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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

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:

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

3 § 2050. Registration through state agencies.

4 (a) Registration through the Division of Motor Vehicles.

5 (1) ~~In addition to registration as provided for elsewhere in this chapter, For each person who is not registered~~
6 ~~to vote and is of sufficient age to register to vote and whose information is not transmitted to the Department of~~
7 ~~Elections pursuant to § 2050A of this title, each application for a motor vehicle driver's license under the laws of~~
8 Delaware (including any renewal application) shall serve as an application for voter registration. However, any person
9 who, at the time of the transaction with the Division of Motor Vehicles, provides a document that demonstrates non-
10 citizenship shall not be offered the opportunity to register to vote. The Division of Motor Vehicles may not offer an
11 opportunity to register to vote to an individual applying for a driving privileges card or permit under § 2711(d) of Title
12 21.

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

15 (2) (3) An applicant for a motor vehicle license under this section may decline in writing to be registered to
16 vote by way of the application for a motor vehicle driver's license. The fact that an applicant has declined to be
17 registered through the motor vehicle application process shall not be used for any purpose other than voter registration.

18 (3) (4) Applications for a motor vehicle license under this section shall include as a part of the application a
19 voter registration component. The voter registration component may not require any information which duplicates
20 information required in the motor vehicle license component other than a second signature or information listed in

21 paragraph (a)(4)(a) ~~(5)a.~~ of this section. If the applicant desires not to register to vote, the transmission of an electronic
22 record will notify the Department of Elections of the applicant's intention.

23 ~~(4)(5)~~ The voter registration component of the motor vehicle license application under this section must
24 contain all of the following:

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

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

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

31 d. No requirement of notarization or other formal authorization.

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

34 (b) Registration through other state agencies.

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

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

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

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

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

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

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

57 b. Employees of the ~~registration agencies~~ voter registration agency who are trained to provide nonpartisan
58 voter registration assistance, and who shall routinely inquire of ~~members of the public~~ individuals served by the
59 agency whether they wish to register to ~~vote~~ vote, and, ~~and who~~, if requested, assist such ~~members of the public~~
60 individuals in completing the registration ~~forms~~ forms. ~~Any such agency employee shall must~~ provide to each
61 ~~applicant~~ individual who does not decline to register to vote the same degree of assistance with regard to the
62 completion of the registration application form as is provided by the ~~office~~ agency with regard to the completion
63 of its own forms. ~~An~~ A voter registration agency employee who provides such assistance ~~shall not~~ may not do any
64 of the following:

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

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

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

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

- 75 (i) A. Inform all applicants for voter registration of voter eligibility ~~requirements;~~ requirements.
- 76 (ii) B. Inform all applicants for voter registration of the penalties provided under law for
77 submission of a false voter registration ~~application;~~ and application.
- 78 (iii) C. Ensure that the identity of the voter registration agency through which any particular
79 voter is registered is not disclosed to the public.

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

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

85 § 2050A. Automatic Voter Registration at the Division of Motor Vehicles and Other Agencies.

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

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

94 (2) The renewal of a commercial driver's license under Chapter 26 of Title 21, a Level 1 Learner's permit or
95 Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21, or an identification card under §
96 3102 of Title 21.

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

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

104 a. The individual's name.

105 b. The individual's date of birth.

106 c. The individual's driver's license or state ID number.

107 d. The individual's residence address and mailing address, if different from the residence address.

108 e. The individual's county of residence.

109 f. The individual's citizenship status.

110 g. An electronic image of the individual's signature.

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

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

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

120 a. Register the individual to vote.

121 b. Mark the individual as unaffiliated.

122 c. Send the individual a notice under subsection (e)(1) of this section.

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

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

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

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

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

140 registration, the office at which the person was registered will remain confidential and will be used only for election
141 administration purposes.

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

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

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

150 (f) If a person returns the notice provided under subsection (e)(1) of this section and declines to be registered, the
151 person's registration is cancelled, and the person is deemed to have never registered. If the person has voted in an election
152 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
153 registered as of the date of the person's application with the Division of Motor Vehicles.

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

157 (3) If a person returns the notice provided under subsection (e)(1) of this section without marking the option to
158 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
159 the person's application with the Division of Motor Vehicles.

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

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

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

166 a. Is registered to vote in this state.

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

168 the following transactions:

169 1. The issuance or replacement of a commercial driver's license under Chapter 26 of Title 21, a Level
170 1 Learner's permit or Class D operator's license under § 2710 of Title 21, a license under § 2711 of Title 21,
171 or an identification card under § 3102 of Title 21.

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

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

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

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

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

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

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

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

196 (3) If, after conducting the assessment required by subsection (h)(2) of this section, the State Election
197 Commissioner or the Commissioner's designee determines that a state agency collects the necessary information to
198 confirm eligibility for registration or update information for an existing registration in the regular course of business,

199 the Department of Elections shall establish a schedule under which the agency must begin providing electronic records
200 regarding individuals eligible to register to vote and updated information for individuals already registered to vote in
201 this state to the Department of Elections.

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

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

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

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

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

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

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

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

226 d. The number of individuals who declined voter registration.

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

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

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

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

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

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

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

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

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

250 § 3161 Voting procedure.

251 (a) The voting procedure at any primary election shall be the same as at any general election, except that the
252 officers shall first determine from the voter's original permanent registration record whether the voter's party affiliation is
253 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
254 the primary election.

255 (b) Notwithstanding any provision to the contrary, if a qualified unaffiliated voter who is registered to vote for the
256 first time pursuant to § 2050A of this title appears at a primary election and indicates the intent to enroll in the party

257 holding the primary election, such voter shall be enrolled immediately in that party and be permitted to cast a regular ballot
258 for the primary election.

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

261 § 1701 Qualifications for registration as qualified voter.

262 (a) Every applicant for registration shall be a qualified voter in a general or primary election if such applicant is a
263 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
264 election next succeeding the applicant's registration, and is a bona fide resident of this State. An applicant shall be a
265 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
266 of the special election. No person in the military, naval or marine service of the United States shall become a resident of
267 this State by being stationed in any garrison, barrack, or military or naval place or station within this State; and no person
268 adjudged mentally incompetent, person who is ineligible to vote under Chapter 61 of this title, or person rendered incapable
269 of voting by reason of violating § 7 of Article V of the Constitution of this State for 10 years next following that person's
270 conviction and sentence thereunder, shall be a qualified voter. For purposes of this chapter, the term "adjudged mentally
271 incompetent" refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing
272 evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment.

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

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

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

SYNOPSIS

This Act creates an automatic voter registration system at the Delaware Division of Motor Vehicles (DMV) and grants the State Election Commissioner the authority to implement automatic voter registration at other state agencies that already offer voter registration services under existing law.

This Act stipulates that an unregistered adult citizen who provides proof of U.S. citizenship during a DMV license or identification card transaction will be automatically registered to vote by the Department of Elections, if otherwise eligible for registration.

To ensure the accuracy of voter rolls, this Act also ensures any updated name or address received from a registered voter during a DMV license or identification card transaction will be automatically forwarded to the Department of

Elections for the purpose of updating existing voter registration records. Using an existing mailer, the Department of Elections then will notify new registrants of their registration and provide them an opportunity decline registration or affiliate with a political party. Existing registrants will similarly be notified of any update to their registration using an existing mailer and provided an opportunity to undo the change, if necessary. People who register to vote under this automatic system but do not identify a specific political party will be afforded another opportunity to affiliate at the polls during the primary election immediately following their registration.

To prevent ineligible non-citizens from registering to vote, individuals who provide documents establishing non-citizenship during a DMV transaction and individuals applying for the Delaware Driving Privilege Card will not be offered the opportunity to register to vote at the DMV and will not have any information forwarded to the Department of Elections. Unregistered individuals who do not provide proof of U.S. citizenship or proof of non-citizenship during a license or identification card transaction will be offered the opportunity to register to vote during the DMV transaction only if they affirm citizenship and other eligibility requirements, consistent with federal law requirements and existing law.

This Act becomes effective two years after enactment, or five days after the State Election Commissioner certifies to the Governor and the General Assembly that the systems to implement the act are functional, whichever is earlier.

Author: Senator Gay