

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 AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 28, 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 QUALIFICATIONS OF ELECTORS AT
13 PRIMARIES, for date of application for absentee ballot, for
14 voting by absentee electors and for canvassing of official
15 absentee ballots.

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

18 Section 1. Section 102 of the act of June 3, 1937 (P.L.1333,
19 No.320), known as the Pennsylvania Election Code, is amended by
20 adding a clause to read:

21 Section 102. Definitions.--The following words, when used in

1 this act, shall have the following meanings, unless otherwise
2 clearly apparent from the context:

3 * * *

4 (z.5) The words "unincorporated association" shall mean any
5 form of unincorporated enterprise owned by one or more persons,
6 other than a partnership, a limited liability partnership or a
7 limited liability company that is treated as a partnership for
8 Federal income tax purposes.

9 SECTION 2. SECTION 702 OF THE ACT IS AMENDED TO READ: <—

10 SECTION 702. QUALIFICATIONS OF ELECTORS AT PRIMARIES.--(A)
11 THE QUALIFICATIONS OF ELECTORS ENTITLED TO VOTE AT PRIMARIES
12 SHALL BE THE SAME AS THE QUALIFICATIONS OF ELECTORS ENTITLED TO
13 VOTE AT ELECTIONS WITHIN THE ELECTION DISTRICT WHERE THE PRIMARY
14 IS HELD, PROVIDED THAT NO ELECTOR WHO IS NOT REGISTERED AND
15 ENROLLED AS A MEMBER OF A POLITICAL PARTY, IN ACCORDANCE WITH
16 THE PROVISIONS OF THIS ACT, SHALL BE PERMITTED TO VOTE THE
17 BALLOT OF SUCH PARTY OR ANY OTHER PARTY BALLOT AT ANY PRIMARY.

18 (B) AN INDIVIDUAL WHO OTHERWISE MEETS THE REQUIREMENTS OF 25
19 PA.C.S. § 1301 (RELATING TO QUALIFICATIONS TO REGISTER) WHO WILL
20 BE AT LEAST EIGHTEEN YEARS OF AGE ON THE DAY OF THE NEXT GENERAL
21 OR MUNICIPAL ELECTION MAY REGISTER AND VOTE FOR THE
22 CORRESPONDING PRIMARY.

23 Section ~~2~~ 3. Sections 1302.1 and 1306 of the act, amended <—
24 February 13, 1998 (P.L.72, No.18), are amended to read:

25 Section 1302.1. Date of Application for Absentee Ballot.--
26 [Applications for absentee ballots unless otherwise
27 specified]

28 (a) Except as provided in subsections (b) and (c),
29 applications for absentee ballots shall be received in the
30 office of the county board of elections not earlier than fifty

1 (50) days before the primary or election and not later than five
2 o'clock P.M. of the first Tuesday prior to the day of any
3 primary or election.[: Provided, however, That]

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

20 (c) In the event any elector otherwise qualified who becomes
21 so physically disabled or ill between five o'clock P.M. on the
22 first Friday preceding any primary or election and eight o'clock
23 P.M. on the day of any primary or election that he is unable to
24 appear at his polling place or any elector otherwise qualified
25 who because of the conduct of his business, duties or occupation
26 will necessarily be absent from the municipality of his
27 residence on the day of the primary or election, which fact was
28 not and could not reasonably be known to said elector prior to
29 five o'clock P.M. on the first Friday preceding any primary or
30 election, the elector shall be entitled to an absentee ballot if

1 the elector completes and files with the court of common pleas
2 in the county in which the elector is qualified to vote an
3 Emergency Application or a letter or other signed document,
4 which includes the same information as is provided on the
5 Emergency Application. Upon a determination that the elector is
6 a qualified absentee elector under section 1301, the judge shall
7 issue an absentee ballot to the elector. THE ELECTOR SHALL ←
8 DESIGNATE SOMEONE TO RECEIVE THE ABSENTEE BALLOT IN THE
9 APPLICATION, LETTER OR OTHER SIGNED DOCUMENT THAT THE ELECTOR
10 SUBMITS REQUESTING THE EMERGENCY ABSENTEE BALLOT AND THE JUDGE
11 SHALL GIVE THE ELECTOR'S ABSENTEE BALLOT TO THAT DESIGNATED
12 PERSON IF THE ELECTOR IS UNABLE TO APPEAR TO RECEIVE THE BALLOT.
13 THE ELECTOR LIKewise SHALL IDENTIFY ANY PERSON WHO WILL ASSIST
14 THE ELECTOR IN MARKING THE ELECTOR'S BALLOT. TO QUALIFY, THE
15 PERSON RENDERING ASSISTANCE SHALL BE IDENTIFIED EITHER BY COURT
16 ORDER OR IN RECORDS OF THE COUNTY AS A PERSON AUTHORIZED TO
17 PROVIDE VOTING ASSISTANCE. THE PERSON, OR A DEPUTY SHERIFF,
18 SHALL DECLARE IN WRITING THAT ASSISTANCE WAS RENDERED. IF NO
19 DECLARATION IS FILED AND ANOTHER PERSON WITNESSES A PERSON
20 RENDERING VOTING ASSISTANCE, THE PERSON RENDERING ASSISTANCE HAS
21 COMMITTED A VIOLATION OF THIS ACT. If the elector is unable to
22 appear in court to receive the ballot, the judge shall give the
23 elector's absentee ballot to an authorized representative of the
24 elector. The authorized representative shall deliver the
25 absentee ballot to the elector and return the completed absentee
26 ballot, sealed in the official absentee ballot envelopes, to the
27 county board of elections, who shall distribute the ballot,
28 unopened, to the absentee voter's election district. If the
29 elector is unable to appear in court or unable to obtain
30 assistance from an authorized representative, the judge shall

1 direct a deputy sheriff of the county to deliver the absentee
2 ballot to the elector if the elector is at a physical location
3 within the county and return the completed absentee ballot,
4 sealed in the official absentee ballot envelopes, to the county
5 board of elections who shall distribute the ballots unopened to
6 the absentee voter's respective election district. IF A DEPUTY ←
7 SHERIFF IS UNAVAILABLE TO DELIVER AN ABSENTEE BALLOT UNDER THIS
8 SECTION, THE JUDGE SHALL DIRECT A CONSTABLE OR AN EMPLOYE OR
9 OFFICIAL OF THE COUNTY BOARD OF ELECTIONS TO MAKE SUCH DELIVERY,
10 IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. NO ABSENTEE
11 BALLOT UNDER THIS SUBSECTION SHALL BE COUNTED WHICH IS RECEIVED
12 IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS LATER THAN EIGHT
13 O'CLOCK P.M. ON THE DAY OF THE PRIMARY OR ELECTION.

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

24 (e) In the case of an elector who is necessarily absent
25 because of the conduct of his business, duties or occupation
26 under the unforeseen circumstances specified in [this
27 subsection] subsections (b) and (c), such Emergency Application,
28 letter or other signed document shall contain a supporting
29 affidavit from such elector stating that because of the conduct
30 of his business, duties or occupation said elector will

1 necessarily be absent from the municipality of his residence on
2 the day of the primary or election which fact was not and could
3 not reasonably be known to said elector on or before the first
4 Tuesday prior to the primary or election.

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

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

27 [Provided, however, That any] (2) Any elector, spouse of the
28 elector or dependent of the elector, qualified in accordance
29 with the provisions of section 1301, subsections (e), (f), (g)
30 and (h) to vote by absentee ballot as herein provided, shall be

1 required to include on the form of declaration a supporting
2 declaration in form prescribed by the Secretary of the
3 Commonwealth, to be signed by the head of the department or
4 chief of division or bureau in which the elector is employed,
5 setting forth the identity of the elector, spouse of the elector
6 or dependent of the elector[:].

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

17(Mark)

18

19 (Date)

20

21 (Signature of Witness)

22

23 (Complete Address of Witness)

24 (b) In the event that any such elector, excepting an elector
25 in military service or any elector unable to go to his polling
26 place because of illness or physical disability, entitled to
27 vote an official absentee ballot shall be in the municipality of
28 his residence on the day for holding the primary or election for
29 which the ballot was issued, or in the event any such elector
30 shall have recovered from his illness or physical disability

1 sufficiently to permit him to present himself at the proper
2 polling place for the purpose of casting his ballot, such
3 absentee ballot cast by such elector shall, be declared void.

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

14 I hereby swear that I am a qualified registered elector who
15 has obtained an absentee ballot, however, I am present in the
16 municipality of my residence and physically able to present
17 myself at my polling place and therefore request that my
18 absentee ballot be voided.

19

20 (Date) (Signature of Elector)

21

22 (Local Judge of Elections)

23 An elector who has received an absentee ballot under the
24 emergency application provisions of section 1302.1, and for
25 whom, therefore, no temporary absentee voter's registration card
26 is in the district register, shall sign the aforementioned
27 affidavit in any case, which the local judge of elections shall
28 then cause to be inserted in the district register with the
29 elector's permanent registration card.

30 Section 3 4. Section 1308 of the act, amended December 11,

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1 1968 (P.L.1183, No.375), February 13, 1998 (P.L.72, No.18) and
2 December 9, 2002 (P.L.1246, No.150), is amended to read:

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

4 (a) The county boards of election, upon receipt of official
5 absentee ballots in such envelopes, shall safely keep the same
6 in sealed or locked containers until they distribute same to the
7 appropriate local election districts in a manner prescribed by
8 the Secretary of the Commonwealth.

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

23 (b) Watchers shall be permitted to be present when the
24 envelopes containing official absentee ballots are opened and
25 when such ballots are counted and recorded.

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

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

8 (e) At such time the local election board shall then further
9 examine the declaration on each envelope not so set aside and
10 shall compare the information thereon with that contained in the
11 "Registered Absentee Voters File," the absentee voters' list and
12 the "Military Veterans and Emergency Civilians Absentee Voters
13 File." If the local election board is satisfied that the
14 declaration is sufficient and the information contained in the
15 "Registered Absentee Voters File," the absentee voters' list and
16 the "Military Veterans and Emergency Civilians Absentee Voters
17 File" verifies his right to vote, the local election board shall
18 announce the name of the elector and shall give any watcher
19 present an opportunity to challenge any absentee elector upon
20 the ground or grounds (1) that the absentee elector is not a
21 qualified elector; or (2) that the absentee elector was within
22 the municipality of his residence on the day of the primary or
23 election during the period the polls were open, except where he
24 was in military service or except in the case where his ballot
25 was obtained for the reason that he was unable to appear
26 personally at the polling place because of illness or physical
27 disability; or (3) that the absentee elector was able to appear
28 personally at the polling place on the day of the primary or
29 election during the period the polls were open in the case his
30 ballot was obtained for the reason that he was unable to appear

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

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

23 (f) Any person challenging an application for an absentee
24 ballot or an absentee ballot for any of the reasons provided in
25 this act shall deposit the sum of ten dollars (\$10.00) in cash
26 with the local election board, in cases of challenges made to
27 the local election board and with the county board in cases of
28 challenges made to the county board for which he shall be issued
29 a receipt for each challenge made, which sum shall only be
30 refunded if the challenge is sustained or if the challenge is

1 withdrawn within five (5) days after the primary or election. If
2 the challenge is dismissed by any lawful order then the deposit
3 shall be forfeited. All deposit money received by the local
4 election board shall be turned over to the county board
5 simultaneously with the return of the challenged ballots. The
6 county board shall deposit all deposit money in the general fund
7 of the county.

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

10 Section ~~4~~ 5. The amendment of sections 1302.1, 1306 and 1308 ←
11 of the act shall apply to elections held on or after January 1,
12 2006.

13 Section ~~5~~ 6. This act shall take effect in 60 days. ←