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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 320

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

1 WHEREAS, federal law establishes the Tuesday next after the 1st Monday in November as the day for the election
2 of Representatives and Delegates to Congress; and

3 WHEREAS, § 1, Article V of the Delaware Constitution is very similar to federal law, requiring that the “general
4 election shall be held biennially on the Tuesday next after the first Monday in the month of November, and shall be by
5 ballot”; and

6 WHEREAS, § 1, Article V of the Delaware Constitution also provides that “the General Assembly may by law
7 prescribe the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter,
8 preserve the freedom and purity of elections and prevent fraud, corruption and intimidation thereat”; and

9 WHEREAS, it is well-established that states can allow voting by mail without violating federal law, because the
10 election is still considered as consummated on election day; and

11 WHEREAS, many state courts have upheld voting by mail laws, following this line of federal cases; and

12 WHEREAS, the language in § 1, Article V of the Delaware Constitution is very similar to the language in federal
13 law under which voting by mail ballot has been upheld and also provides that the General Assembly may by law prescribe
14 the means, methods and instruments of voting; and

15 WHEREAS, the General Assembly finds that voting by mail ballot is a method of voting that is within the General
16 Assembly’s power to establish under § 1, Article V of the Delaware Constitution, because the election is consummated on
17 election day; and

18 WHEREAS, in 2020, approximately 160,000 Delawareans voted absentee using mail ballots under Chapter 56 of
19 Title 16 as enacted by House Bill No. 346 (150th General Assembly).

20 NOW, THEREFORE:

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

22 Section 1. Amend Part IV, Title 15 of the Delaware Code by making deletions as shown by strike through and
23 insertions as shown by underline as follows:

24 Chapter 56A. Voting by mail ballot.

25 § 5601A. [Reserved.]

26 § 5602A. Applicability.

27 This chapter applies to the following elections:

28 (1) A non-presidential primary election.

29 (2) A general election.

30 (3) A special election to fill a vacancy in a statewide office, the General Assembly, or an office covered under

31 Chapter 73 of this title.

32 § 5603A. Voting by mail ballot.

33 Votes cast by mail ballot under this chapter shall be counted in the total for the election district in which the
34 elector is registered.

35 § 5604A. Process for voting by mail ballot.

36 (a) The Department shall create an application which may be completed by any elector wishing to vote by mail
37 under this chapter.

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

39 (1) Complete a handwritten or electronic application to vote by mail.

40 (2) Sign and date the application.

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

43 § 5605A. Distribution of ballots, envelopes, and instructions.

44 (a) Upon receipt of the application for a mail ballot from an elector under § 5604A of this title, the Department
45 shall process the same and confirm that the elector qualifies to vote under this title.

46 (b) No more than 30 days but not less than 7 days before an election, and within 3 days after the ballots, ballot
47 envelopes, and instructions become available, the Department shall mail all of the following to each elector who requested
48 and qualified for a mail ballot:

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

50 (2) The instructions for completing and returning the mail ballot under § 5607A of this title.

51 (3) The ballot envelope required under § 5606A of this title.

52 (c) Postage for all mailings under subsection (b) of this section must be pre-paid by the Department.

53 (d) This section does not prevent the issuance of a mail ballot to a qualified elector when the request is made less
54 than 7 days before the election.

55 § 5606A. Requirements for ballot envelope; numbering and coding; voter identification label; statement of
56 eligibility.

57 (a) With each mail ballot, the Department shall also provide each elector an envelope that is all of the following:

58 (1) A color other than white.

59 (2) Large enough to hold a completed ballot.

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

61 (4) Addressed for return to the Department.

62 (b) All of the following must appear on each envelope provided under subsection (a) of this section:

63 (1) The words “BALLOT ENVELOPE”.

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

65 (3) Identification information for the elector receiving the mail ballot, including all of the following:

66 a. The name of the county within which the elector is domiciled.

67 b. The elector’s name.

68 c. The elector’s address.

69 d. The elector’s election district.

70 e. The elector’s representative district.

71 f. Any other information required by the Department.

72 (4) The following oath:

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

78 (5) A designated space for the elector’s signature.

79 § 5607A. Instructions for completing and returning a mail ballot.

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

85 § 5608A. Voting procedure; execution of statement; return of ballot.

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

87 (1) An elector who receives a mail ballot under this chapter shall complete the ballot by marking it with the
88 elector’s selections and shall place the completed ballot in the envelope marked “BALLOT ENVELOPE”.

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

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

92 (4) The elector shall return the sealed ballot envelope to the Department before the polls close on the day of
93 the election by doing any 1 of the following:

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

96 b. Delivering it, or causing it to be delivered, to the Department.

97 c. Placing it, or causing it to be placed, in a secure drop-box located in a publicly accessible portion of
98 each Department of Elections Office.

99 (b) Mail ballots received by the Department before the day of the election may be processed and scanned but may
100 not tabulated until the day of the election.

101 § 5609A. Time limit for return of ballot; late ballots.

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

103 (b) For a mail ballot to be counted under this chapter, the elector shall return the elector’s marked ballot to the
104 Department before the polls close on the day of the election.

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

108 § 5610A. Procedure on receipt of ballot envelope by Department.

109 (a) Upon receipt of a ballot envelope, the Department shall do all of the following:

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

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

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

115 (b) Except as required under this chapter, no person may open or attempt to open the ballot envelope, or change,
116 alter, or attempt to change or alter the ballot envelope, or any writing, printing, or anything on the ballot envelope.

117 § 5611A. Counting procedure for ballot envelopes.

118 Beginning 30 days before the day of the election, election judges within each county, selected by the
119 administrators of the Department in that county, shall count ballot envelopes at the Department's offices in the county as
120 follows:

121 (1) An election judge shall select the ballot envelopes in order of the election districts within the county.

122 (2) For each ballot envelope, the election judges shall ascertain whether a challenge has been made under §
123 5615A of this title.

124 (3) If no challenge has been made, the election judges shall do all of the following:

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

127 b. Remove the ballots from the ballot envelopes.

128 c. Determine whether the ballots have been properly completed or whether the elector's intent can be
129 determined under § 4972 of this title.

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

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

134 f. A ballot that a team determines cannot be read by the tabulating equipment or which the tabulating
135 equipment rejects, shall be duplicated under § 5612A of this title.

136 (4) Once mail votes have been recorded, an election judge shall deposit the voted ballots, rejected ballots, and
137 any mail vote tally sheet that may have been used, in a carrier envelope for the election district with whose votes the
138 mail votes are counted as follows:

139 a. Each carrier envelope must contain mail ballots, rejected ballots, and tally sheets for no more than 1
140 election district.

141 b. Only 1 carrier envelope can be filled at a time.

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

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

149 § 5612A. Preparing mail ballots for tabulation.

150 (a) The Department may open ballot envelopes in public meetings beginning 30 days before the day of the election
151 in order to prepare them for tabulation. The Department shall notify each party on the ballot that they may have challengers
152 at the meetings during which the Department opens the ballot envelopes. The challengers may challenge ballots as provided
153 elsewhere in this title.

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

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

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

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

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

169 § 5613A. Carrier envelope specifications; carrier envelopes as ballot boxes.

170 (a) The Department shall purchase envelopes to be used as carrier envelopes which must be all of the following:

171 (1) Designed to securely protect the contents from tampering, removal, or substitution without detection.

172 (2) Large enough to accommodate multiple mail ballots cast in the election.

173 (b) For all purposes of this title, carrier envelopes are considered the official ballot boxes for mail votes cast during
174 a given election and must meet all of the following requirements:

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

176 (2) Be labeled to reflect the election district whose mail ballots are held inside.

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

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

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

184 (e) Upon completion of any inspection of votes under this section, mail ballots must be returned to the carrier
185 envelopes from which they were removed and all of the following must be done with the carrier envelopes:

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

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

190 § 5614A. Envelopes in general; approval by Attorney General.

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

194 § 5615A. Challenges.

195 (a) A mail ballot may be challenged for any of the following:

196 (1) The same causes and in the same manner as provided in this title for other voters.

197 (2) That the statement in the center of the face of the ballot envelope is not signed as required under §
198 5608A(a)(2) of this title.

199 (b)(1) If a challenge is made under paragraph (a)(1) of this section, an election judge shall return the ballot to its
200 ballot envelope, shall mark the ballot envelope as “CHALLENGED” and shall set the ballot envelope aside in a secure
201 location for consideration at a later time as provided elsewhere in this title.

202 (2) If a challenge is made under paragraph (a)(2) of this section, an election judge shall mark the ballot
203 envelope as “CHALLENGED” and shall set the ballot envelope aside in a secure location for consideration at a later
204 time as provided elsewhere in this title.

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

209 § 5616A. Rejected ballots.

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

211 (1) The signature of the voter that appears on the front of the ballot envelope is found to have been altered or
212 the ballot envelope is not signed as required under § 5608A(a)(2) of this title.

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

214 (3) The ballot envelope is open.

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

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

217 (b) If the ballot envelope has not been opened at the time an election judge decides that the offered ballot
218 contained therein should not be accepted or voted for any of the reasons under subsection (a) of this section, it must not be
219 opened and the election judge shall endorse on the ballot envelope “REJECTED” and state the reason therefore.

220 (c) If the ballot envelope has been opened at the time an election judge decides that the offered ballot contained
221 therein should not be accepted or voted for any of the reasons under subsection (a) of this section, the ballot must be
222 returned to its ballot envelope and the election judge shall endorse on the ballot envelope “REJECTED” and state the
223 reason therefore.

224 (d) Whenever it is made to appear by due proof to an election judge that any voter, who has marked and forwarded
225 the voter’s ballot, has subsequently died, the ballot envelope containing the ballot must not be opened and the election
226 judge shall record on the ballot envelope “REJECTED, DEAD” and must be preserved and disposed of as other rejected
227 ballots.

228 (e) Whenever a ballot has not been counted but has been rejected under this section, the appropriate notation must
229 be made on the mail ballot tally and the number of ballots rejected must be noted on the certificates of election.

230 (f) Ballots rejected under this section must be deposited in a carrier envelope for the election district to which they
231 apply.

232 § 5617A. Validity of a voter's mail ballot for wrong district.

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

237 § 5618A. Required records.

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

240 (1) The name of the elector.

241 (2) The address at which elector is registered.

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

243 (4) The date the application for a mail ballot is received by the Department.

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

245 (6) The ballot envelope identification number.

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

247 (8) The date the ballot is returned.

248 (b)(1) The Department shall compile from its files a list of names and addresses of all applicants for mail ballots
249 and shall send current and complete copies of this list, without cost, to all political parties with candidates on the ballot in
250 the forthcoming election.

251 (2) The Department shall provide the lists under paragraph (b)(1) of this section no later than 2 weeks before
252 the date of the election and copies of the lists must be mailed on the same date to the respective chairs of each political
253 party involved in the election.

254 (3) The Department shall also make available to representatives of all political parties, comparable
255 information from the file for the list under paragraph (b)(1) of this section, at each office of the Department during the
256 remaining 2 weeks before the election. This information may be recorded by representatives from the political parties
257 from the daily records of the Department with the cooperation and assistance of Department employees.

258 § 5619A. Duties of Department of Elections; political balance of election judges; security.

259 (a) The Department shall ensure that each panel of election judges selected to officiate the procedures required
260 under this chapter represent a politically balanced cross section of the major political parties participating in the election for
261 which the mailed ballots are being counted.

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

264 § 5620A. Logic and accuracy testing of mail ballot tabulating equipment; authority of the State Election
265 Commissioner.

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

268 (b) Rules promulgated under this section must ensure all of the following:

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

271 a. The voting system is properly programmed.

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

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

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

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

277 (4) Public notice of public tests is given at least 7 days before the tests being conducted.

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

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

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

285 § 5621A. System for voters to determine status of their mail ballots.

286 The State Election Commissioner, in collaboration with the Department offices, shall establish a free access
287 system accessible via the Internet through which a person who applied for a mail ballot can determine whether or not the

288 ballot application was received, when the ballot was transmitted, when the voted ballot was received by the Department,
289 and whether or not the ballot was counted.

290 Section 2. Amend § 4502, Title 15 of the Delaware Code by making deletions as shown by strike through and
291 insertions as shown by underline as follows:

292 § 4502. Form and designation of ballots.

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

297 Section 3. Amend § 4503, Title 15 of the Delaware Code by making deletions as shown by strike through and
298 insertions as shown by underline as follows:

299 § 4503. Creating ballots.

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

302 Section 4. Amend § 4505, Title 15 of the Delaware Code by making deletions as shown by strike through and
303 insertions as shown by underline as follows:

304 § 4505. Substitution of candidate's name after creation of ballots.

305 Whenever a supplemental certificate of nomination is filed naming a substitute candidate, as elsewhere provided in
306 this title, the Department shall promptly ~~provide~~ notify electors using absentee or mail ballots of the substitution and do
307 either of the following:

308 (1) Provide new ballots, if there is sufficient time before the ~~election,~~ or take election.

309 (2) Take other appropriate measures if there is insufficient time before the election to provide new ballots.

310 Section 6. This Act applies to elections that occur after July 1, 2022.

SYNOPSIS

This bill establishes voting by mail under the General Assembly's broad powers under § 1, Article V of the Delaware Constitution to "prescribe the means, methods and instruments of voting".

Author: Senator Gay