

# The State of Texas



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## **ELECTION ADVISORY** **No. 2018-08**

TO: Election Officials

FROM: Keith Ingram, Director of Elections 

DATE: January 31, 2018

RE: Voter Identification Procedures under Senate Bill 5 (2017)

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On January 1, 2018, certain provisions related to voter identification requirements under Senate Bill 5 from the 85<sup>th</sup> Regular Legislative Session (2017) went into effect. These changes codified certain components of the interim remedy order that has been in effect for Texas elections since August 10, 2016. In addition to codifying part of this interim order, SB 5 also made certain modifications to components of the interim remedy order. This advisory will summarize the provisions of SB 5 and explain the procedures related to these new provisions.

SB 5 provides for, among other things, the following changes to the Texas Election Code:

- If a voter possesses an acceptable form of photo identification, the voter must use it to vote. For voters aged 18-69, photo identification must be current or have expired no more than four years before being presented for voter qualification at the polling place. However, a voter aged 70 years of age or older may use an acceptable form of photo identification, no matter for how long it has been expired, so long as it is otherwise valid.
- If a person does not possess and cannot reasonably obtain an acceptable form of photo identification, then the person can present a supporting form of identification and sign a Reasonable Impediment Declaration, and vote a regular ballot.
- Provides a list of acceptable supporting forms of identification.
- Provides that the reasonableness of the voter's claimed impediment may not be questioned by the poll workers and that the addresses on the identifications do not have to match the voter registration address. The form warns that false statements and false information on a Reasonable Impediment Declaration subject a person to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 of the Texas Election Code.
- Provides that after completing the Reasonable Impediment Declaration, the election worker must affix the voter's VUID to the declaration and note on the combination form that the declaration was used by the voter.
- Provides that a voter may cure a provisional ballot cast due to the failure to present an acceptable form of photo identification or follow the Reasonable Impediment Declaration procedure at the polls or a voter registration certificate with an "E" notation on it by (1)

presenting an acceptable form of photo ID; (2) if the voter does not possess and cannot reasonably obtain an acceptable form of photo ID, executing a Reasonable Impediment Declaration and presenting an acceptable form of supporting ID; or (3), if applicable, submitting the affidavit for one of the temporary exemptions (natural disaster or religious objection to being photographed); or (4) if applicable, qualifying for the permanent disability exemption to presenting acceptable photo ID or following the Reasonable Impediment Declaration procedure, within 6 days of election day at the voter registrar's office.

Voters who possess an **acceptable form of photo ID** for voting are still required to present it in order to vote in person in all Texas elections. With the exception of the U.S. Citizenship Certificate, which does not expire, the acceptable form of photo ID must be current or, for voters aged 18-69, have expired no more than 4 years before being presented for voter qualification at the polling place. Voters over the age of 70 may present an acceptable ID that is expired by more than four years as long as the ID is otherwise valid.

These are the 7 forms of acceptable photo ID:

1. Texas Driver License issued by the Texas Department of Public Safety ("DPS")
2. Texas Election Identification Certificate issued by DPS
3. Texas Personal Identification Card issued by DPS
4. Texas Handgun License issued by DPS
5. United States Military Identification Card containing the person's photograph
6. United States Citizenship Certificate containing the person's photograph
7. United States Passport (book or card)

Further, voters who do not possess one of the forms of acceptable photo ID, and cannot reasonably obtain one, may present a **supporting form of identification** of the voter and execute a **Reasonable Impediment Declaration ("RID")** (in [English \(PDF\)](#) or [Spanish \(PDF\)](#)). The Reasonable Impediment Declaration that must be used under SB 5 has various modifications from the interim remedy ordering including : (1) the addition of a box for the Voter's VUID, (2) the elimination of the "other" category listed under the reasonable impediments, (3) a statement that providing a false statement or false information on the RID could subject the voter to prosecution for perjury under Chapter 37 of the Penal Code, or Section 63.0013 of the Texas Election Code, (4) modified descriptions of certain supporting IDs, and (5) a space for the voter registrar to sign where the election judge would otherwise sign in the event a Reasonable Impediment Declaration is used to "cure" a provisional ballot at the voter registrar's office.

**These are the 6 forms of supporting ID:**

1. Copy or original of a government document that shows the voter's name and an address, including the voter's voter registration certificate;
2. Copy of or original current utility bill;
3. Copy of or original bank statement;
4. Copy of or original government check;
5. Copy of or original paycheck; or
6. Copy of or original of (a) a certified domestic (from a U.S. state or territory) birth certificate or (b) a document confirming birth admissible in a court of law which establishes your identity (which may include a foreign birth document).

Examples of government documents include driver's licenses from other states, ID cards issued by federally recognized Native American tribes (if the ID card contains an address), DPS Receipts

(without a photo), expired voter registration certificates, and expired Texas DPS-issued driver licenses or personal ID cards (over 4 years). Government documents do NOT include Social Security cards (no address), public college or university IDs without an address, state/federal employee ID cards without an address, or library cards without an address. The address on the government document has to be an address of the voter. It does not have to match the address on the Official List of Registered Voters.

## **Training Polling Place Workers and Procedures for County Election Officials**

### **Preparing the Polling Place**

The election officials should be prepare the polling place as usual; however, they should be provided with the following versions of the following forms:

1. **Voter Information Poster (Form 7-7):** This (as of 01/2018) form should be posted in both [English \(PDF\)](#) and [Spanish \(PDF\)](#) in a prominent location at each polling place.
2. **Notice of Acceptable Identification Poster (Form 13-8):** This form (as of 01/2018) should be posted in both [English \(PDF\)](#) and [Spanish \(PDF\)](#) in a prominent location outside of each polling location (available in three sizes; 8.5x14 sizes are linked; other sizes are available [here](#)).

### **Qualifying the Voter**

1. The poll worker should ask the voter whether the voter possesses one of the acceptable forms of photo ID, which is either current or, if the voter is aged between 18-69 years, not expired more than four years, or, if the voter is aged 70 or older, may be expired for any length of time as long as it is otherwise valid. If the voter indicates that the voter possesses one of these acceptable forms of photo ID, the poll worker should ask the voter to present that acceptable form of photo ID.
  - *If* the voter presents an acceptable form of photo ID, the poll worker should proceed to Step 2.
  - **NOTE:** If a voter has continued access to their acceptable form of photo ID, but, for example, forgets to bring their acceptable form of photo ID to the polling place and/or left it, for example, at home or in their car, the voter still possesses the acceptable photo ID and must use it to vote. Accordingly, *if* the voter states that they possess an acceptable form of photo ID, but they did not bring it to the polling place, the poll worker should explain that the voter may take one of two actions:
    - The voter may leave the polling place and return with their acceptable form of photo ID. Once they return with their acceptable form of photo ID, the poll worker should proceed to Step 2.
    - The voter may cast a provisional ballot, and “cure” by appearing at the county voter registrar’s office within 6 calendar days of election day and presenting an acceptable form of photo ID, or completing a natural disaster affidavit because the voter’s acceptable photo ID is inaccessible due to certain natural disasters.
  - *If* the voter states that they do not possess an acceptable form of photo ID, the poll worker should ask the voter whether the voter cannot reasonably obtain one of the acceptable forms of photo ID.
    - *If* the voter says “yes”, that they cannot reasonably obtain an acceptable form of photo ID, explain to the voter that the voter can show a supporting form of ID

and execute a **Reasonable Impediment Declaration** (in [English PDF](#)) or [Spanish \(PDF\)](#))

- **Note:** If the voter states that they do not possess and cannot reasonably obtain an acceptable form of photo ID, the poll worker should not question the voter as to why. The poll worker should simply state that if the voter does not possess and cannot reasonably obtain an acceptable form of photo ID, they can show a supporting form of ID and execute a Reasonable Impediment Declaration.
- **Note:** The poll worker may not question the reasonableness of the voter's reasonable impediment. For example, if the voter checks "lack of transportation", the poll worker may not challenge the voter's access to a bus route or other means of transportation. A signed reasonable impediment declaration shall be rejected only upon conclusive evidence that the person completing the declaration is not the person in whose name the ballot is cast.
- **Note:** A voter who does not possess an acceptable form of photo ID includes a voter who does not possess a *valid* form of acceptable photo identification. Accordingly, a voter with a lost, stolen, suspended, or, if the voter is aged 18-69, expired more than four years, or, if the voter is aged 70 or older, is not otherwise valid (for these voters acceptable photo IDs may be expired for any length of time and still be used for voting so long as they are otherwise valid), form of photo ID listed above does not possess one of the acceptable forms of photo ID, and the voter could execute the Reasonable Impediment Declaration and present a supporting form of identification if the voter cannot reasonably obtain a replacement of the identification that was lost, stolen, suspended, revoked, expired or another form of acceptable form of photo ID.
  - The poll worker should provide the voter with a Reasonable Impediment Declaration, and ask the voter to complete the form by writing their name, indicating at least one reasonable impediment, and signing and dating the Declaration.
  - After the Declaration is completed by the voter, the voter should return the Declaration to the poll worker, and the poll worker should ask the voter to present one of the forms of supporting ID of the voter. The election judge should enter the date and then sign on the space provided on the Declaration. Either the poll worker or the election judge should indicate on the Declaration which supporting form of identification was presented. Either the poll worker or the election judge shall fill in the voter's VUID in the appropriate box or affix a sticker that contains the information across the box, and note on the combination form that the Declaration was used by the voter. Either the poll worker or the election judge should fill in the Date of Election and Location fields.
- *If* the voter states that they do not possess an acceptable form of photo ID, and the voter can reasonably obtain an acceptable form of photo ID, the voter should be offered a provisional ballot. The voter may "cure" by appearing at the county voter registrar's office within 6 calendar days of election day and presenting an acceptable form of photo ID or qualifying for one of the exemptions (disability, natural disaster, or religious objection to being photographed).

- *If* the voter states that they do not possess an acceptable form of photo ID, and the voter would otherwise not be able to reasonably obtain an acceptable form of photo ID, but has not brought a supporting form of ID to the polling place, the voter should be offered a provisional ballot. The voter may “cure” by appearing at the county voter registrar’s office within 6 calendar days of election day and presenting an acceptable form of photo ID, showing a supporting forms of ID and completing the **Reasonable Impediment Declaration**, or, if applicable, qualifying for one of the exemptions (disability, natural disaster, or religious objection to being photographed). In addition, if the voter would otherwise not be able to reasonably obtain an acceptable form of photo ID, but has not brought a supporting form of ID to the polling place, the poll worker should explain that that voter may also opt to leave the polling place, and return at a later time with their acceptable form of supporting ID and vote a regular ballot after executing a Reasonable Impediment Declaration at that time.
  - **Note:** The ability to “cure” by showing either an acceptable form of photo ID or, for voters who do not possess and cannot reasonably obtain an acceptable form of photo ID, by showing one of the supporting forms of ID and executing a Reasonable Impediment Declaration, is a change in procedure resulting from SB 5. The interim remedy order did not allow for any voters to “cure” by showing a supporting form of ID and executing a Reasonable Impediment Declaration.

If the voter casts a provisional ballot due to not providing an acceptable form of photo ID or not following the Reasonable Impediment Declaration at the polls, the procedures for casting a provisional ballot have not changed, but poll worker should provide to the voter a Notice to Provisional Voter (ID Voter)(Form 7-15c)(as of 01/2018), available in [English\(PDF\)](#) and [Spanish \(PDF\)](#).

Although as of September 1, 2017, it is no longer legally required, it is strongly advised that voters who do not present an acceptable form of photo ID (including, but not limited to, those who do not possess and cannot reasonably obtain an acceptable form of photo ID who present a supporting form of ID and execute a Reasonable Impediment Declaration), be provided with a copy of Notice of Required Identification (Form 13-1) (as of 01/2018), available in [English \(PDF\)](#) and [Spanish \(PDF\)](#).

2. The poll worker should confirm that the voter is on the official list of registered voters, by finding the voter’s name on the official list of registered voters. If the voter is not on the official list of registered voters, the poll worker should follow the procedure specified in Section 63.006, except that for voters who do not possess and cannot reasonably obtain an acceptable form of photo ID, and who execute a Reasonable Impediment Declaration and present a supporting form of ID, the supporting form of ID may also be used as the “acceptable voter ID” (referenced on Form 7-27) along with the voter’s voter registration certificate (and the supporting form of ID may also be the voter’s valid registration certificate).
  - **Note:** The Registrations Omissions List ([Form 7-27 \(PDF\)](#)) has not been updated at this time. The “acceptable voter ID” referred to in the definition of “Required documentation” on the instructions for that form now includes a “supporting form of ID” for voters who do not possess and cannot reasonably obtain an acceptable form of photo ID and who execute a Reasonable Impediment Declaration and present a supporting form of ID.

3. The poll worker should fully compare the voter's name as listed on the official list of registered voters to the voter's name as it appear on present form of ID.
  - **NOTE:** This comparison should be done regardless of whether the voter presents an acceptable form of photo ID *or* presents a supporting form of ID while executing a Reasonable Impediment Declaration.
4. The poll worker should confirm that the voter's address on the official list of registered voters is current by confirming that the voter has not moved.
  - **NOTE: The address on the voter's presented ID (either an acceptable photo ID or a supporting ID) does not have to match the voter's address on the official list of registered voters.**
5. The voter should sign the combination form/signature roster, and execute any required affidavits, such as the substantially similar name affidavit.
6. If the voter does not provide acceptable form of photo ID, and instead, does not possess and cannot reasonably obtain an acceptable form of photo ID, and provides one of the supporting IDs and executes a Reasonable Impediment Declaration, the poll worker should mark the "Reas. Imped. Decl. 63.001(i)" box on the Combination Form. The Combination Form for both election day ([Form 7-20](#)) and early voting ([Form 5-20](#)) have been modified to reflect this change.
7. The voter should complete the check-in proceed to voting a regular or provisional ballot as appropriate. **Voters who do not possess and cannot reasonably obtain an acceptable form of photo ID, who complete the Reasonable Impediment Declaration and present a supporting form of ID, are permitted to cast a regular ballot if they are otherwise qualified to vote a regular ballot.**
  - **NOTE: The Affidavit of Provisional Voter (Form 7-15 (PDF))** has not been updated at this time with a specific reference to the Reasonable Impediment Declaration procedure. For purposes of boxes to be checked at the polling place, the "Failed to present acceptable form of identification or voter certificate with exemption" box includes failing to follow the Reasonable Impediment Declaration procedure.

## Receiving Mail Ballots

The procedure for the early voting clerk to receive ballot by mail has not changed, except that the early voting clerk should use the 01/2018 version of the Hand Delivery Roster ([Form 5-11a \(PDF\)](#)) for accepting carrier envelopes delivered to the early voting clerk on election day, which now also permits voters who do not possess and cannot reasonably obtain an acceptable form of photo ID, delivering their ballots in this manner, to complete the Reasonable Impediment Declaration and present a form of supporting identification.

## Cure Period After the Election

The voter registrar should use the following forms ([as of 01/2018](#)) during the cure period.

Cure list ([Form 9-7 \(PDF\)](#))

Request for Disability Exemption ([Form 13-6 \(PDF\)](#))

Temporary Exemption ([Form 13-7 \(PDF\)](#))

## **Additional Forms**

The following forms (applicable to voters voting for the first time with an “ID Required” flag also account for first time voters who do not possess and cannot reasonably obtain an acceptable form of photo ID):

- **Form 5-22a:** Notice to Voter Who Must Provide Identification (For Voters Voting by Mail (For Voters Voting by Mail (in [English \(PDF\)](#) and [Spanish \(PDF\)](#)) (updated 1/2018))
- **Form 5-8 (PDF):** List of Voters Indicated as ID Voters (updated 01/2018)

## **Records Requirement**

All Reasonable Impediment Declarations should be scanned or photocopied and submitted to the Secretary of State not later than 30 days after the election.

If you have any questions or concerns that are not covered by this Advisory, please do not hesitate to contact the Elections Division toll-free at 1-800-252-2216.

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