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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 351

AN ACT TO AMEND TITLES 11 AND 15 OF THE DELAWARE CODE RELATING TO CRIMINAL HISTORY
BACKGROUND CHECKS FOR CANDIDATES FOR THE GENERAL ASSEMBLY.

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

1 Section 1. Amend Chapter 30, Title 15 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3002. Unaffiliated candidates.

4 (b) A candidate may not be listed as an unaffiliated candidate on any general election ballot unless the candidate
5 files, on forms promulgated by the State Election Commissioner, on or before the close of the official business day on
6 September 1 of the general election year, a sworn declaration with the State Election Commissioner, if a statewide
7 candidate, or the Department office for the county where the candidate resides, if a nonstatewide candidate, stating that the
8 candidate has not been affiliated with any political party for at least 90 days before the filing of the declaration, as required
9 by this title. By September 1 of a general election year, the candidate shall file nominating petitions, as prescribed in this
10 chapter, signed by not less than 1% of the total number of voters registered, as of December 31 of the year immediately
11 preceding the general election year in the State, or if a nonstatewide candidate, of those voters registered to vote for that
12 office which such individual seeks. A candidate for either House of the General Assembly shall include in their filing proof
13 that a criminal history background check has been requested from the State Bureau of Identification under Chapter 85 of
14 Title 11. To be removed from a general election ballot, the candidate must withdraw the nominating petitions on or before
15 4:30 p.m. on the first Friday after the certificate of nomination is submitted.

16 Section 2. Amend Chapter 31, Title 15 of the Delaware Code by making deletions as shown by strike through and
17 insertions as shown by underline as follows:

18 § 3103. Filing fees.

19 (g) The cost of the criminal history background check is an allowed fee for placing the name of the candidate on
20 the ballot.

21 § 3106. Filing of candidacy for nomination at a primary election; withdrawal.

22 (a) Any person desiring to be a candidate shall give notice in the following manner:

(2) Candidates for all other offices:

a. All candidates for county or countywide office, members of the General Assembly, or municipal office for any municipality holding its election at the time of the general election shall notify the county chair, or the county chair's designee, in writing, or the city chair, or the city chair's designee, if applicable for municipal candidates, of their respective political party in their county of residence on forms prescribed by the State Election Commissioner on or before the deadline under § 3101(1) of this title.

b. At the time of giving notice as required under paragraph (a)(2) of this section, each candidate shall tender the required filing fee, if any, by giving a check to the Department office for the county in which the candidate resides, payable to the county committee of the candidate's political party, or city committee, if applicable for municipal candidates, together with a copy of the notice given to the party chair. At such time, the Department office shall receipt a copy of the notice to the candidate.

c. At the time of giving notice as required under paragraph (a)(2) of this section, each candidate shall provide proof that a criminal history background check has been requested from the State Bureau of Identification under Chapter 85 of Title 11.

(g) No person shall qualify to appear on a primary ballot for either House of the General Assembly unless such person has obtained a criminal history background check.

Section 3. Amend Chapter 33, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3301. Certificates of nomination.

(d) The presiding officer and secretary of the county committee of each political party eligible to place candidates on the ballot shall submit a certificate of nomination for candidates for the General Assembly and county and municipal offices to the Department office for the county in which the candidate resides, as follows:

(1) For any office for which no candidate has filed in accordance with § 3101 of this title.

(2) For any office for which candidates are selected by the state nominating convention of a minor political party.

(3) No person shall be placed on the ballot for either House of the General Assembly who has not obtained a criminal history background check under Chapter 85 of Title 11.

Section 4. Amend Chapter 34, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3402. Write-in candidates for a general election.

(j) A declared write in candidate for either House of the General Assembly shall provide proof that a criminal history background check has been requested from the State Bureau of Identification under Chapter 85 of Title 11 when filing a Write-In Candidate Declaration.

Section 5. Amend Chapter 80, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8020. Authorized campaign expenditures.

No political committee may make any expenditure except for the following purposes:

(21) Any fees associated with obtaining a criminal history background check under Chapter 85 of Title 11.

Section 6. Amend Chapter 3, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 302. General powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

(16) Receive from the State Bureau of Identification criminal history background checks for candidates for either House of the General Assembly. Any and all information revealed by the background check is confidential and is not a “public record” under Chapter 100 of Title 29.

(17) Determine that an individual is qualified under § 21, Article II of the Delaware Constitution before the individual may be considered a candidate for election to either House of the General Assembly.

Section 7. Amend Chapter 85, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Criminal History Background Check for Candidates and Members of either House of the General Assembly.

§ 8570. Criminal history background checks for candidates and members of either House of the General Assembly.

§ 8571. Definitions

As used in this chapter:

(1) “Candidate” means an individual who has taken steps to appear on a Primary or General Election ballot for a seat in either House of the General Assembly in accordance with any of the following:

a. Unaffiliated candidates under § 3002 of Title 15.

b. Nominees of a political party under § 3106 of Title 15.

c. Nominees of a political party under § 3301 of Title 15.

83 d. Write-in candidates under § 3402 of Title 15.

84 (2) “Criminal history background check” means the acquisition of state and federal criminal history record
85 information for an individual.

86 § 8572. Authority of the State Bureau of Identification.

87 This subchapter is intended for use by candidates for either House of the General Assembly and by members of
88 either House of the General Assembly who have been required to obtain a criminal history background check pursuant to
89 the procedures established in § 712 of Title 29. The State Bureau of Identification, hereinafter referred to as “Bureau,” shall
90 facilitate the criminal background check of applicants. The Bureau is hereby authorized to promulgate such reasonable
91 forms, fees, and regulations as may be necessary or desirable to effectuate the provisions of this subchapter.

92 § 8573. Application process.

93 (a) The applicant shall appear at the Bureau during regular hours of business and shall inform the Bureau of the
94 applicant’s desire to avail themselves of the procedure set forth in this section.

95 (1) The applicant shall produce identification documentation.

96 (2) The applicant will sign an affidavit attesting to the applicant’s identity. The affidavit will inform the
97 applicant that if any of the information provided is proven to be false the applicant could be prosecuted under § 907 of
98 this title.

99 (3) The applicant shall be required to submit fingerprints and other necessary information in order for the
100 Bureau to run a search of Delaware state criminal databases. This search shall include a review of the applicant’s
101 Delaware criminal history record to determine if the applicant has an alias linked to fingerprints on file at the Bureau.

102 (4) The applicant’s fingerprints and other necessary information will be sent by the Bureau to the Federal
103 Bureau of Investigation for a national background check. This national background check shall be comprised of a
104 report of the applicant’s entire federal criminal history record, pursuant to the Federal Bureau of Investigation
105 appropriation of Title 42 of Public Law 92-544 (28 C.F.R. § 20.33 (a)(3)). The Bureau shall be the recipient of said
106 federal criminal history records. All costs associated with obtaining the criminal history reports required by this
107 paragraph shall be borne by the applicant.

108 (5) Fees for the criminal history background check shall be paid by the applicant prior to the commencement
109 of the background check.

110 (b) The Bureau shall maintain a record of all background checks under this section to the same extent as is
111 required by law.

112 (c) The Bureau will make the result known to Commissioner of Elections within 15 days of the Bureau's receipt of
113 the applicant's request.
114 Section 8. This Act takes effect on January 1, 2023.

SYNOPSIS

This Act requires candidates for either House of the General Assembly to obtain a criminal history background check to ensure that they have not been convicted of or plead guilty to any crime that, per the Delaware state constitution, disqualifies them from holding said office. The results of the background check are provided to the Commissioner of the Department of Elections who has the duty to review the results and ensure that individuals are qualified under § 21, Article II of the Delaware Constitution before the individual may be considered a candidate for election to either House of the General Assembly. The Act makes any and all information revealed by the background check obtained by the Commissioner of Elections confidential and not a public record. The cost of the criminal history background check is the responsibility of the candidate and may be paid from campaign funds.