

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2919 Session of  
1996

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INTRODUCED BY HABAY, MASLAND, MERRY AND TRELLO, OCTOBER 1, 1996

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 1, 1996

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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," providing for open primary elections by  
12 permitting registered independent electors to vote for the  
13 party of their choice.

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

16 Section 1. Sections 702 and 802 of the act of June 3, 1937  
17 (P.L.1333, No.320), known as the Pennsylvania Election Code, are  
18 amended to read:

19 Section 702. Qualifications of Electors at Primaries.--The  
20 qualifications of electors entitled to vote at primaries shall  
21 be the same as the qualifications of electors entitled to vote  
22 at elections within the election district where the primary is  
23 held, [provided that no elector who is not registered and

1 enrolled as a member of a political party, in accordance with  
2 the provisions of this act, shall be permitted to vote the  
3 ballot of such party or any other party ballot at any primary.]  
4 and any elector entitled to vote in an election shall be  
5 entitled to vote in the primary of the party in which he is  
6 enrolled. If the elector is not enrolled with a political party,  
7 the elector may vote in the primary election for the party of  
8 his choice, which choice shall be made at the time and place of  
9 the primary election.

10 Section 802. Only Enrolled Electors to [Vote at Primaries  
11 or] Hold Party Offices.--No person who is not registered and  
12 enrolled as a member of a political party shall be entitled to  
13 vote [at any primary of such party] for or to be elected or  
14 serve as a party officer, or a member or officer of any party  
15 committee, or delegate or alternate delegate to any party  
16 convention.

17 Section 2. Section 922 of the act, amended May 6, 1943  
18 (P.L.196, No.100), is amended to read:

19 Section 922. Which Candidates Nominated.--Candidates of the  
20 various political parties for nomination, except for the office  
21 of President of the United States, who receive a plurality of  
22 votes of their [party] electors in the State, or in the  
23 political district, as the case may be, at the primary election,  
24 together with the candidates for the office of presidential  
25 elector nominated as herein provided, shall be candidates of  
26 their respective parties, and it shall be the duty of the proper  
27 county boards to print their names upon the official ballots and  
28 ballot labels at the succeeding election: Provided, That when a  
29 candidate for nomination shall have died before or on the day of  
30 the primary election and shall nevertheless receive a plurality

1 of votes of his party electors cast for the office for which he  
2 sought nomination, then no candidate shall have been nominated  
3 for the office at such primary and a substituted nomination may  
4 be made in the manner hereinafter provided.

5 Section 3. Section 1002 of the act is amended by adding a  
6 subsection to read:

7 Section 1002. Form of Official Primary Ballot.--\* \* \*

8 (e) At primaries, separate official ballots shall be  
9 prepared for unaffiliated voters who choose to vote in either  
10 the Democratic or Republican primary. The ballots shall be in  
11 substantially the following form:

12 Official..... Primary Ballot.

13 Unaffiliated Voter

14 (Name of Party)

15 .....District,.....Ward, City of.....,

16 County of....., State of Pennsylvania

17 .....Primary election held on the.....day of....., 19...

18 Make a cross (X) or check ( ) in the square to the right of  
19 each candidate for whom you wish to vote. If you desire to vote  
20 for a person whose name is not on the ballot, write, print or  
21 paste his name in the blank space provided for that purpose.  
22 Mark ballot only in black lead pencil, indelible pencil or blue,  
23 black or blue-black ink in fountain pen or ball point pen. Use  
24 the same pencil or pen for all markings you place on the ballot.

25 President of the United States.

26 (Vote for one)

27 John Doe

28 Richard Roe

29 John Stiles

30 United States Senator.



1 district register. They may also, in addition to the number of  
2 ballots required to be printed for general distribution, have  
3 printed for each election district in which a primary is to be  
4 held not less than one book of fifty official ballots of each  
5 party for the use of the absentee electors and for each election  
6 district in which an election is to be held not less than one  
7 book of official ballots for the use of the absentee electors.  
8 They shall also, in addition to the number of ballots required  
9 to be printed for general distribution, have printed ten (10)  
10 per centum of such number, to be known as reserve official  
11 ballots, and, on tinted paper, two (2) per centum of such number  
12 to be known as reserve specimen ballots, which ballots shall be  
13 kept at the office of the county board for the use of any  
14 district, the ballots for which may be lost, destroyed or  
15 stolen. They shall also cause to be printed on tinted paper, and  
16 without the facsimile endorsements, permanent binding or stubs,  
17 copies of the form of ballots provided for each voting place at  
18 each primary or election therein, which shall be called specimen  
19 ballots, and which shall be of the same size and form as the  
20 official ballots, and at each election they shall deliver to the  
21 election officers, in addition to the official ballots to be  
22 used at such election, specimen ballots for the use of the  
23 electors equal in number to one-fifth of the number of official  
24 ballots delivered to such election officers. At each primary,  
25 specimen ballots of each party shall be furnished, equal in  
26 number to one-fifth of the number of official ballots of such  
27 party furnished to the election officers as above provided.

28 Section 5. Section 1222(a) of the act, amended July 14, 1961  
29 (P.L.644, No.332), is amended to read:

30 Section 1222. Count and Return of Votes in Districts in

1 Which Ballots are Used.--

2 (a) As soon as all the ballots have been properly accounted  
3 for, and those outside the ballot box, as well as the "Voting  
4 Check List," numbered lists of voters and district register  
5 sealed, the election officers shall forthwith open the ballot  
6 box, and take therefrom all ballots therein, and at primaries,  
7 separate the same according to the party [to which they belong]  
8 for whom they voted. The ballots shall then be counted one by  
9 one, and a record made of the total number, and at primaries of  
10 the total number cast for each party. Then the judge, under the  
11 scrutiny of the minority inspector, or the minority inspector,  
12 under the scrutiny of the judge, in the presence of the other  
13 officers, clerks, and of the overseers, if any, and within the  
14 hearing and sight of the watchers outside the enclosed space,  
15 shall read aloud the names of the candidates marked or inserted  
16 upon each ballot (at primaries the ballots of each party being  
17 read in sequence), together with the office for which the person  
18 named is a candidate, and the answers contained on the ballots  
19 to the questions submitted, if any, and the majority inspector  
20 and clerks shall carefully enter each vote as read, and keep  
21 account of the same in ink in triplicate tally papers  
22 (triplicate tally papers for each party at primaries) to be  
23 provided by the county board of elections for that purpose, all  
24 three of which shall be made at the same time: Provided, That at  
25 all general, municipal and special elections, in entering each  
26 vote received by candidates at such election, it shall not be  
27 necessary to enter separate tally marks for each vote received  
28 by such candidates upon the ballots containing the same votes  
29 for the same names, commonly known, and in this act designated  
30 as "Straight Party Tickets" for such purpose straight party

1 ticket votes shall be entered carefully as each straight party  
2 ticket vote is read on the triplicate tally sheets under the  
3 heading "Number of votes received upon the  
4 ..... straight party tickets." Upon  
5 completing the number of votes received by each straight party  
6 ticket, the number so tallied for each party shall be entered  
7 numerically on the extreme right hand margin of each such tally  
8 paper. All ballots, after being removed from the box, shall be  
9 kept within the unobstructed view of all persons in the voting  
10 room until replaced in the box. No person while handling the  
11 ballots shall have in his hand any pencil, pen, stamp or other  
12 means of marking or spoiling any ballot. The election officers  
13 shall forthwith proceed to canvass and compute the votes cast,  
14 and shall not adjourn or postpone the canvass or computation  
15 until it shall have been fully completed.

16 \* \* \*

17 Section 6. Section 1302(b) and (e) of the act, amended  
18 December 11, 1968 (P.L.1183, No.375) and May 5, 1986 (P.L.150,  
19 No.47), are amended to read:

20 Section 1302. Applications for Official Absentee Ballots.--\*

21 \* \*

22 (b) The application shall contain the following information:  
23 Home residence at the time of entrance into actual military  
24 service or Federal employment, length of time a citizen, length  
25 of residence in Pennsylvania, date of birth, length of time a  
26 resident of voting district, voting district if known, party  
27 choice, or if unaffiliated, primary in which they choose to  
28 vote, in case of primary, name and, for a military elector, his  
29 stateside military address, FPO or APO number and serial number.  
30 Any elector other than a military elector shall in addition

1 specify the nature of his employment, the address to which  
2 ballot is to be sent, relationship where necessary, and such  
3 other information as may be determined and prescribed by the  
4 Secretary of the Commonwealth. When such application is received  
5 by the Secretary of the Commonwealth it shall be forwarded to  
6 the proper county board of election.

7 \* \* \*

8 (e) Any qualified bedridden or hospitalized veteran absent  
9 from the State or county of his residence and unable to attend  
10 his polling place because of such illness or physical  
11 disability, regardless of whether he is registered or enrolled,  
12 may apply at any time before any primary or election for an  
13 official absentee ballot on any official county board of  
14 election form addressed to the Secretary of the Commonwealth of  
15 Pennsylvania or the county board of elections of the county in  
16 which his voting residence is located.

17 The application shall contain the following information:  
18 Residence at the time of becoming bedridden or hospitalized,  
19 length of time a citizen, length of residence in Pennsylvania,  
20 date of birth, length of time a resident in voting district,  
21 voting district if known, party choice, or if unaffiliated,  
22 primary in which they choose to vote, in case of primary, name  
23 and address of present residence or hospital at which  
24 hospitalized. When such application is received by the Secretary  
25 of the Commonwealth, it shall be forwarded to the proper county  
26 board of elections.

27 The application for an official absentee ballot for any  
28 primary or election shall be made on information supplied over  
29 the signature of the bedridden or hospitalized veteran as  
30 required in the preceding subsection. Any qualified registered



1 elector, including a spouse or dependent referred to in  
2 subsection (1) of section 1301, who expects to be or is absent  
3 from the Commonwealth or county of his residence because his  
4 duties, occupation or business require him to be elsewhere on  
5 the day of any primary or election and any qualified registered  
6 elector who is unable to attend his polling place on the day of  
7 any primary or election because of illness or physical  
8 disability and any qualified registered bedridden or  
9 hospitalized veteran in the county of residence, or in the case  
10 of a county employe who cannot vote due to duties on election  
11 day relating to the conduct of the election, or in the case of a  
12 person who will not attend a polling place because of the  
13 observance of a religious holiday, may apply to the county board  
14 of elections of the county in which his voting residence is  
15 located for an Official Absentee Ballot. Such application shall  
16 be made upon an official application form supplied by the county  
17 board of elections. Such official application form shall be  
18 determined and prescribed by the Secretary of the Commonwealth  
19 of Pennsylvania.

20 (1) The application of any qualified registered elector,  
21 including spouse or dependent referred to in subsection (1) of  
22 section 1301, who expects to be or is absent from the  
23 Commonwealth or county of his residence because his duties,  
24 occupation or business require him to be elsewhere on the day of  
25 any primary or election, or in the case of a county employe who  
26 cannot vote due to duties on election day relating to the  
27 conduct of the election, or in the case of a person who will not  
28 attend a polling place because of the observance of a religious  
29 holiday, shall be signed by the applicant and shall include the  
30 surname and given name or names of the applicant, his

1 occupation, date of birth, length of time a resident in voting  
2 district, voting district if known, place of residence, post  
3 office address to which ballot is to be mailed, the reason for  
4 his absence, and such other information as shall make clear to  
5 the county board of elections the applicant's right to an  
6 official absentee ballot.

7 (2) The application of any qualified registered elector who  
8 is unable to attend his polling place on the day of any primary  
9 or election because of illness or physical disability and the  
10 application of any qualified registered bedridden or  
11 hospitalized veteran in the county of residence shall be signed  
12 by the applicant and shall include surname and given name or  
13 names of the applicant, his occupation, date of birth, residence  
14 at the time of becoming bedridden or hospitalized, length of  
15 time a resident in voting district, voting district if known,  
16 place of residence, post office address to which ballot is to be  
17 mailed, and such other information as shall make clear to the  
18 county board of elections the applicant's right to an official  
19 ballot. In addition, the application of such electors shall  
20 include a declaration stating the nature of their disability or  
21 illness, and the name, office address and office telephone  
22 number of their attending physician: Provided, however, That in  
23 the event any elector entitled to an absentee ballot under this  
24 subsection be unable to sign his application because of illness  
25 or physical disability, he shall be excused from signing upon  
26 making a statement which shall be witnessed by one adult person  
27 in substantially the following form: I hereby state that I am  
28 unable to sign my application for an absentee ballot without  
29 assistance because I am unable to write by reason of my illness  
30 or physical disability. I have made or have received assistance

1 in making my mark in lieu of my signature.  
2 .....(Mark)  
3 (Date)  
4 .....  
5 (Complete Address of Witness) (Signature of Witness)

6 \* \* \*

7 Section 7. Section 1404(b) of the act is amended to read:

8 Section 1404. Computation of Returns by County Board;

9 Certification; Issuance of Certificates of Election.--

10 \* \* \*

11 (b) It shall be the duty of each board of registration  
12 commissioners in each county, before the time fixed for the  
13 county board to convene for purpose of computing and canvassing  
14 returns of any primary or election, to certify to said county  
15 board the total registration of each election district within  
16 its jurisdiction, and the enrollment of each district by  
17 political parties at primaries. The county board, before  
18 computing the votes cast in any election district, shall compare  
19 said registration and enrollment figures with the certificates  
20 returned by the election officers showing the number of persons  
21 who voted in each district or the number of ballots cast. If,  
22 upon consideration by said return board of the returns before it  
23 from any election district and the certificates aforesaid, it  
24 shall appear that the total vote returned for any candidate or  
25 candidates for the same office or nomination or on any question  
26 exceeds the number of registered or enrolled electors in said  
27 election district or exceeds the total number of persons who  
28 voted in said election district or the total number of ballots  
29 cast therein, or, if it shall appear that the total number of  
30 partisan votes returned for any candidate or candidates for the

1 same office or nomination at any primary exceeds the number of  
2 electors registered or enrolled in said district as members of  
3 that political party, or exceeds the total number of persons  
4 belonging to that party who voted in said district or the total  
5 number of ballots of that party cast therein, in any such case,  
6 such excess shall be deemed a discrepancy and palpable error,  
7 and shall be investigated by the return board, and no votes  
8 shall be recorded from such district until such investigation  
9 shall be had, and such excess shall authorize--(a) the summoning  
10 of the election officers, overseers, machine inspectors, and  
11 clerks to appear forthwith with any election papers in their  
12 possession; (b) the production of the ballot box before the  
13 return board, and the examination and scrutiny of all of its  
14 contents, and all of the registration and election documents  
15 whatever, relating to said district, in the presence of  
16 representatives of each party and candidate interested who are  
17 attending the canvass of such votes; and the recount of the  
18 ballots contained in said ballot box, either generally or  
19 respecting the particular office, nomination, or question as to  
20 which the excess exists, in the discretion of the return board;  
21 (c) the correction of the returns in accordance with the result  
22 of said recount; (d) in the discretion of the return board, the  
23 exclusion of the poll of that district, either as to all  
24 offices, candidates, questions, and parties, or as to any  
25 particular offices, candidates, questions, or parties as to  
26 which said excess exists, if the ballot box be found to contain  
27 more ballots than there are electors registered or enrolled in  
28 said election district, [or more ballots of one party than there  
29 are electors registered or enrolled in said district as members  
30 of that party,] or more ballots than the number of voters who

1 voted at said election[, or more ballots of one party than the  
2 number of voters of that party who voted at said election]; (e)  
3 a report of the facts of the case to the district attorney where  
4 such action appears to be warranted.

5 \* \* \*

6 Section 8. Sections 1824 and 1834 of the act are amended to  
7 read:

8 Section 1824. Election Officers Refusing to Permit Elector  
9 to Vote in [Proper Party at] Primaries.--Any judge, inspector or  
10 clerk of election who refuses to permit an elector at any  
11 primary at which ballots are used to receive the ballot of the  
12 party with which he is enrolled, or if unaffiliated, the ballot  
13 of the party in which he chooses to vote, or who gives to any  
14 such elector enrolled in a party the ballot of any party in  
15 which he is not enrolled, or any judge, or inspector of  
16 election, or machine inspector who, at any primary at which  
17 voting machines are used, adjusts any voting machine about to be  
18 used by an elector so as not to permit him to vote for the  
19 candidates of the party in which he is enrolled, or so as to  
20 permit him to vote for the candidates of any party in which he  
21 is not enrolled, shall be guilty of a misdemeanor, and, upon  
22 conviction thereof, shall be sentenced to pay a fine not  
23 exceeding one thousand (\$1,000) dollars, or to undergo an  
24 imprisonment of not less than one (1) month nor more than two  
25 (2) years, or both, in the discretion of the court.

26 [Section 1834. Elector Voting Ballot of Wrong Party at  
27 Primary.--Any elector who shall wilfully vote at any primary the  
28 ballot of a party in which he is not enrolled, in violation of  
29 the provisions of this act, shall be guilty of a misdemeanor,  
30 and, upon conviction thereof, shall be sentenced to pay a fine

1 not exceeding one thousand (\$1,000) dollars, or to undergo an  
2 imprisonment of not more than one (1) year, or both, in the  
3 discretion of the court.]

4 Section 9. All acts and parts of acts are repealed insofar  
5 as they are inconsistent with this act.

6 Section 10. This act shall take effect immediately.