



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 23
[2011 Assembly Bill 7]

Changes to Election Laws

2011 Wisconsin Act 23 makes changes to election laws relating to requiring certain identification in order to vote at a polling place or obtain an absentee ballot; absentee voting; late voter registration; proof of residence; a requirement for electors to provide a signature when voting in person at an election; the duration and location of residency for voting purposes; voting a straight party ticket; issuance of operator's licenses and identification cards by the Department of Transportation (DOT); voter registration information; the statewide voter registration list; voter registration activities; granting rule-making authority; and providing a penalty.

PROOF OF IDENTIFICATION

Under *current law*, an elector voting at a polling place or by absentee ballot is not required to present identification other than, if applicable, proof of residence.

Act 23 requires that an elector present proof of identification to vote at a polling place or by absentee ballot.

"Proof of Identification" Defined

Under *Act 23*, "proof of identification" means identification that contains the name of the individual to whom the document was issued, which name conforms to the individual's voter registration form, if the individual is required to register to vote, and that contains a photograph of the individual. "Identification" means any of the following documents issued to an individual:

- One of the following documents that is unexpired or, if expired, has expired after the date of the most recent general election: (1) an operator's license issued by DOT; (2) an identification card issued by DOT; (3) an identification card issued by a U.S. uniformed service; or (4) a U.S. passport.
- A certificate of U.S. naturalization that was issued not earlier than two years before the date of an election at which it is presented.
- An unexpired driving receipt issued by DOT.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- An unexpired identification card receipt issued by DOT.
- An identification card issued by a federally recognized Indian tribe in this state.
- An unexpired identification card issued by an accredited university or college in this state that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than two years after the date of issuance, if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

Voting at Polling Place

Act 23 requires that an elector present proof of identification when voting at a polling place. The election official must verify that the name on the proof of identification presented by the elector conforms to the name on the poll list or separate list and must verify that any photograph appearing on that document reasonably resembles the elector.

Voting by Absentee Ballot

Act 23 provides that if an elector applies for an absentee ballot in person at the clerk's office, the clerk may not issue the elector an absentee ballot unless the elector presents proof of identification. The clerk must verify that the name on the proof of identification presented by the elector conforms to the name on the elector's application and must verify that any photograph appearing on that document reasonably resembles the elector. The clerk must then enter his or her initials on the certificate envelope indicating that the absentee elector presented proof of identification to the clerk.

In addition, *Act 23* provides that if an elector applies for an absentee ballot in a manner other than in person at the clerk's office, the elector must enclose a copy of his or her proof of identification or any authorized substitute document with his or her application. The municipal clerk must verify that the name on the proof of identification conforms to the name on the application. The clerk may not issue an absentee ballot to an elector who is required to enclose a copy of proof of identification or an authorized substitute document with his or her application unless the copy is enclosed and the proof is verified by the clerk. However, if an elector applies for an absentee ballot in an electronic manner and the elector has not enclosed a copy of his or her proof of identification with his or her application, the elector must enclose a copy of the proof of identification with the absentee ballot.

Lastly, *Act 23* provides that when an agent applies for an absentee ballot for a hospitalized elector, the agent must present proof of identification to the clerk on behalf of the elector. The clerk must verify that the name on the proof of identification presented by the agent conforms to the name on the elector's application. The clerk must then enter his or her initials on the carrier envelope indicating that the agent presented proof of identification to the clerk.

Absentee Ballot Certificate

Act 23 requires that an absentee ballot envelope certificate include a space for the municipal clerk or deputy clerk to enter his or her initials indicating that if an absentee elector voted in person, the elector presented proof of identification to the clerk and the clerk verified the proof of identification presented. The certificate must also include a space for the municipal clerk or deputy clerk to enter his or her initials indicating that the elector is exempt from providing proof of identification.

Exceptions to Identification Requirement

Act 23 creates the following exceptions to the requirement that electors present proof of identification when voting:

- A military elector, as defined in s. 6.34 (1) (a), Stats., who votes by absentee ballot is not required to provide a copy of proof of identification.
- An overseas elector, as defined in s. 6.34 (1) (b), Stats., who votes by absentee ballot is not required to provide a copy of proof of identification.
- An elector who has a confidential listing, as a result of domestic abuse, sexual assault, or stalking, may present his or her confidential identification card, or give his or her name and confidential identification serial number, in lieu of presenting proof of identification.
- An elector who receives a citation or notice of intent to revoke or suspend an operator's license from a law enforcement officer in any jurisdiction that is dated within 60 days of the date of an election, and is required to surrender his or her operator's license or driving receipt issued to the elector at the time the citation or notice is issued, may present an original copy of the citation or notice in lieu of an operator's license or driving receipt, or, if voting by mail, may enclose a copy of the citation or notice in lieu of a copy of an operator's license or driving receipt.
- An absentee elector who has received an absentee ballot from the municipal clerk by mail for a previous election and has provided a copy of proof of identification with that ballot, and has not changed his or her name or address since providing that proof of identification, is not required to provide a copy of proof of identification.
- An absentee elector who is indefinitely confined because of age, physical illness, or infirmity, or who is disabled for an indefinite period, and who has applied for and qualified to receive absentee ballots automatically may, in lieu of providing a copy of proof of identification, submit with his or her absentee ballot a statement signed by the same individual who witnesses voting of the ballot that contains the name and address of the elector and verifies that the name and address are correct.
- An absentee elector who resides in a nursing home, qualified retirement home, qualified community-based residential facility (CBRF), qualified residential care apartment complex, or qualified adult family home where special voting deputies are sent may, in lieu of providing a copy of proof of identification, submit with his or her absentee ballot a statement signed by the special voting deputies that contains the name and address of the elector and verifies that the name and address are correct. The deputies must enclose the statement in the certificate envelope.
- An absentee elector who resides in a qualified retirement home, qualified CBRF, residential care apartment complex, or adult family home where special voting deputies are *not* sent may, in lieu of providing a copy of proof of identification, submit with his or her absentee ballot a statement signed by the same individual who witnesses voting of the ballot and that contains the certification of an authorized representative of the complex, facility, or home that the elector resides in the complex, facility, or home and the complex, facility, or home is certified or registered as required by law, that contains the name and address of the elector, and that verifies that the name and address are correct.

Electors Not Providing Identification

Act 23 provides that if an elector does not present proof of identification, if the name appearing on the document presented does not conform to the name on the poll list or separate list, or if any photograph appearing on the document does not reasonably resemble the elector, the elector may not be

permitted to vote, except that an elector who does not present proof of identification must be offered the opportunity to vote by provisional ballot.

In addition, *Act 23* provides that if an absentee elector is required to provide a copy of proof of identification and no copy of the proof of identification is enclosed or the name on the document cannot be verified by the election officials, the officials must treat the ballot as a provisional ballot.

Lastly, *Act 23* specifies that if an elector is required to provide proof of identification or a copy thereof and fails to do so, and the elector votes by provisional ballot, the elector bears the burden of correcting the omission by providing the proof of identification or copy thereof at the polling place before the closing hour or at the office of the municipal clerk or board of election commissioners no later than 4 p.m. on the Friday after the election.

Public Information Campaign

Act 23 requires that the Government Accountability Board (GAB) conduct a public information campaign in conjunction with the first regularly scheduled primary and election at which the voter identification requirements of the Act initially apply for the purpose of informing prospective voters of the new voter identification requirements. The Act also requires GAB to engage in outreach to identify and contact groups of electors who may need assistance in obtaining or renewing a document that constitutes proof of identification for voting and provide assistance in obtaining or renewing that document.

Instructions

Act 23 requires that a municipal clerk or board of election commissioners post instructions regarding the proof of identification requirement.

Operator's Licenses and Identification Cards

Under *current law*, certain provisions of the federal REAL ID Act will be incorporated into state law when DOT provides notice that it will implement the federal REAL ID Act. These provisions include requirements that DOT follow certain procedures in processing applications for operator's licenses and state identification cards and that each operator's license and identification card contain a photograph.

Act 23 allows DOT, upon the implementation of the federal REAL ID Act in this state, to process applications for operator's licenses and identification cards that are not compliant with the federal REAL ID Act if the licenses and cards are marked to indicate that they are not REAL ID compliant. DOT must process the applications for REAL ID noncompliant operator's licenses and identification cards using DOT practices and procedures that are in effect immediately prior to implementation of the federal REAL ID Act.

Current law allows DOT to issue an operator's license, but not an identification card, that does not contain a photograph of the licenseholder based on the religious beliefs of the licenseholder. However, after implementation of the federal REAL ID Act, all REAL ID compliant operator's licenses and identification cards must contain a photograph.

Under *Act 23*, until implementation of the federal REAL ID Act, the religious belief photograph exemption for operator's licenses continues, and the Act creates a religious belief photograph exemption for identification cards. After implementation of the federal REAL ID Act, the Act creates a religious belief photograph exemption for REAL ID noncompliant operator's licenses and identification cards. Specifically, the exemption provides that an application for an operator's license or identification card may be processed, and the license or card issued or renewed, without a photograph being taken of the

applicant if the applicant provides to DOT an affidavit that states that the applicant has a sincerely held religious belief against being photographed; identifies the religion to which the applicant belongs or the tenets of which the applicant adheres to; and states that the tenets of the religion prohibit the applicant from being photographed.

Lastly, *Act 23* allows an elector to obtain a free identification card from DOT if the applicant is eligible to obtain an identification card and if the elector is a U.S. citizen who will be at least 18 years of age on the date of the next election and the elector requests that the card be provided without charge for purposes of voting.

SIGNATURE REQUIREMENT

Current law does not require that an elector sign the poll list, supplemental list, or other separate list when voting.

Act 23 requires that an elector enter his or her signature on the poll list, supplemental list, or other separate list when voting in person at an election, unless exempt by reason of the elector's physical disability. Each registration list prepared for use as a poll list at a polling place or for purposes of canvassing absentee ballots must contain a space for the elector's signature, or, if another person signed the elector's registration form for the elector by reason of the elector's physical disability, the word "exempt." GAB must, by rule, prescribe the space and location for entry of each elector's signature on the poll list, which must provide for entry of the signature without changing the orientation of the poll list from the orientation used by the election officials.

In addition, *Act 23* provides that if an elector previously signed his or her registration form or is exempt from a registration requirement and is unable, due to physical disability, to enter his or her signature at the election, the officials must waive the signature requirement if the officials determine that the elector is unable, due to physical disability, to enter his or her signature. In such case, the officials must enter the words "exempt by order of inspectors" next to the name and address of the elector on the poll, supplemental, or separate list. If both officials do not waive the signature requirement and the elector wishes to vote, the official or officials who do not waive the requirement must require the elector to vote by ballot and must challenge the elector's ballot. The challenged elector may then provide evidence of his or her physical disability to the board of canvassers charged with initially canvassing the returns prior to the completion of the initial canvass.

RESIDENCY

Under *current law*, an individual must be a resident of an election district or ward for 10 days before an election to be eligible to vote in the election. An individual who moves within this state later than 10 days before an election must vote at his or her previous ward or election district if the individual is otherwise qualified.

Act 23 increases the residency requirement from 10 days before an election to 28 consecutive days before an election. The Act also provides that an individual who moves within this state later than 28 days before an election must vote at his or her previous ward or election district if the individual is otherwise qualified.

Current law provides that an individual who was or who is an eligible elector, except that he or she has been a resident of this state for less than 10 days prior to the date of the presidential election, is entitled to vote for the president and vice president but for no other offices.

Act 23 applies this provision to an individual who has been a resident of this state for less than 28 consecutive days prior to the date of the presidential election.

REGISTRATION

Corroboration

Under *current law*, an elector who registers to vote after the third Wednesday preceding an election generally must provide proof of residence or, if the elector cannot provide proof of residence, another elector of the municipality may corroborate the information contained in the elector's registration form.

Act 23 eliminates the use of corroboration as an alternative to providing proof of residence when registering to vote.

Late Registration Deadline

Under *current law*, an elector of a municipality who has not previously filed a registration form or whose name does not appear on the registration list of the municipality may register after the close of registration (the third Wednesday preceding an election) but not later than 5 p.m. or the close of business, whichever is later, on the day before an election at the office of the municipal clerk.

Act 23 provides that this provision applies until the Friday before an election, rather than the day before an election. [The Act continues to allow an elector to register at a polling place on Election Day.]

Special Registration Deputies

Under *current law*, an elector of this state may apply to GAB to be appointed as a special registration deputy for the purpose of registering electors of any municipality prior to the close of registration. In addition, an elector of this state may apply to any municipal clerk or board of election commissioners to be appointed as a special registration deputy for the purpose of registering electors of the municipality prior to the close of registration. The municipal clerk, board of election commissioners, or GAB may revoke an appointment made by the clerk, board of election commissioners, or GAB for cause at any time.

Act 23 repeals the provisions regarding appointment, and revocation of appointments, of special registration deputies by GAB. In addition, the appointment of each individual who serves as a special registration deputy on the effective date of the Act solely as the result of action of GAB is revoked.

Registration Forms

Under *current law*, registration forms must be designed to obtain from each elector certain information, including the elector's residence location and the number of the elector's valid operator's license issued by DOT.

Act 23 requires that registration forms also be designed to obtain the location of the elector's previous residence immediately before moving to the current residence location. Further, the Act requires that registration forms be designed to obtain the number of an elector's *current* and valid operator's license. The Act also requires that the form contain a statement that falsifying information on the form is a Class I felony.

Proof of Residence for College Students

Under *current law*, proof of residence includes a university, college, or technical college fee or identification card that contains a photograph of the cardholder if the card contains a current and complete name and residential address of an individual. A card that does not contain this information is considered proof of residence if the university, college, or technical college that issued the card provides a certified and current list of students who reside in housing sponsored by the university, college, or

technical college to the municipal clerk prior to the election showing the current address of the students and if the municipal clerk, special registration deputy, or inspector verifies that the student presenting the card is included on the list.

Act 23, instead, provides that proof of residence includes either of the following documents:

- An identification card issued by a university, college, or technical college that contains a photograph of the cardholder, together with a fee payment receipt issued to the cardholder by the university, college, or technical college dated no earlier than nine months before the date of the election at which the receipt is presented.
- An identification card issued by a university, college, or technical college that contains a photograph of the cardholder if the university, college, or technical college that issued the card provides a certified and current list of students who reside in housing sponsored by the university, college, or technical college and who are U.S. citizens to the municipal clerk prior to the election showing the current address of the students and if the municipal clerk, special registration deputy, or inspector verifies that the student presenting the card is included on the list.

Further, *Act 23* provides that an identification card issued by a university, college, or technical college that is used as proof of residence is not required to contain the current and complete residential address of the cardholder.

Out-of-State Driver's Licenses

Under *current law*, if an elector registers to vote and presents a driver's license issued by another state, the election official must record on a separate list the name and address of the elector, the name of the state, and the license number and expiration date of the license. A municipal clerk must compile and, no later than seven days after each general election, transmit to GAB the lists of electors registering to vote who presented valid drivers' licenses issued by other states. Further, after each general election, GAB must contact the chief election official of each state from which an elector who voted in that election presented a valid driver's license. GAB must inquire whether the holder of the driver's license voted in that election in that state.

Act 23 repeals these provisions.

Official Registration List

Current law provides that the official registration list is open to public inspection, except that access to certain information is restricted and may be viewed only by an employee of GAB, county clerk, deputy county clerk, executive director of a county board of election commissioners, deputy designated by the executive director, municipal clerk, deputy municipal clerk, executive director of a city board of election commissioners, or deputy designated by the executive director.

Act 23 provides that GAB or any municipal clerk or board of election commissioners may transfer any information in the registration list to which access is restricted to a law enforcement agency, to be used for law enforcement purposes. Further, the Act provides that GAB may transfer any information in the registration list to which access is restricted to a subunit of the state government of another state to be used for official purposes.

Under *current law*, a municipal clerk may update any entries in the registration list that change on the date of an election in the municipality within 30 days after that date.

Act 23 provides that the municipal clerk may update any entries in the registration list that change on the date of an election, other than a general election, within 30 days after the date of that election and may update any entries that change on the date of a general election within 45 days after the date of that election. In addition, the Act provides that GAB legal counsel may, upon request of a municipal clerk, permit the clerk to update entries that change on the date of a general election within 60 days after that election.

ABSENTEE VOTING

Absentee Ballot Application

Under *current law*, if an elector makes an application for an absentee ballot in person, the application must be made no later than 5 p.m. on the day preceding the election.

Act 23 provides that the application must be made no earlier than the opening of business on the third Monday preceding the election and no later than 5 p.m. or the close of business, whichever is later, on the Friday preceding the election.

In addition, *current law* provides that any registered elector who is hospitalized may apply for and obtain an absentee ballot by agent. The agent may apply for and obtain a ballot for the hospitalized elector by presenting a form prescribed by GAB and containing the required information supplied by the hospitalized elector and signed by that elector.

Act 23 provides that if a hospitalized elector is unable to sign the GAB form due to physical disability, the elector may authorize another elector to sign on his or her behalf. Any elector signing an application on another elector's behalf must attest to a statement that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability. The agent must present this statement along with all other information required under current law.

Electronic Transmission

Under *current law*, a municipal clerk may, if the clerk is reliably informed by an absent elector of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot, transmit a facsimile or electronic copy of the absent elector's ballot to that elector in lieu of mailing if, in the judgment of the clerk, the time required to send the ballot through the mail may not be sufficient to enable return of the ballot by the return deadline.

Act 23 provides that a municipal clerk must, if the clerk is reliably informed by an absent elector of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot, transmit a facsimile or electronic copy of the absent elector's ballot to that elector in lieu of mailing.

Automatic Absentee Ballots

Current law provides that an elector may, by written application, require that an absentee ballot be sent to the elector automatically for every election that is held within the same calendar year in which the application is filed.

Act 23 provides that the municipal clerk must discontinue mailing or transmitting absentee ballots to an elector if the elector fails to return any absentee ballot mailed or transmitted to the elector. In addition, an elector who fails to cast an absentee ballot but who remains qualified to receive absentee ballots may receive absentee ballots for subsequent elections by notifying the municipal clerk that the elector wishes to continue receiving absentee ballots for subsequent elections.

Uniform Instructions

Current law requires that GAB prescribe uniform instructions to absentee voters. The instructions must include information concerning the procedure for correcting errors in marking a ballot and obtaining a replacement for a spoiled ballot.

Act 23 also requires that the instructions include information concerning whether proof of identification is required to be presented or enclosed.

RESIDENTIAL CARE APARTMENT COMPLEXES AND ADULT FAMILY HOMES

Current law contains procedures that may be adopted for absentee voting by occupants of nursing homes, qualified CBRFs, and qualified retirement homes and includes procedures relating to the appointment of special voting deputies to visit the home or facility to supervise absentee voting by occupants of the home or facility.

Act 23 also applies the procedures to absentee voting by occupants of qualified residential care apartment complexes and qualified adult family homes. Specifically, the Act provides that the municipal clerk or board of election commissioners of any municipality where a residential care apartment complex or adult family home is located may adopt the procedures for absentee voting in any such complex or home located in the municipality if the clerk or board finds that there are a significant number of the occupants of the complex or home who lack adequate transportation to the appropriate polling place, who may need assistance in voting, who are aged 60 or over, or who are indefinitely confined.

Under *current law*, no person may engage in electioneering within 100 feet of an entrance to or within a nursing home, qualified CBRF, or qualified retirement home while special voting deputies are present at the home or facility. In addition, current law provides that no election official may obtain an absentee ballot for voting in a nursing home, qualified CBRF, or qualified retirement home and fail to return the ballot to the issuing officer.

Act 23 also applies the prohibition against electioneering to qualified residential care apartment complexes and qualified adult family homes and applies the prohibition against failing to return a ballot to voting in qualified residential care apartment complexes and qualified adult family homes.

STRAIGHT PARTY TICKET

Under *current law*, at a general election, an elector may vote a straight party ticket, which allows an elector to vote for all candidates nominated by one political party.

Act 23 eliminates the authority for any elector, other than an overseas or military elector, to vote a straight party ticket. Under federal law, an overseas or military elector may vote a straight party ticket on a write-in absentee ballot for national offices.

CHALLENGING VOTERS

Under *current law*, each inspector must challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector.

Act 23 also requires that an inspector challenge for cause any person offering to vote who does not adhere to any voting requirement under ch. 6, Stats.

ELECTION MATERIAL

Current law provides that poll lists created at a nonpartisan primary or election may be destroyed two years after the primary or election at which they were created and poll lists created at a

partisan primary or election may be destroyed four years after the primary or election at which they were created.

Act 23 provides that poll lists created for any election may be destroyed 22 months after the election at which they were created.

INITIAL APPLICABILITY

Durational Residency

Act 23 provides that the 28 consecutive day residency requirement first applies to elections occurring on the effective date of the Act.

Signature Requirement

Act 23 provides that the requirement that an elector sign a poll list first applies to elections occurring on the effective date of the Act.

Absentee Ballot Applications

Act 23 provides that in-person applications for absentee ballots must be made no earlier than the opening of business on the third Monday preceding the election and no later than 5 p.m. or the close of business, whichever is later, on the Friday preceding the election. This time period first applies to requests for absentee ballots made for voting in elections held on the effective date of the Act.

Voter Registration Forms

Act 23 provides that the additional information required on registration forms first applies with respect to registration of electors on the effective date of the Act.

Late Registration Deadline

Act 23 provides that a qualified elector of a municipality who has not previously filed a registration form or whose name does not appear on the registration list of the municipality may register after the close of registration but no later than 5 p.m. or the close of business, whichever is later, on the Friday before an election. This deadline first applies with respect to late registration for elections held on the effective date of the Act.

Proof of Residence for College Students

Act 23 provides that proof of residence includes a university, college, or technical college identification card presented as proof of residence, together with a fee payment receipt dated no earlier than nine months before the date of the election, or includes an identification card if the university, college, or technical college provides a certified and current list of students who reside in housing sponsored by the university, college, or technical college and who are U.S. citizens prior to the election and the student is included on the list. These proof of residence provisions first apply with respect to elections held on the effective date of the Act.

Straight Party Ticket

Act 23 provides that the elimination of straight party ticket voting first applies with respect to voting at the 2012 General Election.

Proof of Identification

Act 23 provides that no elector who votes by absentee ballot at an election held prior to the 2012 Spring Primary is required to provide proof of identification. Further, an elector who votes at a polling place at an election held prior to the date of the 2012 Spring Primary must be *requested* by the election officials to present proof of identification. However, if the elector does not present proof of identification, and the elector is otherwise qualified, the elector's ballot *must be counted* without the necessity of presenting proof of identification and without the necessity of casting a provisional ballot.

If any elector who votes at a polling place at an election held prior to the 2012 Spring Primary does not provide proof of identification and would be required to provide proof of identification but for this provision, the election official who provides that elector with a ballot must also provide to the elector written information prescribed by GAB. The GAB information must briefly describe the voter identification requirement created by the Act and inform the elector that he or she will be required to comply with that requirement when voting at future elections beginning with the 2012 Spring Primary unless an exemption applies.

Effective date: The Act generally takes effect on June 10, 2011, except for provisions relating to voting identification assistance and REAL ID.

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