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McDowell, Paradee, Sokola, Sturgeon

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

# HOUSE BILL NO. 346
AS AMENDED BY
HOUSE AMENDMENT NO. 5

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO VOTING BY MAIL FOR THE 2020 NON-PRESIDENTIAL PRIMARY, GENERAL, AND SPECIAL ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The General Assembly finds and declares all of the following:

(1) The Centers for Disease Control ("CDC") has determined that a novel coronavirus ("COVID-19") presents a serious public health threat and has advised the public that asymptomatic individuals may be carriers of the COVID-19 virus and may unknowingly spread the virus to other individuals in close proximity, and therefore social distancing is required to help mitigate the individual exposure to and community spread of the COVID-19 virus.

(2) Governor Carney declared a State of Emergency for the State of Delaware Due to a Public Health Threat as a result of COVID-19 on March 12, 2020.

(3) A primary responsibility of the General Assembly is to protect the citizens of Delaware from a public health emergency that threatens their lives and the lives of their families.

(4) The public health threat created by COVID-19 will likely continue to create dangerous and potentially life-threatening public health conditions for Delawareans through the Summer, Fall and early Winter, 2020.

(5) COVID-19 is a highly contagious virus that spreads from person-to-person most frequently when in close contact. Evidence shows that the virus may remain viable for hours to days on surfaces.

(6) People 60 and older, those with serious chronic health conditions, people with disabilities, face greater risks for COVID-19.

(7) As of May 22, 2020, the total number of cases of COVID-19 in the United States was 1,571,617 resulting in 94,150 deaths. According to the CDC, the total number of cases increased by 20,522 in 1 day.



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(8) As of May 23, 2020, the total number of cases of COVID-19 in Delaware was 8,690 resulting in 324 deaths. The total number of cases increased by 161 in 1 day.

(9) The CDC encourages that due to COVID-19, voters use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.

(10) The CDC also encourages that nursing homes, long-term care facilities, and senior living residences not be used as polling places to minimize COVID-19 exposure among individuals and those with chronic medical conditions.

(11) Article V, § 4A of the Delaware Constitution permits absentee voting in limited circumstances including when an elector is in the public service of the United States, the nature of an elector's business or occupation, or an elector's sickness, disability, or absence from the district while on vacation. The list of reasons for absentee voting is exhaustive.

(12) Pursuant to Article XVII, § I, the General Assembly, in order to insure continuity of State and local governmental operations in periods of emergency resulting from disease, shall have the power and the immediate duty to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations. In the exercise of the powers conferred by Article XVII, § 1, the General Assembly shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the General Assembly to do so would be impracticable or would cause undue delay.

(13) It is the judgment of the General Assembly that due to the highly contagious nature of COVID-19 and the need to protect the electors and polling workers in this State from infection of COVID-19, voting by mail is necessary and proper for insuring the continuity of governmental operations, and to conform to the requirements of Article V, § 4A, would be impracticable.

Section 2. Amend Chapter 45, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4502 Form and designation of ballots.

(d) Absentee <u>and mail</u> ballots may be laid out with candidate names under an office title. If this form is used, party logos shall not be used and the political party of each candidate shall be listed beside or below the name of each candidate. The candidates shall be listed in the order specified in subsection (a) of this section above. Except, that in a primary election the candidates shall be listed in alphabetic order and the political party shall be listed for each office.

§ 4503 Creating ballots.

The Department shall create the ballots to be used in the voting devices and print or cause to have printed sufficient absentee and mail ballots for any election conducted by the Department under the provisions of this title.

§ 4505 Substitution of candidate's name after creation of ballots.

Whenever a supplemental certificate of nomination is filed naming a substitute candidate, as elsewhere provided in this title, the Department shall promptly provide new absentee and mail ballots, if there is sufficient time before the election, or take other appropriate measures including to notify electors to whom absentee or mail ballots have been sent of the substitute candidate, if there is insufficient time before the election to provide new ballots.

Section 3. Amend Part IV, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 56. Voting by Mail

§ 5601 Applicability.

This chapter applies to the following elections in 2020:

(1) A non-presidential primary election.

(2) A general election.

(3) A special election to fill a vacancy in a statewide office, the General Assembly, or any election held under the provisions of Chapter 73 of this title.

§5602 Persons eligible for voting by mail.

(a) Any qualified elector, duly registered, of this State may cast the qualified elector's vote by mail in the 2020 primary election, general election, special election held under the provisions of Chapter 73 of this title.

(b) Votes cast by mail pursuant to this chapter shall be counted in the total for the election district in which the elector is registered.

§ 5603 Process for Voting by Mail.

(a) The State Election Commissioner shall, no later than 60 days before any election to which this chapter applies, mail an application to receive a voting by mail ballot to every qualified, duly registered elector at the address appearing on such elector's voter registration record in order to allow electors the choice for voting by mail.

(b) A qualified, duly registered elector wishing to vote by mail must do all of the following:

(1) Complete the application for voting by mail.

(2) Sign and date the application.

(3) Mail, deliver, or cause to be mailed or delivered, the completed application to the Department by the deadline provided by the Department.

(c) Unless otherwise specified by the elector, an application to receive a voting by mail ballot applies to the 2020 primary election, general election, and any special election to fill a vacancy in a statewide office, the General Assembly, or an office covered by Chapter 73 of this title.

§5604 Distribution of ballots, envelopes, and instructions.

(a) Upon receipt of the application for voting by mail from an elector pursuant to §5603 of this title, the Department shall process the same and confirm that the elector qualifies for a mail ballot pursuant to § 5602 of this title.

(b) Not more than 30 days nor less than 4 days prior to an election, and within 3 days after the mail ballots, envelopes, and instructions therefore become available, the Department shall mail, to each elector who requested and qualified for a mail ballot pursuant to § 5602 of this title all of the following:

(1) A mail ballot for the election district in which the elector resides.

(2) Instructions for completing the mail ballot and returning it to the Department, marked "INSTRUCTIONS FOR COMPLETING AND RETURNING A MAIL BALLOT".

(3) An envelope marked "BALLOT ENVELOPE," which shall be all of the following:

a. Of the type known as a security mailing envelope, designed to securely protect the contents thereof from tampering, removal, or substitution without detection.

b. Large enough to carry the ballot envelope containing the completed mail ballot.

c. Addressed for return to the Department.

(4) Postage for all mailings made pursuant to this subsection shall be pre-paid by the Department.

(5) Nothing contained in this section shall prevent the issuance of a mail ballot to those lawfully entitled thereto when the request is made less than 4 days prior to the election.

§ 5605 Requirements for ballot envelope; numbering and coding; voter identification label; statement of eligibility.

(a) The Department shall provide to each elector to whom it sends a mail ballot an envelope which shall be all of the following:

(1) A color other than white.

(2) Large enough to hold a completed ballot.

(3) Designed to protect its contents from tampering, removal or substitution without detection.

(b) Upon each envelope provided pursuant to this section all of the following shall appear:

(1) The words "BALLOT ENVELOPE".

(2) An alphanumeric symbol and/or barcode for use in accounting for the mail ballot.

(3) Identification information for the elector receiving the mail ballot, including: the name of the county within which the elector is domiciled, the elector's name, the elector's address, the elector's election district, the elector's representative district, and such other information as the Department may require.

(4) The following oath:

"I do solemnly swear (affirm) that to the best of my knowledge I am eligible to vote in the State of Delaware and that my voting address is as it appears on the label on this envelope. I also do solemnly swear (affirm) under penalty of perjury that I have not received or accepted, or offered to receive or accept, any money or other item of value as compensation, inducement or reward for the giving or withholding of a vote at this election, nor that I am acting under duress or threat of duress or harm."

(5) The voter's signature.

§ 5606 Instructions for completing mail ballots.

The Attorney General shall prepare a list of instructions to assist an elector voting by mail ballot in properly marking and returning the elector's ballot pursuant to this chapter. These instructions shall be known and marked as "INSTRUCTIONS FOR COMPLETING AND RETURNING A MAIL BALLOT." Before each election the Attorney General shall deliver a copy of the instructions to the Department in sufficient time for the Department to have the instructions printed and delivered to each elector who requested a mail ballot for the ensuing election.

§ 5607 Voting procedure; execution of statement; return of ballot.

(a) The procedure for completing a mail ballot and returning it to the Department includes all of the following:

(1) An elector who receives a mail ballot pursuant to this chapter shall complete the ballot by marking it with the elector's selections and shall place the completed ballot in the envelope marked "BALLOT ENVELOPE."

(2) The elector shall confirm that the information about that elector on the ballot envelope is correct and then sign the self-administered oath.

(3) The elector shall then seal the ballot envelope.

(4) The elector shall return the sealed ballot envelope to the Department by any 1 of the following:

a. Depositing it, or causing it to be deposited, in a United States postal mailbox, thereby mailing it to the Department.

b. Delivering it, or causing it to be delivered, to the Department before the polls close on the day of the election.

c. Placing it, or causing it to be placed, in a secure drop-box located in the publicly accessible portion of each Department of Elections Office either before or on Election Day.

(b) Mail ballots received by the Department before Election Day may be processed and scanned but may not tabulated until Election Day.

§ 5608 Time limit for return of ballot; late ballots.

(a) The Department shall endorse the date and time of receipt on the ballot envelope of each mail ballot received thereby.

(b) For a mail ballot to be counted under this chapter, an elector voting by mail ballot shall return the elector marked ballot to the Department office of the county in which the voter resides before the polls close on the day of the election.

(c) The Department shall retain unopened any ballot envelope it receives after the polls close on the day of the election until the last day of February next after the election, or longer if directed by proper authority or required to do so by federal law.

§ 5609 Procedure on receipt of ballot envelope by Department.

(a) Upon receipt of a ballot envelope the Department, or a person authorized by the Department, shall do all of the following:

(1) Ascertain the name of each elector as it appears on the face of each ballot envelope.

(2) Ascertain from the information on the ballot envelope the election district with whose votes the ballot within it shall be tallied.

(3) Place the ballot envelope in a secure location until such time as it is opened and the ballot within it is counted.

(b) No member of the Department (the director or any other person) shall open or attempt to open the ballot envelope, or change or alter or attempt to change or alter the ballot envelope, or any writing, printing or anything whatsoever thereon.

§ 5610 Counting procedure for mail ballot envelopes.

At any time between the 30th calendar day before the election and the closing of the polls on an election day, mail election judges within each county, selected by the administrators of the Department in that county, shall count mail ballot envelopes at the Department's offices in the county as follows:

(1) A mail judge shall select the ballot envelopes in order of the election districts within the county;

(2) For each ballot envelope, the mail judges shall ascertain whether a challenge has been made pursuant to this chapter;

(3) If a challenge has been made, on election day, the BALLOT ENVELOPE shall be marked as "CHALLENGED" and shall be set aside in a secure location for consideration at a later time as provided elsewhere in this title.

(4) If no challenge has been made, the mail judges shall do all of the following:

a. Open the ballot envelopes in such a manner as not to deface or destroy the statement thereon or the mail ballot enclosed.

b. Remove the ballots from the ballot envelopes.

c. Determine whether the ballots have been properly completed and/or whether the elector's intent can be determined pursuant to § 4972 of this title.

d. Tally any mail votes that were written-in, or that must be counted by hand pursuant to § 4972 of this title, on mail vote tally sheets for the election district with whose votes the mail votes are to be counted.

e. Record the proper notations of such votes in the election records for the election district to which they apply.

f. A ballot that a team determines cannot be read by the tabulating equipment or which the tabulating equipment rejects, shall be duplicated as provided for in § 5611 of this title.

(5) Once mail votes have been recorded, a mail judge shall deposit the voted ballots, rejected ballots, and any mail vote tally sheet that may have been used, in a carrier envelope for the election district with whose votes the mail votes are counted; provided, however, that each carrier envelope shall contain mail ballots, rejected ballots, and tally sheets for no more than one election district and only one carrier envelope shall be filled at a time.

(6) Once a carrier envelope is filled, it shall be sealed by a mail judge. The mail judge shall sign the mail judge's name on each sealed carrier envelope, affirming that the mail judge sealed the envelope and that the envelope contains ballots for the election district to which the envelope is assigned. Each sealed and signed carrier envelope shall be placed in a secure location and held there until such time as it is destroyed or moved for further legal process.

(7) The results of the mail ballots shall not be extracted or reported before the polls have closed on the day of the election.

§ 5611 Preparing mail ballots for tabulation.

(a) Notwithstanding any other provision of this chapter or regulations adopted by the Department, the Department may open mail ballot envelopes in public meetings at any time between the 30th calendar day before the election and the closing of the polls on election day in order to prepare them for tabulation. The Department shall notify each party on the

ballot that they may have challengers at the meetings during which the Department opens the mail ballots. The challengers may challenge ballots as provided elsewhere in this title.

(b) The Department shall appoint teams composed of an equal number of Democrats and Republicans to open and duplicate ballots.

(c) The teams shall open ballots by election district, check them off against the list of mail voters, duplicate ballots that the team determines that the tabulating equipment cannot read and then secure the opened and duplicated ballots along with the envelopes in a carrier envelope. The teams shall record the number of the carrier envelope and the election district number on a log sheet that it shall also secure in the same carrier envelope.

(d) Teams shall duplicate ballots by marking them according to the voter's intent as shown on the ballot marked by the voter. If a team cannot determine a voter's intent, they shall consult the director and deputy director for advice and guidance.

(e) When duplicating ballots, the teams shall assign the same unique identifier to the ballot that they duplicate and the duplicated ballot. After the team has duplicated ballots for an election district, the team shall put the ballots that the team duplicated in a separate envelope and put it in the carrier envelope for the election district and the team shall put the duplicated ballots with the ballots that the Department shall tabulate on the day of the election.

(f) The Department shall secure the carrier envelopes in locked cabinets until opened in a subsequent public meeting to insert additional ballots or to tabulate the ballots on the day of the election.

§ 5612 Carrier envelope specifications; carrier envelopes as ballot boxes.

(a) The Department shall purchase envelopes to be used as carrier envelopes, which shall be security mailing envelopes, designed to securely protect the contents thereof from tampering, removal, or substitution without detection and shall be large enough to accommodate multiple mail ballots cast in the election.

(b) Carrier envelopes shall do all of the following:

(1) For all purposes of this title, be considered the official ballot boxes for mail votes cast during a given election.

(2) Contain voted mail ballots from a single election district.

(3) Be labeled to reflect the election district whose mail ballots are held inside; and

(4) Ensure the security of said ballots in the event they must be moved for the purposes of certifying an election or recounting votes cast in an election.

(c) A sealed carrier envelope may be reopened only when necessary to certify an election or recount votes cast in an election.

(d) In the event the Department must move mail ballots for the purposes of certifying an election, or recounting votes cast in an election, it shall select the carrier envelopes for the affected election districts and move them, in a secure fashion, to the location where the carrier envelopes will be opened and the votes inside inspected.

(e) Upon completion of any inspection of votes pursuant to this subsection, mail ballots shall be returned to the carrier envelopes from which they were removed and the carrier envelopes shall be:

(1) Resealed in a secure manner, or shall be placed in another security envelope, for the purposes of securely protecting the contents thereof from tampering, removal, or substitution without detection; and

(2) Placed in a secure location and held there until such time as it is destroyed or moved for further legal process.

§ 5613 Envelopes in general; approval by Attorney General.

The Attorney General shall personally approve each kind or type of envelope for use pursuant to this chapter. The Department shall not purchase, use, have printed upon, mail or deliver any envelope for use pursuant to this chapter unless such type or kind of such envelope has first been approved personally by the Attorney General.

§ 5614 Challenges.

(a) The ballot of any elector choosing to vote by mail ballot may be challenged for the same causes and in the same manner as provided in this title for other voters.

(b) In addition, the vote of a mail voter may be challenged for any of the following grounds:

(1) That the statement filed by the voter in compliance with § 5603 of this title is false.

(2) That the statement in the center of the face of the ballot envelope is not signed.

(c) If a challenge is made pursuant to subsection (a) of this section, a mail judge shall return the ballot to its ballot envelope, shall mark the ballot envelope as "CHALLENGED," and shall set the envelope aside in a secure location for consideration at a later time as provided elsewhere in this title. If a challenge is made pursuant to subsection (b) of this section, a mail judge shall mark the ballot envelope as "CHALLENGED" and shall set it aside in a secure location for consideration at a later time as provided elsewhere in this title.

(d) All challenges to mail ballots voted in a particular election district must be resolved before the counting of votes in that election district may be considered complete. Any challenge not resolved by the mail judges within a reasonable time of the challenge having been made shall be referred for resolution to the county director and deputy county director of the Department in the county where such election district is located.

§ 5615 Rejected ballots.

(a) No vote shall be accepted or counted if any of the following occurs:

(1) The statement of the mail voter that appears on the front of the ballot envelope is found to have been altered or is not signed.

(2) The mail voter is not a duly registered elector in this State.

(3) The ballot envelope is open.

(4) It is evident that the ballot envelope has been opened and resealed.

(5) It is evident that the ballot envelope has been tampered with or altered.

(b) If the ballot envelope has not been opened at the time a mail judge decides that the offered ballot contained therein should not be accepted or voted for any of the reasons set forth in subsection (a) of this section, it shall not be opened but shall instead be endorsed thereon as, "REJECTED," giving the reason therefore.

(c) If the ballot envelope has been opened at the time a mail judge decides that the offered ballot contained therein should not be accepted or voted for any of the reasons set forth in subsection (a) of this section, the ballot shall be returned to its ballot envelope and the mail judge shall endorse on the ballot envelope, "REJECTED," giving the reason therefore.

(d) Whenever it is made to appear by due proof to a mail judge that any mail voter, who has marked and forwarded the mail voter's ballot, has subsequently died, the ballot envelope containing the ballot shall not be opened but shall be marked "REJECTED, DEAD," and shall be preserved and disposed of as other rejected ballots.

(e) Whenever a ballot has not been counted but has been rejected pursuant to this section, the appropriate notation shall be made on the mail ballot tally and the number of ballots so rejected shall be noted on the certificates of election.

(f) Ballots rejected pursuant to this section shall be deposited in a carrier envelope for the election district to which they apply.

§ 5616 Validity of mail voter's ballot for wrong district.

If a mail voter marks and returns a mail ballot for an election district other than the one of which the mail voter is a resident and a duly registered elector, such ballot, because thereof, shall not be adjudged invalid, but, as indicated by the marking of the ballot by the voter, shall be counted as a vote for every candidate appearing thereon who is a candidate for an office to be duly voted for in the election district.

§ 5617 File of mail voters.

(a) The Department shall maintain records providing for the prevention of fraud and to make possible the tracing and detection of any attempt to do so. Such records shall include the following entries:

(1) The name of elector.

(2) The address at which elector is registered.

(3) The address where ballot is to be mailed.

(4) The date the statement is received by the Department.

(5) The elector's election and representative district.

(6) The ballot envelope identification number.

(7) The date the ballot is mailed or delivered to the elector.

(8) The date the ballot is returned.

(b) The Department shall compile from its files a list of names and addresses of all applicants for mail ballots, and shall send current and complete copies thereof without cost to all political parties with candidates on the ballot in the forthcoming election. Such lists shall be provided no later than 2 weeks prior to the date of the election and copies of the lists must be mailed on the same date to the respective chairs of each political party involved in the election. Comparable information from the file shall also be made available to representatives of all political parties at each office of the Department during the remaining 2 weeks before the election, such information to be recorded by such representatives from the daily records of the Department with the cooperation and assistance of the employees thereof.

§ 5618 Duties of Department of Elections; political balance of mail judges; security.

(a) The Department shall ensure that each panel of mail judges selected to officiate the procedures set forth in this chapter represent a politically balanced cross section of the major political parties participating in the election for which absentee ballots are being counted.

(b) The Department shall promulgate rules to ensure the security and integrity of the procedures set forth in this chapter and that the counting process for mail ballots is not subject to improper influences.

§ 5619 Logic and accuracy testing of mail ballot tabulating equipment; authority of the State Election Commissioner.

(a) The State Election Commissioner, in consultation with the Department offices, shall promulgate rules relating to logic and accuracy testing of mail ballot tabulating machines.

(b) Rules promulgated pursuant to this section shall ensure all of the following:

(1) All machines are thoroughly tested immediately following maintenance and programming thereof to determine all of the following:

a. The voting system is properly programmed.

b. The election is correctly defined on the voting system.

c. All of the voting system input, output, and communication devices are working properly.

(2) Any machine deemed unsatisfactory shall be recoded, repaired, or replaced and shall be retested.

(3) Machines are publicly tested prior to use to ascertain that they will correctly count votes cast for all offices and all measures in the upcoming election;

(4) Public notice of public tests is given at least 7 days prior to the tests being conducted;

(5) The resetting and sealing of each publicly tested machine is witnessed by the election officials, representatives of the political parties, and any candidates or candidate representatives who were in attendance;

(6) Each publicly tested machine is secured following the test in a state of readiness until the day of the election; and

(7) Records are kept of all pre-election testing of each mail ballot tabulating machine which shall be present and available for inspection and reference during public pre-election testing of that machine by any person in attendance during such testing.

§ 5620 Emergency authority for the State Election Commissioner.

(a) In the event that a national or local emergency makes substantial compliance with the provisions of this chapter impossible or unreasonable for some of all of the citizens covered under § 5602(1) or (2) of this title, the State Election Commissioner may direct the use of special procedures to facilitate mail voting for those citizens directly affected who are eligible to vote in the State. Such an emergency may be a natural and/or humanitarian disaster; and/or armed conflict involving United States Armed Forces to include mobilized State National Guard and/or Reserve components.

(b) The State Election Commissioner shall consult with the Governor and the Federal Voting Assistance Program or its successor prior to directing the use of the special procedures cited in subsection (a) of this section.

(c) The State Election Commissioner, in collaboration with the Department, shall promulgate special procedures to be followed in the event that such a national or local emergency occurs.

§ 5621 System for voters to determine status of their mail ballots.

The State Election Commissioner, in collaboration with the Department offices, shall establish a free access system accessible via the Internet through which a person who applied for a mail ballot can determine whether or not the ballot application was received, when the ballot was transmitted, when the voted ballot was received by the Department, and whether or not the ballot was counted.

Section 4. This Act expires on January 12, 2021.