

LAWS OF DELAWARE
VOLUME 83
CHAPTER 71
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 5

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO REGISTRATION OF VOTERS.

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

Section 1. Amend § 2050, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2050. Registration through state agencies.

(a) Registration through the Division of Motor Vehicles.

(1) ~~In addition to registration as provided for elsewhere in this chapter, For each person who is not registered to vote and is of sufficient age to register to vote and whose information is not transmitted to the Department of Elections pursuant to § 2050A of this title, each application for a motor vehicle driver's license under the laws of Delaware (including any renewal application) shall serve as an application for voter registration. However, any person who, at the time of the transaction with the Division of Motor Vehicles, provides a document that demonstrates non-citizenship shall not be offered the opportunity to register to vote. The Division of Motor Vehicles may not offer an opportunity to register to vote to an individual applying for a driving privileges card or permit under § 2711(d) of Title 21.~~

~~(2) An application for voter registration submitted under paragraph (a)(1) of this section shall be considered as updating any previous voter registration by the applicant.~~

(2) ~~(3)~~ An applicant for a motor vehicle license under this section may decline in writing to be registered to vote by way of the application for a motor vehicle driver's license. The fact that an applicant has declined to be registered through the motor vehicle application process shall not be used for any purpose other than voter registration.

(3) ~~(4)~~ Applications for a motor vehicle license under this section shall include as a part of the application a voter registration component. The voter registration component may not require any information which duplicates information required in the motor vehicle license component other than a second signature or information listed in paragraph (a)~~(4)(a)~~ ~~(5)a~~ of this section. If the applicant desires not to register to vote, the transmission of an electronic record will notify the Department of Elections of the applicant's intention.

~~(4)(5)~~ The voter registration component of the motor vehicle license application under this section must contain all of the following:

a. The minimum amount of information necessary to ensure the prevention of duplicate voter registrations and preserve the ability of election officials to determine eligibility of the applicant and otherwise administer voter registration and the election ~~process~~; process.

b. A statement setting forth voting eligibility requirements and an attestation that the applicant meets the ~~requirements~~; requirements.

c. The signature of the applicant under penalty of ~~perjury~~; and perjury.

d. No requirement of notarization or other formal authorization.

~~(6) Any change of address form submitted to the Division of Motor Vehicles shall serve as notification of change of address for voter registration purposes.~~

(b) Registration through other state agencies.

(1) The Secretary or Chief Administrative Officer of each of the state agencies ~~listed in~~ under paragraph (b)(2) of this section shall be a voter registration agency for purposes of this subchapter and must provide the voter registration services listed in paragraph (b)(3) of this section for its employees and the public it serves.

(2) In addition to the ~~manner of~~ voter registration procedure provided elsewhere in this chapter, ~~under subsection (a) of this section~~, a ~~person~~ an individual who is qualified to register to vote may complete a voter registration application or apply to change a previous voter registration at any of the following ~~divisions of~~ state agencies:

a. Department of Health and Social Services, ~~Division of Economic Services~~; Division of Social Services.

b. Department of Labor, Division of Employment and Training and Division of Vocational ~~Rehabilitation~~; and Rehabilitation.

c. ~~The Secretary or Chief Administrative Officer of each state agency not enumerated under paragraph (b)(2)a. or b. of this section may provide voter registration services for its employees and the public it serves.~~ Any other state agency that the Secretary or Chief Administrative officer for that state agency selects to provide voter registration services for its employees and the public it serves.

(3) At each voter registration agency established by this subsection, all of the following services ~~shall~~ must be made available:

a. Distribution of mail voter registration application forms as required by subchapter IV of this chapter in conjunction with the voter registration agency's own application for the service it provides to the public, and with each of the agency's ~~application~~ applications for recertification, ~~renewal~~ renewal, or change of address form relating to the services the agency provides, unless the ~~applicant~~ individual, in writing, declines to register to ~~vote~~; to vote. To the greatest extent practicable, the voter registration agencies' forms ~~shall~~ must incorporate a means by which a ~~person~~ an individual who completes the forms may decline, in writing, to register to vote.

b. Employees of the ~~registration agencies~~ voter registration agency who are trained to provide nonpartisan voter registration assistance, ~~and who shall routinely inquire of members of the public~~ individuals served by the agency whether they wish to register to ~~vote~~ vote, ~~and, and who~~, if requested, assist such ~~members of the public~~ individuals in completing the registration forms forms. ~~Any such agency~~

~~employee shall~~ must provide to each ~~applicant~~ individual who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the ~~office~~ agency with regard to the completion of its own forms. ~~An~~ A voter registration agency employee who provides such assistance ~~shall not~~ may not do any of the following:

1. Seek to influence an applicant's political preference or party ~~registration;~~ registration.
2. Display any such political preference or party ~~allegiance;~~ or allegiance.
3. Make any statement to an applicant to take any ~~action;~~ action of which the purpose or effect ~~of which~~ is to discourage the applicant from registering to vote.

c. Acceptance of completed voter registration applications for transmittal to the appropriate office of the Department of ~~Elections;~~ Elections.

1. ~~No information~~ Information relating to a declination to register to vote in connection with an application made at a ~~registering~~ voter registration agency may not be used for any purpose other than voter registration.

2. ~~Registering~~ Voter registration agencies ~~shall~~ must do all of the following:

(i) A. Inform all applicants for voter registration of voter eligibility ~~requirements;~~ requirements.

(ii) B. Inform all applicants for voter registration of the penalties provided under law for submission of a false voter registration ~~application;~~ and application.

(iii) C. Ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(4) Notwithstanding the provisions of paragraph (b)(3) of this section, a voter registration agency may use an electronic tool developed by the State Election Commissioner to register clients to vote and to update ~~their~~ voter registration records.

Section 2. Amend Subchapter VII, Chapter 20, Title 15 of the Delaware Code by adding a new § 2050A and by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2050A. Automatic Voter Registration at the Division of Motor Vehicles and Other Agencies.

(a) Each person who, in the course of business with the Division of Motor Vehicles, provides documentation demonstrating United States citizenship, shall be confirmed in the Division of Motor Vehicles database as meeting the citizenship requirement for eligibility to vote. The course of business with the Division of Motor Vehicles applies to any person who comes to an office of the Division of Motor Vehicles or accesses its website in order to conduct any of the following transactions:

(1) The issuance or replacement of a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under § 3102 of Title 21.

(2) The renewal of a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under § 3102 of Title 21.

(3) The change of an individual's legal name or residence address listed on a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under § 3102 of Title 21.

(b)(1) For each individual who is confirmed in the Division of Motor Vehicles database as meeting the citizenship requirement for eligibility to vote, and who is not registered to vote and who is of sufficient age to register to vote, the Division of Motor Vehicles shall provide to the Department of Elections all of the following information about the individual:

- a. The individual's name.
- b. The individual's date of birth.
- c. The individual's driver's license or state ID number.
- d. The individual's residence address and mailing address, if different from the residence address.
- e. The individual's county of residence.
- f. The individual's citizenship status.
- g. An electronic image of the individual's signature.

(2) The Division of Motor Vehicles shall transmit the information in subsection (b)(1) of this section to the Department of Elections electronically, at least on a daily basis, and in a format agreed upon by the Division of Motor Vehicles and the Department of Elections. The Department of Elections must be able to upload the information onto the statewide computerized voter registration database.

(c) Nothing in this section shall be construed to amend the substantive qualifications for voter registration in this State or to require documentary proof of citizenship for voter registration.

(d)(1) Upon receiving a complete electronic record for an individual who is not registered to vote, is of sufficient age to register to vote, and who has demonstrated United States citizenship, the Department of Elections shall, upon determination that the individual is eligible to register to vote, do all of the following:

- a. Register the individual to vote.
- b. Mark the individual as unaffiliated.
- c. Send the individual a notice under subsection (e)(1) of this section.

(2) If the Department of Elections determines that a person under subsection (d)(1) of this section is ineligible to register to vote, the Department of Elections may not register the individual to vote or send the individual a notice under subsection (e)(1) of this section.

(3) If the electronic record received for an individual does not include the information required by subsection (b)(1) of this section, the Department of Elections shall ask the individual to provide the necessary additional information, pursuant to procedures set out by Department of Elections regulations.

(e)(1) For any individual registered to vote pursuant to subsection (d)(1) of this section, the Department of Elections shall send to the person's address of record, by non-forwardable mail, a notice that the individual has been registered to vote that contains a postage paid preaddressed return form by which the person may affiliate with a political party or decline to be registered.

(2) A notice mailed under subsection (e)(1) of this section must include an explanation of the eligibility requirements to register to vote and a statement indicating that if the person is not eligible, the person should decline to register using the preaddressed return form. The notice must also state the penalties for submission of a false application.

(3) The notice provided under subsection (e)(1) of this section must also include a statement indicating that if the person declines to register to vote, the fact that the person has declined registration will remain confidential and will be used only for election administration purposes, and a statement indicating that if a person does not decline registration, the office at which the person was registered will remain confidential and will be used only for election administration purposes.

(4) The notice provided under subsection (e)(1) of this section must include a statement instructing the person to select a political party in order to vote in that party's political primary. The notice must also inform the person that they may affiliate with a political party by using the State's online voter registration system.

(5) The notice provided under subsection (e)(1) of this section must provide information regarding participation in the Address Confidentiality Program pursuant to § 1303 of this title.

(6) The Department of Elections shall prescribe the form of the notice described in subsection (e)(1) of this section. Such notice may be combined with the notice provided to newly registered voters required under § 2014(c) of this title.

(f) If a person returns the notice provided under subsection (e)(1) of this section and declines to be registered, the person's registration is cancelled, and the person is deemed to have never registered. If the person has voted in an election after the transfer of the person's record but before the notice is returned, the returned form is of no effect and the person is registered as of the date of the person's application with the Division of Motor Vehicles.

(2) If a person returns the notice provided under subsection (e)(1) of this section and affiliates with a party, the person is registered as of the date of the person's application with the Division of Motor Vehicles, and the person's affiliation shall be marked effective as of the date the affiliation information is received.

(3) If a person returns the notice provided under subsection (e)(1) of this section without marking the option to decline or the option to affiliate with a party, the returned form is of no effect. The person is registered as of the date of the person's application with the Division of Motor Vehicles.

(4) If a notice provided under subsection (e)(1) of this section is returned as undeliverable, the Department of Elections must send the person an address verification request pursuant to § 2014(c) of this title.

(5) Information relating to the return of a notice form declining to be registered may not be used for any purpose other than election administration.

(g)(1) The Division of Motor Vehicles shall provide notice of a change of name or address to the Department of Elections for an individual who meets all of the following requirements:

a. Is registered to vote in this state.

b. Comes to an office of the Division of Motor Vehicles or accesses its website in order to conduct any of the following transactions:

1. The issuance or replacement of a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under § 3102 of Title 21.

2. The renewal of a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under § 3102 of Title 21.

3. The change of an individual's legal name or residence address listed on a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under § 3102 of Title 21.

c. Provides information indicating a different name or address from that on the individual's voter registration record.

(2) This information shall be transmitted electronically, at least on a daily basis, and in a format agreed upon by the Division of Motor Vehicles and the Department of Elections. The Department of Elections must be able to upload the information onto the statewide computerized voter registration database.

(3) The Department of Elections must change the person's registration record to reflect the change of name or address, mark the registration record as "active," and send to the person's address of record, by forwardable mail, notice of the change and a postage paid preaddressed return form by which the person may verify or correct the information. Such notice may be combined with the notice required under § 2014(c) of this title.

(4) If the person returns the form described in subsection (g)(3) of this section and indicates that the change to the registration records was in error, the Department of Elections must immediately correct the person's previously updated information in the statewide voter registration database.

(h)(1) Each state agency that provides voter registration services pursuant to § 2050(b) of this title shall annually provide to the Department of Elections a list with each designated office, the type of services the office provides, and a designated voter registration contact for that office.

(2) At the earliest practicable time, the State Election Commissioner or the Commissioner's designee shall assess which voter registration agencies collect sufficient information from applicants to verify eligibility for voter registration purposes or update information for an existing registration.

(3) If, after conducting the assessment required by subsection (h)(2) of this section, the State Election Commissioner or the Commissioner's designee determines that a state agency collects the necessary

information to confirm eligibility for registration or update information for an existing registration in the regular course of business, the Department of Elections shall establish a schedule under which the agency must begin providing electronic records regarding individuals eligible to register to vote and updated information for individuals already registered to vote in this state to the Department of Elections.

(4) The agency shall provide electronic records to the Department of Elections, and the Department of Elections shall process electronic records received from the agency substantially in accordance with the procedures set out in this section for the Division of Motor Vehicles, subject to any modifications necessary to comply with federal law.

(i) The Department of Elections, officials from the Division of Motor Vehicles, and officials from any other agencies designated under subsection (h)(3) of this section shall work jointly to provide registration and materials educating the public about the procedures established in this section.

(j) The Department of Elections shall establish adequate and reasonable technological security requirements for the exchange or transfer of data related to voter registration between the Department of Elections and the Division of Motor Vehicles or any other agency designated pursuant to subsection (h)(3) of this section. No agency may begin to exchange or transfer data under this section unless that agency adheres to the technological security requirements established by the Department of Elections under this subsection.

(k) The Department of Elections, in consultation with the Division of Motor Vehicles and any other agencies designated pursuant to subsection (h)(3) of this section, shall audit the system established by this section for quality of data prior to implementation. Following implementation, the Department of Elections shall conduct regular audits and random checks of the system to ensure accuracy and reliability.

(l)(1) The Department of Elections shall produce an annual public report to the Governor and General Assembly that includes all of the following:

a. The number of records transferred to the Department of Elections under this section, categorized by the source agency.

b. The number of voters newly added to the statewide voter registration list because of records transferred, categorized by the source agency.

c. The number of voters on the statewide voter registration list whose information was updated because of records transferred, categorized by the source agency and the type of information update.

d. The number of individuals who declined voter registration.

e. Information on the implementation of audits, security, and privacy protocols.

f. Any efforts the Department of Elections and source agencies plan to make to improve the efficiency and effectiveness of the voter registration process, by source agency.

(2) For items (l)(1)(a) through (d), the report shall be subcategorized by sex and age of the individuals included.

(3) The report may not include any personal identifying information.

(m)(1) Unless a person who is ineligible to register to vote intentionally takes voluntary action to register to vote knowing that he or she is not eligible to register, the transfer of the person's electronic record to the Department of Elections under this section does not constitute the completion of a voter registration form by that person, and that person may not be considered to have registered to vote or made a false claim to United States citizenship. If such a registration is processed by the Department of Elections, it is presumed to have been officially authorized by the state, and the person is not subject to any penalty under this code.

(2) If an individual who is ineligible to vote becomes registered to vote under this section, that individual is not guilty of wrongful registration under § 2302 of this title unless the individual intentionally takes voluntary action to register to vote knowing that he or she is not eligible to register.

(3) If an individual who is ineligible to vote becomes registered to vote under this subchapter and votes or attempts to vote in an election held after the effective date of the individual's registration, that individual is presumed to have a defense under § 5104 of this title and is not guilty of fraudulent voting under § 5128 of this title unless the individual intentionally takes voluntary action to register to vote knowing that he or she is not eligible to register.

(n) The Division of Motor Vehicles and the Department of Elections may promulgate regulations to implement and enforce the provisions of this section.

Section 3. Amend § 3161, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3161 Voting procedure.

(a) The voting procedure at any primary election shall be the same as at any general election, except that the officers shall first determine from the voter's original permanent registration record whether the voter's party affiliation is the same as the party holding the primary election, and, if they are not the same, the voter shall not be permitted to vote in the primary election.

(b) Notwithstanding any provision to the contrary, if a qualified unaffiliated voter who is registered to vote for the first time pursuant to § 2050A of this title appears at a primary election and indicates the intent to enroll in the party holding the primary election, such voter shall be enrolled immediately in that party and be permitted to cast a regular ballot for the primary election.

Section 4. Amend § 1701, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1701 Qualifications for registration as qualified voter.

(a) Every applicant for registration shall be a qualified voter in a general or primary election if such applicant is a citizen of this State of the age of 18 years and upwards, or who will be 18 years old on or before the day of the general election next succeeding the applicant's registration, and is a bona fide resident of this State. An applicant shall be a qualified voter in a special election if such applicant is a citizen of this State of the age of 18 years and upwards on the date of the special election. No person in the military, naval or marine service of the United States shall become a resident of this State by being stationed in any garrison, barrack, or military or naval

place or station within this State; and no person adjudged mentally incompetent, person who is ineligible to vote under Chapter 61 of this title, or person rendered incapable of voting by reason of violating § 7 of Article V of the Constitution of this State for 10 years next following that person's conviction and sentence thereunder, shall be a qualified voter. For purposes of this chapter, the term "adjudged mentally incompetent" refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment.

(b) The Department shall permit registration of any citizen and bona fide resident of this State 16 years of age or older through the Division of Motor Vehicles as set forth in § 2050(a) and § 2050A of this title, provided that such applicant shall not be a qualified voter unless qualified under subsection (a) of this section.

Section 5. This Act shall become effective on the earlier occurrence of: (1) two years after enactment into law; or (2) five days after the date of certification by the State Election Commissioner to the Governor and the General Assembly that the information technology infrastructure to substantially implement this act is functional.

Section 6. The Department of Elections and other state agencies are immediately authorized to promulgate and implement necessary rules and regulations and to take steps required to implement this act.

Approved June 30, 2021