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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 180

AN ACT PROPOSING AN AMENDMENT TO ARTICLE V OF THE DELAWARE CONSTITUTION RELATING TO VOTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 2, Article V of the Delaware Constitution by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 2. Qualifications for voting; members of the Armed Services of the United States stationed within State; persons
4 disqualified; forfeiture of right.

5 Section 2.

6 (a) Every citizen of this State of the age of ~~twenty-one years who shall have been a resident thereof one year next~~
7 ~~preceding an election, and for the last three months a resident of the county, and for the last thirty days a resident of the~~
8 ~~hundred or election district in which he or she may offer to vote, and in which he or she~~ 18 years or older who shall have
9 been duly registered as hereinafter provided for, shall be entitled to vote at ~~such~~ an election in the hundred or election
10 district of which he or she shall at the time be a resident, and in which he or she shall be registered, for all officers that now
11 are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people;
12 provided, however, ~~that no person who shall attain the age of twenty-one years after the first day of January in the year of~~
13 ~~our Lord, nineteen hundred, or after that date shall become a citizen of the United States, shall have the right to vote unless~~
14 ~~he or she shall be able to read this Constitution in the English language and write his or her name; but these requirements~~
15 ~~shall not apply to any person who by reason of physical disability shall be unable to comply therewith; and provided also,~~
16 that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in

17 this State, State by being stationed in any garrison, barrack, or military or naval place or station within this State; and no
18 person adjudged mentally incompetent or person ~~convicted~~ imprisoned because of a conviction of a crime deemed by law
19 ~~felony, or incapacitated under the provisions of this Constitution from voting,~~ a felony shall enjoy the right of an elector;
20 ~~and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime.~~ elector.

21 (b) Any person who is disqualified as a voter because the person is imprisoned because of a conviction of a crime
22 deemed by law a felony shall have such disqualification removed upon being pardoned, or after the expiration of the
23 ~~sentence,~~ imprisonment, whichever may first occur. ~~The term "sentence" as used in this Section shall include all periods of~~
24 ~~modification of a sentence, such as, but not limited to, probation, parole and suspension. The provision of this paragraph~~
25 ~~shall not apply to (1) those persons who were convicted of any felony of murder or manslaughter, (except vehicular~~
26 ~~homicide); or (2) those persons who were convicted of any felony constituting an offense against public administration~~
27 ~~involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local~~
28 ~~jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony~~
29 ~~constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or~~
30 ~~of the District of Columbia. The removal of the disqualification must not be made contingent on monetary payments of any~~
31 kind. As used in this subsection, "imprisonment" means only actual periods of incarceration and does not include periods of
32 early release, supervised custody, community supervision, probation, parole, or suspension.

33 Section 2. Amend § 7, Article V of the Delaware Constitution by making deletions as shown by strike through and
34 insertions as shown by underline as follows:

35 § 7. Election offenses; penalties; self-incrimination.

36 Section 7. Every person who either in or out of the State shall receive or accept, or offer to receive or accept, or
37 shall pay, transfer or deliver, or offer or promise to pay, transfer or deliver, or shall contribute, or offer or promise to
38 contribute, to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for
39 the giving or withholding, or in any manner influencing the giving or withholding, a vote at any general, special, or
40 municipal election in this State, or at any primary election, convention or meeting held for the purpose of nominating any
41 candidate or candidates to be voted for at such general, special or municipal election; or who either in or out of the State
42 shall make or become directly or indirectly a party to any bet or wager depending upon the result of any such general,
43 special, municipal or primary election or convention or meeting, or upon a vote thereat by any person; or who either in or
44 out of the State shall, by the use or promise of money or other valuable thing, or otherwise, cause or attempt to cause any
45 officer of election or registration officer to violate said person's official duty; or who either in or out of the State shall by the
46 use or promise of money or other valuable thing influence or attempt to influence any person to be registered or abstain

47 from being registered; or who, being an officer of election or registration officer, shall knowingly and wilfully violate said
48 person's official duty; or who shall by force, threat, menace or intimidation, prevent or hinder, or attempt to prevent or
49 hinder, any person qualified for registration from being registered or any person qualified to vote from voting according to
50 said person's choice at any such general, special or municipal election, shall be deemed guilty of a misdemeanor, and shall
51 be fined not less than one hundred dollars nor more than five thousand dollars, or shall be imprisoned for a term not less
52 than one month nor more than three years, or shall suffer both fine and imprisonment within said limits, at the discretion of
53 the court; and shall further for a term of ten years next following said person's sentence, be incapable of voting at any such
54 general, special, municipal or primary election or convention or meeting; but the penalty of disfranchisement shall not
55 apply to any person making or being a party to any bet or wager, depending upon the result of any such general, special,
56 municipal or primary election or convention or meeting. court. Every person charged with the commission while out of the
57 State of any of the offenses enumerated in this section, and by this section made punishable, whether committed in or out of
58 the State, may be prosecuted under Section 8 of this Article in any county in which said person shall be arrested on such
59 charge. No person, other than the accused, shall, in the prosecution for any offense mentioned in this section, be permitted
60 to withhold said person's testimony on the ground that it may criminate said person or subject said person to public infamy;
61 but such testimony shall not afterwards be used against said person in any judicial proceeding, except for perjury in giving
62 such testimony.

SYNOPSIS

This Act is a substitute for Senate Bill No. 180. Like Senate Bill No. 180, this Act is the first leg of an amendment to the Delaware Constitution that does all of the following:

(1) Under Section 1 of this Act, limits the loss of the right to vote of an individual who is convicted of a felony to the period during which the individual is imprisoned due to the felony, or until the individual is pardoned, whichever comes first.

(2) Brings Section 1 of this Act into conformity with the United States Constitution and federal law.

Like in Section 1 of Senate Bill No. 180, Section 1 of this Act specifically does all of the following:

(1) Removes the ability of the General Assembly to impose the forfeiture of the right of suffrage as a punishment for a crime.

(2) Removes the list of felonies resulting in permanent removal of the right to vote.

(3) Prohibits making the re-enfranchisement of an individual who is convicted of a felony contingent on the payment of a monetary payment of any kind.

(4) Makes a conforming change based on proposed changes in Section 2 of this Act.

(5) Updates the age at which a resident of this State is granted a right to vote to be 18 years or older, to conform the Delaware Constitution to the 26th Amendment to the United States Constitution.

(6) Removes the durational residency requirements necessary to qualify to vote in this State. Durational residency requirements have been found unconstitutional because these requirements infringe on both the constitutional right to vote and the constitutional right to travel. See *Dunn v. Blumstein*, 92 S. Ct. 995 (1972) (finding 1-year residency requirement in a state and 3-month residency requirement in a county unconstitutional) and *Marston v. Lewis*, 93 S. Ct. 1211 (1973). A voter will still be required to be a resident at the time the voter registers.

(7) Removes the literacy test requirement to qualify to vote in this State. Literacy tests have been used to disqualify Blacks and individuals who are immigrants or poor. Because of the discriminatory use of, and often subjective nature of, literacy tests, literacy tests are prohibited under federal law, see 52 U.S.C. § 10501, and likely unconstitutional under the 14th or 15th Amendment to the United States Constitution, see *Oregon v. Mitchell*, 91 S. Ct. 260 (1970).

(8) Makes a technical correction to remove an unnecessary comma.

Like in Section 2 of Senate Bill No. 180, Section 2 of this Act removes the suspension of the right to vote as a punishment for violation of certain election offenses.

This Act differs from Senate Bill No. 180 by removing “work release” from the list of criminal sentences not included in the definition of “imprisonment” for purposes of Section 1 of this Act.

Amending the Delaware Constitution requires not only the passing of the changes in this Act, but also passage of the same changes after the next general election by the next General Assembly.

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.

Author: Senator Gay