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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 187

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO CONDUCT OF ELECTIONS AND
ADMITTING A PERSON TO VOTE.

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

1 Section 1. Amend § 4937, Title 15 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4937. Voting procedure.

4 (a) A voter, upon entering the room where an election is being held, shall announce that voter's own name and
5 address and provide proof of identity, in accordance with the provisions contained in § 4938 of this chapter, whereupon the
6 clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does
7 not have proof of identity with them, the voter shall sign an affidavit of affirmation that the voter is the person listed on the
8 election district record- , and given an opportunity to vote by provisional ballot. The affidavit of affirmation shall be signed
9 by the voter and contain the voter's name, date of birth, address, and the last 4 digits of the voter's Social Security number
10 (if applicable). The affidavit of affirmation shall be attached to the envelope containing the provisional ballot.

11 (b) If it appears that the voter is properly registered, and has presented appropriate identification as defined in §
12 4938 of this chapter, an election officer shall hand to the voter a voter signature card which the voter shall sign. In the event
13 that the voter is unable to sign a voter signature card for any reason the election officer shall sign the voter's name on the
14 voter signature card and the election officer's name and make note that the voter is unable to personally sign the card.

15 (c) In the event of a challenge as to the identity of the voter or residency of the voter, the voter's right to vote shall
16 be determined by a majority vote of the inspector and the 2 judges of the election. The voter may be allowed to cast a
17 provisional ballot in accordance with § 4937(a) of this chapter as determined by a majority vote of the inspector and the 2
18 judges of the election. In the event that the voter is not permitted to vote, the voter's signature card shall be marked "not
19 permitted to vote" and signed by 2 election officers and shall be forwarded to the department at the same time and in the
20 same manner as other voter signature cards are sent to the department.

(d) If the voter is not challenged or if a challenge is decided in the voter's favor, 1 of the election officers to be stationed at the entrance of the voting machine shall announce the name of the voter and permit the voter to pass through the entrance to the booth of the voting machine for the purpose of casting the voter's vote. No voter shall remain in the voting machine longer than 3 minutes, unless for good and sufficient reason the voter be granted a longer period of time by the election officers in charge. When the voter has cast a vote, the voter shall at once leave the room. If the voter refuses to leave after a reasonable period, they shall be removed by the election officers. No voter, after having entered and emerged from the voting machine booth shall be permitted to enter the voting machine booth. No voter shall hold any conversation or communicate with any other person than an election officer while in the voting room, except as otherwise provided in this title.

(e) The rest of this title notwithstanding, any parent, guardian or caregiver may be accompanied in the voting area and voting machine by the parent's, guardian's or caregiver's children or by children for whom they are providing care who are 17 years of age or younger. Any challenge to the age of any child shall be resolved by the voter affirming to the inspector that the child or children being challenged are 17 years of age or younger.

Section 2. Amend § 4938, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4938. Grounds for admitting a person to a voting machine.

(a) The election officers shall only admit to a voting machine a person whose name appears on the poll list, who is authorized to vote by the department of elections or who is authorized to vote by court order, and the person seeking admission to a voting machine establishes their identity as provided in subsection (b) of this section.

(b) The election officer shall:

(1) establish the voter's identity by:

A. requesting the voter to state the month, day, and year of the voter's birth and comparing the response to the information in the Department's records; and

B. requiring the voter to present valid and unexpired forms of any one of the following:

- i. A valid polling place card issued by the Delaware Department of Elections.
- ii. Delaware driver's license or state ID card issued by the Division of Motor Vehicles
- iii. Any photo ID issued by the State of Delaware or its political subdivisions (county or municipal governments) containing the first and last name of the voter.
- iv. U.S. passport

v. any U.S. military photo identification card containing the first and last name of the voter

vi. Any photo ID issued by a Delaware public school or school district; any private school; university, college, or technical school containing the first and last name of the voter.

vii. Any photo ID issued by an employer based in Delaware containing the first and last name of the voter.

(2) read the voter's name aloud, except;

(i) if a voter's personal information has been deemed confidential by the Department or court order, the Department will conduct an alternative verification method established by the Department.

(ii) if a voter's personal information has been deemed confidential by court order, the voter shall provide to the election officer the original court order or a copy of the court order.

(C) The election officer shall refer the individual for a provisional ballot if:

(1) the voter is unable to provide identification as required by this section; or

(2) eligibility of the voter to vote at that election district cannot be determined.

(NOTE: Sections 4939 through 4947 Remain Unchanged.)

Section 3. Amend § 4948, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4948. Provisional ballots.

(a) Provisional ballots shall be used in primary and general elections conducted under the provisions of this title. Provisional ballots shall not be used in public school elections or municipal elections unless specifically authorized in Title 14, Title 15 and/or the respective town or city charter.

(b) A person claiming to be properly registered in an election district, but whose eligibility to vote at that election district cannot be determined, shall be entitled to vote a provisional ballot. Election officers shall inform a person who is not being permitted to vote for whatever reason that the person may cast a provisional ballot in that election. The inspector shall return all voted provisional ballots to the Department on the night of the election.

(c) Persons voting a provisional ballot shall present proof of identity and address to the election officers. The type of ID shown by the voter shall be annotated on the provisional ballot envelope. If the person does not show proof of identity or address, the person shall be permitted to vote by provisional ballot and the fact that the person did not show proof of identity and/or address shall be annotated on the provisional ballot envelope.

(d) If the Superior Court or another court of competent jurisdiction orders that some or all polling places in a county of the state be kept open beyond the normal time for closing, all persons who arrive to vote at the polling place or places ordered to be kept open after the normal time for closing shall vote by provisional ballot. The election officers shall keep such ballots separate and return them to the Department on the night of the election.

(e) Provisional ballots shall be as much as possible in the same form as absentee ballots ~~except that only federal offices shall be listed~~ and they shall be labeled as provisional ballots. For general and special elections, the departments shall provide a minimum of ~~40~~ 30 blank provisional ballots to each election district, a minimum of ~~20~~ 60 blank provisional ballots to election districts with 3 or more assigned voting machines, and a minimum of ~~30~~ 90 blank provisional ballots to election district with 4 or more assigned voting machines. For a primary election, each department shall develop a standard appropriate for the respective primary. The Department shall deliver additional provisional ballots, envelopes, instructions or voter information sheets to the polling place for an election district when notified by an election officer from the district that the supply of some or all of the provisional ballot materials is very low.

(f) Election officers shall give whatever assistance is requested by a voter who is voting by provisional ballot. When that assistance includes marking or assisting in marking the person's ballot, 2 election officers with different political party affiliations shall provide that assistance.

(g) A voter who spoils that voter's own ballot shall, upon request, be given a replacement ballot after surrendering the spoiled ballot.

(h) Tallying provisional ballots.

(1) The day following an election in which provisional ballots were used, the Department shall meet to examine the provisional ballots, determine which of the ballots should be tallied in accordance with the rules stated below, and then tally those ballots.

(2) The Attorney General shall appoint a Deputy Attorney General to advise the Department as requested during the provisional ballot tallying process.

(3) The county chairperson of each political party with a candidate on a provisional ballot within the county may appoint in writing 1 observer to be in the room where provisional ballots are being reviewed and tallied.

(4) The Department shall sit until the disposition of every provisional ballot has been determined. The Department shall establish an appropriate schedule of breaks, meals and rest periods.

(5) Where the provisional ballot affidavit is incomplete, the ballot shall be set aside, not opened and the votes not tallied. An incomplete affidavit shall be defined as one that does not include all of the following information: full name, complete address, political party affiliation (primary elections only), and date of birth.

(6) Where the person who voted by provisional ballot did not show suitable identification at the polling place, ~~the ballot shall be set aside, not opened and the votes not tallied~~ the affidavit of affirmation attached to the provisional ballot envelope shall be examined. If the data provided on the affidavit is judged to be accurate, as determined by the Department of Elections, the ballot shall be opened and tallied. Any absentee ballot with incomplete voter data on the affidavit of affirmation, or which is found to contain inaccurate voter data on the affidavit of affirmation, shall be set aside unopened and the vote not tallied.

(7) Provisional ballots cast by persons who are not registered to vote in the state or who are not registered to vote in the election district in which they were cast shall be set aside, not opened and the votes not tallied.

(8) A provisional ballot cast by a person who is registered to vote and who has moved into the election district shall be counted if the person voted at the correct polling place for that person's new address.

(9) The Department shall tally the provisional ballots that meet the above criteria. After all of the provisional ballots determined as meeting the above criteria have been tallied, the Department shall deliver 1 copy of the provisional ballot tally sheet for each Election District, all the provisional ballots cast in the election, and all affidavits, envelopes and supporting documentation to the Prothonotary.

(i) Post election processing and notification.

(1) As soon as practical, but not later than 30 days following an election in which provisional ballots were used, the Department shall enter the appropriate data into a free access system so that a person who voted by provisional ballot may determine whether or not that person's ballot was counted, and if it was not counted, the reason or reasons for which it was not counted.

(2) The Department shall use the provisional ballot affidavit as authority to register a person to vote who voted by provisional ballot in an election and who is not already registered to vote providing that the minimum information required to register a person to vote is provided. The provisional ballot envelope shall be used to transfer a registered voter's address and/or update the registered voter's name when the address and/or name is different than the information on the person's voter registration record.

SYNOPSIS

This Act specifies the duty of election officers to establish the identity of a voter by requesting explicit forms of identification. Any citizen presenting themselves as a voter at a polling place, but who is unable to provide an acceptable form of identification, or whose eligibility to vote cannot be determined, may cast a provisional ballot. The number of provisional ballots initially available at each polling place is tripled under this Act. Provisional ballots will be processed under existing state law, as modified by this Act, allowing state election officials to determine the validity of the ballot by matching the data provided by the voter against the state's voter records. This measure will maintain a citizen's right to vote, while establishing clear procedures for ensuring the integrity of the voting process and facilitating greater public trust in election results.