

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 853 Session of 2021

INTRODUCED BY WHEELAND, PICKETT, STAATS, MILLARD, KAUFFMAN, ROTHMAN, BERNSTINE, DUNBAR, WARNER, KEEFER, GROVE, METCALFE, SAYLOR, ROWE, HAMM, BOROWICZ, RYAN, OBERLANDER, OWLETT, IRVIN, R. MACKENZIE, STRUZZI, JAMES, GAYDOS, MOUL, SANKEY, HEFFLEY, STAMBAUGH, M. MACKENZIE, GLEIM, KERWIN, SMITH, COOK, CAUSER, LEWIS DELROSSO, GREINER, HICKERNELL, E. NELSON, JONES, ARMANINI AND MARSHALL, MARCH 10, 2021

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 10, 2021

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 preliminary provisions, further providing for
 12 definitions; in the Secretary of the Commonwealth, further
 13 providing for requirements relating to voter identification;
 14 and, in preparation for and conduct of primaries and
 15 elections, further providing for manner of applying to vote,
 16 persons entitled to vote, voter's certificates, entries to be
 17 made in district register, numbered lists of voters and
 18 challenges.

19 The General Assembly of the Commonwealth of Pennsylvania
 20 hereby enacts as follows:

21 Section 1. Section 102(z.5) of the act of June 3, 1937
 22 (P.L.1333, No.320), known as the Pennsylvania Election Code,
 23 amended October 31, 2019 (P.L.552, No.77), is amended and the

1 section is amended by adding a subsection to read:

2 Section 102. Definitions.--The following words, when used in
3 this act, shall have the following meanings, unless otherwise
4 clearly apparent from the context:

5 * * *

6 (z.5) The words "proof of identification" shall mean:

7 [(1) In the case of an elector who has a religious objection
8 to being photographed, a valid-without-photo driver's license or
9 a valid-without-photo identification card issued by the
10 Department of Transportation.

11 (2) For an elector who appears to vote under section 1210, a
12 document that:

13 (i) shows the name of the individual to whom the document
14 was issued and the name substantially conforms to the name of
15 the individual as it appears in the district register;

16 (ii) shows a photograph of the individual to whom the
17 document was issued;

18 (iii) includes an expiration date and is not expired,
19 except:

20 (A) for a document issued by the Department of
21 Transportation which is not more than twelve (12) months past
22 the expiration date; or

23 (B) in the case of a document from an agency of the Armed
24 forces of the United States or their reserve components,
25 including the Pennsylvania National Guard, establishing that the
26 elector is a current member of or a veteran of the United States
27 Armed Forces or National Guard which does not designate a
28 specific date on which the document expires, but includes a
29 designation that the expiration date is indefinite; and

30 (iv) was issued by one of the following:

1 (A) The United States Government.

2 (B) The Commonwealth of Pennsylvania.

3 (C) A municipality of this Commonwealth to an employee of
4 that municipality.

5 (D) An accredited Pennsylvania public or private institution
6 of higher learning.

7 (E) A Pennsylvania care facility.

8 (3) For a qualified absentee elector under section 1301 or a
9 qualified mail-in elector under section 1301-D:

10 (i) in the case of an elector who has been issued a current
11 and valid driver's license, the elector's driver's license
12 number;

13 (ii) in the case of an elector who has not been issued a
14 current and valid driver's license, the last four digits of the
15 elector's Social Security number;

16 (iii) in the case of an elector who has a religious
17 objection to being photographed, a copy of a document that
18 satisfies paragraph (1); or

19 (iv) in the case of an elector who has not been issued a
20 current and valid driver's license or Social Security number, a
21 copy of a document that satisfies paragraph (2).]

22 (1) in the case of an elector who has been issued a current
23 and valid driver's license, the elector's driver's license
24 number;

25 (2) in the case of an elector who has not been issued a
26 current and valid driver's license, the last four digits of the
27 elector's Social Security number;

28 (3) in the case of an elector who has a religious objection
29 to being photographed, a copy of a valid-without-photo driver's
30 license or a valid-without-photo identification card issued by

1 the Department of Transportation; or

2 (4) in the case of an elector who has not been issued a
3 current and valid driver's license or Social Security number, a
4 copy of a document that:

5 (i) shows the name of the individual to whom the document
6 was issued and the name substantially conforms to the name of
7 the individual as it appears in the district register;

8 (ii) shows a photograph of the individual to whom the
9 document was issued;

10 (iii) includes an expiration date and is not expired,
11 except:

12 (A) for a document issued by the Department of
13 Transportation that is not more than twelve (12) months past the
14 expiration date; or

15 (B) in the case of a document from an agency of the armed
16 forces of the United States or their reserve components,
17 including the Pennsylvania National Guard, establishing that the
18 elector is a current member of or a veteran of the armed forces
19 of the United States or National Guard that does not designate a
20 specific date on which the document expires, but includes a
21 designation that the expiration date is indefinite; and

22 (iv) was issued by one of the following:

23 (A) The United States Government.

24 (B) The Commonwealth of Pennsylvania.

25 (C) A municipality of this Commonwealth to an employee of
26 that municipality.

27 (D) An accredited Pennsylvania public or private institution
28 of higher learning.

29 (E) A Pennsylvania care facility.

30 * * *

1 (z.7) The words "care facility" shall mean any of the
2 following:

3 (1) A long-term care nursing facility as defined in section
4 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the
5 "Health Care Facilities Act."

6 (2) An assisted living residence or a personal care home as
7 defined in section 1001 of the act of June 13, 1967 (P.L.31,
8 No.21), known as the "Human Services Code."

9 Section 2. Section 206 of the act is amended to read:

10 Section 206. Requirements Relating to Voter

11 Identification.--~~[(a)]~~ The Secretary of the Commonwealth shall
12 prepare and disseminate information to the public regarding the
13 proof of identification requirements established under sections
14 1210 and 1302.

15 ~~[(b) Notwithstanding the provisions of 75 Pa.C.S. § 1510(b)~~
16 ~~(relating to issuance and content of driver's license) to the~~
17 ~~contrary, the Department of Transportation shall issue an~~
18 ~~identification card described in 75 Pa.C.S. § 1510(b) at no cost~~
19 ~~to any registered elector who has made application therefor and~~
20 ~~has included with the completed application a statement signed~~
21 ~~by the elector declaring under oath or affirmation that the~~
22 ~~elector does not possess proof of identification as defined in~~
23 ~~section 102(z.5)(2) and requires proof of identification for~~
24 ~~voting purposes.~~

25 ~~(c) The Secretary of the Commonwealth shall prepare the form~~
26 ~~of the statement described in subsection (b) and shall~~
27 ~~distribute the form to the counties and the Department of~~
28 ~~Transportation. The Secretary of the Commonwealth, the Secretary~~
29 ~~of Transportation and the county boards of election shall~~
30 ~~disseminate information to the public regarding the availability~~

1 of identification cards under subsection (b).]

2 Section 3. Section 1210 of the act, amended October 31, 2019
3 (P.L.552, No.77), November 27, 2019 (P.L.673, No.94) and March
4 27, 2020 (P.L.41, No.12), is amended to read:

5 Section 1210. Manner of Applying to Vote; Persons Entitled
6 to Vote; Voter's Certificates; Entries to Be Made in District
7 Register; Numbered Lists of Voters; Challenges.--(a) At every
8 primary and election each elector who appears to vote and who
9 desires to vote shall first present to an election officer
10 [proof of identification.] one of the following forms of photo
11 identification:

12 (1) a valid driver's license or identification card issued
13 by the Department of Transportation;

14 (2) a valid identification card issued by any other agency
15 of the Commonwealth;

16 (3) a valid identification card issued by the United States
17 Government;

18 (4) a valid United States passport;

19 (5) a valid student identification card;

20 (6) a valid employe identification card; or

21 (7) a valid armed forces of the United States identification
22 card.

23 The election officer shall examine the [proof of] identification
24 presented by the elector and sign an affidavit stating that
25 [this has been done.] the election officer has examined the
26 identification presented.

27 (a.1) (1) If the elector does not have a form of photo
28 identification as provided for in subsection (a), the elector
29 shall present for examination two of the following forms of
30 identification that show the name and address of the elector:

1 (i) nonphoto identification issued by the Commonwealth, or
2 any agency thereof;

3 (ii) nonphoto identification issued by the United States
4 Government, or agency thereof;

5 (iii) a firearm permit;

6 (iv) a current utility bill;

7 (v) a current bank statement;

8 (vi) a paycheck; or

9 (vii) a government check.

10 (2) The election officer shall examine the two forms of
11 identification presented under paragraph (1) by the elector and
12 sign an affidavit stating that the election officer has examined
13 the identification presented.

14 (a.2) [If any of the following apply, the elector shall be
15 permitted to cast a provisional ballot in accordance with
16 subsection (a.4):

17 (1) The elector is unable to produce proof of
18 identification:

19 (i) on the grounds that the elector is indigent and unable
20 to obtain proof of identification without the payment of a fee;
21 or

22 (ii) on any other grounds.

23 (2) The elector's proof of identification is challenged by
24 the judge of elections.] If the elector is unable to produce
25 identification or the elector's identification is challenged by
26 the judge of elections, the elector shall be permitted to cast a
27 provisional ballot in accordance with subsection (a.4).

28 (a.3) (1) All electors, including any elector that shows
29 [proof of] identification pursuant to subsection (a), shall
30 subsequently sign a voter's certificate in blue, black or blue-

1 black ink with a fountain pen or ball point pen, and, unless he
2 is a State or Federal employe who has registered under any
3 registration act without declaring his residence by street and
4 number, he shall insert his address therein, and hand the same
5 to the election officer in charge of the district register.

6 (2) Such election officer shall thereupon announce the
7 elector's name so that it may be heard by all members of the
8 election board and by all watchers present in the polling place
9 and shall compare the elector's signature on his voter's
10 certificate with his signature in the district register. If,
11 upon such comparison, the signature upon the voter's certificate
12 appears to be genuine, the elector who has signed the
13 certificate shall, if otherwise qualified, be permitted to vote:
14 Provided, That if the signature on the voter's certificate, as
15 compared with the signature as recorded in the district
16 register, shall not be deemed authentic by any of the election
17 officers, such elector shall not be denied the right to vote for
18 that reason, but shall be considered challenged as to identity
19 and required to make the affidavit and produce the evidence as
20 provided in subsection (d) of this section.

21 (3) When an elector has been found entitled to vote, the
22 election officer who examined his voter's certificate and
23 compared his signature shall sign his name or initials on the
24 voter's certificate, shall, if the elector's signature is not
25 readily legible, print such elector's name over his signature,
26 and his number in the order of admission to the voting machines,
27 and at primaries a letter or abbreviation designating the party
28 in whose primary he votes shall also be entered by one of the
29 election officers or clerks.

30 (4) As each voter is found to be qualified and votes, the

1 election officer in charge of the district register shall write
2 or stamp the date of the election or primary, his number in the
3 order of admission to the voting machines, and at primaries a
4 letter or abbreviation designating the party in whose primary he
5 votes, and shall sign his name or initials in the proper space
6 on the registration card of such voter contained in the district
7 register.

8 (5) As each voter votes, his name in the order of voting
9 shall be recorded in two (2) numbered lists of voters provided
10 for that purpose, with the addition of a note of each voter's
11 party enrollment after his name at primaries.

12 (a.4) (1) At all elections an individual who claims to be
13 properly registered and eligible to vote at the election
14 district but whose name does not appear on the district register
15 and whose registration cannot be determined by the inspectors of
16 election or the county election board shall be permitted to cast
17 a provisional ballot. Individuals who appear to vote shall be
18 required to produce [proof of] identification pursuant to
19 subsection (a) or (a.1) and if unable to do so shall be
20 permitted to cast a provisional ballot. An individual presenting
21 a judicial order to vote shall be permitted to cast a
22 provisional ballot.

23 (2) Prior to voting the provisional ballot, the elector
24 shall be required to sign an affidavit stating the following:

25 I do solemnly swear or affirm that my name is _____,
26 that my date of birth is _____, and at the time that I
27 registered I resided at _____ in the municipality of
28 _____ in _____ County of the Commonwealth of
29 Pennsylvania and that this is the only ballot that I cast in
30 this election.

- 1 Signature of Voter/Elector
- 2 Current Address
- 3 Check the Reason for Casting the Provisional Ballot.
- 4 Signed by Judge of Elections and minority inspector

5 (3) After the provisional ballot has been cast, the
6 individual shall place it in a secrecy envelope. The individual
7 shall place the secrecy envelope in the provisional ballot
8 envelope and shall place his signature on the front of the
9 provisional ballot envelope. All provisional ballots shall
10 remain sealed in their provisional ballot envelopes for return
11 to the county board of elections.

12 (4) Within seven calendar days of the election, the county
13 board of elections shall examine each provisional ballot
14 envelope that is received to determine if the individual voting
15 that ballot was entitled to vote at the election district in the
16 election. One authorized representative of each candidate in an
17 election and one representative from each political party shall
18 be permitted to remain in the room in which the determination is
19 being made. Representatives shall be permitted to keep a list of
20 those persons who cast a provisional ballot and shall be
21 entitled to challenge any determination of the county board of
22 elections with respect to the counting or partial counting of
23 the ballot under this section. Upon challenge of any provisional
24 ballot under this clause, the ballot envelope shall be marked
25 "challenged" together with the reason for the challenge, and the
26 provisional ballot shall be set aside pending final
27 determination of the challenge according to the following
28 procedure:

29 (i) Provisional ballots marked "challenged" shall be placed
30 unopened in a secure, safe and sealed container in the custody

1 of the county board of elections until it shall fix a time and
2 place for a formal hearing of all such challenges, and notice
3 shall be given where possible to all provisional electors thus
4 challenged and to every attorney, watcher or candidate who made
5 the challenge.

6 (ii) The time for the hearing shall not be later than seven
7 days after the date of the challenge.

8 (iii) On the day fixed for the hearing, the county board
9 shall proceed without delay to hear the challenges and, in
10 hearing the testimony, the county board shall not be bound by
11 the Pennsylvania Rules of Evidence.

12 (iv) The testimony presented shall be stenographically
13 recorded and made part of the record of the hearing.

14 (v) 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 petitioner
17 aggrieved by the decision of the county board. The appeal shall
18 be taken, within two days after the decision was made, whether
19 the decision was 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 the decision.

22 (vi) Pending the final determination of all appeals, the
23 county board shall suspend any action in canvassing and
24 computing all challenged provisional ballots irrespective of
25 whether or not an appeal was taken from the county board's
26 decision.

27 (vii) Upon completion of the computation of the returns of
28 the county, the votes cast upon the challenged official
29 provisional ballots shall be added to the other votes cast
30 within the county.

1 (5) (i) Except as provided in subclause (ii), if it is
2 determined that the individual was registered and entitled to
3 vote at the election district where the ballot was cast, the
4 county board of elections shall compare the signature on the
5 provisional ballot envelope with the signature on the elector's
6 registration form and, if the signatures are determined to be
7 genuine, shall count the ballot if the county board of elections
8 confirms that the individual did not cast any other ballot,
9 including an absentee ballot, in the election.

10 (ii) A provisional ballot shall not be counted if:

11 (A) either the provisional ballot envelope under clause (3)
12 or the affidavit under clause (2) is not signed by the
13 individual;

14 (B) the signature required under clause (3) and the
15 signature required under clause (2) are either not genuine or
16 are not executed by the same individual;

17 (C) a provisional ballot envelope does not contain a secrecy
18 envelope; or

19 [(D) in the case of a provisional ballot that was cast under
20 subsection (a.2)(1)(i), within six calendar days following the
21 election the elector fails to appear before the county board of
22 elections to execute an affirmation or the county board of
23 elections does not receive an electronic, facsimile or paper
24 copy of an affirmation affirming, under penalty of perjury, that
25 the elector is the same individual who personally appeared
26 before the district election board on the day of the election
27 and cast a provisional ballot and that the elector is indigent
28 and unable to obtain proof of identification without the payment
29 of a fee;

30 (E) in the case of a provisional ballot that was cast under

1 subsection (a.2)(1)(ii), within six calendar days following the
2 election, the elector fails to appear before the county board of
3 elections to present proof of identification and execute an
4 affirmation or the county board of elections does not receive an
5 electronic, facsimile or paper copy of the proof of
6 identification and an affirmation affirming, under penalty of
7 perjury, that the elector is the same individual who personally
8 appeared before the district election board on the day of the
9 election and cast a provisional ballot; or]

10 (F) the elector's absentee ballot or mail-in ballot is
11 timely received by a county board of elections.

12 (iii) One authorized representative of each candidate in an
13 election and one representative from each party shall be
14 permitted to remain in the room in which deliberation or
15 determination of subclause (ii) is being made.

16 (6) If it is determined that the individual voting the
17 provisional ballot was not registered, the provisional ballot
18 shall not be counted and the ballot shall remain in the
19 provisional ballot envelope and shall be marked "Rejected as
20 Ineligible."

21 (7) The following shall apply:

22 (i) Except as provided in subclause (ii), if it is
23 determined that the individual voting the provisional ballot was
24 eligible to vote in the county in which the ballot was cast but
25 not at the election district where the ballot was cast, the
26 county board of elections shall open the envelope and only count
27 that portion of the ballot that the individual would have been
28 eligible to vote in his proper election district and at the
29 election district where the vote was cast if:

30 (A) the county board of elections confirms that the

1 individual did not cast any other ballot, including an absentee
2 ballot, in the election; and

3 (B) the individual casting the provisional ballot is a
4 resident of the county in which the provisional ballot was cast.

5 (ii) In the event that the individual casting the
6 provisional ballot is not found to be a resident of the county
7 in which the provisional ballot was cast, the ballot shall not
8 be counted.

9 (iii) In the event that the board of elections determines,
10 based on an evidentiary record, that the individual
11 intentionally and wilfully cast a provisional ballot in an
12 election district in which the individual was not eligible to
13 vote, the ballot shall not be counted.

14 (8) On election night, immediately upon completion of the
15 count and tabulation of the votes cast, the judge of election
16 shall prepare and certify under oath a tally displaying the
17 number of provisional ballots received from the election board
18 and the number of provisional ballots cast and transmitted to
19 the county board of elections. The judge of election shall
20 record on the tabulation the name of the individual into whose
21 possession the provisional ballots were passed for transmission
22 to the county board of elections.

23 (9) All provisional ballots and the tally of provisional
24 ballots tabulated under clause (8) in the possession of an
25 election board official shall be promptly returned by the judge
26 of election to the custody of the proper county election board
27 in accordance with sections 1113-A(j), 1225(b) and 1228(a).

28 (10) One authorized representative of each candidate in an
29 election and one representative from each political party shall
30 be permitted to remain in the room where provisional ballots are

1 received by the county board of elections.

2 (11) The department shall establish a World Wide Web site
3 and a toll-free telephone number to permit an individual who
4 cast a provisional ballot to determine whether the vote of that
5 individual was counted and, if the vote was not counted, the
6 reason that it was not counted.

7 (12) For purposes of this subsection, "provisional ballot"
8 means a ballot issued to an individual who claims to be a
9 registered elector by the judge of elections on election day
10 when the individual's name does not appear on the general
11 register and the individual's registration cannot be verified.

12 (b) If any elector was unable to sign his name at the time
13 of registration, or, if having been able to sign his name when
14 registered, he subsequently shall have lost his sight or lost
15 the hand with which he was accustomed to sign his name, or shall
16 have been otherwise rendered by disease or accident unable to
17 sign his name when he applies to vote, he shall establish his
18 identity to the satisfaction of the election officers, and in
19 such case he shall not be required to sign a voter's
20 certificate, but a certificate shall be prepared for him by one
21 of the election officers, upon which the facts as to such
22 disability shall be noted and attested by the signature of such
23 election officer.

24 (c) No person who applies to vote shall be permitted by any
25 election officer or clerk or other person to see the signature
26 recorded as his in the district register until after he shall
27 have signed his name to the voter's certificate.

28 (d) No person, except a qualified elector who is in actual
29 military or naval service under a requisition of the President
30 of the United States or by the authority of this Commonwealth,

1 and who votes under the provisions of Article XIII of this act,
2 shall be entitled or permitted to vote at any primary or
3 election at any polling place outside the election district in
4 which he resides, nor shall he be permitted to vote in the
5 election district in which he resides, unless he has been
6 personally registered as an elector and his registration card
7 appears in the district register of such election district,
8 except by order of the court of common pleas as provided in this
9 act, and any person, although personally registered as an
10 elector, may be challenged by any qualified elector, election
11 officer, overseer, or watcher at any primary or election as to
12 his identity, as to his continued residence in the election
13 district or as to any alleged violation of the provisions of
14 section 1210 of this act, and if challenged as to identity or
15 residence, he shall produce at least one qualified elector of
16 the election district as a witness, who shall make affidavit of
17 his identity or continued residence in the election district:
18 Provided, however, That no person shall be entitled to vote as a
19 member of a party at any primary, unless he is registered and
20 enrolled as a member of such party upon the district register,
21 which enrollment shall be conclusive as to his party membership
22 and shall not be subject to challenge on the day of the primary.

23 (e) A person who wilfully commits fraud or who conspires to
24 wilfully commit fraud in relation to any of the provisions of
25 this section commits a felony of the third degree and, upon
26 conviction, shall be sentenced to pay a fine not exceeding
27 fifteen thousand dollars (\$15,000) or to undergo a term of
28 imprisonment of not more than seven years, or both. An
29 individual convicted under this subsection shall be barred for
30 life from serving as a judge, inspector or clerk of election,

1 machine inspector translator, county election board official,
2 poll watcher or in any other official capacity relating to the
3 sanctity, observation or conduct of Pennsylvania elections.

4 [(f) As used in this section, "care facility" means any of
5 the following:

6 (1) A long-term care nursing facility as defined in section
7 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the
8 "Health Care Facilities Act."

9 (2) An assisted living residence or a personal care home as
10 defined in section 1001 of the act of June 13, 1967 (P.L.31,
11 No.21), known as the "Public Welfare Code."]

12 Section 4. The amendment of section 1210 of the act shall
13 apply to elections held after January 1, 2022.

14 Section 5. This act shall take effect immediately.