

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, GEIST, MANDERINO, THOMAS, JAMES, FABRIZIO, McILHINNEY AND YOUNGBLOOD, FEBRUARY 14, 2005

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 8, 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," DEFINING "UNINCORPORATED ASSOCIATION"; AND
12 further providing for date of application for absentee
13 ballot, for voting by absentee electors and for canvassing of
14 official absentee ballots.

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

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

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21 SECTION 1. SECTION 102 OF THE ACT OF JUNE 3, 1937 (P.L.1333,

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1 NO.320), KNOWN AS THE PENNSYLVANIA ELECTION CODE, IS AMENDED BY  
2 ADDING A CLAUSE TO READ:

3 SECTION 102. DEFINITIONS.--THE FOLLOWING WORDS, WHEN USED IN  
4 THIS ACT, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE  
5 CLEARLY APPARENT FROM THE CONTEXT:

6 \* \* \*

7 (Z.5) THE WORDS "UNINCORPORATED ASSOCIATION" SHALL MEAN ANY  
8 FORM OF UNINCORPORATED ENTERPRISE OWNED BY ONE OR MORE PERSONS,  
9 OTHER THAN A PARTNERSHIP, A LIMITED LIABILITY PARTNERSHIP OR A  
10 LIMITED LIABILITY COMPANY THAT IS TREATED AS A PARTNERSHIP FOR  
11 FEDERAL INCOME TAX PURPOSES.

12 SECTION 2. SECTIONS 1302.1 AND 1306 OF THE ACT, AMENDED  
13 FEBRUARY 13, 1998 (P.L.72, NO.18), ARE AMENDED TO READ:

14 Section 1302.1. Date of Application for Absentee Ballot.--  
15 [Applications for absentee ballots unless otherwise  
16 specified]

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

23 (b) Except as provided in subsection (c), in the event any  
24 elector otherwise qualified who is so physically disabled or ill  
25 on or before the first Tuesday prior to any primary or election  
26 that he is unable to file his application or who becomes  
27 physically disabled or ill after the first Tuesday prior to any  
28 primary or election and is unable to appear at his polling place  
29 or any elector otherwise qualified who because of the conduct of  
30 his business, duties or occupation will necessarily be absent

1 from the municipality of his residence on the day of the primary  
2 or election, which fact was not and could not reasonably be  
3 known to said elector on or before the first Tuesday prior to  
4 any primary or election, the elector shall be entitled to an  
5 absentee ballot at any time prior to five o'clock P.M. on the  
6 first Friday preceding any primary or election upon execution of  
7 an Emergency Application in such form prescribed by the  
8 Secretary of the Commonwealth.

9 (c) In the event any elector otherwise qualified who becomes  
10 so physically disabled or ill between five o'clock P.M. on the  
11 first Friday preceding any primary or election and eight o'clock  
12 P.M. on the day of any primary or election that he is unable to  
13 appear at his polling place or any elector otherwise qualified  
14 who because of the conduct of his business, duties or occupation  
15 will necessarily be absent from the municipality of his  
16 residence on the day of the primary or election, which fact was  
17 not and could not reasonably be known to said elector prior to  
18 five o'clock P.M. on the first Friday preceding any primary or  
19 election, the elector shall be entitled to an absentee ballot if  
20 the elector completes and files with the court of common pleas  
21 in the county in which the elector is qualified to vote an  
22 Emergency Application or a letter or other signed document,  
23 which includes the same information as is provided on the  
24 Emergency Application. Upon a determination that the elector is  
25 a qualified absentee elector under section 1301, the judge shall  
26 issue an absentee ballot to the elector. If the elector is ←  
27 unable to appear in court, the judge shall direct a deputy  
28 sheriff of the county to deliver the absentee ballot to the  
29 elector. Upon completion of the absentee ballot, the elector  
30 shall seal the ballot in the official absentee ballot envelopes.

1 ~~The deputy sheriff shall deliver the absentee ballot to the~~  
2 ~~county board of elections, who shall distribute the ballots,~~  
3 ~~unopened to the absentee voter's respective election district.~~  
4 IF THE ELECTOR IS UNABLE TO APPEAR IN COURT TO RECEIVE THE ←  
5 BALLOT, THE JUDGE SHALL GIVE THE ELECTOR'S ABSENTEE BALLOT TO AN  
6 AUTHORIZED REPRESENTATIVE OF THE ELECTOR. THE AUTHORIZED  
7 REPRESENTATIVE SHALL DELIVER THE ABSENTEE BALLOT TO THE ELECTOR  
8 AND RETURN THE COMPLETED ABSENTEE BALLOT, SEALED IN THE OFFICIAL  
9 ABSENTEE BALLOT ENVELOPES, TO THE COUNTY BOARD OF ELECTIONS, WHO  
10 SHALL DISTRIBUTE THE BALLOT, UNOPENED, TO THE ABSENTEE VOTER'S  
11 ELECTION DISTRICT. IF THE ELECTOR IS UNABLE TO APPEAR IN COURT  
12 OR UNABLE TO OBTAIN ASSISTANCE FROM AN AUTHORIZED  
13 REPRESENTATIVE, THE JUDGE SHALL DIRECT A DEPUTY SHERIFF OF THE  
14 COUNTY TO DELIVER THE ABSENTEE BALLOT TO THE ELECTOR IF THE  
15 ELECTOR IS AT A PHYSICAL LOCATION WITHIN THE COUNTY AND RETURN  
16 THE COMPLETED ABSENTEE BALLOT, SEALED IN THE OFFICIAL ABSENTEE  
17 BALLOT ENVELOPES, TO THE COUNTY BOARD OF ELECTIONS WHO SHALL  
18 DISTRIBUTE THE BALLOTS UNOPENED TO THE ABSENTEE VOTER'S  
19 RESPECTIVE ELECTION DISTRICT.

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

30 (e) In the case of an elector who is necessarily absent

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

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

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

1 postage prepaid, except where franked, or deliver it in person  
2 to said county board of election[:].

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

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

23 .....(Mark)

24 .....

25 (Date)

26 .....

27 (Signature of Witness)

28 .....

29 (Complete Address of Witness)

30 (b) In the event that any such elector, excepting an elector

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

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

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

25 .....

26 (Date) (Signature of Elector)

27 .....

28 (Local Judge of Elections)

29 An elector who has received an absentee ballot under the  
30 emergency application provisions of section 1302.1, and for

1 whom, therefore, no temporary absentee voter's registration card  
2 is in the district register, shall sign the aforementioned  
3 affidavit in any case, which the local judge of elections shall  
4 then cause to be inserted in the district register with the  
5 elector's permanent registration card.

6 Section ~~2~~ 3. Section 1308 of the act, amended December 11, ←  
7 1968 (P.L.1183, No.375), February 13, 1998 (P.L.72, No.18) and  
8 December 9, 2002 (P.L.1246, No.150), is amended to read:

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

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

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

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



1 when such ballots are counted and recorded.

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

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

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

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

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

29 (f) Any person challenging an application for an absentee  
30 ballot or an absentee ballot for any of the reasons provided in

1 this act shall deposit the sum of ten dollars (\$10.00) in cash  
2 with the local election board, in cases of challenges made to  
3 the local election board and with the county board in cases of  
4 challenges made to the county board for which he shall be issued  
5 a receipt for each challenge made, which sum shall only be  
6 refunded if the challenge is sustained or if the challenge is  
7 withdrawn within five (5) days after the primary or election. If  
8 the challenge is dismissed by any lawful order then the deposit  
9 shall be forfeited. All deposit money received by the local  
10 election board shall be turned over to the county board  
11 simultaneously with the return of the challenged ballots. The  
12 county board shall deposit all deposit money in the general fund  
13 of the county.

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

16 Section ~~3~~ 4. The amendment of sections 1302.1, 1306 and 1308 ←  
17 of the act shall apply to elections held on or after January 1,  
18 2006.

19 Section 4 5. This act shall take effect in 60 days. ←