

Clearinghouse Rule 06-137

NOTICE OF PROPOSED RULE

STATE ELECTIONS BOARD

NOTICE IS HEREBY GIVEN that pursuant to ss.5.05(1)(f), 5.93, and 227.11(2)(a), Stats., and interpreting ss.5.02(6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats., and according to the procedure set forth in s.227.16(2)(e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

ANALYSIS PREPARED BY STATE ELECTIONS BOARD:

1. Statutory authority: ss.5.05(1)(f) and 227.11(2)(a):
2. Statutes interpreted: ss.5.02(6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats.
3. Explanation of agency authority: In 2002, Congress enacted the Help America Vote Act to address problems and issues that surfaced in the 2000 presidential election. Section 303(a)(5)(A)(i) of the Act provided that “an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number.” To comply with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver’s license but do not provide that number on their registration form, the Board has adopted EIBd s.3.04, providing for the issuance of a provisional ballot to those registrants, pursuant to s.6.97, Stats. Under that statute, the provisional ballot will be counted if the registrant casting a provisional ballot provides his or her driver’s license number to the clerk of the municipality in which the registrant has voted, not later than 4:00 p.m., on the day following the election.

Previously, the Board’s policy had been to process the election day registration of those registrants who failed to list their driver’s license number on their registration application, if they had provided, on their registration form, a

Wisconsin-issued Identification Card Number or the last four digits of their Social Security Number. Whether that policy complied with federal law had been in issue. To assure that Wisconsin's practice complies with federal law, the Elections Board proposes to promulgate the following rule providing for the issuance of a provisional ballot to those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that license number on their registration form. This rule is consistent with both federal and state law and has been approved by the U. S. Department of Justice.

4. Related statute(s) or rule(s): Subchapter II of Chapter 6, Stats. and EIBd chapter 3, Wis. Adm. Code, Voter Registration
5. Plain language analysis: The proposed rule provides the method by which persons who are not registered and who do not provide their driver's license number, for whatever reason, may register and vote on election day.
6. Summary of, and comparison with, existing or proposed federal regulations: The rule is consistent with Section 303(a)(5)(A)(i) of the Help America Vote Act, which provides that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."
7. Comparison with rules in adjacent states: The rule is consistent with the requirements in Illinois, Iowa, Michigan and Minnesota, similar to those in federal law, that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."
8. Summary of factual data and analytical methodologies: Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.
9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The rule will have no effect on small business nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.

11. Agency contact person (including e-mail and telephone): George A. Dunst
Legal Counsel, State Elections Board, 17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973; Phone 266-0136; (george.dunst@seb.state.wi.us)

12. Place where comments are to be submitted and deadline for submission: State
Elections Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973;
(elections.state.wi.us)

Pursuant to the authority vested in the State of Wisconsin Elections Board by
ss.5.05(1)(f) and 227.(11)(2)(a), Stats., the Elections Board hereby creates Rule EIBd
3.04 interpreting ss. 5.02(6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50,
6.54, 6.55, and 6.56, Stats., as follows:

SECTION 1. EIBd 3.04 is created to read:

ELBD 3.04 Requiring provision of certain information by election-day voter registration applicants. (1) A qualified elector registering to vote at a polling place on election day, who has been issued a current and valid Wisconsin driver's license, shall list his or her Wisconsin driver's license number on the voter registration application before the registration may be accepted or processed and before the person is allowed to vote at any election in Wisconsin. A Wisconsin driver's license that has expired, or has been suspended or revoked, is not a current and valid driver's license.

(2) If a current and valid Wisconsin driver's license has been issued to the registration applicant, but the registration applicant does not list the driver's license number on the registration application, the applicant will be allowed to vote a provisional ballot under s. 6.97, Stats. Individuals voting provisional ballots shall be given the written information required under s.6.97(1), Stats. If the person voting a provisional ballot provides his or her driver's license number to the municipal clerk, by any means feasible, including but not limited to in person, email, facsimile or telephone, not later than 4:00 p.m., on the day following the day of the election, the person's ballot will be counted.

(3) If a current and valid Wisconsin driver's license has not been issued to the applicant, the applicant shall list on the registration application either the last four digits of the applicant's Social Security Number, or the Wisconsin Department of Transportation identification card number if one has been issued to the applicant. If neither a driver's license nor a Social Security Number has been issued to the applicant, the applicant shall check the appropriate box on the application before the application may be accepted or processed and the registrant is allowed to vote.

INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

CONTACT PERSON:

George A. Dunst
Legal Counsel, State Elections Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973; Phone 266-0136

The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated December 21, 2006

KEVIN J. KENNEDY
Executive Director
State Elections Board