

**ALERT RE: DRIVER'S LICENSE AND SOCIAL SECURITY DATA
COMPARISON PROCESSES REQUIRED BY THE HELP AMERICA VOTE
ACT (HAVA)**

The Help America Vote Act of 2002 (HAVA) requires (1) that all applications for new voter registration include a current and valid PA driver's license number, the last four digits of the applicant's social security number, or a statement indicating that the applicant has neither a valid and current PA driver's license or social security number; and (2) that voter registration commissions compare the information provided by an applicant with the Department of Transportation's driver's license database or the database of the Social Security Administration, as appropriate. However, HAVA does **not** require as a condition of the approval of an application for voter registration that the voter registration commission successfully verify the information through those databases. Rather, under HAVA and Pennsylvania law, **the disposition of an application for voter registration must be made solely by the county voter registration commission under the standards and procedures prescribed by Pennsylvania law.**

The Department of State sends this alert to revise and clarify the policies and procedures that it previously adopted to comply with the database comparison process that HAVA has required for applications for new voter registration since the beginning of the year.

I. Background

Effective January 1, 2006, section 303(a)(5) of HAVA required State and local voter registration officials to implement processes for comparing information submitted on applications for new voter registration with the State's driver's license records and the

database of the Social Security Administration. The Department of State in January 2006 implemented these processes in Pennsylvania as a component of the Statewide Uniform Registry of Electors (SURE) system. Those policies and procedures were written based on the Department's understanding of the requirements of section 303(a)(5) of HAVA at that time.

During the months that these processes have been in use, however, it has become apparent to the Department that the policies and procedures it established to comply with this new requirement are not well designed to comply with HAVA and Pennsylvania law governing voter registration. Most importantly, the Department's policies and procedures appear to require the rejection of voter registration applications solely on the basis that the information submitted by the applicant failed to match information contained in the database of the Social Security Administration or on driver's license records. Neither HAVA nor Pennsylvania law requires that result. *See Washington Ass'n of Churches, et al. v. Sam Reed*, No. C06-0726RSM, op. at 4-5 (W.D. Wash. August 1, 2006) (HAVA's data comparison process "was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility.").

For example, the transposition of a digit in the driver's license or social security number by either the applicant or at the time of data entry at the county registration office will result in a failure to match the applicant's driver's license record or social security record and could result in the applicant's voter registration application being rejected, without regard to the fact that the applicant meets all the eligibility requirements under Pennsylvania law to be a registered voter. Another common example is a voter

registration application that cannot be automatically matched with a record in a government database because the applicant customarily uses his or her middle name or a derivation of the applicant's given first name, rather than the applicant's full legal name. Completing a voter registration application using the name by which the individual is popularly known but not formally recorded in the social security database also will result in an inability to match the voter registration application with the person's social security record, notwithstanding the accuracy of all other information submitted by the applicant.

Other common examples of causes of failure to match include hyphens used within the name in one place and not in the other; and name changes adopted by individuals as part of the marriage or divorce processes or for other reasons that do not precisely conform to the form of name that appears in the database of the Social Security Administration.

Rejecting voter registration applications solely on these bases is not required by HAVA and is not authorized by Pennsylvania law. Because its policies and procedures appear to be resulting in the rejection of applications for reasons unrelated to the qualification of applicants to be registered voters, the Department has concluded that its procedures actually are frustrating the principal purpose and intent of HAVA to ensure that eligible persons are not disenfranchised.

Thus, in order to better meet the purpose and intent of HAVA and to facilitate the proper enfranchisement of all persons eligible under Pennsylvania law to vote, the Department is modifying the procedures and processes for using the driver's license record and social security number data comparison component of SURE. Also, the new

policy and procedure is more consistent with the policies and procedures that a majority of the States has adopted to implement the HAVA data comparison requirement.

II. Revised Policies and Procedures

A. *Applications for Voter Registration*

Under HAVA, a voter registration commission may not accept or process an application for voter registration unless it includes a driver's license number, the last four digits of a social security number, or a statement reflecting that the applicant has not been issued either a current and valid Pennsylvania driver's license or a social security number. *See* HAVA § 303(a)(5)(A). The Department's policies and procedures respecting this explicit HAVA requirement are consistent with HAVA, and therefore those policies and procedures will not be modified.

B. *Comparison with PennDOT and Social Security Administration databases is required by HAVA.*

If a driver's license number has been provided as part of the application for voter registration, HAVA requires the voter registration commission to submit the information provided in the application for comparison with the database of driver's license records maintained by the Pennsylvania Department of Transportation. *See* HAVA § 303(a)(5)(B)(i). If the applicant has not provided a driver's license number, but has provided the last four digits of the applicant's social security number, then HAVA requires the voter registration commission to submit the applicant's name and date of birth and the last four digits of the applicant's social security number for comparison with information maintained by the Social Security Administration. *See* HAVA § 303(a)(5)(B)(ii). The Department's policies and procedures implementing these explicit mandates of HAVA also will not be modified.

C. *Results and consequences of database comparisons.*

The Department's policy and procedures for use of the SURE data comparison component are clarified and revised to emphasize that under Pennsylvania law, and consistent with the purposes and intent of HAVA, the decision whether to approve or reject a proper application for voter registration is vested with the voter registration commission, as provided by 25 Pa.C.S. § 1328 (relating to approval of registration applications).

The HAVA data comparison requirements must be followed, but no provision of the HAVA data comparison requirement overrides the authority of the voter registration commission under Pennsylvania law to determine the validity of a voter registration application under the requirements of Pennsylvania law. Under HAVA and Pennsylvania law, the failure to achieve a match between a voter registration application and a record in the Commonwealth's driver's license database or the database of the Social Security Administration is not a reason to reject the application.¹

In anticipation of this modification in policy and procedure, the Department earlier suspended the operation of SURE's program for automatically rejecting applications for voter registration based on an applicant's failure to respond to notices issued to applicants seeking additional information. Thus, rejection of an application for

¹ By contrast, section 303(b)(3)(B) of HAVA does explicitly require that an election official *successfully* match the information provided on a mail-in application for voter registration with an existing State identification record bearing the same driver's license number or last four digits of the individual's social security number in order for the applicant to qualify for exemption from HAVA's voter identification requirement for first-time voters prescribed by section 303(b)(1) of HAVA. However, section 303(b)(3)(B) of HAVA does not affect the authority of a voter registration commission to approve an application for voter registration under Pennsylvania law; it applies only to the voter identification requirements imposed on electors whose applications for voter registration have been approved. As it has done since 2004, the SURE system will track and identify for county boards of elections those registered electors who are required by HAVA to present or submit voter identification as a condition of voting for the first time in Pennsylvania (including by absentee ballot) in an election for Federal office.

voter registration now can be accomplished only by the affirmative action of the voter registration commission or its authorized staff, acting pursuant to its authority under Pennsylvania law.

In addition, the issuance to applicants of all form notices that are prescribed by the SURE system is at the sole discretion of the voter registration commission, acting in the exercise of its judgment under Pennsylvania law.

Until the Department has modified the policies and procedures issued through the SURE system, the Department of State recommends that the voter registration commissions perform their powers and duties respecting the consideration and approval or disapproval of applications for voter registration based on the provisions of Federal and Pennsylvania law, as outlined in this notice.

Of course, as with all matters, the voter registration commissions should consult with their solicitors for necessary legal advice and counsel.