or poor district office, or the office
5 of [alderman,] justice of the peace or constable, who has not
6 paid the filing fee required by section [nine hundred thirteen
7 of this act] 913, as amended, for the filing of a nomination
8 petition for such office, [or who has not filed the loyalty oath
9 required by section 14, act of December 22, 1951 (P.L.1726),
10 known as the "Pennsylvania Loyalty Act," as last amended June
11 19, 1961 (P.L.446),] or who has not filed the oath required by
12 section 910.1, shall pay the amount of such fee to and file such
13 oath with the Secretary of the Commonwealth, or the county board
14 of elections, as the case may be, at least [eighty-five (85)]
15 sixty (60) days previous to the day of the general or municipal
16 election at which such candidate's name would appear on the
17 ballot. Failure to pay such fee or file such oath within the
18 time herein prescribed shall result in a vacancy in such party
19 nomination. Such vacancy shall be filled in the manner
20 hereinafter provided for the filling of such vacancies happening
21 by reason of the death or withdrawal of any candidate.
22 Section 5. This act shall take effect immediately.