

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 638 Session of 2017

INTRODUCED BY SIMMONS, KAUFFMAN, CALTAGIRONE, GROVE, GILLEN,  
ROTHMAN, COX AND GABLER, FEBRUARY 27, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 27, 2017

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," in district election officers, further providing  
 12 for election officers to be sworn; in dates of elections and  
 13 primaries and special elections, further providing for  
 14 affidavits of candidates; in nomination of candidates,  
 15 further providing for petition may consist of several sheets  
 16 and affidavit of circulator, for affidavits of candidates,  
 17 for examination of nomination petitions, certificates and  
 18 papers and return of rejected nomination petitions,  
 19 certificates and papers, for vacancy in party nomination by  
 20 failure to pay filing fee or for failure to file loyalty  
 21 oath, for affidavits of candidates, for filling of certain  
 22 vacancies in public office by means of nomination  
 23 certificates and nomination papers and for substituted  
 24 nominations to fill certain vacancies for a November  
 25 election; in ballots, further providing for form and printing  
 26 of ballots; in returns of primaries and elections, further  
 27 providing for manner of computing irregular ballots; and  
 28 replacing references to "justice of the peace" with  
 29 "magisterial district judge."

30 The General Assembly of the Commonwealth of Pennsylvania  
 31 hereby enacts as follows:

1 Section 1. Sections 406, 630.1, 909, 910, 976, 978.1, 981.1,  
2 993(a) and (b), 998(a) and (b), 1004 and 1405 of the act of June  
3 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election  
4 Code, are amended to read:

5 Section 406. Election Officers to Be Sworn.--All judges,  
6 inspectors, clerks of election and machine inspectors shall,  
7 before entering upon their duties at any primary or election, be  
8 duly sworn in the presence of each other and of the watchers and  
9 overseers, if any. The judge shall first be sworn by the  
10 minority inspector or by a magistrate, alderman or [justice of  
11 the peace] magisterial district judge, and the inspectors,  
12 clerks and machine inspectors shall then be sworn by the judge.  
13 Each of them shall forthwith sign in duplicate the oath taken by  
14 him upon forms to be furnished by the county board, and the same  
15 shall be attested by the officer who administered the oath.

16 Section 630.1. Affidavits of Candidates.--Each candidate for  
17 any State, county, city, borough, incorporated town, township,  
18 school district or poor district office, or for the office of  
19 United States Senator or Representative in Congress, selected as  
20 provided in section 630 of this act, shall file with the  
21 nomination certificate an affidavit stating--(a) his residence,  
22 with street and number, if any, and his post-office address; (b)  
23 his election district, giving city, borough, town or township;  
24 (c) the name of the office for which he consents to be a  
25 candidate; (d) that he is eligible for such office; (e) that he  
26 will not knowingly violate any provision of this act, or of any  
27 law regulating and limiting election expenses and prohibiting  
28 corrupt practices in connection therewith; (f) unless he is a  
29 candidate for judge of a court of common pleas, the Philadelphia  
30 Municipal Court or the Traffic Court of Philadelphia, [or for

1 the office of school board in a district where that office is  
2 elective] or for the office of [justice of the peace]  
3 magisterial district judge, that he is not a candidate for the  
4 same office of any party or political body other than the one  
5 designated in such certificate; (g) that he is aware of the  
6 provisions of section 1626 of this act requiring election and  
7 post-election reporting of campaign contributions and  
8 expenditures; and (h) that he is not a candidate for an office  
9 which he already holds, the term of which is not set to expire  
10 in the same year as the office subject to the affidavit.

11 Section 909. Petition May Consist of Several Sheets;  
12 Affidavit of Circulator.--Said nomination petition may be on one  
13 or more sheets, and different sheets must be used for signers  
14 resident in different counties. If more than one sheet is used,  
15 they shall be bound together when offered for filing if they are  
16 intended to constitute one petition, and each sheet shall be  
17 numbered consecutively beginning with number one, at the foot of  
18 each page. In cases of petitions for delegate or alternate  
19 delegate to National conventions, each sheet shall contain a  
20 notation indicating the presidential candidate to whom he is  
21 committed or the term "uncommitted." Each sheet shall have  
22 appended thereto the affidavit of the circulator of each sheet,  
23 setting forth--(a) that he or she is a qualified elector duly  
24 registered and enrolled as a member of the designated party of  
25 the State, or of the political district, as the case may be,  
26 referred to in said petition, unless said petition relates to  
27 the nomination of a candidate for a court of common pleas, for  
28 the Philadelphia Municipal Court or for the Traffic Court of  
29 Philadelphia or for [justice of the peace] magisterial district  
30 judge, in which event the circulator need not be a duly

1 registered and enrolled member of the designated party; (b) his  
2 residence, giving city, borough or township, with street and  
3 number, if any; (c) that the signers thereto signed with full  
4 knowledge of the contents of the petition; (d) that their  
5 respective residences are correctly stated therein; (e) that  
6 they all reside in the county named in the affidavit; (f) that  
7 each signed on the date set opposite his name; and (g) that, to  
8 the best of affiant's knowledge and belief, the signers are  
9 qualified electors and duly registered and enrolled members of  
10 the designated party of the State, or of the political district,  
11 as the case may be.

12 Section 910. Affidavits of Candidates.--Each candidate for  
13 any State, county, city, borough, incorporated town, township,  
14 ward, school district, poor district, election district, party  
15 office, party delegate or alternate, or for the office of United  
16 States Senator or Representative in Congress, shall file with  
17 his nomination petition his affidavit stating--(a) his  
18 residence, with street and number, if any, and his post-office  
19 address; (b) his election district, giving city, borough, town  
20 or township; (c) the name of the office for which he consents to  
21 be a candidate; (d) that he is eligible for such office; (e)  
22 that he will not knowingly violate any provision of this act, or  
23 of any law regulating and limiting nomination and election  
24 expenses and prohibiting corrupt practices in connection  
25 therewith; (f) unless he is a candidate for judge of a court of  
26 common pleas, the Philadelphia Municipal Court or the Traffic  
27 Court of Philadelphia, [or for the office of school director in  
28 a district where that office is elective] or for the office of  
29 [justice of the peace] magisterial district judge that he is not  
30 a candidate for nomination for the same office of any party

1 other than the one designated in such petition; (g) if he is a  
2 candidate for a delegate, or alternate delegate, member of State  
3 committee, National committee or party officer, that he is a  
4 registered and enrolled member of the designated party; (h) if  
5 he is a candidate for delegate or alternate delegate the  
6 presidential candidate to whom he is committed or the term  
7 "uncommitted"; (i) that he is aware of the provisions of section  
8 1626 of this act requiring pre-election and post-election  
9 reporting of campaign contributions and expenditures; and (j)  
10 that he is not a candidate for an office which he already holds,  
11 the term of which is not set to expire in the same year as the  
12 office subject to the affidavit. In cases of petitions for  
13 delegate and alternate delegate to National conventions, the  
14 candidate's affidavit shall state that his signature to the  
15 delegate's statement, as hereinafter set forth, if such  
16 statement is signed by said candidate, was affixed to the sheet  
17 or sheets of said petition prior to the circulation of same. In  
18 the case of a candidate for nomination as President of the  
19 United States, it shall not be necessary for such candidate to  
20 file the affidavit required in this section to be filed by  
21 candidates, but the post-office address of such candidate shall  
22 be stated in such nomination petition.

23 Section 976. Examination of Nomination Petitions,  
24 Certificates and Papers; Return of Rejected Nomination  
25 Petitions, Certificates and Papers.--When any nomination  
26 petition, nomination certificate or nomination paper is  
27 presented in the office of the Secretary of the Commonwealth or  
28 of any county board of elections for filing within the period  
29 limited by this act, it shall be the duty of the said officer or  
30 board to examine the same. No nomination petition, nomination

1 paper or nomination certificate shall be permitted to be filed  
2 if--(a) it contains material errors or defects apparent on the  
3 face thereof, or on the face of the appended or accompanying  
4 affidavits; or (b) it contains material alterations made after  
5 signing without the consent of the signers; or (c) it does not  
6 contain a sufficient number of signatures as required by law;  
7 Provided, however, That the Secretary of the Commonwealth or the  
8 county board of elections, although not hereby required so to  
9 do, may question the genuineness of any signature or signatures  
10 appearing thereon, and if he or it shall thereupon find that any  
11 such signature or signatures are not genuine, such signature or  
12 signatures shall be disregarded in determining whether the  
13 nomination petition, nomination paper or nomination certificate  
14 contains a sufficient number of signatures as required by law;  
15 or (d) in the case of nomination petitions, if nomination  
16 petitions have been filed for printing the name of the same  
17 person for the same office, except the office of judge of a  
18 court of common pleas, the Philadelphia Municipal Court or the  
19 Traffic Court of Philadelphia[, or the office of school director  
20 in districts where that office is elective] or the office of  
21 [justice of the peace] magisterial district judge upon the  
22 official ballot of more than one political party; or (e) in the  
23 case of nomination papers, if the candidate named therein has  
24 filed a nomination petition for any public office for the  
25 ensuing primary, or has been nominated for any such office by  
26 nomination papers previously filed; or (f) if the nomination  
27 petitions or papers are not accompanied by the filing fee or  
28 certified check required for said office; or (g) in the case of  
29 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  
12 upon an application to compel its reception as of the date when  
13 it was presented to the office of such officer or board:

14 Provided, however, That said officer or board shall be entitled  
15 to a reasonable time in which to examine any petitions,  
16 certificates or papers, and to summon and interrogate the  
17 candidates named therein, or the persons presenting said  
18 petitions, certificates or papers, and his or their retention of  
19 same for the purpose of making such examination or interrogation  
20 shall not be construed as an acceptance or filing.

21 Upon completion of any examination, if any nomination  
22 petition, certificate or paper is found to be defective, it  
23 shall forthwith be rejected and returned to the candidate or one  
24 of the candidates named therein, together with a statement of  
25 the reasons for such rejection:

26 Provided further, That no nomination petition, nomination  
27 paper or nomination certificate shall be permitted to be filed,  
28 if the political party or political body referred to therein  
29 shall be composed of a group of electors whose purposes or aims,  
30 or one of whose purposes or aims, is the establishment, control,

1 conduct, seizure or overthrow of the Government of the  
2 Commonwealth of Pennsylvania or the United States of America by  
3 the use of force, violence, military measure or threats of one  
4 or more of the foregoing. The authority to reject such  
5 nomination petition, paper or certificate for this reason shall,  
6 when filed with the Secretary of the Commonwealth, be vested in  
7 a committee composed of the Governor, the Attorney General and  
8 the Secretary of the Commonwealth, and when filed with any  
9 county board of elections shall be vested in such board. If in  
10 such case the committee or board, as the case may be, shall  
11 conclude that the acceptance of such nomination petition, paper  
12 or certificate should be refused, it shall within two days of  
13 the filing of such nomination petition, paper or certificate fix  
14 a place and a time five days in advance for hearing the matter,  
15 and notice thereof shall be given to all parties affected  
16 thereby. At the time and place so fixed the committee or board,  
17 as the case may be, shall hear testimony, but shall not be bound  
18 by technical rules of evidence. The testimony presented shall be  
19 stenographically recorded and made a part of the record of the  
20 committee or board. Within two days after such hearing the  
21 committee or board, if satisfied upon competent evidence that  
22 the said nomination petition, paper or certificate is not  
23 entitled to be accepted and filed, it shall announce its  
24 decision and immediately notify the parties affected thereby.  
25 Failure to announce decision within two days after such hearing  
26 shall be conclusive that such nomination petition, paper or  
27 certificate has been accepted and filed. The decision of said  
28 committee or board in refusing to accept and file such  
29 nomination petition, paper or certificate may be reviewed by the  
30 court upon an application to compel its reception as of the date

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

21 Section 978.1. Vacancy in Party Nomination by Failure to Pay  
22 Filing Fee or for Failure to File Loyalty Oath.--Every person  
23 nominated at any primary election as the candidate of any  
24 political party for any office, other than a borough, town,  
25 township, school district or poor district office, or the office  
26 of [justice of the peace] magisterial district judge, or  
27 constable, who has not paid the filing fee required by section  
28 nine hundred thirteen of this act, as amended, for the filing of  
29 a nomination petition for such office, or who has not filed the  
30 loyalty oath required by section 14, act of December 22, 1951

1 (P.L.1726), known as the "Pennsylvania Loyalty Act," as last  
2 amended June 19, 1961 (P.L.446), shall pay the amount of such  
3 fee to and file such oath with the Secretary of the  
4 Commonwealth, or the county board of elections, as the case may  
5 be, at least eighty-five (85) days previous to the day of the  
6 general or municipal election at which such candidate's name  
7 would appear on the ballot. Failure to pay such fee or file such  
8 oath within the time herein prescribed shall result in a vacancy  
9 in such party nomination. Such vacancy shall be filled in the  
10 manner hereinafter provided for the filling of such vacancies  
11 happening by reason of the death or withdrawal of any candidate.

12 Section 981.1. Affidavits of Candidates.--Each candidate for  
13 any State, county, city, borough, incorporated town, township,  
14 ward, school district, poor district or election district  
15 office, or for the office of United States Senator or  
16 Representative in Congress, selected as provided in sections 979  
17 and 980 of this act, shall file with the substituted nomination  
18 certificate an affidavit stating--(a) his residence, with street  
19 and number, if any, and his post-office address; (b) his  
20 election district, giving city, borough, town or township; (c)  
21 the name of the office for which he consents to be a candidate;  
22 (d) that he is eligible for such office; (e) that he will not  
23 knowingly violate any provision of this act, or of any law  
24 regulating and limiting election expenses and prohibiting  
25 corrupt practices in connection therewith; (f) unless he is a  
26 candidate for judge of a court of common pleas, the Philadelphia  
27 Municipal Court or the Traffic Court of Philadelphia, [or for  
28 the office of school board in a district where that office is  
29 elective] or for the office of [justice of the peace]  
30 magisterial district judge, that he is not a candidate for the

1 same office of any party or political body other than the one  
2 designated in such certificate; (g) that he is aware of the  
3 provisions of section 1626 of this act requiring election and  
4 post-election reporting of campaign contributions and  
5 expenditures; and (h) that he is not a candidate for an office  
6 which he already holds, the term of which is not set to expire  
7 in the same year as the office subject to the affidavit.

8 Section 993. Filling of Certain Vacancies in Public Office  
9 by Means of Nomination Certificates and Nomination Papers.--(a)  
10 In all cases where a vacancy shall occur for any cause in an  
11 elective public office, including that of judge of a court of  
12 record, at a time when such vacancy is required by the  
13 provisions of the Constitution or the laws of this Commonwealth  
14 to be filled at the ensuing election but at a time when  
15 nominations for such office cannot be made under any other  
16 provision of this act, nominations to fill such vacancies shall  
17 be made by political parties in accordance with party rules  
18 relating to the filling of vacancies by means of nomination  
19 certificates in the form prescribed in section nine hundred  
20 ninety-four of this act, and by political bodies by means of  
21 nomination papers in accordance with the provisions of sections  
22 nine hundred fifty-one, nine hundred fifty-two and nine hundred  
23 fifty-four of this act. No such nomination certificate shall  
24 nominate any person who has already been nominated by any other  
25 political party or by any political body for the same office  
26 unless such person is a candidate for the office of judge of a  
27 court of common pleas, the Philadelphia Municipal Court or the  
28 Traffic Court of Philadelphia, [or for the office of school  
29 director in districts where that office is elective] or for the  
30 office of [justice of the peace] magisterial district judge. No

1 such nomination papers shall nominate any person who has already  
2 been nominated by any political party or by any other political  
3 body for any office to be filled at the ensuing November  
4 election, unless such person is a candidate for the office of  
5 judge of a court of common pleas, the Philadelphia Municipal  
6 Court or the Traffic Court of Philadelphia, [or for the office  
7 of school director in districts where that office is elective]  
8 or for the office of [justice of the peace] magisterial district  
9 judge.

10 (b) Said nomination certificates and nomination papers for  
11 State public offices and judges of courts of records shall be  
12 filed in the office of the Secretary of the Commonwealth at  
13 least fifty (50) days prior to a general or municipal election,  
14 as the case may be. Nomination certificates and nomination  
15 papers for public offices in counties, cities, boroughs, towns,  
16 townships, wards and school districts and for the offices of  
17 aldermen and [justices of the peace] magisterial district judges  
18 shall be filed in the office of the county board of elections at  
19 least fifty (50) days prior to a municipal election.

20 \* \* \*

21 Section 998. Substituted Nominations to Fill Certain  
22 Vacancies for a November Election.--(a) Any vacancy happening  
23 or existing in any party nomination made in accordance with the  
24 provisions of section nine hundred ninety-three of this act for  
25 a November election by reason of the death or withdrawal of any  
26 candidate may be filled by a substituted nomination made by such  
27 committee as is authorized by the rules of the party to make  
28 nominations in the event of vacancies on the party ticket, in  
29 the form prescribed by section nine hundred ninety-four of this  
30 act. But no substituted nomination certificate shall nominate

1 any person who has already been nominated by any other political  
2 party or by any political body for the same office, unless such  
3 person is a candidate for the office of judge of a court of  
4 common pleas, the Philadelphia Municipal Court or the Traffic  
5 Court of Philadelphia, [or for the office of school director in  
6 districts where that office is elective] or for the office of  
7 [justice of the peace] magisterial district judge.

8 (b) In case of the death or withdrawal of any candidate  
9 nominated by a political body for an election, the committee  
10 named in the original nomination papers may nominate a  
11 substitute in his place by filing a substituted nomination  
12 certificate in the form and manner prescribed by section nine  
13 hundred eighty of this act. In the case of a vacancy caused by  
14 the death of any candidate, said nomination certificate shall be  
15 accompanied by a death certificate properly certified. No  
16 substituted nomination certificate shall nominate any person who  
17 has already been nominated by any political party or by any  
18 other political body for any office to be filled at the ensuing  
19 November election, unless such person is a candidate for the  
20 office of judge of a court of common pleas, the Philadelphia  
21 Municipal Court or the Traffic Court of Philadelphia, [or for  
22 the office of school director in districts where that office is  
23 elective] or for the office of [justice of the peace]  
24 magisterial district judge.

25 \* \* \*

26 Section 1004. Form of Ballots; Printing Ballots; Stubs;  
27 Numbers.--From the lists furnished by the Secretary of the  
28 Commonwealth under the provisions of sections 915 and 984, and  
29 from petitions and papers filed in their office, the county  
30 election board shall print the official primary and election

1 ballots in accordance with the provisions of this act: Provided,  
2 however, That in no event, shall the name of any person  
3 consenting to be a candidate for nomination for any one office,  
4 except the office of judge of a court of common pleas, the  
5 Philadelphia Municipal Court or the Traffic Court of  
6 Philadelphia, [or the office of school director in districts  
7 where that office is elective] or the office of [justice of the  
8 peace] magisterial district judge be printed as a candidate for  
9 such office upon the official primary ballot of more than one  
10 party. All ballots for use in the same election district at any  
11 primary or election shall be alike. They shall be at least six  
12 inches long and four inches wide, and shall have a margin  
13 extending beyond any printing thereon. They shall be printed  
14 with the same kind of type (which shall not be smaller than the  
15 size known as "brevier" or "eight point body") upon white paper  
16 of uniform quality, without any impression or mark to  
17 distinguish one from another, and with sufficient thickness to  
18 prevent the printed matter from showing through. Each ballot  
19 shall be attached to a stub, and all the ballots for the same  
20 election district shall be bound together in books of fifty, in  
21 such manner that each ballot may be detached from its stub and  
22 removed separately. The ballots for each party to be used at a  
23 primary shall be bound separately. The stubs of the ballots  
24 shall be consecutively numbered, and in the case of primary  
25 ballots, the number shall be preceded by an initial or  
26 abbreviation designating the party name. The number and initial  
27 or abbreviation which appears upon the stub shall also be  
28 printed in the upper right hand corner of the back of the  
29 ballot, separated from the remainder of the ballot by a diagonal  
30 perforated line so prepared that the upper right hand corner of

1 the back of the ballot containing the number may be detached  
2 from the ballot before it is deposited in the ballot box and  
3 beside that corner shall also be printed, "Remove numbered stub  
4 immediately before depositing your ballot in ballot box."

5 Section 1405. Manner of Computing Irregular Ballots.--The  
6 county board, in computing the votes cast at any primary or  
7 election, shall compute and certify votes cast on irregular  
8 ballots exactly as such names were written, stamped, affixed to  
9 the ballot by sticker, or deposited or affixed in or on  
10 receptacles for that purpose, and as they have been so returned  
11 by the election officers. In the primary the Secretary of the  
12 Commonwealth shall not certify the votes cast on irregular  
13 ballots for any person for a National office including that of  
14 the President of the United States, United States Senator and  
15 Representative in Congress; or for any State office including  
16 that of Governor and Lieutenant Governor, Auditor General, State  
17 Treasurer, Senator and Representative in the General Assembly,  
18 justices and judges of courts of record or for any party office  
19 including that of delegate or alternate delegate to National  
20 conventions and member of State committee unless the total  
21 number of votes cast for said person is equal to or greater than  
22 the number of signatures required on a nomination petition for  
23 the particular office. In the primary the county board shall not  
24 certify the votes cast on irregular ballots for any person for a  
25 [justice of the peace] magisterial district judge, constable,  
26 National, State, county, city, borough, town, township, ward,  
27 school district, election or local party office unless the total  
28 number of votes cast for said person is equal to or greater than  
29 the number of signatures required on a nomination petition for  
30 the particular office.

1 Section 2. This act shall take effect in 60 days.