

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 469 Session of
2005

INTRODUCED BY E. Z. TAYLOR, PICKETT, MAJOR, KILLION, ARMSTRONG,
BARRAR, BEBKO-JONES, CALTAGIRONE, CAPPELLI, CORNELL,
CRAHALLA, CREIGHTON, CURRY, FRANKEL, FREEMAN, GOOD, HERSHEY,
LEH, MANN, MARSICO, McILHATTAN, R. MILLER, MUNDY, MUSTIO,
PHILLIPS, RUBLEY, SCHRODER, STERN, SURRA, WATSON AND GEIST,
FEBRUARY 14, 2005

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 14, 2005

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," further providing for date of application for
12 absentee ballot, for voting by absentee electors and for
13 canvassing of official absentee ballots.

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

16 Section 1. Sections 1302.1 and 1306 of the act of June 3,
17 1937 (P.L.1333, No.320), known as the Pennsylvania Election
18 Code, amended February 13, 1998 (P.L.72, No.18), are amended to
19 read:

20 Section 1302.1. Date of Application for Absentee Ballot.--
21 [Applications for absentee ballots unless otherwise

1 specified]

2 (a) Except as provided in subsections (b) and (c),
3 applications for absentee ballots shall be received in the
4 office of the county board of elections not earlier than fifty
5 (50) days before the primary or election and not later than five
6 o'clock P.M. of the first Tuesday prior to the day of any
7 primary or election.[: Provided, however, That]

8 (b) Except as provided in subsection (c), in the event any
9 elector otherwise qualified who is so physically disabled or ill
10 on or before the first Tuesday prior to any primary or election
11 that he is unable to file his application or who becomes
12 physically disabled or ill after the first Tuesday prior to any
13 primary or election and is unable to appear at his polling place
14 or any elector otherwise qualified who because of the conduct of
15 his business, duties or occupation will necessarily be absent
16 from the municipality of his residence on the day of the primary
17 or election, which fact was not and could not reasonably be
18 known to said elector on or before the first Tuesday prior to
19 any primary or election, the elector shall be entitled to an
20 absentee ballot at any time prior to five o'clock P.M. on the
21 first Friday preceding any primary or election upon execution of
22 an Emergency Application in such form prescribed by the
23 Secretary of the Commonwealth.

24 (c) In the event any elector otherwise qualified who becomes
25 so physically disabled or ill between five o'clock P.M. on the
26 first Friday preceding any primary or election and eight o'clock
27 P.M. on the day of any primary or election that he is unable to
28 appear at his polling place or any elector otherwise qualified
29 who because of the conduct of his business, duties or occupation
30 will necessarily be absent from the municipality of his

1 residence on the day of the primary or election, which fact was
2 not and could not reasonably be known to said elector prior to
3 five o'clock P.M. on the first Friday preceding any primary or
4 election, the elector shall be entitled to an absentee ballot if
5 the elector completes and files with the court of common pleas
6 in the county in which the elector is qualified to vote an
7 Emergency Application or a letter or other signed document,
8 which includes the same information as is provided on the
9 Emergency Application. Upon a determination that the elector is
10 a qualified absentee elector under section 1301, the judge shall
11 issue an absentee ballot to the elector. If the elector is
12 unable to appear in court, the judge shall direct a deputy
13 sheriff of the county to deliver the absentee ballot to the
14 elector. Upon completion of the absentee ballot, the elector
15 shall seal the ballot in the official absentee ballot envelopes.
16 The deputy sheriff shall deliver the absentee ballot to the
17 county board of elections, who shall distribute the ballots,
18 unopened to the absentee voter's respective election district.

19 (d) In the case of an elector who is physically disabled or
20 ill on or before the first Tuesday prior to a primary or
21 election or becomes physically disabled or ill after the first
22 Tuesday prior to a primary or election, such Emergency
23 Application, letter or other signed document shall contain a
24 supporting affidavit from his attending physician stating that
25 due to physical disability or illness said elector was unable to
26 apply for an absentee ballot on or before the first Tuesday
27 prior to the primary or election or became physically disabled
28 or ill after that period.

29 (e) In the case of an elector who is necessarily absent
30 because of the conduct of his business, duties or occupation

1 under the unforeseen circumstances specified in [this
2 subsection] subsections (b) and (c), such Emergency Application,
3 letter or other signed document shall contain a supporting
4 affidavit from such elector stating that because of the conduct
5 of his business, duties or occupation said elector will
6 necessarily be absent from the municipality of his residence on
7 the day of the primary or election which fact was not and could
8 not reasonably be known to said elector on or before the first
9 Tuesday prior to the primary or election.

10 Section 1306. Voting by Absentee Electors.--(a) [At] Except
11 as provided in paragraphs (1), (2) and (3), at any time after
12 receiving an official absentee ballot, but on or before five
13 o'clock P. M. on the Friday prior to the primary or election,
14 the elector shall, in secret, proceed to mark the ballot only in
15 black lead pencil, indelible pencil or blue, black or blue-black
16 ink, in fountain pen or ball point pen, and then fold the
17 ballot, enclose and securely seal the same in the envelope on
18 which is printed, stamped or endorsed "Official Absentee
19 Ballot."

20 (1) Any elector who submits an Emergency Application and
21 receives an absentee ballot in accordance with section 1302.1(b)
22 or (c) shall mark the ballot on or before eight o'clock P.M. on
23 the day of the primary or election. This envelope shall then be
24 placed in the second one, on which is printed the form of
25 declaration of the elector, and the address of the elector's
26 county board of election and the local election district of the
27 elector. The elector shall then fill out, date and sign the
28 declaration printed on such envelope. Such envelope shall then
29 be securely sealed and the elector shall send same by mail,
30 postage prepaid, except where franked, or deliver it in person

1 to said county board of election[:].

2 [Provided, however, That any] (2) Any elector, spouse of the
3 elector or dependent of the elector, qualified in accordance
4 with the provisions of section 1301, subsections (e), (f), (g)
5 and (h) to vote by absentee ballot as herein provided, shall be
6 required to include on the form of declaration a supporting
7 declaration in form prescribed by the Secretary of the
8 Commonwealth, to be signed by the head of the department or
9 chief of division or bureau in which the elector is employed,
10 setting forth the identity of the elector, spouse of the elector
11 or dependent of the elector[:].

12 [Provided further, That any] (3) Any elector who has filed
13 his application in accordance with section 1302 subsection (e)
14 (2), and is unable to sign his declaration because of illness or
15 physical disability, shall be excused from signing upon making a
16 declaration which shall be witnessed by one adult person in
17 substantially the following form: I hereby declare that I am
18 unable to sign my declaration for voting my absentee ballot
19 without assistance because I am unable to write by reason of my
20 illness or physical disability. I have made or received
21 assistance in making my mark in lieu of my signature.

22(Mark)

23

24 (Date)

25

26 (Signature of Witness)

27

28 (Complete Address of Witness)

29 (b) In the event that any such elector, excepting an elector
30 in military service or any elector unable to go to his polling

1 place because of illness or physical disability, entitled to
2 vote an official absentee ballot shall be in the municipality of
3 his residence on the day for holding the primary or election for
4 which the ballot was issued, or in the event any such elector
5 shall have recovered from his illness or physical disability
6 sufficiently to permit him to present himself at the proper
7 polling place for the purpose of casting his ballot, such
8 absentee ballot cast by such elector shall, be declared void.

9 Any such elector referred to in this subsection, who is
10 within the municipality of his residence, must present himself
11 at his polling place and shall be permitted to vote upon
12 presenting himself at his regular polling place in the same
13 manner as he could have voted had he not received an absentee
14 ballot: Provided, That such elector has first presented himself
15 to the judge of elections in his local election district and
16 shall have signed the affidavit on the absentee voter's
17 temporary registration card, which affidavit shall be in
18 substantially the following form:

19 I hereby swear that I am a qualified registered elector who
20 has obtained an absentee ballot, however, I am present in the
21 municipality of my residence and physically able to present
22 myself at my polling place and therefore request that my
23 absentee ballot be voided.

24
25 (Date) (Signature of Elector)
26
27 (Local Judge of Elections)

28 An elector who has received an absentee ballot under the
29 emergency application provisions of section 1302.1, and for
30 whom, therefore, no temporary absentee voter's registration card

1 is in the district register, shall sign the aforementioned
2 affidavit in any case, which the local judge of elections shall
3 then cause to be inserted in the district register with the
4 elector's permanent registration card.

5 Section 2. Section 1308 of the act, amended December 11,
6 1968 (P.L.1183, No.375), February 13, 1998 (P.L.72, No.18) and
7 December 9, 2002 (P.L.1246, No.150), is amended to read:

8 Section 1308. Canvassing of Official Absentee Ballots.--

9 (a) The county boards of election, upon receipt of official
10 absentee ballots in such envelopes, shall safely keep the same
11 in sealed or locked containers until they distribute same to the
12 appropriate local election districts in a manner prescribed by
13 the Secretary of the Commonwealth.

14 [The] Except as provided in section 1302.1(c), the county
15 board of elections shall then distribute the absentee ballots,
16 unopened, to the absentee voter's respective election district
17 concurrently with the distribution of the other election
18 supplies. Absentee ballots shall be canvassed immediately and
19 continuously without interruption until completed after the
20 close of the polls on the day of the election in each election
21 district. The results of the canvass of the absentee ballots
22 shall then be included in and returned to the county board with
23 the returns of that district. No absentee ballot shall be
24 counted which is received in the office of the county board of
25 election later than [five o'clock P.M. on the Friday immediately
26 preceding the primary or November election.] eight o'clock P.M.
27 on the day of the primary or election.

28 (b) Watchers shall be permitted to be present when the
29 envelopes containing official absentee ballots are opened and
30 when such ballots are counted and recorded.

1 (b.1) In all election districts in which electronic voting
2 systems are used, absentee ballots shall be opened at the
3 election district, checked for write-in votes in accordance with
4 section 1113-A and then either hand-counted or counted by means
5 of the automatic tabulation equipment, whatever the case may be.

6 (d) Whenever it shall appear by due proof that any absentee
7 elector who has returned his ballot in accordance with the
8 provisions of this act has died prior to the opening of the
9 polls on the day of the primary or election, the ballot of such
10 deceased elector shall be rejected by the canvassers but the
11 counting of the ballot of an elector thus deceased shall not of
12 itself invalidate any nomination or election.

13 (e) At such time the local election board shall then further
14 examine the declaration on each envelope not so set aside and
15 shall compare the information thereon with that contained in the
16 "Registered Absentee Voters File," the absentee voters' list and
17 the "Military Veterans and Emergency Civilians Absentee Voters
18 File." If the local election board is satisfied that the
19 declaration is sufficient and the information contained in the
20 "Registered Absentee Voters File," the absentee voters' list and
21 the "Military Veterans and Emergency Civilians Absentee Voters
22 File" verifies his right to vote, the local election board shall
23 announce the name of the elector and shall give any watcher
24 present an opportunity to challenge any absentee elector upon
25 the ground or grounds (1) that the absentee elector is not a
26 qualified elector; or (2) that the absentee elector was within
27 the municipality of his residence on the day of the primary or
28 election during the period the polls were open, except where he
29 was in military service or except in the case where his ballot
30 was obtained for the reason that he was unable to appear

1 personally at the polling place because of illness or physical
2 disability; or (3) that the absentee elector was able to appear
3 personally at the polling place on the day of the primary or
4 election during the period the polls were open in the case his
5 ballot was obtained for the reason that he was unable to appear
6 personally at the polling place because of illness or physical
7 disability. Upon challenge of any absentee elector, as set forth
8 herein the local election board shall mark "challenged" on the
9 envelope together with the reason or reasons therefor, and the
10 same shall be set aside for return to the county board unopened
11 pending decision by the county board and shall not be counted.
12 All absentee ballots not challenged for any of the reasons
13 provided herein shall be counted and included with the general
14 return of paper ballots or voting machines, as the case may be
15 as follows. Thereupon, the local election board shall open the
16 envelope of every unchallenged absentee elector in such manner
17 as not to destroy the declaration executed thereon. All of such
18 envelopes on which are printed, stamped or endorsed the words
19 "Official Absentee Ballot" shall be placed in one or more
20 depositories at one time and said depository or depositories
21 well shaken and the envelopes mixed before any envelope is taken
22 therefrom. If any of these envelopes shall contain any
23 extraneous marks or identifying symbols other than the words
24 "Official Absentee Ballot," the envelopes and the ballots
25 contained therein shall be set aside and declared void. The
26 local election board shall then break the seals of such
27 envelopes, remove the ballots and record the votes in the same
28 manner as district election officers are required to record
29 votes. With respect to the challenged ballots, they shall be
30 returned to the county board with the returns of the local

1 election district where they shall be placed unopened in a
2 secure, safe and sealed container in the custody of the county
3 board until it shall fix a time and place for a formal hearing
4 of all such challenges and notice shall be given where possible
5 to all absentee electors thus challenged and to every attorney,
6 watcher or candidate who made such challenge. The time for the
7 hearing shall not be later than seven (7) days after the date of
8 said challenge. On the day fixed for said hearing, the county
9 board shall proceed without delay to hear said challenges and,
10 in hearing the testimony, the county board shall not be bound by
11 technical rules of evidence. The testimony presented shall be
12 stenographically recorded and made part of the record of the
13 hearing. The decision of the county board in upholding or
14 dismissing any challenge may be reviewed by the court of common
15 pleas of the county upon a petition filed by any person
16 aggrieved by the decision of the county board. Such appeal shall
17 be taken, within two (2) days after such decision shall have
18 been made, whether reduced to writing or not, to the court of
19 common pleas setting forth the objections to the county board's
20 decision and praying for an order reversing same. Pending the
21 final determination of all appeals, the county board shall
22 suspend any action in canvassing and computing all challenged
23 ballots irrespective of whether or not appeal was taken from the
24 county board's decision. Upon completion of the computation of
25 the returns of the county, the votes cast upon the challenged
26 official absentee ballots shall be added to the other votes cast
27 within the county.

28 (f) Any person challenging an application for an absentee
29 ballot or an absentee ballot for any of the reasons provided in
30 this act shall deposit the sum of ten dollars (\$10.00) in cash

1 with the local election board, in cases of challenges made to
2 the local election board and with the county board in cases of
3 challenges made to the county board for which he shall be issued
4 a receipt for each challenge made, which sum shall only be
5 refunded if the challenge is sustained or if the challenge is
6 withdrawn within five (5) days after the primary or election. If
7 the challenge is dismissed by any lawful order then the deposit
8 shall be forfeited. All deposit money received by the local
9 election board shall be turned over to the county board
10 simultaneously with the return of the challenged ballots. The
11 county board shall deposit all deposit money in the general fund
12 of the county.

13 Notice of the requirements of subsection (b) of section 1306
14 shall be printed on the envelope for the absentee ballot.

15 Section 3. The amendment of sections 1302.1, 1306 and 1308
16 of the act shall apply to elections held on or after January 1,
17 2006.

18 Section 4. This act shall take effect in 60 days.