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**ELECTION LAWS
OF THE
STATE OF DELAWARE**



Issued by
Commissioner of Elections
32 Loockerman Square
Suite 203
Dover, Delaware 19901

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STATE OF DELAWARE

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ELECTION LAWS OF THE STATE OF DELAWARE

CONSTITUTION OF THE STATE OF DELAWARE ADOPTED 1897 AS AMENDED

Article V ELECTIONS

Sec.

1. Time and manner of holding general election.
2. Qualifications for voting; members of the Armed Services of the United States stationed within State; persons disqualified; forfeiture of right.
- 2A. Residence requirements in case of intra-state removal; election of President and Vice-President of United States; qualifications.
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ARTICLE V ELECTIONS

Cross references. — As to requirement that elections be free and equal, see Del. Const., art. I, § 3. As to number and boundaries of representative and senatorial districts, see Del. Const., art. II, §§ 2, 2A. As to election

of the Governor generally, see Del. Const., art. III. As to elections generally, see Title 15. As to composition of and reapportionment of the General Assembly, see Chapter 8 of Title 29.

§ 1. Time and manner of holding general election.

Section 1. The general election shall be held biennially on the Tuesday next after the first Monday in the month of November, and shall be by ballot; but the General Assembly may by law prescribe the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation thereat.

Term "general election" does not include primary election. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

It is the next general state election to fill vacancy in elective office. — The general election held biennially as provided by Del. Const., art. V, § 1 is the next general election mentioned in Del. Const., art. III, § 9 for the filling vacancies and, therefore, the next general state election in point of time is the proper time to fill a vacancy in elective office, such as in the office of the Levy Court Commissioner, though it was not the next general election at which the office would ordinarily be filled under 9 Del. C. §§ 302, 303. State ex rel. Southerland v. Hart, Del. Super., 129 A. 691 (1925).

Precautions must be taken in absentee voters' law. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible precaution against fraudulent abuse of the privilege. State ex rel. Smith v. Carey, Del. Supr., 112 A.2d 26 (1955).

But election not set aside where improper influence not shown. — Where there is no showing whatever that the voters in an

election were improperly influenced in any way, the election will not be set aside. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

Nor where minor irregularities do not affect result. — Minor irregularities in the conduct of an election, unaccompanied by fraud or unfair dealing, and not affecting the result will not void an election otherwise valid. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

For example, where voters in an election were given 2 ballots instead of 1 as specified by statute, but there is no suggestion of any fraud or unfairness in the voting or any suggestion that the departure from the statutory mandate could possibly have affected the result, the election will not be set aside. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

Where the use of 2 ballots in an election did not destroy secrecy in voting, but on the contrary if affirmatively appears that the procedure adopted was such as to insure a secret ballot, such defect is not a ground for setting aside the election. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

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

Section 2. Every citizen of this State of the age of twenty-one years who shall have been a resident thereof one year next preceding an election, and for the last three months a resident of the county, and for the last thirty days a resident of the hundred or election district in which he may offer to vote, and in which he shall have been duly registered as hereinafter provided for, shall be entitled to vote at such election in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered, for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people; provided, however, that no person who shall attain the age of twenty-one years after the

first day of January in the year of our Lord, nineteen hundred, or after that date shall become a citizen of the United States, shall have the right to vote unless he shall be able to read this Constitution in the English language and write his name; but these requirements shall not apply to any person who by reason of physical disability shall be unable to comply therewith; and provided also, that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot or insane person, pauper, or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector; and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime. (55 Del. Laws, c. 44.)

Cross references. — As to voter registration procedure generally, see Chapter 20 of Title 15. As to registration for members of the military forces and related organizations, see Chapter 19 of Title 15.

State courts, not federal courts, have the responsibility of vindicating voting rights conferred by State Constitution, for these rights affect the State directly. *Wright v. Richter*, 301 F. Supp. 1345 (D. Del. 1969).

Right to vote subject to reasonable regulations by State. — While the right of suffrage is unquestionably a fundamental right in a free and democratic society, since the right to exercise the franchise in an open and unimpaired manner is preservative of other basic civil and political rights, nevertheless, the right to vote is subject to reasonable regulations by the State. *Wright v. Richter*, 301 F. Supp. 1345 (D. Del. 1969).

But General Assembly cannot add to qualifications. — Qualifications of voters are explicitly set out in the Constitution, and no power exists in the General Assembly to add to these qualifications. *Buckingham v. State ex rel. Killoran*, Del. Supr., 35 A.2d 903 (1944).

Registration as a voter is not a qualification to vote, under 10 Del. C. § 4504, but is only an evidence of the existence of the necessary qualifications as established by Del. Const., art. 5, § 2. *State v. Lyons*, Del. Gen. Sess., 5 A.2d 495 (1939).

Knowledge of residency requirement imputed. — Knowledge of the constitutional requirement with respect to residence as a qualification for voting is imputed. *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

"Resident" synonymous with "domiciled". — In this section, as well as in the statute defining who is taxable (30 Del. C. § 1101), the word "resident" is synonymous with the legal term "domiciled." *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

Residence at a place and the intent to live there permanently or indefinitely constitute domicile, and when in point of time residence and intent concur, domicile follows as a legal consequence. *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

The mere desire to keep a "legal residence" for voting purposes avails nothing, and the intention of returning to the old place of domicile for the purpose of voting and the desire to retain the right to vote do not prevent a change of domicile to a new home. *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

No extension by implication. — Statutes suspending the civil rights of imprisoned felons are penal and may not be extended by implication. *Chesapeake Util. Corp. v. Hopkins*, Del. Supr., 340 A.2d 154 (1975).

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

Section 2. Every citizen of this State of the age of twenty-one years who shall have been a resident thereof one year next preceding an election, and for the last three months a resident of the county, and for the last thirty days a resident of the hundred or election district in which he may offer to vote, and in which he shall have been duly registered as hereinafter provided for, shall be entitled to vote at such election in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered, for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people; provided, however, that no person who shall attain the age of twenty-one years after the first day of January in the year of our Lord, nineteen hundred, or after that date shall become a citizen of the United States, shall have the right to vote unless he shall be able to read this Constitution in the English language and write his name; but these requirements shall not apply to any person who by reason of physical disability shall be unable to comply therewith; and provided also, that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot or insane person, pauper, or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector; and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime.

Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or 2 years after the expiration of his/her sentence, whichever may first occur.

The term "sentence" as used in this section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole and suspension. The provisions of this paragraph shall not apply, however, to those persons who were convicted of any felony of murder or manslaughter in any degree. (68 Del. Laws, c. 228, § 1.)

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Chapter 228 of 68 Del. Laws on April 2, 1992.

§ 2A. Residence requirements in case of intrastate removal; election of President and Vice-President of United States; qualifications.

Section 2A. The General Assembly shall extend to any elector in the state who shall have changed his residence from one county, hundred, or election district to another, but who has not resided therein for a sufficient time so as to be eligible to vote in the county, hundred or election district to which he has removed, the right to vote for the choice of electors for President and Vice-President of the United States, but for no other offices, provided such citizen would have been eligible to vote within this State had he not moved, and provided that he is not entitled to vote for the choice of electors for President or Vice-President of the United States in any other place and provided further that such citizen would be an otherwise qualified voter under this Constitution except that he has not resided in his county, hundred or election district for a sufficient length of time. (56 Del. Laws, c. 20, § 1.)

§ 2B. Residence requirements of persons from other states; election of President and Vice-President of United States; qualifications.

Section 2B. The General Assembly shall extend to a citizen of the United States who has resided in this State for at least 3 months next preceding an election but who does not meet the residence requirements established in Article V, Section 2 of this Constitution, the right to vote for the choice of electors for President and Vice-President of the United States, but for no other offices, provided such citizen was either a qualified voter in another state immediately prior to his removal to this State, or would have been eligible to vote in such other state had he remained there until such election, and provided that he is not entitled to vote for the choice of electors for President or Vice-President of the United States in any other state and provided further that such citizen would be an otherwise qualified voter under this Constitution except that he had not resided in this State for one year. (56 Del. Laws, c. 20, § 2.)

§ 3. Influencing voter; loss of vote; challenge; oath and affirmation; perjury.

Section 3. No person who shall receive or accept, or offer to receive or accept, or shall pay, transfer, or deliver, or offer or promise to pay, transfer or deliver, or shall contribute, or offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation, induce-

ment or reward for the registering or abstaining from registering of any one qualified to register, or for the giving or withholding, or in any manner influencing the giving or withholding, a vote at any general or special or municipal election in this State, shall vote at such election; and upon challenge for any of said causes the person so challenged before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or accepted, or offered to receive or accept, or paid, transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed, or offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register, or for the giving or withholding, or in any manner influencing the giving or withholding, a vote at such election.

Such oath or affirmation shall be conclusive evidence to the election officers of the truth of such oath or affirmation; but if any such oath or affirmation shall be false, the person making the same shall be guilty of perjury, and no conviction thereof shall bar any prosecution under Section 8 of this Article.

Cross references. — As to perjury and related offenses, see §§ 1221 to 1235 of Title 11. As to perjury during taking of oath or affirmation relating to elections, see § 5135 of Title 15.

The phrase "general election" does not include school or municipal elections. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

§ 4. Registration of voters; days for registration; application to strike name from list; appeals; registration as prerequisite for voting.

Section 4. The General Assembly shall enact uniform laws for the registration of voters in this State entitled to vote under this Article, which registration shall be conclusive evidence to the election officers of the right of every person so registered to vote at any General Election while his or her name shall remain on the list of registered voters, and who is not at the time disqualified under the provisions of Section 3 of this Article; and no person shall vote at such General Election whose name does not at that time appear in said list of registered voters.

There shall be at least two registration days in a period commencing not more than one hundred and twenty days, nor less than sixty days before, and ending not more than twenty days, nor less than ten days before, each General Election, on which registration days persons whose names are not on the list of registered voters established by law for such election, may apply for registration, and on which registration days applications may be made to strike from the said registration list names of persons on said list who are not eligible to vote at such election; provided, however, that such registration may

be corrected as hereinafter provided at any time prior to the day of holding the election.

From the decision of the registration officers granting or refusing registration, or striking or refusing to strike a name or names from the registration list, any person interested, or any registration officer, may appeal to the resident Associate Judge of the County, or in case of his disability or absence from the County, to any Judge entitled to sit in the Supreme Court, whose determination shall be final; and he shall have power to order any name improperly omitted from the said registry to be placed thereon, and any name improperly appearing on the said registry to be stricken therefrom, and any name appearing on the said registry, in any manner incorrect, to be corrected, and to make and enforce all necessary orders in the premises for the correction of the said registry. Registration shall be a prerequisite for voting only at general elections, at which Representatives to the General Assembly shall be chosen, unless the General Assembly shall otherwise provide by law.

The existing laws in reference to the registration of voters, so far as consistent with the provisions of this Article, shall continue in force until the General Assembly shall otherwise provide. (34 Del. Laws, c. 1.)

Cross references. — As to registration dates and hours in election districts, see § 1104 of Title 15. As to removal of records of deceased person from registration roll, see § 1705 of Title 15. As to motion to remove name from registration roll, see § 1706 of Title 15.

Voter qualifications must be evidenced by registration. — Qualifications are recognized as existing as distinct from a right to vote, and a voter must possess certain qualifications, the possession of which entitles him to be a voter; but the existence of these qualifications must be evidenced by registration before he is permitted to exercise his right as a voter. *McComb v. Robelen*, Del. Ch., 116 A. 745 (1922).

"Registration" defined. — Registration, within the meaning of election laws, is a method of proof prescribed for ascertaining the electors who are qualified to cast votes and is the act of making a list, catalogue, schedule or register, and, when applied to voters, it is any list, register or schedule containing names, the being on which lists, registers or schedules constitutes a prerequisite to voting. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

To be uniform within the meaning of this section, a law for registration of electors

must of necessity be general; "general" and "uniform" as applied to laws have a well defined and generally accepted meaning as antithetical to "special" or "discriminatory." *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

Meaning that all are treated alike. — A law is general and uniform as required by this section if all persons in the same circumstances are treated alike. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

Notwithstanding, matters which cannot be so treated may still be legislated. — It was not the intention of the framers of the provision amending this section of the Constitution or of those adopting it to deprive the General Assembly of its power to legislate with respect to those matters which could not be included within the structure of a general and uniform law. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

And section only applies to general elections. — This section indicates that the Constitution does not intend to make registration a qualification of the voter at other elections than general elections, and it leaves it for the General Assembly to determine when and at what other elections voters shall be required to register before being allowed to vote. *McComb v. Robelen*, Del. Ch., 116 A. 745 (1922).

§ 4A. General laws for absentee voting.

Section 4A. The General Assembly shall enact general laws providing that any qualified elector of this State, duly registered, who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, either because of being in the public service of the United States or of this State, because of the nature of his or her business or occupation, because of his or her sickness or physical disability, because of his or her absence from the district while on vacation, or because of the tenets or teachings of his or her religion, may cast a ballot at such general election to be counted in such election district. (44 Del. Laws, c. 1; 61 Del. Laws, c. 39; 64 Del. Laws, c. 177.)

Cross references. — As to absentee voting generally, see Chapter 55 of Title 15.

Revisor's note. — The amendment to the Constitution set out above was initially approved as Chapter 37 of 63 Del. Laws on June 18, 1981, and finally approved as Chapter 177 of 64 Del. Laws on June 27, 1983. A previous amendment of the section was initially approved as Chapter 520 of 60 Del. Laws on June 30, 1976, and finally approved as Chapter 39 of 61 Del. Laws on Apr. 28, 1977.

Provisions of this section are limited to general elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

It specifically enumerates classifications of persons eligible to vote by absentee ballot at general elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

School district regulations never had registration as qualification. — Since Delaware has a constitutional provision providing

for the registration of voters, the provisions of a school district regulating school elections never had specified registration as 1 of the qualifications of a voter at such elections. *Brennan v. Black*, Del. Supr., 104 A.2d 777 (1954).

By expressly including certain classifications, the drafters of this section impliedly excluded all other classifications. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

It is beyond the power of the General Assembly to either limit or enlarge upon the absentee voter classifications specified in the Constitution for general elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

But it must take precautions against fraudulent abuse. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible precaution against fraudulent abuse of the privilege. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 4A. General laws for absentee voting.

Section 4A. The General Assembly shall enact general laws providing that any qualified elector of this State, duly registered, who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, either because of being in the public service of the United States or of this State, or his or her spouse or dependents when residing with or accompanying him or her, because of the nature of his or her business or occupation, because of his or her sickness or physical disability, because of his or her absence from the district while on vacation, or because of the tenets or teachings of his or her religion, may cast a ballot at such general election to be counted in such election district. (68 Del. Laws, c. 263, § 1.)

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Chapter 263 of 68 Del. Laws on June 9, 1992.

§ 4B. Uniform laws for absentee registration.

Section 4B. The General Assembly shall enact uniform laws for the registration of voters of this State entitled to vote under this Article who are temporarily absent therefrom and in the Armed Forces or Merchant Marine of the United States, or retainers or persons accompanying or serving therewith, or who are absent from the State because of illness or injury received while serving in any such capacity, upon application in person or in writing. (46 Del. Laws, c. 325.)

Cross references. — As to registration for members of military forces and related organizations, see Chapter 19 of Title 15. As to absentee voting generally, see Chapter 55 of Title 15.

Precautions must be taken against

fraudulent abuse. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible precaution against fraudulent abuse of the privilege. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 4B. Uniform laws for absentee registration.

Section 4B. The General Assembly shall enact uniform laws for the registration of voters of this State entitled to vote under this Article who are temporarily absent therefrom and in the Armed Forces or Merchant Marine of the United States, or retainers or his or her spouse or dependents when residing with or accompanying him or her, or who are absent from the State because of illness or injury received while serving in any such capacity, upon application in person or in writing. (68 Del. Laws, c. 263, § 2.)

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Chapter 263 of 68 Del. Laws on June 9, 1992.

§ 5. Electors privileged from arrest; exceptions.

Section 5. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to and returning from them.

Cross references. — As to arrest and commitment generally, see Chapter 19 of Title 11.

§ 6. Certificate of election and ballots; delivery to Prothonotary; duties and composition of court; quorum.

Section 6. The presiding election officer of each hundred or election district, on the day next after the general election, shall deliver one of the certificates of the election, made and certified as required by law, together with the ballot box or ballot boxes, containing the ballots, and other papers required by law to be placed therein, to the Prothonotary of the Superior Court of the county, who shall at twelve o'clock noon on the second day after the election present the same to the said Court, and the election officer or officers having charge of any other certificate or certificates of the election shall at the same time present the same to the said Court, and the said Court shall at the same time convene for the performance of the duties hereby imposed upon it; and thereupon the said Court, with the aid of such of its officers and such sworn assistants as it shall appoint, shall publicly ascertain the state of the election throughout the county, by calculating the aggregate amount of all the votes for each office that shall be given in all the hundreds and election districts of the county for every person voted for for such office.

In case the certificates of election of any hundred or election district shall not be produced, or in case the certificates produced do not agree, or in case of complaint under oath of fraud or mistake in any such certificate, or in case fraud or mistake is apparent on the face of any such certificate, the Court shall have power to issue summary process against the election officers or any other persons to bring them forthwith into Court with the election papers in their possession or control, and to open the ballot boxes and take therefrom any paper contained therein, and to make a recount of the ballots contained therein, and to correct any fraud or mistake in any certificate or paper relating to such election.

The said Court shall have all the other jurisdiction and powers now vested by law in the boards of canvass, and such other powers as shall be provided by law.

After the state of the election shall have been ascertained as aforesaid, the said Court shall make certificates thereof, under the seal of said Court in the form required by law, and transmit, deliver and lodge the same as required by this Constitution or by law, and deliver the ballot boxes to the sheriff of the county, to be by him kept and delivered as required by law.

No act or determination of the Court in the discharge of the duties imposed upon it by this section shall be conclusive in the trial of any contested election.

For the purposes of this section the Superior Court shall consist in New Castle County of the President Judge and resident Associate Judge; in Kent County of the resident Associate Judge and an Associate Judge designated by the President Judge; and in Sussex County of the resident Associate Judge and an Associate Judge designated by the President Judge.

Two shall constitute a quorum. The Governor shall have power to commission a Judge for the purpose of constituting a quorum when by reason of legal exception to any Judge, or for any other cause, a quorum could not otherwise be had. (53 Del. Laws, c. 303; 68 Del. Laws, c. 136.)

Cross references. — As to canvass of votes and proclamation of results of election, see Chapter 57 of Title 15.

Revisor's note. — The amendment to the Constitution set out above was initially approved as Chapter 305 of 67 Del. Laws on June 27, 1990, and finally approved as Chapter 136 of 68 Del. Laws on June 28, 1991.

Boards of canvass are difficult to catalogue as either judicial or administrative bodies. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

However, boards of canvass do not have power to try contested election proceeding. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

And duties are largely ministerial. — The duties of the boards of canvass under this section are largely ministerial in nature. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

Granting that the board of canvass is the Superior Court for the purpose of review of its action by writ of mandamus from the Supreme Court, it yet remains true that it is a body specially created and constituted for a limited purpose to perform specified duties largely ministerial in nature. The framers of the Constitution, in transferring to the Superior Court the

powers and duties of the former boards of canvass, added certain specified powers and none other. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

To count vote. — The Superior Court is, under the Constitution, still primarily a board of canvass whose function is to count the vote. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Not to exercise general power over conduct of elections. — Had it been the intent to confer upon the new boards of canvass general power over the conduct of elections as affecting the returns, language to that effect would certainly have been included in the Constitution. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Hence, boards of canvass have no power to enter upon inquiry into misconduct of election officers, and are under no legal duty to act upon a petition alleging such misconduct. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Nevertheless, to a limited extent boards of canvass exercise quasi-judicial powers (e.g., in rejecting ballots illegal on their face), but it by no means follows that those powers extend to the hearing and determination of every act of fraud or wrongdoing in the conduct

of the election. The powers of a board are primarily directed to the existence of "fraud or mistake in any such certificate," e.g., questions of its genuineness or of a defect apparent on its face or the like; and what may be called the newly-added powers are largely, if not wholly, limited to an examination of the election papers and of the contents of the ballot box. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

But, the power of board of canvass "to correct any fraud or mistake in any certificate" is clearly confined to errors resulting from the examination authorized by the language of the sentence concerning the examination of the election papers and the contents of the ballot box. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Phrase "election papers" refers to certificates of election. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

And "any other persons" means persons in whose custody they may be found. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

Certificates only "prima facie" title to office. — Certificates of election issued by the boards of canvass upon the completion of the count are only prima facie title to office. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

But it justifies paying him salary of office. — The certificate of election issued to the defendant following the canvass of the vote conferred upon him a prima facie title to the office, justifying the disbursing officers of the county in paying to him the stated salary of the office. Walker v. Hughes, Del. Supr., 36 A.2d 47 (1944).

Recount includes recording tapes as well as paper ballots. — The second paragraph of this section was written at a time when all voting was done by paper ballot. Under the modern use of voting machines the procedure for a recount includes the examination of the recording tapes in the machines, as well as the recounting of the paper ballots, which, under the present election law, necessarily are only absentee ballots. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

When Board must officially record vote. — Where a petitioner desired votes recounted and the certificates applicable to the particular election districts agree on their faces and are uniform in not showing a separate tally of absentee votes, then, lacking the filing of a com-

plaint under oath of fraud or mistake in such certificates, the board of canvass is without authority to do other than accept the certificates at their face value and officially record the vote for those districts as reflected in the totals shown on the certificates. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Time limitation to demand recount analogous to rules, not statute of limitations. — Fixing of a limitation of time for the exercise of the right to demand a recount is more nearly analogous to court rules of procedure and practice than to a statute of limitation. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Fixing of a limitation of time for the right to demand a recount is not a denial of right to petition for such recount, but is a regulation adopted to further the orderly procedure of the canvass of the vote. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Its being within board's power. — The fixing of a deadline for the filing of petitions for recount is clearly and necessarily within the powers of the several boards of canvass. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

As to their power to fix a limitation of time for the exercise of the right to demand a recount, the precise character of the boards of canvass is considered to be immaterial, for administrative tribunals, as well as judicial, have inherently the power to make rules and regulations to govern the proceedings before them. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Notice of early deadline for filing complaints settled. — Since the fixation of a very early deadline for filing complaints has existed at least twenty-five years without challenge and has become settled practice, notice of it must be charged to the political party officials of the State and the candidates of these parties. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Boards of canvass are required to convene at 12:00 noon on the second day following a general election, and everyone is chargeable with notice of this hour of meeting. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

The phrase "general election" does not include a municipal election. Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).

The fact that municipal officers are elected

on the day of a general election by the same voting mechanics does not convert a municipal election into a general election or make the municipal election a part of the general election as the phrase is used in this section. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

Thus, no duty is cast upon Superior Court to canvass such vote. — The duty of the Superior Court to "ascertain the state of the election" casts no duty upon the Court to canvass the vote at a municipal election. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

Moreover, the jurisdiction of the Superior Court as a board of canvass is limited, and, although the General Assembly is given power to add to the powers of the Court, it is expressly not given power to add to the jurisdiction of the Court. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

Authority of Superior Court to order recount. — Under the mandatory terms of this Article and 15 Del. C. § 5702(b), the Superior Court has authority to order recount of votes where the evidence presented clearly showed that there were material discrepancies which could affect the results of the election. *Woo v. Robinson, Del. Supr., 484 A.2d 950 (1984).*

Chancellor as member in Kent County does not create more than 1 Superior Court. — The fact that this section provides that the Chancellor shall be a member of the Court in Kent County does not evidence the creation of more than 1 Superior Court. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

"Ascertained as aforesaid" construed. — The phrase "ascertained as aforesaid," means in the manner theretofore prescribed in this section, and this meaning cannot be enlarged by legislative action. *State ex rel. Walker v. Harrington, Del. Supr., 30 A.2d 688 (1943).*

Where the certificate of election has not been issued and a writ is requested compelling the election officers so to do, an inquiry should be made in order to determine the relator's legal right to the remedy sought; however, such an inquiry is by no means a conclusive determination of title and will not extend beyond that which is absolutely necessary to determine the relator's legal right. *State ex rel. Buckingham v. Hopkins, Del. Super., 32 A.2d 659 (1943).*

Acts of the Superior Court sitting as a board of canvass are not subject to review by the Supreme Court on appeal or by writ of

error. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Rather, mandamus may be used. — It is within the jurisdiction of the Supreme Court in all proper cases to direct its writ of mandamus to the Superior Court as a court or as a board of canvass or to any of the Judges of the Court in their official capacity. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Mandamus is a discretionary remedy, and its use to review the rulings of the board might conceivably be inappropriate in certain cases. *State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).*

If the board of canvass has not calculated the aggregate amount of all the votes exclusively in the prescribed manner and has signed and sealed the prescribed certificates showing the result of the canvass, then it has not performed its function and would be subject to writ of mandamus from the Supreme Court. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

And constitutionality of statute setting forth duties may be determined. — Where the Superior Court, acting as a board of canvass, performs its duties on the basis of a statute, the Supreme Court may determine the constitutionality of the statute in a mandamus proceeding brought, claiming the Board had not followed its legal duties in the proper and lawful manner. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

The question of constitutionality is frequently interposed by a petitioner or relator in mandamus when he claims that a statute or ordinance which, if valid, would excuse the respondent from performing the duty or the act in question is invalid and there seems to be no reason why the constitutionality of the act thus relied on may not be raised in such manner. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Whereupon correct performance enforced where statute is unconstitutional. — Where the board of canvass has followed its statutory duty by canvassing votes, it would be proper for the Supreme Court to issue a writ of mandamus to enforce the correct performance of the board's duties and to correct alleged errors in the canvassing if the statute authorizing the canvassing of such votes was unconstitutional, since the board would not have performed its duties in the manner required by law. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Also, Supreme Court has power to issue mandamus to board of canvass to recanvass votes contested in General Assembly election, and this provision is not in conflict with the constitutional powers given the General Assembly to determine the election and qualifications of its own members. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

However, in mandamus proceedings the title to an office cannot be inquired into and determined, but an application for a writ of mandamus to compel the board of canvass to perform its functions is not such a question. State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).

Title to the office of Representative in the General Assembly cannot be tried in mandamus proceeding and the writ, if issued, will only be directed to the Judges of the Superior Court, sitting as a board of canvass. State ex

rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

Except where law has provided no other means. — Mandamus will not lie to try and finally determine the title to an office, except, perhaps, in a case in which the law has provided no other means of doing so. State ex rel. Buckingham v. Hopkins, Del. Super., 32 A.2d 659 (1943).

Such as an action quo warranto. — A certificate of election is prima facie evidence of title, and the holder thereof, if he has duly qualified subsequent to the election, is prima facie the officer de jure, and, as such, entitled to the temporary fruits of his victory until such time as his title shall be inquired into and decreed otherwise in an appropriate action in the nature of a quo warranto. State ex rel. Buckingham v. Hopkins, Del. Super., 32 A.2d 659 (1943).

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

Section 7. Every person who either in or out of the State shall receive or accept, or offer to receive or accept, or shall pay, transfer or deliver, or offer or promise to pay, transfer or deliver, or shall contribute, or offer or promise to contribute, to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the giving or withholding, or in any manner influencing the giving or withholding, a vote at any general, special, or municipal election in this State, or at any primary election, convention or meeting held for the purpose of nominating any candidate or candidates to be voted for at such general, special or municipal election; or who either in or out of the State shall make or become directly or indirectly a party to any bet or wager depending upon the result of any such general, special, municipal or primary election or convention or meeting, or upon a vote thereat by any person; or who either in or out of the State shall, by the use or promise of money or other valuable thing, or otherwise, cause or attempt to cause any 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 use or promise of money or other valuable thing influence or attempt to influence any person to be registered or abstain from being registered; or who, being an officer of election or registration officer, shall knowingly and wilfully violate said person's official duty; or who shall by force, threat, menace or intimidation, prevent or hinder, or attempt to prevent or hinder, any person qualified for registration from being registered or any person qualified to vote from voting according to said person's choice at any such general, special or municipal election, shall be

deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five thousand dollars, or shall be imprisoned for a term not less than one month nor more than three years, or shall suffer both fine and imprisonment within said limits, at the discretion of the court; and shall further for a term of ten years next following said person's sentence, be incapable of voting at any such general, special, municipal or primary election or convention or meeting; but the penalty of disfranchisement shall not apply to any person making or being a party to any bet or wager, depending upon the result of any such general, special, municipal or primary election or convention or meeting. Every person charged with the commission while out of the State of any of the offenses enumerated in this section, and by this section made punishable, whether committed in or out of the State, may be prosecuted under Section 8 of this Article in any county in which said person shall be arrested on such charge. No person, other than the accused, shall, in the prosecution for any offense mentioned in this section, be permitted to withhold said person's testimony on the ground that it may criminate said person or subject said person to public infamy; but such testimony shall not afterwards be used against said person in any judicial proceeding, except for perjury in giving such testimony. (67 Del. Laws, c. 129.)

Cross references. — As to authority of General Assembly to define and punish other election offenses, see Del. Const., art. V, § 9. As to jury trial not being required in prosecutions under this section, see Del. Const., art. XV, § 7. As to criminal offenses relating to elections generally, see Chapter 51 of Title 15. As to testimony in election bribery cases under this section, see Rule 26(1) of the Supreme Court.

Revisor's note. — The amendment to the Constitution set out above was initially approved as Chapter 340 of 66 Del. Laws on June 29, 1988, and finally approved as Chapter 129 of 67 Del. Laws on June 30, 1989.

Indicia for constituting a crime present. — The framers of the Delaware Constitution intended the violation of the election provision to constitute a crime. They designated the offense as a misdemeanor and they provided penalties consisting of fine or imprisonment or both. Hence, the indicia for constituting a crime are present. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Offense is substantive, not an attempt. — The offense defined in this section is not one of an attempt to commit a particular crime; rather, it is a distinct, substantive offense.

State v. Burris, Del. Gen. Sess., 97 A. 427 (1916).

Six-month imprisonment test is to be applicable in determining defendant's right to jury trial regardless of whether defendant is charged with a crime or criminal contempt. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

A defendant faced with a charge under provision of this section that provides a possible maximum imprisonment of three years is entitled to a jury trial. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Each defendant is entitled to jury trial with respect to charges alleging violation of this section. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Furnishing registration money violates section. — One may be convicted in violation of this section though he may have had no corrupt motive and may have intended merely to furnish the money needed for registration. *State v. Collins*, Del. Gen. Sess., 42 A. 619 (1898).

The only reference to primary elections in the Constitution appears in this section, and it is not a limitation upon the legislative power. The framers of the Constitution intentionally and successfully avoided any limita-

tion upon the legislative powers of the General Assembly as to primary elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

§ 8. Prosecution for election offenses; procedure; appeal; bond.

Section 8. Every prosecution for any of the offenses mentioned in Section 7 of this Article shall be on information filed by the Attorney-General, after examination and commitment or holding to bail by a judge or Justice of the Peace, and the cause shall be heard, tried and determined by the court without the intervention of either a grand jury or petit jury. The accused if adjudged guilty of the offense charged against him, shall have the right at any time within the space of three calendar months next after sentence is pronounced to an appeal to the Supreme Court. The court below, or any judge thereof, in term time or vacation, shall upon application by the accused allow such appeal; but such appeal shall not operate as a supersedeas unless the appellant shall at the time of the allowance thereof give an appeal bond to the State of Delaware in such amount and with such surety as shall be approved by such court or judge. On such appeal the Supreme Court shall, with all convenient speed, review the evidence adduced in the cause in the court below, as well as the other proceedings therein, and the law applicable thereto, and give final judgment accordingly, either affirming or reversing the judgment below. If the appellant shall fail to prosecute his appeal pursuant to the rules and practice hereinafter provided for, the Supreme Court shall affirm the judgment of the court below. Where the sentence in the court below includes a term of imprisonment and an appeal bond is given and approved in manner aforesaid, the Supreme Court, if it affirm the judgment below, shall sentence the appellant to a term of imprisonment equal to that imposed by the court below, after deducting therefrom a period equal to the time of imprisonment, if any, already suffered by him under the sentence of the court below. The surety or sureties in any appeal bond given under the provisions of this section shall have the right at any time after its approval and until final judgment shall be rendered by the Supreme Court, and, in case the judgment of the court below shall be affirmed, until the expiration of the space of thirty days next following such affirmance, to take, wherever found, and render the appellant to the sheriff of the county in which he was sentenced; and a certified copy of the appeal bond shall be the sufficient warrant for such surety or sureties for such taking and rendering. If the Supreme Court shall reverse any judgment of the court below imposing a fine, and if the accused shall have fully paid such fine and the costs of prosecution, the amount thereof shall be refunded to the appellant through a warrant drawn by the court below on the treasurer of the county in which the accused was sentenced. All the judges

entitled to sit in the Supreme Court shall, as soon as conveniently may be, meet at the usual place of sitting of said court, and they, or a majority of them, shall adopt rules prescribing the forms and conditions of appeal bonds to be used under the provisions of this section, and the manner of certifying copies thereof, providing for the printing or reduction to writing of all oral evidence in the cause in the court below and of the opinion of said court, for the certification of the same when so printed or reduced to writing, and of copies thereof; for the copying and certification of all documentary or other written or printed evidence in the cause in the court below and of the record therein; for the transmission to the Supreme Court of such certified copies of such record, and of all the evidence adduced in the court below and of the opinion of said court for the transmission to the court below of a certified copy of the final judgment of the Supreme Court and of any additional sentence pronounced by said court, for the discharge of securities in appeal bonds, and for the framing, issuance, service and enforcement of all process and rules necessary to give full effect to the provisions of this section; and regulating generally the practice and procedure of the Supreme Court and the court below in cases of appeal under this section. The said judges, or a majority of them, met as aforesaid, may also provide that when complaint shall be made in due form, prescribed by them, to any judge entitled to sit in the Supreme Court, that any offense mentioned in Section 7 of this Article has been committed in the county in which such judge shall reside, or out of the State, such judge shall have power to cause the person charged with such offense to be arrested within any county of this State and brought before him, and to bind him with sufficient surety, or, for want of bail, commit him for his appearance and answer at the next term of the Court of General Sessions in such manner and under and pursuant to such rules and regulations as the said judges, or a majority of them, shall prescribe. From time to time hereafter, whenever a majority of all the judges entitled to sit in the Supreme Court shall so request, all of the judges so entitled shall, as soon as conveniently may be, meet at the usual place of sitting of said court; and they, or a majority of them, shall have power to revise, amend, add to or annul, any rule or rules theretofore adopted touching forms, practice or procedure in cases of appeal under this section, or arrest and binding or commitment for appearance and answer, in such manner and to such extent as in their judgment shall best serve to effectuate the purposes hereof. No person shall be adjudged guilty of an offense mentioned in Section 7 of this Article without the concurrence of all the judges trying the case; and upon appeal no judgment of the court below shall be affirmed without the concurrence of all of the judges of the Supreme Court sitting in the case, and their failure to concur as aforesaid shall operate as a reversal of the judgment of the court below; provided, however, that such concurrence of the judges sitting in the Supreme Court shall not be necessary for the affirmance

of the judgment of the court below where the appellant shall fail to prosecute his appeal pursuant to the rules and practices herein provided for.

Cross references. — As to two judges constituting a quorum, see Del. Const., art. IV, § 5. As to jurisdiction of Supreme Court over appeals from the Superior Court in prosecutions under this section, see Del. Const., art. IV, § 11. As to conviction of perjury under Del. Const., art. V, § 3 for false oath or affirmation not barring prosecution under this section, see Del. Const., art. V, § 3. As to matters within this section being excepted from Del. Const., art. I, § 8, see Del. Const., art. XV, § 7. As to limitation of actions on appeal being subject to the provisions of this section, see Rule 23 of the Supreme Court. As to procedure in election bribery cases, see Rule 26 of the Supreme Court.

Objective of this section was to assure more convictions for election bribery. It was felt that the jury system was ineffective in dealing with political matters and that a different system was needed to deal with election violators. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Section is attempt to protect sanctity of elections. — This section did not represent an experiment designed to provide protection for the accused. It represented an attempt to protect the sanctity of elections by providing a means for convicting more of those who were accused of violation. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Procedure for prosecution of vote-buying prescribed by section. — The procedure for the prosecution and punishment of persons guilty of vote-buying in primary or general elections is that prescribed by this section, and it is exclusive of any other procedure. In re Opinions of the Justices, Del. Supr., 88 A.2d 128 (1952).

And the Constitution clearly indicates the Superior Court as the trial court in all such cases, whether the first steps were had before a judge or a justice of the peace. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

The effect of this section is to withdraw from the Grand Jury all of its powers of investigation, presentment and indictment in respect of the offenses enumerated in Del. Const., art. 5, § 7. In re Opinion of the Justices, Del. Supr., 88 A.2d 128 (1952).

It does not violate the due process clause of the federal Constitution. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

Serious crime entitles one to jury trial. — According to the framers of the Delaware Constitution, the evil of election bribery is especially serious, and, hence, there should be no jury trial. But, according to the United States Supreme Court cases, a crime which is serious entitles a defendant to jury trial. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Deprivation of jury trial violative of federal constitution. — Insofar as this section undertakes to deprive a defendant charged with violating Del. Const., art. V, § 7, of a jury trial, that provision violates the rights of a defendant under the United States Constitution to jury trial as those rights have been interpreted by the United States Supreme Court. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Each defendant is entitled to jury trial with respect to charges alleging violation of Del. Const., art. V, § 7. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Six-month imprisonment test is to be applicable in determining defendant's right to jury trial regardless of whether defendant is charged with a crime or criminal contempt. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Distinct offenses should not be joined in 1 information. — When separate and distinct offenses are charged in 1 indictment, the State may be called upon to elect which of the offenses shall be prosecuted; hence, distinct offenses should not be joined in 1 information. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

It is not necessary to aver in the information the commitment and holding to bail, which is no part of the offense charged. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

However, 1 of the defined offenses must appear on face of bail bond. — Before the Attorney General is authorized to file an information for any of the offenses enumerated in section 7, article 5 of the Constitution, it must, at least in the case of a "holding to bail," substantially appear on the face of the bail bond that 1 of the offenses defined by the Constitu-

tion, for which an information may be filed, is charged or set forth in the bond. Such is for the reason that, in order to constitute a holding to bail, within the meaning, contemplation and purpose of the Constitution, the bail bond sent up to this Court must charge an offense within the terms and provisions of the Constitution in language sufficiently certain to inform the accused of the offense with which he is charged. The defendant, then, in the preliminary pro-

ceedings required by the Constitution, may have notice of the nature and character of the offense charged against him. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

Section 2504 of Title 29 may be treated as coextensive with the constitutional powers of the office of Attorney General. In re *Blue Hen Country Network, Inc.*, Del. Super., 314 A.2d 197 (1973).

§ 9. Enumeration of election offenses as limitation on power of General Assembly.

Section 9. The enumeration of the offenses mentioned in Section 7 of this Article shall not preclude the General Assembly from defining and providing for the punishment of other offenses against the freedom and purity of the ballot, or touching the conduct, returns or ascertainment of the result of general, special or municipal elections, or of primary elections, conventions or meetings held for the nomination of candidates to be voted for at general, special or municipal elections. No prosecution under any act of the General Assembly passed pursuant to this section shall be subject to the provisions of Section 8 of this Article.

Cross references. — As to criminal offenses relating to elections generally, see Chapter 51 of Title 15.



TITLE 15

Elections

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PART I
Administrative Agencies
CHAPTER 1. PURPOSE AND MEANING OF
ELECTION LAWS

Sec.
 101. Definitions.
 101A. Purpose.

Sec.
 102-120. [Transferred.]

§ 101. Definitions.

As used in this title:

(1) "Ballot" means those portions of cardboard, paper or other material to be placed within the ballot frames of a voting machine or to be used for absentee voting in order to list the names of the offices to be voted for, the name of each candidate and the designation of the party by which he is nominated, a space for the voter to write in the name of any candidate of his choice for any office, and the statement of any question submitted with provision for a "yes" or "no" vote.

(2) "Board of elections" or "board" in each of the 3 counties of the State means that body of individuals appointed by the Governor and confirmed by the Senate to serve as a board of elections for their respective counties, and are, as such, vested with the responsibility and power to see to the administration of the election laws of this State in their respective counties as more particularly defined in this title.

(3) "Clerk" means clerk of election.

(4) "Commissioner" means the State Election Commissioner.

(5) "County committee" means the regularly organized and constituted county committee or governing authority of a political party.

(6) "Department" means the department of elections in each county of this State, consisting of the board of elections and such staff as the board shall appoint under this title. The department in each county, under the direction of the board of elections, shall administer the election laws of this State as defined in this title.

(7) "Election officers" means the inspector of election, the 2 judges of election and the clerks of election who are appointed for each election district under § 4701 of this title.

(8) "Independent", "decline" or words equivalent thereto means any person who at the time of registration does not choose to be affiliated with a political party as defined in this section.

(9) "Inspector" means inspector of elections.

(10) "Judge" means judge of elections.

(11) "Local office" means any political district smaller than the State, including municipal, county, state representative or state senatorial.

(12) "Mobile registration" means any registration held outside the central registration in the office of the department of elections for each respective county and excluding registrations held within the district on registration days designated by the department of elections.

(13) "Party" or "political party" means any political organization which elects a state committee and officers of a state committee, by a state convention composed of delegates elected from each representative district in which the party has registered members, and which nominates candidates for electors of President and Vice-President, or nominates candidates for offices to be decided at the general election. All political parties shall be divided into 2 classes:

a. "Major political party" means any political party which, as of December 31 of the year immediately preceding any general election year, has registered in the name of that party voters equal to at least 5 percent of the total number of voters registered in the State.

b. "Minor political party" means any political party which does not qualify as a major political party.

(14) "Primary ballots" means paper ballots used with ballot boxes or ballots used in voting machines.

(15) "Primary election" means an election at which voters registered as members of a major political party may vote to determine the nominees of that political party for the general election.

(16) "Principal political parties" or words equivalent thereto will be the two political parties which have the highest total voter registration in this State.

(17) "Protective counter" means a separate counter built into the voting machine, which cannot be reset, which records the total number of movements of the operating lever.

(18) "Question" means any proposition or other question to be submitted to the voters.

(19) "Registration officers" means the registrar, assistant registrar and alternate registrars appointed by the departments as defined in this section.

(20) "State chairman" means the highest executive officer of a political party of this State.

(21) "State committee" means the regularly organized and constituted statewide governing authority of a political party in this State.

(22) "Unaffiliated candidate" means any individual who files a declaration as a candidate for any office to be decided at the general election and who is not affiliated with any political party and has not been thus affli-

ated for at least 3 months prior to the filing of his declaration. (15 Del. C. 1953, § 101; 49 Del. Laws, c. 4, § 5; 57 Del. Laws, c. 181, § 1; 57 Del. Laws, c. 567, §§ 1, 1A, 2; 57 Del. Laws, c. 695, § 1; 58 Del. Laws, c. 148, §§ 1, 2; 60 Del. Laws, c. 414, § 1; 60 Del. Laws, c. 446, §§ 1, 2; 61 Del. Laws, c. 418, §§ 3-5; 61 Del. Laws, c. 480, § 1.)

Political party is not state agency. — If the candidates nominated by a political party as defined in this section are certified to the proper officer, placed upon the official ballot and elected at the next general or special election, they become part of the state or county government and may be classed as state or county officers, but that does not make the political party by which they were nominated a state agency or a part of the state government to which the General Assembly may delegate the power of appointing the members of a state agency. *State ex rel. James v. Schorr*, Del. Supr., 65 A.2d 810 (1948).

Regulation of access of candidates to ballot. — The State has the authority to regulate access of candidates to the ballot, but that authority must be exercised so as not to burden unfairly or unnecessarily an individual candidate's equally important interest in the availability of political opportunity. *McCarthy v. Tribbitt*, 421 F. Supp. 1193 (D. Del. 1976).

Regulations imposed by Delaware laws upon candidates of political parties seeking to obtain a ballot position are not invali-

dated. *Maddox v. Wrightson*, 421 F. Supp. 1249 (D. Del. 1976).

Requirement of nominations to be party is permissive. — The requirement of this section that a party nominate candidates for the named offices and "other officers" is permissive rather than mandatory. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

And nominations for all statewide offices are not required. — This section does not require a party to nominate candidates for all statewide offices. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

But to qualify as party, nomination for 1 office is needed. — In order to qualify as a political party, the state organization must nominate candidates for at least 1 of the named offices. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

As is election of state committee at convention. — This section requires an organization, in order to qualify as a political party, to elect a state committee at its convention. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

§ 101A. Purpose.

The purpose of this title is to assure the people's right to free and equal elections, as guaranteed by our state Constitution. To that end, the full exercise of that right demands that the people be afforded the means to form political parties, nominate candidates and cast ballots for whomever they choose. At the same time, however, lengthy ballots which list a profusion of political parties and unaffiliated candidates, many of which are not serious contenders and lack even a modicum of community support, tend to create voter confusion and to clog the election machinery.

To secure the right to free and equal elections and to preserve the integrity of the democratic political process, it is essential that an orderly system be established:

- (1) For the registration of voters and the preservation of voter registration records;
- (2) To encourage public participation in political parties and to demonstrate sufficient community support of these parties by permitting voters

to affiliate with the party of their choice, if they so desire, on their voter registration records;

(3) To provide a means by which political parties and unaffiliated candidates, which have demonstrated a meaningful level of community support, may qualify for listing on the general election ballot;

(4) For the orderly and fair selection of party nominees by primary election or political party convention, and for the filling of vacancies among such nominees;

(5) To provide for the free exercise of the write-in vote for both politically affiliated and unaffiliated candidates who may not qualify for listing on the general election ballot;

(6) For the conduct of primary and general elections;

(7) For the certification of election results and the resolution of election contests;

(8) To provide criminal penalties and civil liability for violation of the laws set forth in this title;

(9) To provide for all such other matters, related to the electoral process, as may be set forth herein. (61 Del. Laws, c. 418, § 2.)

§§ 102-120.

[Transferred.]

Revisor's note. — The material formerly codified under these sections was transferred and now appears as §§ 201-219 of this title.

CHAPTER 2. DEPARTMENT OF ELECTIONS

Sec.

- 201. Department of Elections.
- 202. Board of Elections for New Castle County; composition; appointment; term.
- 203. Boards of Elections for Kent and Sussex Counties; composition; appointment; term.
- 204. Qualifications of members of all boards.
- 205. Confirmation or rejection of appointments.
- 206. Oath.
- 207. Compensation of members.
- 208. Organization meeting; officers.
- 209. Necessary votes for transaction of business.

Sec.

- 210. Rules.
- 211. Administrative director; deputy administrative director; powers, duties, qualifications, compensation.
- 212. Office; equipment and supplies.
- 213. Employees; duties and compensation.
- 214. Maps.
- 215. Expenses and compensation.
- 216. Notaries public.
- 217. Administrative director and deputy administrative director of departments of elections; limitations.
- 218. Timing and dating.
- 219. Political activity limited; penalty.

§ 201. Department of Elections.

There shall be a Department of Elections for New Castle County, Kent County and Sussex County. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 1; 22 Del. Laws, c. 70, § 5; Code 1915, § 1658; Code 1935, §§ 1745, 1745A; 42 Del. Laws, c. 115, §§ 1, 2; 45 Del. Laws, c. 148, § 1; 45 Del. Laws, c. 149, § 1; 15 Del. C. 1953, § 102; 50 Del. Laws, c. 357, § 1; 50 Del. Laws, c. 429, § 1; 50 Del. Laws, c. 546, § 2; 50 Del. Laws, c. 549, § 2; 61 Del. Laws, c. 418, § 1.)

§ 202. Board of Elections for New Castle County; composition; appointment; term.

(a) The Board of Elections for New Castle County shall consist of 10 members and each of the 2 principal political parties shall be represented at all times by not less than 5 members and at all times both principal political parties shall have equal representation.

(b) In carrying out this section, the Governor shall appoint 10 members. The Governor shall appoint 5 members, with at least 2 from each of the 2 principal political parties, for a term of 2 years each, and 5 members, with at least 2 from each of the 2 principal political parties, for a term of 4 years each.

(c) Upon the expiration of the term of any member of the Board, his successor shall be appointed by the Governor for a period of 4 years; provided, however, that such member shall hold office until his successor shall be duly qualified and provided, further, that the term of such successor shall commence on the date he is duly qualified. In the event a vacancy occurs in the Board from any cause, other than expiration of the term of a member, the Governor shall fill the vacancy for the residue of the term.

(d) The 10 members required to be appointed by the Governor from the 2 principal political parties under subsections (b) and (c) of this section shall be appointed from a list of not less than 3 nominees for each member to be appointed, which list shall be submitted by the state chairman of the political party from which the appointment must be made. Seven of the members to be appointed must reside in a different senatorial district in rural New Castle County and 3 of the members to be appointed must reside in a separate senatorial district of the City of Wilmington. Such lists shall be submitted to the Governor within 30 days of the expiration or vacancy of any term herein when such expiration or vacancy leaves fewer than 5 members of the principal political party. The Governor shall submit his appointments from the names on the lists within 30 days of the date the Governor receives the lists. If a state chairman does not submit a list to the Governor as provided in this subsection, then the Governor shall submit his appointments for any vacancy.

(e) All members shall be appointed by and with the consent of the majority of the members elected to the Senate. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, §§ 1, 2; 22 Del. Laws, c. 70, §§ 1, 3; Code 1915, §§ 1658, 1659; 40 Del. Laws, c. 141, § 1; Code 1935, §§ 1745, 1745A, 1746; 42 Del. Laws, c. 115, §§ 1-3; 45 Del. Laws, c. 147, § 1; 15 Del. C. 1953, § 103; 54 Del. Laws, c. 163, § 1; 55 Del. Laws, c. 334, § 1; 57 Del. Laws, c. 181, § 2; 58 Del. Laws, c. 148, §§ 3, 4; 61 Del. Laws, c. 418, § 1.)

§ 203. Boards of Elections for Kent and Sussex Counties; composition; appointment; term.

(a) The Board of Elections for Kent County and the Board of Elections for Sussex County shall each consist of 6 members appointed as provided in this section. Each of the 2 principal political parties shall at all times be represented by not less than 3 members of each board.

(b) In carrying out this section, the Governor shall initially appoint for the Board of Elections of Kent County 2 members for a term of 2 years each and 2 members for a term of 4 years each, and for the Board of Elections of Sussex County, 3 members for a term of 2 years each and 3 members for a term of 4 years each.

(c) Upon the expiration of the term of any member from either board his successor shall be appointed by the Governor for a term of 4 years; provided, however, that such member shall hold office until his successor shall be duly qualified and provided, further, that the term of such successor shall commence on the date he is duly qualified. In the event that a vacancy occurs in either board from any cause, other than expiration of the term of a member, the Governor shall fill the vacancy for the residue of the term.

(d) The members to be appointed by the Governor under subsections (c) and (d) of this section shall be appointed from a list of not less than 3 nominees for

each member to be appointed, which list shall be submitted by the state chairman of the political party from which the appointment must be made. Each senatorial district in Kent and Sussex Counties must be represented by 1 member and no senatorial district may be represented by more than 2 members. Such lists shall be submitted to the Governor within 30 days of June 25, 1969, and within 30 days of the expiration or vacancy of any term herein when such expiration or vacancy leaves fewer than 3 members of the principal political party. The Governor shall submit his appointments from the names on the lists within 30 days of the date the Governor receives the lists.

(e) All members shall be appointed by and with the consent of the majority of the members elected to the Senate. (45 Del. Laws, c. 148, §§ 1, 2, 4, 5; 45 Del. Laws, c. 149, §§ 1, 2, 4, 5; 15 Del. C. 1953, § 104; 54 Del. Laws, c. 163, § 1; 55 Del. Laws, c. 334, § 2; 57 Del. Laws, c. 181, § 3; 58 Del. Laws, c. 148, § 5; 61 Del. Laws, c. 418, § 1.)

§ 204. Qualifications of members of all boards.

No person shall be appointed as a member of any board of elections who is not a citizen of the United States and a resident of the county for which he is appointed and who has not resided therein for 1 year next preceding his appointment. No member of any board shall hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office;

(2) Elective office or appointed position of a political party, nor shall a member be an appointed official to any federal, state, county, city or incorporated municipality commission or administrative body. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 105; 50 Del. Laws, c. 82, § 1; 55 Del. Laws, c. 280; 57 Del. Laws, c. 181, § 4; 58 Del. Laws, c. 148, § 6; 61 Del. Laws, c. 418, § 1.)

§ 205. Confirmation or rejection of appointments.

The Senate shall either confirm or reject any appointment under § 202 or 203 of this title within 10 legislative days of its receipt or said appointment is deemed confirmed. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 2; 45 Del. Laws, c. 149, § 2; 15 Del. C. 1953, § 106; 50 Del. Laws, c. 357, § 1; 50 Del. Laws, c. 429, § 1; 50 Del. Laws, c. 546, § 2; 50 Del. Laws, c. 549, § 2; 52 Del. Laws, c.

130, § 3; 54 Del. Laws, c. 163, § 1; 57 Del. Laws, c. 181, § 5; 61 Del. Laws, c. 418, § 1.)

§ 206. Oath.

Each member of each board, before entering upon his duties and within 10 days from the time of his appointment, shall take and subscribe to the oath or affirmation prescribed by the Constitution and shall record the same in the office of the recorder of the county of the member's residence. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; 22 Del. Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 140, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 107; 58 Del. Laws, c. 148, § 7; 61 Del. Laws, c. 418, § 1.)

§ 207. Compensation of members.

The president of each board shall receive as compensation for his services a salary of \$1,500 per year and each member of each board shall receive as compensation for his services a salary of \$1,000 per year. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 108; 50 Del. Laws, c. 357, § 4; 50 Del. Laws, c. 429, § 6; 50 Del. Laws, c. 546, § 1; 50 Del. Laws, c. 549, § 1; 54 Del. Laws, c. 364, § 1; 58 Del. Laws, c. 148, § 8; 61 Del. Laws, c. 418, § 1.)

§ 208. Organization meeting; officers.

(a) Within 30 days after confirmation of all the members of each of the boards by the Senate, the members of each board shall meet and organize by electing 1 of their members to be president and shall at the same time elect a secretary whose function other than that of a member shall be to record the minutes of the meeting of the board and they shall serve until date prescribed in subsection (b) hereto.

(b) In New Castle County on the second Tuesday in February in each year, in Kent County on the third Tuesday in February in each year, and in Sussex County on the fourth Tuesday in February in each year, the members of each board shall meet and organize by electing 1 of their members to be president. They shall at the same time elect a secretary whose function other than that of a member shall be to record the minutes of the meeting of the board. The terms of office of the president and secretary shall be until the date prescribed by this section for holding the next regular organizational meeting or a successor is elected. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; 22 Del.

Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 109; 50 Del. Laws, c. 545, § 4; 50 Del. Laws, c. 557, § 1; 57 Del. Laws, c. 181, § 6; 58 Del. Laws, c. 148, § 9; 61 Del. Laws, c. 418, § 1.)

Members of the department of elections are public officers; their sovereign powers and duties, involving the exercise of discretion and judgment for the public welfare, may not be properly delegated. *Martin v. Trivitts*, Del. Super., 103 A.2d 779 (1954).

§ 209. Necessary votes for transaction of business.

(a) The affirmative vote of 6 members shall be required for the transaction of any business for the Board of Elections for New Castle County.

(b) The affirmative vote of 4 members shall be required for the transaction of any business for the Board of Elections for Kent and Sussex Counties respectively. (22 Del. Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 110; 57 Del. Laws, c. 181, § 7; 58 Del. Laws, c. 148, § 10; 61 Del. Laws, c. 418, § 1.)

§ 210. Rules.

Each board may make rules for its government not inconsistent with the Constitution or any law of this State and subject to the approval of the State Election Commissioner. (22 Del. Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 111; 57 Del. Laws, c. 181, § 8; 58 Del. Laws, c. 148, § 11; 61 Del. Laws, c. 418, § 1.)

§ 211. Administrative director; deputy administrative director; powers, duties, qualifications, compensation.

(a) The board of elections of each county shall appoint:

(1) An administrative director who shall be a member of the same political party as the State Election Commissioner and who shall serve at the pleasure of the board;

(2) A deputy administrative director who shall be nominated and elected by the members of the board of elections of the opposite political party of the State Election Commissioner and who shall serve at the pleasure of same. In the nomination and election of a deputy administrative director, § 209 of this title shall not be applicable.

(b) The administrative director shall assist the department of elections of his county in carrying out its duties and responsibilities and, subject to the policies and directives of the board, shall have general supervision over the employees of the department and shall see to it that the work of the department is performed in a proper and nonpartisan manner.

(c) The deputy administrative director shall assist the administrative director.

(d) The administrative director and the deputy administrative director of each department of elections shall be a citizen of the United States and a qualified elector of the county employing him.

(e) Each board shall fix the salary of its administrative director and deputy administrative director. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 112; 50 Del. Laws, c. 630, § 1; 57 Del. Laws, c. 181, § 9; 58 Del. Laws, c. 148, §§ 12-14; 58 Del. Laws, c. 571; 61 Del. Laws, c. 418, § 1.)

§ 212. Office; equipment and supplies.

Each department shall occupy a suitable and convenient office in the courthouse or public building of the county, or elsewhere in the county seat, and shall obtain whatever furniture, equipment and supplies that may be necessary to properly carry out its duties. (21 Del. Laws, c. 40, § 5; Code 1915, § 1660; Code 1935, § 1747; 42 Del. Laws, c. 115, § 4; 45 Del. Laws, c. 147, § 2; 45 Del. Laws, c. 148, § 7; 45 Del. Laws, c. 149, § 7; 15 Del. C. 1953, § 113; 61 Del. Laws, c. 418, § 1; 61 Del. Laws, c. 480, § 2.)

§ 213. Employees; duties and compensation.

(a) Each department may hire such employees as it may deem necessary for the performance by the department of its duties, subject to the limitations of subsection (b) of this section.

(b) Persons presently employed by said departments shall be retained.

(c) The duties of such employees shall be prescribed and the compensation fixed by the Director of State Personnel.

(d) The employees of each department shall be placed under the state merit system but subject to all provisions of this title. (21 Del. Laws, c. 40, § 3; Code 1915, § 1664; 40 Del. Laws, c. 141, § 3; Code 1935, § 1751; 45 Del. Laws, c. 147, § 4; 45 Del. Laws, c. 148, § 7; 45 Del. Laws, c. 149, § 7; 15 Del. C. 1953, § 114; 57 Del. Laws, c. 181, § 10; 61 Del. Laws, c. 418, § 1.)

§ 214. Maps.

(a) The Department of Public Works of the City of Wilmington, the planning departments of each county and the Planning Division of the Department of Transportation shall provide such maps as may be requested by any department of elections. All such maps shall be the most current available, shall be at such scale as requested and shall be provided at cost.

(b) Such planning maps shall be used by each department of elections to compile the maps required by § 4911 of this title and § 861 of Title 29.

(c) In addition to the maps required by § 4911 of this title and § 861 of Title 29, each department of elections shall prepare individual, large-size wall maps for each senatorial district within the State. These individual maps shall also designate the boundaries of all election districts within each senatorial district. (19 Del. Laws, c. 39, § 29; Code 1915, § 1676; Code 1935, § 1763; 42 Del. Laws, c. 115, § 12; 45 Del. Laws, c. 148, § 22; 45 Del. Laws, c. 149, § 22; 15 Del. C. 1953, § 115; 57 Del. Laws, c. 567, § 3; 58 Del. Laws, c. 148, § 15; 61 Del. Laws, c. 418, § 1; 64 Del. Laws, c. 133, § 1.)

§ 215. Expenses and compensation.

All expenses of each department, including the compensation of the members, secretaries and assistants, shall be paid by the State. (21 Del. Laws, c. 40, §§ 3, 5, 6; Code 1915, §§ 1659, 1660, 1664; 40 Del. Laws, c. 141, §§ 1, 3; Code 1935, §§ 1746, 1747, 1751; 42 Del. Laws, c. 115, §§ 3, 4; 45 Del. Laws, c. 147, §§ 1, 2, 4; 45 Del. Laws, c. 148, §§ 5, 7, 10; 45 Del. Laws, c. 149, §§ 5, 7, 10; 15 Del. C. 1953, § 116; 51 Del. Laws, c. 149, § 8; 61 Del. Laws, c. 418, § 1.)

§ 216. Notaries public.

(a) In addition to the notaries public for the respective counties authorized to be appointed by any other law, the Governor shall appoint as notaries public:

(1) Three employees of the Department of Elections for New Castle County; and

(2) One employee and the Administrative Director of the Departments of Elections for Kent and Sussex Counties.

(b) Whenever any person so appointed ceases to be employed by or as administrative director of the department, his term as notary public shall terminate and the Governor shall appoint either another employee or his successor as a notary public. (Code 1935, § 1755; 45 Del. Laws, c. 147, § 8; 45 Del. Laws, c. 148, § 33; 45 Del. Laws, c. 149, § 33; 15 Del. C. 1953, § 117; 57 Del. Laws, c. 181, § 11; 61 Del. Laws, c. 418, § 1.)

§ 217. Administrative director and deputy administrative director of departments of elections; limitations.

No administrative director or deputy administrative director of any department of elections shall hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office; or

(2) Elective office or position of a political party nor shall he be an appointed official to any federal, state, county, city or incorporated municipality commission or administrative body. (15 Del. C. 1953, § 118; 50 Del. Laws, c. 82, § 2; 57 Del. Laws, c. 181, § 12; 61 Del. Laws, c. 418, § 1.)

§ 218. Timing and dating.

It shall be the duty of each department to time and date each application for a ballot or other communication received by the department and the person timing and dating the application for a ballot, letter or other communication shall place his initials thereon. Each department shall note the time and date of all ballots received. (15 Del. C. 1953, § 119; 52 Del. Laws, c. 221, § 2; 61 Del. Laws, c. 418, § 1.)

§ 219. Political activity limited; penalty.

(a) No person, member, administrative director or deputy administrative director or employee of the department shall directly or indirectly use or seek to use his authority or official influence to control or modify the political action of another person or at any time actively participate in any political activities or campaigns.

(b) Any person who shall violate this section shall be fined not more than \$500 and shall forfeit his position or employment. (15 Del. C. 1953, § 120; 57 Del. Laws, c. 181, § 13; 58 Del. Laws, c. 215, § 1; 61 Del. Laws, c. 418, § 1.)

CHAPTER 3. STATE ELECTION COMMISSIONER

Sec.

301. Appointment; term and compensation.
 302. General powers and duties of Commissioner.
 303. Duties upon receipt of applications for registration.
 304. Preparation of lists of registered voters.

Sec.

305. Audit for duplication of names.
 306. Audit for names of persons who have not voted in the last 2 general elections.
 307. Supplying lists to political party chairmen and other persons.

§ 301. Appointment; term and compensation.

(a) The State Election Commissioner shall be appointed by the Governor for a term of 4 years and confirmed by a majority of the members elected to the Senate. Until such appointment and confirmation the State Auditor shall serve as the State Election Commissioner without additional compensation. In the event of a vacancy in the office, the Governor shall appoint a successor to fulfill the unexpired term and said successor shall be confirmed by a majority of the members elected to the Senate.

(b) The salary of the State Election Commissioner shall be determined by the Governor and shall be no less than \$12,000 and no more than \$16,000 per year.

(c) The State Election Commissioner shall serve in this capacity on a full-time basis and his powers and duties prescribed by this title shall remain with the Election Commissioner and shall not be delegated to any other individual or group.

(d) The State Election Commissioner shall not hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office; or

(2) Elective office or position of a political party nor shall he be an appointed official to any federal, state, county, city or incorporated municipality, commission or administrative body.

(e) The State Election Commissioner shall not directly or indirectly use or seek to use his authority or official influence to control or modify the political action of another person or at any time participate in any political activities or campaigns. (15 Del. C. 1953, § 302; 50 Del. Laws, c. 168, § 1; 57 Del. Laws, c. 181, § 15; 58 Del. Laws, c. 215, § 2.)

§ 302. General powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

(1) To furnish, by purchase, lease, or otherwise, such equipment, supplies and services that may be required in order to conduct his powers and duties prescribed in this title;

(2) To order any department, board, commission or agency of this State to transfer to the Commissioner any equipment or supplies to his custody that are owned by the State and not in use by the department, board, commission or agency concerned, which may be used by the Commissioner in conducting the functions of his office;

(3) To select and maintain in the City of Dover, preferably in a building owned by the State, suitable office space;

(4) To make reasonable rules and regulations with respect to the functions of his office and with respect to the manner of making entries in registration and election records to be followed by each department and all registration and election officers;

(5) To have the sole responsibility for the security of the records in his office which shall not be delegated to anyone;

(6) To prescribe the form of the registration and election records which under this title are to be uniform throughout this State so long as they are not in conflict with this title;

(7) To supply necessary instruction and assistance to each department and all registration and election officers in order to insure uniform operation of this title throughout the State;

(8) Such other powers and duties as may be necessary in order for the Commissioner to carry out his functions under this title;

(9) To be an ex officio member of each county department of elections;

(10) To attend each county department of elections meeting at which time he may do the following:

a. Participate in any and all discussions; and

b. Cast a vote only in the event of a tie;

(11) To collect unofficial results of the general election at each election district in the State and to tabulate, report and disseminate the results of the election as soon as possible to the public. (15 Del. C. 1953, § 303; 50 Del. Laws, c. 168, § 1; 57 Del. Laws, c. 181, § 16; 57 Del. Laws, c. 384; 57 Del. Laws, c. 567, § 4; 58 Del. Laws, c. 215, § 3.)

§ 303. Duties upon receipt of applications for registration.

Upon receipt of applications for registration the Commissioner shall first determine whether each application has been properly approved and verified by the department concerned. In the event of any discrepancy he shall return the application to the department concerned for such corrections or additions as may be necessary. If the application has been properly approved and verified, the Commissioner shall then cause the information contained thereon to be punched upon tabulating cards. The cards shall be properly indexed by county election districts and shall be maintained in tamperproof, fire protected cabinet.

The Commissioner shall check the permanent significant registration number placed upon each application for registration to determine whether the proper number has been assigned by the department. In the event the Commissioner determines that the permanent significant registration number assigned by a department is erroneous, he shall assign the proper number, and shall notify the department concerned which shall make the proper corrective entry upon the Election District Record and County Master Record.

After the applications for registration have been used by the Commissioner to comply with this section, he shall cause every application to be microfilmed and indexed and shall destroy each original application. (15 Del. C. 1953, § 304; 50 Del. Laws, c. 168, § 1.)

§ 304. Preparation of lists of registered voters.

(a) The Commissioner of Elections shall cause to be prepared lists of all voters duly registered in the State as of 21 days prior to the date of the delegate primary and another complete list of all registered voters as of 21 days prior to the date of the statewide primary. Such lists are to be in alphabetical order and shall contain the full name, address and political party designation of each voter as it appears on the registration records. A separate list shall be prepared for each election district in the State.

(b) The Commissioner of Elections shall also cause to be prepared for each election district in the State a supplemental list of all voters who register, transfer their registration or make changes in their names, addresses or party designations between that period of 21 days prior to the date of the statewide primary and the last general registration day of the year of any general election, inclusive. Such separate supplemental lists, in alphabetical order, shall be prepared for each election district in the State, and each such list shall contain the full names, address and political party designation of those voters who are newly registered, who have changed their names or who have changed their party designation, together with information showing the election district to which and from which such voters have transferred their regis-

tration, where applicable. (15 Del. C. 1953, § 305; 50 Del. Laws, c. 168, § 1; 52 Del. Laws, c. 221, § 1; 57 Del. Laws, c. 181, § 17; 57 Del. Laws, c. 567, §§ 5, 6; 58 Del. Laws, c. 215, § 4; 58 Del. Laws, c. 397, § 1.)

§ 305. Audit for duplication of names.

Within 10 days following the last registration day in each general election year, the Commissioner shall process all of the punch cards of each voter in the State to determine whether or not there is any duplication of names. In the event that duplications are found, the Commissioner shall immediately notify each department concerned, which shall undertake an investigation to determine the right of the voters concerned to be registered as prescribed in § 1704 of this title. (15 Del. C. 1953, § 306; 50 Del. Laws, c. 168, § 1.)

§ 306. Audit for names of persons who have not voted in the last 2 general elections.

Before the 15th day of April in each year in which a general election is not held, the Commissioner shall process the records of each voter in the State to determine whether or not any voters have failed to vote in the last 2 preceding general elections. The Commissioner shall, before the 1st day of May in each such year, cause to be prepared a separate list for each election district, with full names in alphabetical code order and with addresses of all voters so found, and immediately deliver such information to the department concerned, which shall undertake an investigation as prescribed in § 1704 of this title. (15 Del. C. 1953, § 307; 50 Del. Laws, c. 168, § 1; 52 Del. Laws, c. 32, § 1; 57 Del. Laws, c. 181, § 18; 57 Del. Laws, c. 567, § 7; 58 Del. Laws, c. 140, § 1; 67 Del. Laws, c. 354, § 1.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "April" for "June" in the first sentence and "May" for "July" in the second sentence.

§ 307. Supplying lists to political party chairmen and other persons.

(a) It shall be the duty of the Commissioner to make available copies of all lists referred to in §§ 304-306 of this title upon request therefor, subject to this section. Eight copies of each list shall be supplied without charge to each political party whose registered members equal at least 1% of the total number of registered voters of this State. In addition, the Commissioner shall sell copies of such lists to any duly certified candidate for a primary election or a general election in the State upon receipt of payment therefor, the charge for each list to be established by the Commissioner, but not to exceed \$5 for a

total listing of a representative district pursuant to subsection (a) of § 304 of this title or 50 cents for any other list.

(b) Provided that written request therefor is submitted at least 15 days before the date fixed by statute for preparation of the list, the lists shall be made available by the Commissioner as follows: The lists referred to in subsection (a) of § 304 of this title, no later than 7 working days after the last day for registration in the period to which the list relates, and the lists referred to in §§ 305 and 306 of this title, no later than the date for giving notice to the several departments of information contained on such lists. In all other cases, the lists requested shall be made available as soon as practicable.

(c) Requests for lists for political parties shall be submitted in writing by the state chairman of each party or by the county chairman if there is no state chairman. A request may designate other persons, not exceeding 2 in each county, to whom all, or specified portions, of the lists are to be available from the Commissioner. (15 Del. C. 1953, § 308; 57 Del. Laws, c. 181, § 19; 60 Del. Laws, c. 446, § 3; 67 Del. Laws, c. 354, § 2.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "available from" for "delivered by" in the second sentence of (c).

PART II

Registration of Voters

Cross references. — As to registration of voters, see Del. Const., art. V, § 4.

CHAPTER 11. GENERAL PROVISIONS

Sec.

1101. Permanent registration system.

1102. Supplementary registrations.

Sec.

1103. New general registration.

1104, 1105. [Repealed.]

§ 1101. Permanent registration system.

(a) During 1956 there shall be a general registration of all persons resident in this State who shall be qualified to vote in the general election held in the year 1956. The general registration shall be conducted as hereinafter prescribed and thereafter the records resulting therefrom shall be deemed to constitute a permanent registration record of all voters resident in this State entitled to vote and such permanent registration record shall be compiled, purged, supplemented and preserved in the manner prescribed in this title. Except as herein otherwise provided, a voter who registers in the general registration shall not be required to register again so long as he continues to reside in the same election district in which he is originally registered and if he is not disenfranchised for any cause prescribed in the laws of this State and if his registration is not cancelled as provided in this title.

(b) During the year 1956 there shall also be held a general registration of all persons qualified to vote at the general election to be held in such year who are temporarily absent from this State and are in the armed forces or merchant marine of the United States of America, or retainers or persons accompanying or serving therewith, or who are absent from this State because of illness or injury received while serving in any such capacity. The registration of all such persons shall be part of the permanent registration record.

(c) With respect to any elections held in this State prior to the completion of the general registration in the year 1956, the registration heretofore applicable in this State and the laws relating thereto shall apply. Commencing with the general election in the year 1956, the provisions of this chapter as to elections shall apply. (21 Del. Laws, c. 36, § 1; Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1102; 49 Del. Laws, c. 17, § 1; 50 Del. Laws, c. 169, § 1.)

Registration is method of proof to ascertain qualified electors. — Registration, within the meaning of election laws, is a method of proof prescribed for ascertaining the electors who are qualified to cast votes and is the act of making a list or catalogue or sched-

ule or register, and, when applied to voters, it is any list, or register or schedule containing names, the being on which lists, registers or schedules constitutes a prerequisite to voting. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

§ 1102. Supplementary registrations.

(a) During the year 1958 and every 2 years thereafter and prior to the general election to be held in those years there shall be a supplementary registration of all persons resident in this State who shall be qualified to vote and whose names do not appear as qualified voters from the general registration held in 1956.

(b) During each year in which a supplementary registration is held and prior to the general election to be held in each such year there shall also be a registration of all persons qualified to vote at the general election to be held in such year who are temporarily absent from this State and are in the armed forces or merchant marine of the United States of America, or retainers or persons accompanying or serving therewith, or who are absent from this State because of illness or injury received while serving in any such capacity and whose names do not appear as qualified voters from the general registration held in 1956.

(c) The records of persons registering at supplementary registrations shall become a part of the permanent registration record the same as if they had registered at the general registration held in 1956. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1103; 49 Del. Laws, c. 17, § 2; 50 Del. Laws, c. 169, § 1.)

§ 1103. New general registration.

If the original permanent registration records of any election district are lost, destroyed, mutilated or defaced and they cannot be duplicated by photostating or photographing the duplicate permanent registration records so that the proper registration records will be available for use at an ensuing election, a new general registration, to be known as a special registration, shall be held in such election district in accordance with this title. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1104; 49 Del. Laws, c. 17, § 3; 50 Del. Laws, c. 169, § 1.)

§§ 1104, 1105. Registration dates and hours in election districts; notice of registration.

Repealed by 64 Del. Laws, c. 424, § 2, eff. Jan. 1, 1985.

CHAPTER 13. REGISTRATION BOOKS, SUPPLIES AND PLACES

Sec.

1301. [Repealed.]

1302. Same — Types; contents; filing.

1303. Transfer of names when election district divided; procedure.

1304. Custody of registration records; public inspection.

Sec.

1305. Registration supplies.

1306. Registration places; designation and preparation.

1307. Expenses.

§ 1301. Registration records — Furnished by the Commissioner.

Repealed by 60 Del. Laws, c. 414, § 2, eff. May 22, 1976.

§ 1302. Same — Types; contents; filing.

(a) There shall be an original and duplicate permanent registration record and an application for registration or transfer for each voter, which shall be one and the same form. The application for registration or transfer and the original and duplicate permanent registration record shall contain a registration serial number, which shall be different for each voter, but the same for the 2 records of each voter. The 2 records shall be prepared in different and distinctive colors and shall be uniform throughout the State.

The original permanent registration records of all voters shall consist of loose-leaf forms which shall be properly indexed alphabetically by election district and housed in visible type loose-leaf binders with locking devices. The binder or binders for each election district shall be known as the Election District Record. The Election District Record for each election district shall at all times, between elections, remain in the office of the department.

The duplicate permanent registration records of all voters in each county shall be filed by name and properly indexed and housed in visible type files with protected edges in locked, fire-protected cabinets and shall be known as the County Master Record. The County Master Record shall at all times remain in the office of the department and shall not be removed for any reason whatsoever, except as provided by law.

The application for registration or transfer and the original and duplicate permanent registration records shall be identical in substance, printing and arrangement, except that the space for the applicant's signature or mark shall be preceded by the words "The foregoing statements are true" on the application for registration or transfer and by the words "Signature for Identification Only", on the original and duplicate permanent registration record. On all applications and registration records, the space for the applicant's signature

or mark shall be followed by space for the signature of 2 registration officers, each of a different party affiliation. In addition, space will be provided for recording the following data:

- (1) The registration serial number and the permanent registration significant number;
- (2) The applicant's surname, given names and initials of other names;
- (3) The date of application for registration or transfer;
- (4) The place of his residence, including street and number and development, if any, and also including post-office designation of the address at which the applicant claims to reside;
- (5) The election district, representative district and county in which such residence address is located;
- (6) The length of the applicant's residence (i) in this State; (ii) in the county; and (iii) in the election district, calculated to the time of the next election for which the registration will be effective;
- (7) Whether the applicant previously registered anywhere, and, if so, the name under which and address at which he then resided;
- (8) The state or county where the applicant was born and, if naturalized, the date of naturalization and before what court;
- (9) Identification of the applicant including birthdate, social security number, sex, height, color of hair and color of eyes;
- (10) The voting record of each voter for a period of not less than 20 years;
- (11) The party affiliation of the applicant or if the applicant does not choose to be affiliated with a political party, for entering the words "independent", "decline" or words equivalent thereto;
- (12) Transfers from 1 election district to another and changes of address;
- (13) Remarks.

(b) There shall be 1 or more visible, prong, loose-leaf binders with locking devices for the purpose of housing each Election District Record. Each binder shall be conspicuously labeled to indicate the election district, representative district, ward (if applicable), and county, and shall have adequate index leaves for reference purposes. The key for each binder shall be in the custody of the department and in no event shall any key be removed from the office of the department.

(c) There shall be 1 or more carrying cases for each binder, a lock and key for each carrying case and a sufficient supply of seals for each carrying case. Each carrying case shall be appropriately labeled to indicate the same contents as the binder which it houses.

(d) There shall be a voters' registration list for each election district to be completed by registration officers as prescribed in this title. (19 Del. Laws, c. 38, § 5; 19 Del. Laws, c. 39, §§ 3, 4; 21 Del. Laws, c. 35, § 3; 22 Del. Laws, c.

64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1621; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 2; Code 1935, § 1708; 43 Del. Laws, c. 121, § 2; 15 Del. C. 1953, § 1302; 50 Del. Laws, c. 169, § 2; 51 Del. Laws, c. 106; 55 Del. Laws, c. 152; 57 Del. Laws, c. 567, § 9; 60 Del. Laws, c. 414, §§ 3-5.)

§ 1303. Transfer of names when election district divided; procedure.

When the boundaries of an election district are changed, the department having jurisdiction, not later than the 1st day of March in the year in which such change is made, shall transfer the original permanent registration records of registered voters whose voting districts have been changed into the appropriate Election District Record and make the necessary notation of the transfer on each duplicate permanent registration record in the County Master Record. The Commissioner of Elections shall be notified of all changes. The registration of any voter shall not be invalidated nor shall the right of any registered voter to vote be prejudiced by any error in making transfers of the registration records. (19 Del. Laws, c. 38, § 5; 21 Del. Laws, c. 35, § 3; 22 Del. Laws, c. 64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1621; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 2; 40 Del. Laws, c. 140, § 2; Code 1935, § 1708; 43 Del. Laws, c. 121, § 2; 15 Del. C. 1953, § 1303; 50 Del. Laws, c. 169, § 2; 55 Del. Laws, c. 267; 56 Del. Laws, c. 366, § 1.)

§ 1304. Custody of registration records; public inspection.

All registration records when not in the custody of the registrars shall be and remain in the custody of the department except as otherwise provided. The registration records shall, during normal business hours of each department, be open to the inspection of anyone desiring to examine the same, without fee or reward. Anyone desiring to do so may be permitted to make copies or partial copies thereof. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1304; 49 Del. Laws, c. 17, § 6; 50 Del. Laws, c. 169, § 2; 55 Del. Laws, c. 452; 58 Del. Laws, c. 401, § 1.)

§ 1305. Registration supplies.

Each department shall prepare and furnish all necessary maps, forms, oaths, certificates, blanks and instructions for the use of registration officers, and provide for the furnishing of such officers therewith and with all necessary supplies and also a copy of the registration and election laws. They shall have and retain the custody of all records, maps, forms, oaths of office and of

removal, blanks, instructions and all other records and supplies of every kind or description pertaining to the departments. (45 Del. Laws, c. 144, § 33; 45 Del. Laws, c. 148, § 37; 45 Del. Laws, c. 149, § 37; 15 Del. C. 1953, § 1305; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 2.)

§ 1306. Registration places; designation and preparation.

(a) Each department shall designate and procure for each election district in its county a registration place, which shall also be used as the district's polling place, wherever possible. The suitability, convenience and accessibility of the registration place to the voters of the election district must be given prime consideration in its selection. This selection shall be determined according to this order of preference:

- (1) Within the geographical boundaries of the election district to be served;
- (2) Within the boundaries of an election district which immediately adjoins the district to be served and is in the same representative district;
- (3) Within the boundaries of an election district which immediately adjoins the district to be served, but is in a different representative district, provided such designation is made by a unanimous vote of the members present at a meeting of the board of elections for the county.

(b) Each department of elections shall designate only conveniently located and readily accessible registration places for each election district. Such registration places, whenever possible, shall be located in public buildings including suitable government buildings, schools, firehouses, community buildings, churches, financial institutions, lobbies or other gathering places at least 350 square feet in size or apartment buildings or complexes consisting of 50 or more units or other similar structures. In the event that no such public building is available in a conveniently located and readily accessible place, then the board of elections, by unanimous consent, may, with the concurrence of the Election Commissioner, designate a suitable, conveniently located and readily accessible private business establishment or union hall, but in no event shall the department of elections designate a private residence as a registration place.

(c) The same public building may be designated as housing the registration place for 1, 2 or 3 election districts, in the discretion of the departments, if suitable precautions are taken to separate and identify the specific registration place within the building to be used for each election district.

(d) The registration officers of each election district shall fit out the room in the registration place.

(e) Whenever the department has designated for voter registration facilities owned or leased by agencies or subdivisions of this State, it shall be the duty of the officials of such agencies or subdivisions to make these facilities

available and to provide a suitable location, heat, lighting and other services necessary for the conduct of registration, so long as such use is not incompatible with the primary function of the agency or subdivision. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 45 Del. Laws, c. 144, §§ 10, 33; 45 Del. Laws, c. 145, § 6; 45 Del. Laws, c. 148, §§ 10, 37; 45 Del. Laws, c. 149, §§ 10, 37; 15 Del. C. 1953, § 1306; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 2; 57 Del. Laws, c. 181, § 22; 57 Del. Laws, c. 567, § 10; 58 Del. Laws, c. 148, §§ 16-18; 58 Del. Laws, c. 215, § 6; 58 Del. Laws, c. 398, § 1; 61 Del. Laws, c. 480, § 3.)

§ 1307. Expenses.

(a) The compensation of registration officers, as fixed in § 1510 of this title, shall be paid by the State in the manner prescribed in § 1511 of this title.

(b) All other costs and expenses of registration shall be paid by the State. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1307; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 7; 50 Del. Laws, c. 169, § 2; 51 Del. Laws, c. 149, § 1; 57 Del. Laws, c. 567, § 11; 58 Del. Laws, c. 148, § 19.)

CHAPTER 15. REGISTRATION OFFICERS

Sec.

1501-1518. [Repealed.]

§§ 1501-1518. Appointment; qualifications; recommendations of political parties; terms of office; certificate of appointment; alternate registrars — appointment; powers and duties; oath of office for registration and election officers; appearance of registration and election officers for taking of oath and instruction; removal; vacancies; compensation; payment procedure; source of pay; quorum; majority action; equal representation; duties; exemptions from military duty and service as registration officer; refusal to qualify or act; penalty; vacation of office; registration officers not to be candidates; special powers of registrars during registration; duties of assistant registrars; registrar to file affidavits.

Repealed by 67 Del. Laws, c. 354, § 3, eff. July 17, 1990.

CHAPTER 17. REMOVAL PROCEDURES FOR REGISTRATION RECORDS

Subchapter I. General Provisions

Sec.

1701. Qualifications for registration as qualified voter.
1702. Removal of names by board of elections.
1703. Duty of officers to notify departments of facts suggesting voter disqualification.
1704. Determination of validity of registration; removal of names of persons disqualified to vote; cancellation of registration; and provision for reregistration.
1705. Removal of records of deceased persons from registration records.
1706. Motion to remove a name from registration records; procedure; entries in records as to such motion.
1707. Cancellation of registration between states.

Sec.

1708. Correction of clerical errors.
1709. Reregistration unnecessary upon change in election district boundary.
1710. Notice of change of election district boundary.
1711. Notice by registered or certified mail.
1712. Registration before a special election.

Subchapter II. Procedure at Registration Place

1721. [Repealed.]
1722. [Transferred.]
- 1723, 1724. [Repealed.]
1725. [Transferred.]
- 1726, 1727. [Repealed.]
1728. [Transferred.]

Subchapter III. Transfer of Registration Between Districts; Change of Address or Name

- 1741-1749. [Transferred.]

Cross references. — As to uniform laws for absentee registration, see Del. Const., art. V, § 4B.

Revisor's note. — Section 4 of 67 Del. Laws, c. 354, effective July 16, 1990, rewrote the chapter heading.

Subchapter I. General Provisions

§ 1701. Qualifications for registration as qualified voter.

Every applicant for registration shall be a qualified voter if he is a 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 election next succeeding his registration, and is a bona fide resident of this State. No person in the military, naval or marine service of the United States shall become a resident of this State by being stationed in any garrison, barrack or military or naval place or station within this State; and no idiot or insane person, person convicted of a crime deemed by law a felony, or person who shall have been rendered incapable of voting by reason of violating § 7 of Article V of the Constitution of this State for 10 years next following his conviction and sentence thereunder, shall be a qualified voter. (19 Del. Laws, c. 38, § 8; 21 Del. Laws, c. 36, § 4; 22 Del. Laws, c. 64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1627; 37 Del. Laws, c. 117, § 6;

40 Del. Laws, c. 140, § 5; Code 1935, § 1714; 44 Del. Laws, c. 105, § 1; 15 Del. C. 1953, § 1701; 52 Del. Laws, c. 197, § 1; 58 Del. Laws, c. 502, § 1.) ..

Cross references. — As to constitutional qualifications for voting, see Del. Const., art. V, § 2. As to residency requirements in case of intrastate removal, see Del. Const., art. V, § 2A. As to residency requirements of persons from other states, see Del. Const., art. V, § 2B.

Registration is method of proof to ascertain qualified voters. — Registration, within the meaning of election laws, is a method of proof prescribed for ascertaining the electors who are qualified to cast votes and is the act of making a list or catalogue or schedule or register, and, when applied to voters, it is any list,

or register or schedule containing names, the being on which lists, registers or schedules constitutes a prerequisite to voting. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

Transfer of property for purpose of qualifying transferee to vote. — Votes cast by one to whom a transfer of property is made solely for the purpose of affecting the results of an election or of qualifying the transferee to vote are invalid. *Kelley v. Mayor of Dover*, Del. Ch., 300 A.2d 31 (1972).

§ 1702. Removal of names by board of elections.

(a) At any duly called meeting of the board of elections for each county, the board may sit to consider the removal of names from the County Master Record in cases where there is a valid reason to believe a person is no longer a duly qualified elector in the election district in which he is registered.

(b) The board shall afford the affected voter the full right to be heard at such meeting with the right of appeal in all cases, first giving notice as required by § 1711 of this title. (Code 1935, § 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 1702; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 10; 50 Del. Laws, c. 169, § 7; 58 Del. Laws, c. 148, § 25.)

Mandamus would not issue to compel a registrar to place plaintiff's name on the voting list since this section provided another

adequate remedy. *Hastings v. Henry*, Del. Supr., 40 A. 1125 (1894).

§ 1703. Duty of officers to notify departments of facts suggesting voter disqualification.

(a) The clerk or Prothonotary of any court in this State having jurisdiction of felonies shall, when a person is convicted of a crime deemed by law a felony, notify immediately the department of the county in which the person is a resident and the State Election Commissioner. Such notification shall include a full, complete and accurate copy of the record of the name, present residence and last previous residence, date of birth, and Social Security number if available of each individual of voting age who has been convicted of a felony.

(b) All state, county and municipal agencies shall have the duty, when it comes to their attention that a person is an idiot or insane or a pauper, to notify immediately the department of the county in which the person is a resident and the State Election Commissioner. (Code 1935, § 1744; 45 Del.

Laws, c. 145, § 15; 15 Del. C. 1953, § 1703; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 11; 50 Del. Laws, c. 169, § 8; 57 Del. Laws, c. 181, § 25; 67 Del. Laws, c. 354, § 5.)

§ 1704. Determination of validity of registration; removal of names of persons disqualified to vote; cancellation of registration; and provision for re-registration.

Upon receiving the list specified in § 306 of this title and during the period of 10 months following each general election, the department shall send a notice, by regular mail (nothing in this title to the contrary notwithstanding), to each person appearing on the Election District Record who did not vote at the last 2 preceding general elections. Such written notice shall advise the voter of the state of the record and the fact that he is liable to have his name removed from the registration records if he does not advise the department, within 60 days of the notice being mailed, that he is still eligible to be registered as a voter at the address appearing on the Election District Record and to which the notice was mailed. Such replies by the voter shall be sent to the department on a form prepared by the department and sent to the voter with such notice. If, however, no such reply, signed by the voter, is received by the department, within 60 days after such notice is mailed by the department, then the department shall proceed to determine the eligibility of such voter to remain registered, as hereinafter provided, and, in the absence of proof of such eligibility, shall remove the name of such voter from the Election District Record. If, however, the voter returns the written notice as an application for the transfer of his registration in accordance with § 2041 of this title within 60 days after such notice is sent by the department, the department shall not proceed to determine the eligibility of such voter to remain registered as hereinafter provided.

In proceeding to determine the eligibility of such voters to remain registered, the department shall give a second notice of its intention to remove the name of each such voter from its Election District Record to all voters from which it received no reply or evidence of not residing at the address appearing on the department's records. Said second notice shall state the reason therefor, date, time and place the board will meet to hear and act upon such matter, which such notice shall be given by first-class mail directed to the voter concerned at his post-office address as same appears on the Election District Record. The notice shall be postmarked not later than 7 days next preceding the date when the board is scheduled to meet to hear and act upon such questions. If at such meeting of the board it shall be established to the satisfaction of the board that the person in question is a duly qualified voter in the

election district, then his name shall not be removed from the Election District Record; but if it shall not be so established, then the department shall remove the disqualified voter's original permanent registration record from the Election District Record and place it in a special file or binder to be known as "list of disqualified voters", and in addition thereto the department shall make an appropriate entry to indicate the voter's disqualification upon his original and duplicate permanent registration records. The department shall also notify the Commissioner who in turn shall remove from his file the tabulating punch card for the voter concerned.

A determination of disqualification to vote under this section shall not preclude the person in question from reregistering at a later date if he is otherwise qualified. (45 Del. Laws, c. 144, § 31; 45 Del. Laws, c. 148, § 34; 45 Del. Laws, c. 149, § 34; 15 Del. C. 1953, § 1704; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 12; 50 Del. Laws, c. 169, § 9; 52 Del. Laws, c. 32, § 2; 52 Del. Laws, c. 37; 55 Del. Laws, c. 257; 57 Del. Laws, c. 567, § 15; 58 Del. Laws, c. 140, § 2; 58 Del. Laws, c. 215, § 10; 60 Del. Laws, c. 136, § 1; 61 Del. Laws, c. 479, §§ 1, 2; 67 Del. Laws, c. 231, § 1.)

§ 1705. Removal of records of deceased persons from registration records.

(a) The Registrar of Vital Statistics for this State shall furnish to the departments of election and to the Commissioner on or before the 10th day of January, April, July and October, in each year, a full, complete and accurate copy of the record of the name, residence at time of death and previous residence, and date of birth of each person 18 years of age and upward who has died in the respective counties, during the 3 calendar months then next preceding, as the facts in respect to such deaths shall be furnished to the Registrar of Vital Statistics. The departments and the Commissioner shall keep, preserve and file all copies or microfilms of such records.

(b) The department shall remove the original and duplicate permanent registration records of each deceased voter from the Election District Record and the County Master Record and place them in a special file labeled "disqualified voters." If the department so desires, it may file a microfilm copy of these records instead of the originals, which originals may then be destroyed. The Commissioner shall delete the record of the deceased voter from his files.

(c) Should the department be unable to determine from the records of the Registrar of Vital Statistics the identity of a deceased voter it shall refer the name, residence, age and such other available information to the Attorney General who shall forthwith make a full investigation and report his findings to the department. The department shall then remove the original and duplicate permanent registration records of the deceased voter as provided in subsection (b) of this section. (45 Del. Laws, c. 144, § 31; 45 Del. Laws, c. 148, § 34; 45 Del. Laws, c. 149, § 34; 15 Del. C. 1953, § 1705; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 10; 52 Del. Laws, c. 221, § 3; 57 Del. Laws, c. 181, § 26; 58 Del. Laws, c. 148, § 26; 67 Del. Laws, c. 354, § 6.)

Cross references. — As to application to strike name from voter registration list, see Del. Const., art. V, § 4.

Effect of amendments. — 67 Del. Laws, c.

354, effective July 16, 1990, substituted "18 years of age" for "21 years of age" in the first sentence of (a).

§ 1706. Motion to remove a name from registration records; procedure; entries in records as to such motion.

(a) Any person may move to remove from the registration records the records of any person who has been illegally registered as a qualified voter or who since his registration has become disqualified or for any reason has ceased to be a qualified voter in the election district in which he is registered.

(b) The person making such motion must be a qualified voter of the representative district which includes the election district wherein the person whose registration is appealed is registered.

(c) The motion may be made to the same judge who sits to hear appeals from the department in the county where the person affected by such motion is registered without such motion having previously been made to the department of the county concerned.

(d) The person making the motion shall make an affidavit that he believes he has lawful grounds for such motion and setting them forth.

(e) If the motion is made to the judge in the first instance the affidavit shall be presented to the judge at the time of making the motion, but if the motion is made first to the department, then the affidavit shall be presented at the department office no later than September 15 of each year of a general election.

(f) When the motion is made to the judge, the person making the motion shall notify the department of the county in which the person affected by such motion is registered and shall also notify the person affected by such motion, stating in the notice the time when the motion will be made to the judge.

(g) The judge before whom any such motion is made shall hear and inquire into all the grounds of the motion set forth in the affidavit.

(h) If it appears that the person against whom the motion is made was illegally registered or that since his registration he has become disqualified or that for any reason he has ceased to be a qualified voter in the election district in which he is registered, then and in any such case the judge shall order and direct the department to make the appropriate marks and entries in the registration records.

(i) The administrative director or any other agent of the department of the county in which the person is registered and against whom the motion is made shall appear at the hearing of such motion before the judge with the registration records and shall make such marks and entries therein as he shall be directed by the judge.

(j) When the motion is made first to the department, the person making such motion need not notify the person affected. Upon receipt of the motion, the department shall notify the person or persons affected, in accordance with § 1711 of this title, of the date and hour when the motion will be heard and shall also set forth the reason for the motion and the name of the person or persons making the motion. The person or persons making the motion shall also be notified, in accordance with § 1711 of this title, to appear at the date and hour when the motion is to be heard.

(k) The board of elections shall hear and examine the matter within 60 days of the filing of the motion. The board shall rule on any motion no later than 10 days prior to the last registration day. All witnesses before the board shall give sworn testimony.

(l) The board at such sitting shall examine into the matter. If upon the examination it appears that the person against whom such motion is made was illegally registered or that since his registration he has become disqualified or that for any reason he has ceased to be a qualified voter of the election district in which he is registered, then the department shall remove the voter's original permanent registration record from the Election District Record and place it in a special file or binder to be known as "list of disqualified voters", and in addition the department shall make an appropriate entry to indicate the voter's disqualification upon his duplicate permanent registration record contained in the County Master Record. The department shall also notify the Commissioner who shall remove from his files the tabulating punch card for the voter concerned. (Code 1915, § 1631; 34 Del. Laws, c. 106, § 1; Code 1935, § 1718; 43 Del. Laws, c. 121, § 7; 44 Del. Laws, c. 107, § 1; 45 Del. Laws, c. 145, § 7; 15 Del. C. 1953, § 1706; 50 Del. Laws, c. 169, § 11; 57 Del. Laws, c. 181, § 27; 58 Del. Laws, c. 148, §§ 27, 28; 58 Del. Laws, c. 215, §§ 11, 12.)

§ 1707. Cancellation of registration between states.

(a) If an elector applying for registration is already registered in another state, he shall so state this fact to the registration officer and shall sign an authorization to cancel the previous registration on a form substantially as follows:

CANCELLATION AUTHORIZED

I, hereby authorize the cancellation of my previous registration in the state of, in the county of, city, township or village of, Ward, Precinct My last registration address therein being

Signature

.....

Date of Birth

.....

Present Address

(b) If such a cancellation authorization or form substantially similar is received from another state by the department of elections for a county or by the State Election Commissioner, the voter may be removed from the records of the State Election Commissioner and the proper county department of elections at a meeting of the board of elections of the county. (15 Del. C. 1953, § 1707; 57 Del. Laws, c. 181, § 29.)

§ 1708. Correction of clerical errors.

The several departments of election may by unanimous consent of those members present at any regular or special meeting correct clerical errors in the name, address, birth date or physical description on any registration record; provided, however, that there shall be representatives of the department from both major political parties at the meeting at which such correction is made. (15 Del. C. 1953, § 1708; 51 Del. Laws, c. 139, § 1; 57 Del. Laws, c. 181, § 28.)

§ 1709. Reregistration unnecessary upon change in election district boundary.

Any elector whose name appears as a registered voter in an election district affected by a change of boundary shall not be required to reregister because of the change in election districts arising from the change of boundaries. (45 Del. Laws, c. 144, § 10; 45 Del. Laws, c. 148, § 10; 45 Del. Laws, c. 149, § 10; 15 Del. C. 1953, § 1709; 57 Del. Laws, c. 181, § 30.)

§ 1710. Notice of change of election district boundary.

When the boundaries of any election district have been changed, the department of the county in which the district is located shall notify each of the affected voters by mail. (15 Del. C. 1953, § 1710; 57 Del. Laws, c. 181, § 31; 58 Del. Laws, c. 215, § 13.)

§ 1711. Notice by registered or certified mail.

In all cases where written notice is required by this chapter to be given to any person, such notice shall be deemed sufficient if sent by registered or certified mail addressed to the person to be notified at his address appearing in the County Master Record, and deposited in the mail not later than 7 days preceding the sitting of the department at which he may be notified to appear, except notice sent by first-class mail shall be sufficient for any such notice sent pursuant to § 1704 of this title. (19 Del. Laws, c. 38, § 13; 21 Del. Laws, c. 36, § 9; Code 1915, § 1633; 34 Del. Laws, c. 106, § 1; Code 1935, § 1720; 15 Del. C. 1953, § 1711; 50 Del. Laws, c. 169, § 12; 57 Del. Laws, c. 181, § 32; 58 Del. Laws, c. 215, § 14; 61 Del. Laws, c. 479, § 3.)

§ 1712. Registration before a special election.

In any special election held in this State, other than a special election to fill a vacancy occurring or existing in either House of the General Assembly while it is in session or within 20 days prior to the convening of the General Assembly in regular or special session, the registration officers of the respective election districts of this State shall sit on the third and fourth Saturdays immediately preceding the day of such special election, from 7:00 a.m. until 8:00 p.m., with an intermission from 12:00 to 1:00 at the place where the special election will be held, or at some convenient and suitable place in the town in which such election will be held, and at such sittings shall add to the registration records of their respective election districts the names of all qualified voters of the district whose names do not already appear as registered voters and who shall apply in person for registration.

Such registration officers shall follow the same procedures as in supplementary registrations.

The provisions of this chapter relative to the custody, safe keeping and delivery of the registration records shall be deemed to apply to the case of special elections as well as to general elections. (19 Del. Laws, c. 38, § 24; 21 Del. Laws, c. 36, § 27; Code 1915, § 1646; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 12; Code 1935, § 1733; 15 Del. C. 1953, § 1712; 50 Del. Laws, c. 169, § 13; 57 Del. Laws, c. 181, § 33.)

*Subchapter II. Procedure at Registration Place***§ 1721. Delivery of registration records to registrars.**

Repealed by 67 Del. Laws, c. 354, § 12, eff. July 16, 1990.

§ 1722. Entries by registration officers.

Transferred.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1722 to be present § 2011.

§§ 1723, 1724. Entries in election districts; admission of representative from each party and of witnesses to registration room; prohibited area.

Repealed by 67 Del. Laws, c. 354, § 12, eff. July 16, 1990.

§ 1725. Challenge for bribery; oath; effect of oath; refusal to take oath.

Transferred.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1725 to be present § 2012.

§§ 1726, 1727. Display of registration flag; certifications by registration officers as to registration entries.

Repealed by 67 Del. Laws, c. 354, § 12, eff. July 16, 1990.

§ 1728. Duties of department following registration.

Transferred.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1728 to be present § 2013.

*Subchapter III. Transfer of Registration Between Districts;
Change of Address or Name*

§§ 1741-1749.

Transferred.

Revisor's note. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of this chapter, containing §§ 1741

to 1749, as present subchapter VI of chapter 20 of this title, containing §§ 2041 to 2049.

CHAPTER 19. REGISTRATION FOR MEMBERS OF THE MILITARY FORCES, RELATED ORGANIZATIONS AND THOSE CITIZENS LIVING OUTSIDE THE TERRITORIAL LIMITS OF THE UNITED STATES

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Cross references. — As to voting qualifications of members of the armed services of the United States stationed within the State, see

Del. Const., art. V, § 2. As to uniform laws for absentee registration, see Del. Const., art. V, § 4B.

Subchapter I. Registration Procedures

§ 1901. Additional registration at administrative offices; persons entitled to register.

(a) In addition to the registration days as elsewhere provided by law, the departments of elections for New Castle, Kent and Sussex Counties shall sit each day, Saturdays, Sundays and legal holidays excepted, during the regular office hours of the department, and such other hours as the department deems necessary in the office of the department until 10 days prior to the date of any general election, for the purpose of registering every qualified elector who is a member of the armed forces of the United States of America, of the merchant marine of the United States of America, or who is serving with the American Red Cross, the Society of Friends, or the United Service Organizations, at-

tached to and serving with the armed forces of the United States of America, or who is in the government service of the United States in a foreign country, or who has received official notice of induction or acceptance into any such services or who is the spouse of any of the persons above enumerated, and whose name does not already appear as a registered voter on the registration records for his or her election district and who appears in person at the office of the department.

(b) Every person otherwise qualified who is absent from this State and is a member of the armed forces in the active service, or his spouse or dependents, or a member of the merchant marine of the United States, or his spouse or dependents, or a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or his spouse or dependents when residing with or accompanying him, or is absent from this State because of illness or injury received while serving in the armed forces of the United States may register in the election district of his permanent residence under § 1906 of this title.

(c) Registration made under this section shall become a part of the permanent registration system.

(d) Every person otherwise qualified who has either been a member of said armed forces or said merchant marine or said foreign service of the United States, or has been serving as aforesaid for at least 6 months prior to the date of the general election next succeeding his registration or else was a bona fide resident of the county in which said election district is located 6 months or more prior to such day may register. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1901; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 14; 50 Del. Laws, c. 169, §§ 30, 31; 50 Del. Laws, c. 629, §§ 1-5; 56 Del. Laws, c. 398, §§ 1-4; 58 Del. Laws, c. 215, § 42; 58 Del. Laws, c. 397, §§ 4, 5.)

§ 1902. Auxiliary registrars; appointment; qualifications; term; compensation.

(a) For the purposes of this subchapter the departments may appoint auxiliary registrars who shall be residents and voters in the county. The members of the departments and the auxiliary registrars, so appointed, shall possess all the powers and shall perform all the duties imposed upon registration officers, except they shall not be nor shall they be authorized to perform any of the duties of an election officer.

(b) Auxiliary registrars shall be equally divided between the 2 principal political parties, and shall serve at the pleasure of the department by which they were appointed.

(c) The compensation of auxiliary registrars, so appointed, shall be fixed by the appointing department and shall be paid by the State. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1902; 51 Del. Laws, c. 149, § 2.)

§ 1903. Vacancies.

If any vacancy occurs among the auxiliary registrars, such vacancy shall be filled by the appointment of some capable person who shall have the same qualifications, possess the same powers and be qualified in the same manner as the original appointee. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1903.)

§ 1904. Oath.

Before entering upon their duties as registration officers, the members of the department and the auxiliary registrars shall take and subscribe to the oath or affirmation as prescribed for other registration officers. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1904; 49 Del. Laws, c. 4, § 5.)

§ 1905. Law applicable.

All the provisions relating to registration of voters in general, as provided by law, shall apply as far as pertinent to this subchapter. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1905.)

§ 1906. Absentee registration; procedure.

(a) Any person meeting the tests laid down in § 1901(b) of this title may register as an absentee by applying in writing to the department for an absentee registration affidavit at any time up to, but not after, 30 days before the general election is to be held and by returning such affidavit to the said department no later than 10 days prior to election day. The application for such affidavit must be received by the department no later than 30 days prior to election day.

(b) The absentee registration affidavit shall be in the form set forth in § 1907 of this title and shall be made before any commissioned officer in the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the Secretary of Commerce, the head of any department or agency of the United States, any civilian official empowered by the state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the

United States, or, in the absence of one of the above, may be self-administered and sworn to, under penalty of perjury. It shall be returned, duly authenticated as above, in an envelope addressed to the department of the county in which the affiant claims to be a resident.

(c) The department, on request made in writing therefor, shall forthwith mail to the person applying for absentee registration the necessary blank forms of the absentee registration affidavit in duplicate, an application for registration and an original and duplicate permanent registration record with instructions as to the manner of completing the records. The affiant may retain the duplicate copy of the affidavit. Upon receipt of the affidavit and records by the department within the time permitted herein, the department shall treat them in the same manner as in the case of other registrations except that 2 members of the department, of opposite political parties, shall perform the same duties with respect thereto as would registration officers for registrations held in election districts. (15 Del. C. 1953, § 1906; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 15; 50 Del. Laws, c. 169, § 32; 58 Del. Laws, c. 215, § 43; 58 Del. Laws, c. 397, § 6; 65 Del. Laws, c. 455, § 9.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 1907. Absentee registration affidavit; form.

(a) The absentee registration affidavit shall be in substantially the following form and contain the information requested in such form:

STATE OF DELAWARE }
COUNTY OF } ss.

I,, do solemnly swear (or affirm) that I am a resident of the election district of the representative district in the county of, State of Delaware, and am entitled to register as a qualified voter in the general election to be held in said district during the year in which this affidavit is dated, that I am absent from the State of Delaware and do not expect to be present in the State of Delaware at any time from the date of this affidavit until 10 days before the date of such general election, that I am absent because:

- I am a member of the armed forces of the United States of America;
- I am a member of the merchant marine of the United States of America;
- I am the spouse or dependent of a person in one of the above categories;
- I am suffering from an illness or injury received while serving in any of the foregoing capacities;
- I am a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia;

I am a spouse or dependent of the immediately preceding category who is residing with or accompanying said citizen, that I was a resident of the said election district at the commencement of my aforesaid membership (or ser-

vice), and that the information concerning me that I have noted upon the application for registration is true and correct.

Signed

Subscribed and sworn to (or affirmed) before me this day of, A. D. 19.....

.....
Commissioned officer, notary public or
other specified person (state title).

(b) Any person who meets the tests laid down in § 1901(b) of this title may subscribe to a self-administered oath, under penalty of perjury, in the absence of any of those authorized to execute the affidavit under the provisions of § 1906(b) of this title. (15 Del. C. 1953, § 1907; 49 Del. Laws, c. 17, § 15; 50 Del. Laws, c. 169, § 33; 50 Del. Laws, c. 629, § 6; 56 Del. Laws, c. 398, § 5; 58 Del. Laws, c. 397, § 7; 65 Del. Laws, c. 455, § 10.)

§ 1908. Absentee registration; application for by applying for absentee ballot; mailing affidavit and records with absentee ballot.

Whenever any person who is not a registered elector for the year in which a general election is to be held but who meets the tests laid down in § 1901(b) of this title shall apply in writing to the department of the county of which he claims to be a resident for an absentee ballot, within the time provided therefor by the laws of this State, the department shall mail to the applicant, along with the absentee ballot, envelopes and instructions, the necessary blank forms for absentee registration, as set forth in § 1906 of this title, to be executed and returned by the applicant as provided in this chapter.

If the absentee registration affidavit and records are properly executed, authenticated and returned as provided in this chapter and if the information contained therein shows that the applicant is otherwise qualified to vote under the laws of this State, the applicant shall be deemed a qualified voter duly registered to vote to the same extent and with the same effect as if he had followed 1 of the other authorized methods of registration, and the department shall record proper entries in the registration records showing that the applicant is duly registered to vote.

If the applicant is registered under this section, his absentee ballot, if it and the necessary affidavits and envelopes in connection therewith are properly executed and returned in accordance with the laws of this State, shall be counted as every other valid and proper absentee ballot under the laws of this State.

If the department determines from the absentee registration affidavit or records that the applicant is not an otherwise qualified voter under the laws of this State or that the affidavit is not sufficiently executed, it shall mark

“rejected” on the affidavit and application for registration and write thereon the reasons therefor and shall not record or enter the applicant as a duly registered elector and shall not count his or her absentee ballot. (15 Del. C. 1953, § 1908; 49 Del. Laws, c. 17, § 15; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 34.)

§ 1909. Retention of absentee registration affidavits.

All absentee registration affidavits and records received by the department shall be retained by it as part of its records. (15 Del. C. 1953, § 1909; 49 Del. Laws, c. 17, § 15; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 35.)

Subchapter II. Registration of Citizens at Military Establishments

§ 1921. Domicile of those in military service or government service not lost.

(a) Every person enlisted in any military organization of this State or the United States who prior to enlistment was a resident of any election district of this State shall not lose his domicile in such election district by reason of such enlistment.

(b) Every person employed in any government service of the United States in a foreign country who prior to such employment was a resident of any election district in this State shall not lose his domicile in such election district by reason of such employment.

(c) As used in this chapter the term “government service” shall include, but shall not be limited to, the Peace Corps. (21 Del. Laws, c. 37, § 1; Code 1915, § 1647; 34 Del. Laws, c. 106, § 1; Code 1935, § 1734; 15 Del. C. 1953, § 1921; 56 Del. Laws, c. 398, § 6.)

§ 1922. Citizens in military service over 18 years old entitled to be registered.

Every citizen of this State of the age of 18 years and upwards who is enlisted or engaged in any government service of the United States or any military organization of this State or the United States shall be entitled to have his name registered as a voter in the election district in which he resided prior to his enlistment, to the same extent as if he had remained continuously present in such election district during the period of his enlistment. (21 Del. Laws, c. 37, § 2; Code 1915, § 1648; 34 Del. Laws, c. 106, § 1; Code 1935, § 1735; 15 Del. C. 1953, § 1922; 56 Del. Laws, c. 398, § 7; 60 Del. Laws, c. 414, § 6.)

§ 1923. Auxiliary registrars; appointment; qualifications; term.

The Governor of this State may appoint as many qualified citizens of this State as auxiliary registrars of voters as he may deem necessary for the purpose prescribed in § 1925 of this title.

The terms of office of the auxiliary registrars shall be 1 year from the date of appointment.

The Governor shall issue a commission to each person appointed by him as auxiliary registrar.

In appointing auxiliary registrars, the Governor shall appoint the same number from each of the 2 principal political parties of this State. (21 Del. Laws, c. 37, § 3; Code 1915, § 1649; 34 Del. Laws, c. 106, § 1; Code 1935, § 1736; 45 Del. Laws, c. 145, § 12; 15 Del. C. 1953, § 1923.)

§ 1924. Oath.

Each person appointed auxiliary registrar under § 1923 of this title shall before entering upon his duties and within 10 days after receiving notice of his appointment take and subscribe before the clerk of the peace of the county in which he resides the oath prescribed by the Constitution for other state officers.

The clerk of the peace of the county may administer the oath but no fee shall be charged therefor. (Code 1935, § 1736; 45 Del. Laws, c. 145, § 12; 15 Del. C. 1953, § 1924.)

§ 1925. Duties.

(a) The auxiliary registrars, by direction of the Governor, shall visit, sometime before the last Saturday in September in any year in which a general election is held in this State, the military encampments in this State or elsewhere in the United States wherein citizens of this State shall be engaged in military duty, for the purpose of registering, as provided in this chapter, such citizens as voters of the election in which they are entitled to be registered, as designated in this chapter.

(b) The auxiliary registrars shall work and travel in boards of 2, 1 from each political party. (21 Del. Laws, c. 37, § 3; Code 1915, § 1649; 34 Del. Laws, c. 106, § 1; Code 1935, § 1736; 45 Del. Laws, c. 145, § 12; 15 Del. C. 1953, § 1925.)

§ 1926. Compensation.

The auxiliary registration officers provided for by this subchapter shall receive such compensation per day as is allowed to registrars sitting in the various districts of this State, and they shall be allowed and paid by the State Treasurer such an amount for traveling expenses as shall be approved by the State Auditor upon vouchers presented to him. (21 Del. Laws, c. 37, § 11; Code 1915, § 1655; 34 Del. Laws, c. 106, § 1; Code 1935, § 1742; 15 Del. C. 1953, § 1926.)

§ 1927. Time of visit to encampments; notice.

The auxiliary registrars shall notify the encampments of the time they will visit them for the purpose of registering voters and they shall sit for registering during such hours of the day as shall be arranged to suit the convenience of the military organization. (21 Del. Laws, c. 37, § 5; Code 1915, § 1650; 34 Del. Laws, c. 106, § 1; Code 1935, § 1737; 15 Del. C. 1953, § 1927.)

§ 1928. Procedure.

The auxiliary registrars shall register all persons in the same manner as registrations in election districts. (21 Del. Laws, c. 37, §§ 6, 7; Code 1915, §§ 1651, 1652; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1738, 1739; 15 Del. C. 1953, § 1928; 50 Del. Laws, c. 169, § 36.)

§ 1929. Return by auxiliary registrars.

Upon completion of the registrations, the auxiliary registrars shall forward by registered mail, or personally deliver, to the registrar of each election district affected the registration records of all persons who applied to be registered as voters in such election district so that the records will be received by the registrar prior to the second Saturday of September in the year of a general election. (21 Del. Laws, c. 37, § 8; Code 1915, § 1653; 34 Del. Laws, c. 106, § 1; Code 1935, § 1740; 15 Del. C. 1953, § 1929; 50 Del. Laws, c. 169, § 37.)

§ 1930. Action by registrars; challenge.

The registrars of the respective election districts of this State who shall receive any such records from any auxiliary registrars shall open such records during the first hour of the next succeeding meeting of the officers of registration. Then the registrar shall, in a clear and distinct voice audible to those in the room, read the name of each person so returned by the auxiliary registrars for registration. Any registration officer or any qualified voter of the election

district may challenge the right to be registered of any person whose name appears on the records and the question shall be determined by the registration officers. If their determination is against the right of any person to be registered whose name appears on the records they shall make the same marks and entries on the application for registration of the person concerned as they would make for other persons disqualified to register. (21 Del. Laws, c. 37, § 9; Code 1915, § 1654; 34 Del. Laws, c. 106, § 1; Code 1935, § 1741; 15 Del. C. 1953, § 1930; 50 Del. Laws, c. 169, § 38.)

§ 1931. Appeals.

From the action of the registration officers in registering or refusing to register any name from the records, any registration officer or any qualified voter in the election district may appeal for or against the person affected. The provisions of this part relative to appeals shall apply to those taken under this section except notice to the person affected may not be required by the judge hearing the appeal and the appeal for or against any citizen absent in the military service may be prosecuted as effectually as if such absentee were present in person. (21 Del. Laws, c. 37, § 9; Code 1915, § 1654; 34 Del. Laws, c. 106, § 1; Code 1935, § 1741; 15 Del. C. 1953, § 1931; 50 Del. Laws, c. 169, § 39.)

§ 1932. Disposition of records.

In all cases, the registrars shall forward the records to the department and follow the same procedure as in the case of other registrations. (Code 1915, § 1654; 34 Del. Laws, c. 106, § 1; Code 1935, § 1741; 15 Del. C. 1953, § 1932; 50 Del. Laws, c. 169, § 40.)

ELECTION LAWS

CHAPTER 20. OFFICE AND MOBILE REGISTRATION; REGISTRATION BY MAIL

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Revisor's note. — Section 16 of 67 Del. Laws, c. 354, effective July 16, 1990, substi-

tuted "Office" for "Central" in the chapter heading.

Subchapter I. Registration Officers; Office Registration

Revision of subchapter. — Section 19 of 67 Del. Laws, c. 354, effective July 16, 1990, repealed and reenacted this subchapter, substi-

tuting present §§ 2001 to 2006 for former § 2001.

§ 2001. Appointment.

The department shall appoint as registration officers a sufficient number of registered voters to conduct registration in the department's central office. (67 Del. Laws, c. 354, § 19.)

§ 2002. Appearance of registration officers for taking of oath and instruction.

Each person appointed under § 2001 of this title shall appear before the department to qualify by taking and subscribing to the prescribed oath (or affirmation) and to receive suitable instruction after due notice from the department, which shall be given at least 7 days before the times appointed for the appearance of the registration officers. No person shall be excused from the obligation unless he shall have become disqualified by sickness, disability or otherwise. (67 Del. Laws, c. 354, § 19.)

§ 2003. Oath of office for registration officers.

(a) Each person appointed under § 2001 of this title shall take and subscribe before the department before beginning his duties the following oath (or affirmation):

I, _____, residing in _____ election district of the representative district in _____ county, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of registration officer in _____ county, according to the best of my ability.

(b) Any board of elections member, administrative director, deputy administrative director or other authorized agent of the department may administer this oath (or affirmation). (67 Del. Laws, c. 354, § 19.)

§ 2004. Certificate of appointment.

Each department shall deliver a certificate of appointment to whomsoever it shall appoint and who shall be sworn into office as registration officers. Such certificate shall be in such form as shall be prescribed by the department and shall include the date of the expiration of his term of office. (67 Del. Laws, c. 354, § 19.)

§ 2005. Vacancies.

If any vacancy occurs in the office of the registration officer before the expiration of the full term, from any cause whatsoever, the department shall appoint some suitable person to fill such vacancy who shall serve for the residue of such unexpired term who shall possess the same qualifications and be qualified in the same manner and who shall possess the same powers and perform the same duties as the original appointee. (67 Del. Laws, c. 354, § 19.)

§ 2006. Special powers of registration officers during registration.

Each of the registration officers shall, in addition to the other powers conferred upon him by law, have, during the respective times of the appointed sittings for registration, the power to:

- (1) Preserve order and enforce obedience to his lawful commands at or around the place of registration;
- (2) Keep access to such place open and unobstructed;
- (3) Protect and keep safe the registration records while in his and the assistant registration officer's custody and possession;
- (4) Administer oaths or affirmations. (67 Del. Laws, c. 354, § 19.)

Subchapter II. Procedure at Registration Place

Revisor's note. — Section 17 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter II of this chapter, con-

taining former §§ 2002 to 2006, as present subchapter III of this chapter, containing §§ 2021 to 2025.

§ 2011. Entries by registration officers.

(a) When a person appears at a registration place for the purpose of applying to register as a voter, a registration officer shall obtain from him the necessary information to complete an application for registration. All recording shall be done by typewriting, or by printing in longhand in black or blue-black ink.

(b) After the application for registration has been fully completed, 2 registration officers, 1 from each political party, shall both inspect the application for completeness, eligibility and legibility and such additions or corrections as may be necessary shall be made in the presence of the applicant. The applicant shall then submit for inspection by such registration officers proof as to identity and residence as shown on the application. If the 2 registration officers are both satisfied that the applicant is eligible and has established his identity and that the application is complete and legible, the applicant shall

sign the application and the 2 registration officers, 1 from each principal political party, shall then sign their names in the blanks provided for that purpose on the application.

(c) If unable to sign, the applicant shall make his mark on the application for registration and the original and duplicate permit registration records initialed by the registration officers. If the applicant is unable to sign or make his mark because of physical disability, the registration officers shall indicate the fact in the space provided for the signature of the applicant upon the registration records, and they shall sign the application for registration and initial the original and duplicate permanent registration records the same as in other cases.

(d) The registration officers shall attach the application for registration, signed or marked by the applicant, to the original and duplicate permanent registration forms signed or marked by the applicant.

(e) The registration officers shall record the name and address of each applicant upon a separate list of registered voters in the order in which they appear at the registration place to be registered.

(f) At the end of the registration day, the registration officer shall deliver to the department all of the sets of registration records supplied by the department along with the list of all transactions. (19 Del. Laws, c. 38, § 8; 21 Del. Laws, c. 36, § 4; 22 Del. Laws, c. 64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1627; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 6; 40 Del. Laws, c. 140, § 5; Code 1935, § 1714; 44 Del. Laws, c. 105, § 1; 15 Del. C. 1953, § 1722; 50 Del. Laws, c. 169, § 15; 57 Del. Laws, c. 181, § 35; 67 Del. Laws, c. 354, §§ 7, 12.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1722 as present § 2011, deleted the former introductory language of (a), former (a)(3),

(a)(5) and (b) and redesignated former (a)(1), (a)(2), and (a)(4) as present (a), (b) and (d); inserted present (c) and added present (e) and (f).

§ 2012. Challenge for bribery; oath; effect of oath; refusal to take oath.

If upon the personal application of anyone to be registered, he shall be challenged for having received or accepted, or for having offered to receive or accept, or for having paid, transferred or delivered, or for having offered or promised to pay, transfer or deliver, or for having contributed or offered or promised to contribute to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of anyone qualified to register, the registration officer shall administer to the person so challenged an oath or affirmation, as follows:

"You do solemnly swear upon the Holy Evangels of Almighty God (or "You do solemnly, sincerely and truly declare and affirm") that you have not received or accepted or offered to receive or accept, or paid, transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed or offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of anyone qualified to register at the registration for this present year, so help you God" (or "so you do solemnly, sincerely and truly declare and affirm").

Such oaths or affirmations shall be conclusive evidence to the registration officers of the truth of such oath or affirmation, but if any such oath or affirmation is false, the person making the same shall be guilty of perjury, and no conviction thereof shall bar any prosecution under § 8 of Article V of the Constitution. If any person so challenged refuses to make the oath or affirmation prescribed in this section, the registration officers shall enter the words "refused to make oath concerning bribery" in the appropriate space in the applicant's application for registration and the department shall place the original permanent registration record of the applicant in the special file or binder known as the "list of disqualified voters." (21 Del. Laws, c. 36, § 5; Code 1915, § 1628; 34 Del. Laws, c. 106, § 1; 35 Del. Laws, c. 82, § 1; Code 1935, § 1715; 15 Del. C. 1953, § 1725; 50 Del. Laws, c. 169, § 17; 67 Del. Laws, c. 354, §§ 11, 12.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1725 as present § 2012, substituted "registration officer" for "registrar" near the end of the introductory language of the first paragraph.

§ 2013. Duties of department following registration.

(a) After the registration officer delivers the registration records to the department following each registration day, the department shall first check the record by the registration number of the registration records furnished to the election district to ascertain whether all the records supplied have been returned to the department. If the department is satisfied that all records have been returned, it shall file and retain the records for not less than 1 year. If all the records have not been returned, the department shall notify the Attorney General, who may take appropriate action.

(b) The department shall then take the applications for registration which have been completed, and signed or marked by the applicant and the registration officers, and examine them for completeness, legibility and eligibility. If the department does not complete the registration of an applicant, it shall enter the reason upon the appropriate spaces in the original and duplicate permanent registration records and notify the applicant by first class mail,

immediately of its action. If the department is satisfied that the application is complete and legible and that the applicant's name does not appear on the list of disqualified voters and that the applicant is qualified to be registered, the department shall cause the information contained on the application for registration to be typed or written upon the original permanent registration record and the duplicate permanent registration record, making the latter the carbon copy.

(c) The department shall then assign and mark upon the original and duplicate permanent registration record and the application for registration a permanent significant registration number according to the system established by the Commissioner.

(d) The department shall then ascertain whether the original and duplicate permanent registration records conform to the application for registration and, if satisfied that the data on all 3 records is identical, a person authorized by the department shall stamp his name on the application for registration to indicate that it has been approved and verified by the department, and the department shall then forward it to the Commissioner. The department shall then file the original permanent registration record in the appropriate Election District Record, and file the duplicate permanent registration record in the County Master Record. (15 Del. C. 1953, § 1729; 50 Del. Laws, c. 169, § 19; 57 Del. Laws, c. 181, § 36; 67 Del. Laws, c. 354, §§ 8-12.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1728 as present § 2013; in (a), substituted "registration officer" for "registrar" and deleted "inventory" preceding "record by the registration number" in the first sentence, and

substituted "retain the records" for "retain the inventory" in the second sentence; in (b), substituted "first class mail" for "registered mail" in the second sentence and substituted "typed or written" for "typewritten" in the last sentence.

Subchapter III. Mobile Registration

Revisor's note. — Section 17 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter II of this chapter, containing former §§ 2002 to 2006, as present subchapter III of this chapter, containing §§ 2021 to 2025.

Section 18 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of this chapter, containing former §§ 2012 to 2015, to be present subchapter IV of this chapter, containing §§ 2031 to 2034.

§ 2021. Conduct of mobile registration.

(a) The department for each county shall conduct mobile registration throughout its county on a regularly scheduled year-round basis; provided, however, that during an election year, mobile registration shall not take place after the second Saturday in October and shall recommence on the Saturday after election day.

During the days and hours set for mobile registration, each department shall cause its traveling registration officers to sit either in mobile units or in other convenient public locations including, but not limited to, public gathering places, shopping centers, public and community buildings and other places easily accessible to the public. Each department shall distribute the services of its traveling registration officers as equitably as possible throughout its county, so as to make mobile registration readily available to residents of all portions of its county. It shall regularly give due public notice of the visits of these traveling registration officers and shall so schedule their visits that the officers shall sit in each senatorial district of the county during the 30 days immediately preceding the last day for voter registration.

In scheduling the locations of mobile registration, each department shall consider those locations requested by any well-established community organization which has demonstrated a concern with increasing the number of registered voters.

(b) Whoever knowingly causes or attempts to cause the registration of any person who is disqualified as a voter, the registration of any person under a fictitious name or any other fraudulent conduct concerning the registration of voters under this section, shall be guilty of a misdemeanor. Upon conviction a person may be sentenced to a period of incarceration for 2 years, a \$5,000 fine or both. The Board is empowered to enforce this section. Jurisdiction for offenses of this section shall be in Superior Court. (15 Del. C. 1953, § 2002; 58 Del. Laws, c. 215, § 16; 60 Del. Laws, c. 396, § 2; 64 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 354, § 17.)

§ 2022. Traveling registration officers; duties; qualifications; compensation; term of office.

The traveling registration officers shall have all the powers and duties vested in registration officers by this title, consistent with this subchapter. Traveling registration officers shall subscribe to the oath required of other registration officers, and they shall be suitably instructed. Their compensation shall be fixed by the department appointing them, and they shall serve at its pleasure. (15 Del. C. 1953, § 2003; 58 Del. Laws, c. 215, § 16; 67 Del. Laws, c. 354, § 17.)

§ 2023. Performance of duties by traveling registration officers.

Traveling registration officers shall conduct their duties in units of 2 or more officers, there being 1 officer appointed from each of the 2 principal political parties present at all times. Registration of qualified electors who

appear before these officers shall be conducted in the same manner and under the same provisions of this title as in the several election districts, with right of appeal and challenge in all cases. (15 Del. C. 1953, § 2004; 58 Del. Laws, c. 215, § 16; 67 Del. Laws, c. 354, § 17.)

§ 2024. Appointment of traveling registration officers.

The department for each county shall appoint traveling registration officers for its county no later than February of each general election year, or 1 week prior to the first day designated for mobile registration, whichever is sooner. Such officers shall be qualified electors of the county from which appointed and shall be equally divided between the 2 principal political parties. The county executive committee of each of these 2 parties, within 30 days after written request by the department of elections, shall furnish the department a list of 5 names of properly qualified persons for each position to be filled. The department shall make its appointments from among those named on these lists. If the lists are not furnished or if the number of qualified persons named on the lists is insufficient, the department shall appoint some suitable elector or electors of the required political affiliation to fill the vacancies. (15 Del. C. 1953, § 2005; 58 Del. Laws, c. 215, § 16; 67 Del. Laws, c. 354, § 17.)

§ 2025. Intercounty registration.

Persons qualified to register to vote may do so at the department of elections in any county, or at any mobile registration site, regardless of the county of their actual residence. If a person applies for registration outside the county of his or her residence, the department for the county in which the application is made shall forward the application to the department for the county in which the applicant resides for approval. Registration under this section shall not be deemed valid until approved by the department of elections in the county in which the applicant resides. (64 Del. Laws, c. 332, § 2; 67 Del. Laws, c. 354, § 17.)

Subchapter IV. Registration by Mail

Revisor's note. — Section 18 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of this chapter,

containing former §§ 2012 to 2015, to be present subchapter IV of this chapter, containing §§ 2031 to 2034.

§ 2031. Procedure for registration by mail.

(a) Every qualified elector who is a resident of this State and who is not registered may, as an alternative to other methods of registration, apply to the department of elections for the county in which he resides by mail, telephone or in person, for registration forms. Within 3 days, the department shall mail the required forms and a set of instructions to the applicant. The completed application shall be returned to the department of elections no later than October 1 of an election year and no returned registration forms shall be accepted by mail if postmarked later than that date.

(b) If a person applies for registration by mail for someone other than himself, he shall give the name and address of such person and shall sign an appropriate form declaring he is requesting such registration forms be mailed to the applicant.

(c) The department shall perform the same duties in regard to these registration forms as it is required to do with other applications for voter registration. Two department employees, of opposite political parties, shall examine, approve and sign each form. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

§ 2032. Duties of department following receipt of mail registration forms.

(a) Upon receipt, all mail registration forms shall be date-stamped by the department.

(b) A verification inquiry shall be conducted where:

- (1) The applicant has neglected to sign the form;
- (2) Information given on the form is incomplete;
- (3) Information appears unclear or inconsistent; or
- (4) The application appears to be a duplicate.

(c) If the information on the mail registration form appears to be a transfer of address, change of name by marriage or otherwise, or party affiliation change, the change shall be made by the department and the applicant shall be notified such change was made. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

§ 2033. Notification of registration.

(a) Upon receipt by the department of a registration by mail form and upon the completion of any necessary inquiry and verification process, each applicant determined to be qualified to vote shall be mailed a voter notification form by nonforwardable first-class mail.

(b) If the notification form is returned as undelivered, a second mailing shall be attempted.

(c) Registration shall not be considered valid until the voter notification form is deemed to have been received by the applicant by mail. If the notification form is not returned as undelivered within 5 days of the day of mailing by the department, it shall be deemed to have been received by the applicant and the department shall proceed to process the application in the method provided elsewhere in this title.

(d) The form may include the name, address of the voter, date of registration, party affiliation and the election and representative district in which his (or her) residence is located.

(e) The registration records of persons registering by mail, after completion, shall become a part of the permanent registration system. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

§ 2034. Rejection of mail registration.

Each applicant for registration by mail whose application is rejected shall be promptly notified in writing of such rejection and of the specific reason or reasons for such rejection. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

Subchapter VI. Transfer of Registration Between Districts; Change of Address or Name

Revisor's note. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of Chapter 17 of this title, containing §§ 1741 to 1749, to be present subchapter VI of this chapter, containing §§ 2041 to 2049.

§ 2041. Transfer of registration upon moving from 1 election district to another within a county; procedure; application.

(a) Any duly registered voter in this State who has moved to a new residence in the same county may apply for the transfer of his registration records to his new election district in the manner following:

(1) Such registered voter may apply in writing or in person or by telephone on any regular business day, except during the period from the third Saturday in October of a general election year through election day, to the department for the county in which he resides, for an application form to be provided by the department.

(2) Such registered voter may apply to the designated registration place in his new election district whenever registrations are therein being taken.

(3) Such registered voter may apply by placing his new address on, signing and returning the written notice received pursuant to § 1704 of this title to the department.

(b) Upon receipt of a duly signed application, the department shall cause the signature thereon to be compared with the original registration records of the applicant and if such signature appears to be the same as the original, the change shall be noted on the original and duplicate registration records of the voter and the voter's records transferred to the proper book for the registered voter's new election district. If the department is not satisfied that such signature appears to be the same as the original signature, the voter shall be noticed to appear in the office of the department to answer under oath such questions as may be deemed necessary. If the voter fails to appear as noticed, no such transfer shall be made. If it shall be determined that the applicant had not previously registered, his application shall be treated as an application for registration.

(c) If a person makes application for someone other than himself, he shall give the name and address of such registered voter for whom application is made and shall sign an appropriate form declaring that he is requesting that a transfer form be forwarded to the registered voter. It shall be the duty of the department of the county in which the registrant resides to mail to him a form to be completed and returned to the department. Upon receipt of the executed form, the signature thereon shall be compared with the original signature. If the department is satisfied that the signature appears to be the same as the original signature, the department shall make the change of address on all records, shall transfer the voter's records to the new district, and shall notify the registrant within 10 days of the change. If the department is not satisfied that such signature appears to be the same as the original signature, the voter shall be noticed to appear in the office of the department to answer under oath such questions as may be deemed necessary. If the voter fails to appear as noticed, no such transfer shall be made. (19 Del. Laws, c. 38, § 11; 21 Del. Laws, c. 36, § 8; Code 1915, § 1632; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1741; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 21; 51 Del. Laws, c. 139, § 2; 52 Del. Laws, c. 10, § 3; 55 Del. Laws, c. 78, § 1; 57 Del. Laws, c. 567, § 18A; 58 Del. Laws, c. 148, § 31; 67 Del. Laws, c. 231, §§ 2, 15.)

Effect of amendments. — 67 Del. Laws, c. 231, effective June 13, 1990 added (a)(3).

§ 2042. Transfer of registration upon moving from 1 county to another.

(a) If any person, having been previously registered in any election district in this State, shall by his or her removal therefrom have attained a legal residence, as required by the Constitution of this State, in any other county of this State, such person must register anew as a qualified voter in such other county and authorize the transfer of the previous registration information, including their voting record, to the new address. Such application for registration may be filed with the registration officers for the election district in which the person applying for registration shall then reside or with the department for the county in which the applicant shall then reside. Applications shall be made at such time or times as the registration officers or department shall set for the purpose of registration.

(b) Upon the receipt of such application for registration, the department shall within 3 days thereafter mail a copy of the application to the department for the county wherein the applicant formerly resided, and such department, upon receipt of such application, shall cause the registration record of such applicant to be removed from the registration records for the election district in which he formerly resided and sent to the department for the county in which he is presently residing within 3 business days.

(c) [Repealed]. (Code 1915, § 1632; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1742; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 2; 55 Del. Laws, c. 78, § 2; 58 Del. Laws, c. 215, § 15; 60 Del. Laws, c. 200, § 1; 65 Del. Laws, c. 471, §§ 2, 3; 67 Del. Laws, c. 354, §§ 13, 15.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, inserted "anew" following "such person must register" in the first sentence of (a).

§ 2043. No transfer to be made without an application.

No person shall knowingly enter the name of any elector in the registration records who is registered in any other election district in this State unless such person has first made, signed and filed an application for transfer of registration, as in this chapter provided. (19 Del. Laws, c. 38, § 11; 21 Del. Laws, c. 36, § 8; Code 1915, § 1632; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1744; 50 Del. Laws, c. 169, § 25; 67 Del. Laws, c. 354, § 15.)

§ 2044. Examination under oath and registration.

All persons who shall apply at the office of the department of elections for transfer of registration may be examined under oath or affirmation as to their name, age, address and qualifications as a voter and right as such to register and vote in the election district in which they claim residence. If satisfied upon such examination that the person applying for transfer is in fact qualified to register and vote in such election district, such person shall be registered by the registration officers or such other person qualified to make registrations in accordance with § 1722 of this title. (Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1745; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 26; 67 Del. Laws, c. 354, § 15.)

§ 2045. Removal of voter's records of district where voter formerly resided; notice of action taken.

Upon acceptance of an application for transfer of registration at their office, or upon receipt of an application for transfer of registration from registration officers, the department of elections or a person authorized by the department shall examine the Election District Record for the election district where the applicant formerly resided, shall remove the applicant's original permanent registration record therefrom and, after noting the change of address thereon, shall file it in the Election District Record of the election district in which the applicant presently resides, and shall also make an appropriate notation of the transfer and change of address upon the applicant's duplicate permanent registration record in the County Master Record. The department shall notify the Commissioner of the transfer and change of address. (19 Del. Laws, c. 38, § 11; 21 Del. Laws, c. 36, § 8; Code 1915, § 1632; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1746; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 27; 52 Del. Laws, c. 15, § 2; 67 Del. Laws, c. 354, §§ 14, 15.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, deleted "and the Commissioner shall cause a new punch card to be made for the applicant and file it in the proper place" following "change of address" in the last sentence.

§ 2046. Notice by first-class mail sufficient.

In all cases where this subchapter requires written notice to be given to any person, such notice shall be deemed sufficient if sent by first-class mail addressed to the person to be notified at the post-office address named by him at the time of his application for registration. (Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1748; 67 Del. Laws, c. 354, § 15.)

§ 2047. Notice required upon change of address within a district.

Change of address or residence within the same election district shall not disqualify any person as a voter in such election district; however, such person shall be required, not later than the last registration day preceding the next election, to notify personally the department having custody of the registration records of such changes of address or residence in his county. If such change of address takes place during a period when such change of address cannot be made in the Election District Records, such voter shall, upon proper identification, be permitted to vote if he is otherwise qualified. (Code 1915, § 1632; 40 Del. Laws, c. 140, § 6; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1749; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 29; 67 Del. Laws, c. 354, § 15.)

§ 2048. Change of name; new registration required.

Any registered voter who changes his or her name by marriage or otherwise, shall be required to change their registration to their new name and authorize the transfer of the previous registration information, including their voting record, to the new name. If the change of name takes place within a period during which new registrations cannot be made, the elector shall be permitted to vote at the next succeeding election, if otherwise qualified. (Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1750; 65 Del. Laws, c. 471, § 1; 67 Del. Laws, c. 354, § 15.)

§ 2049. Change of party designation; procedure.

(a) A duly registered voter may apply in person or by written notice or by telephone to the department for the county in which he resides, at any time except during the periods from March 1 through the day of the final primary election of a general election year and from the third Saturday in October of that year through election day, or to the registration officers in his election district (when the officers are sitting for the purpose of registration) for application to change his party designation upon his registration record. The application shall be upon a form provided by the Commissioner and shall be signed by the registrant and returned by mail or delivered to the office of the department. An appropriately addressed envelope shall be supplied by the department for return of the executed application. Upon receipt of the executed application, the department shall cause the signature to be compared with the original registration record of such applicant, and if such signature appears to be the same, such change of affiliation shall be made on the original and duplicate records and the applicant shall be immediately notified by mail of

the change so made. If the department is not satisfied as to the signature on the application, the applicant shall be notified by mail to appear at the office of the department to answer under oath such questions as may be deemed necessary. If the applicant fails to appear as notified, no such change of affiliation shall be made. If the application is made to the registration officers, they shall forward the completed application to the department at the same time as they forward other registration records at the close of registration, and the department shall cause appropriate notations thereof to be made upon the applicant's original and duplicate permanent registration records and shall notify the Commissioner who shall make appropriate changes in his records.

(b) The time limitations set forth in subsection (a) of this section shall not prevent a voter from changing his party designation for purposes of qualifying a minor political party for the 1978 General Election ballot pursuant to § 3001 of this title. (15 Del. C. 1953, § 1751; 50 Del. Laws, c. 169, § 42; 52 Del. Laws, c. 59; 55 Del. Laws, c. 78, § 4; 57 Del. Laws, c. 181, § 38; 57 Del. Laws, c. 567, § 16; 58 Del. Laws, c. 148, § 32; 58 Del. Laws, c. 215, § 41; 61 Del. Laws, c. 418, § 6; 67 Del. Laws, c. 354, § 15.)

This section does not unconstitutionally infringe Fourteenth Amendment right to equal protection under law. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

With respect to political parties, the equal protection doctrine does not require that the burden of organization correspond to the size of the party. The burdens are to be measured only against themselves and not in relation to the capacities of the parties. This section and § 3001 of this title do not impose greater burdens on small parties than major parties. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Nor does it violate First Amendment rights to freedom of speech and association. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

This section serves compelling state interests in regulating the number of candidates on the ballot. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Purpose of section. — In the present

scheme of election laws, the purpose of this section is to preserve the integrity of the electoral system principally by preventing inter-party raiding, a purpose which is recognized as legitimate. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

This section, in conjunction with § 3001 of this title, protects the electoral system by limiting the parties on the ballot to those which have demonstrated some degree of popular support, thereby insuring that the ballot is not filled with an abundance of candidates serving only to divide and confuse rather than to consolidate the support of the populace. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Party required to legitimate itself by demonstrating popular support. — One of the purposes of this section and § 3001 of this title is to require that a party legitimize itself by demonstrating some modicum of popular support. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

CHAPTER 21. REGISTRATION APPEALS

Sec.	Sec.
2101. Right to appeals; persons entitled.	2108. Duty of registration officers to attend appeals.
2102. Notice of appeal.	2109. Alternate registrars.
2103. Notice of appeal to correct name; correction by judge.	2110. Order by court.
2104. Manner of giving notice; time; proof.	2111. Finality of decisions.
2105. Affidavit of appellant.	2112. Costs.
2106. Disposition of appeals.	2113. Registration appeal dockets.
2107. Limit on appeals presenting the same issue.	

§ 2101. Right to appeals; persons entitled.

(a) From the decision of any of the departments or the registration officers granting or refusing registration or removing or refusing to remove names from the registration records, any person interested or any member of such department or any registration officer may appeal to the court.

(b) The word "court" as used in this chapter shall mean either the Resident Associate Judge of the county, or, in case of his disability or absence from the county, any judge entitled to sit in the Supreme Court. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1724, 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2101; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1.)

§ 2102. Notice of appeal.

(a) In order to prosecute an appeal, the person taking the same shall notify the department or registration officers of the decision from which the appeal is taken and also the person affected by the appeal, stating in the notice the time when the appeal will be presented.

(b) To take an appeal from a decision of the registration officers it shall not be necessary for the appellant to declare his intention so to do to the registration officers other than by the notice to the department and the registration officers as provided in subsection (a) of this section.

(c) No entry in the registration records with respect to an appeal shall affect the right to appeal. (21 Del. Laws, c. 36, § 11; Code 1915, § 1636; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1723, 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2102; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1.)

§ 2103. Notice of appeal to correct name; correction by judge.

Any person applying to the court to have any name appearing in any manner incorrectly in the Election District Record for his election district to be corrected shall give notice as provided in this chapter to the department of his intention to make application for the correction thereof, so that the department or its duly authorized representatives shall and may be present with the appropriate registration records to make such corrections therein as the court shall order and direct, and shall also give notice of his intention to the person affected, as provided in this chapter. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, § 1724; 15 Del. C. 1953, § 2103; 50 Del. Laws, c. 171, § 1.)

§ 2104. Manner of giving notice; time; proof.

(a) All notices required to be served upon any person by this chapter shall be in writing and shall be served personally or by registered mail, return receipt requested, addressed to the person's address that appears in the County Master Record.

(b) All required notices shall be served at least 5 days prior to the day on which the appeal or application is made to the court. The date of personal service or the date of mailing shall be considered as the first day in computing the 5 days' period.

(c) In all cases where service is made by registered mail, proof of such service shall be by affidavit showing the date of mailing and by the return receipt which shall be annexed to the affidavit showing that the person sought to be served received or refused the notice by registered mail or that the person sought to be served was unknown at the address appearing in the County Master Record.

(d) No appeal shall be considered by the court unless it is satisfied that notice has been given as required by this section. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, § 1724; 44 Del. Laws, c. 108, § 1; 15 Del. C. 1953, § 2104; 50 Del. Laws, c. 171, § 1.)

§ 2105. Affidavit of appellant.

No appeal shall be received and acted upon by the court unless the appellant shall at the time of presenting his appeal also make and file therewith an affidavit that notice of his intention to present his appeal on the day was given to the department or registration officers or both, and to the person affected by the appeal and that such appeal is made in good faith and based upon facts within the knowledge of the person making and filing such affida-

vit. (Code 1935, § 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2105; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1.)

§ 2106. Disposition of appeals.

In the event any appeal is taken or any appeal remains undetermined within the period of 30 days before the date of the general election, the court shall give priority to any such appeal over any other business before the court, and the court shall hear and determine the appeal and enter an order as provided in § 2110 of this title, on or before the tenth calendar day preceding the last registration day. (21 Del. Laws, c. 36, § 16; 23 Del. Laws, c. 56, § 1; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1724, 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2106; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1; 57 Del. Laws, c. 181, § 40.)

§ 2107. Limit on appeals presenting the same issue.

Once an appeal has been determined, no appeal shall thereafter be heard or allowed by the court which presents the same or substantially the same issue as has already been determined in a prior appeal. (45 Del. Laws, c. 148, § 35; 45 Del. Laws, c. 149, § 35; 15 Del. C. 1953, § 2107; 50 Del. Laws, c. 171, § 1.)

§ 2108. Duty of registration officers to attend appeals.

The registration officers of an election district shall attend and be present at all hearings of which they had notice, before the court sitting for that purpose, of appeals which have been taken from their decision. (21 Del. Laws, c. 36, § 17; Code 1915, § 1638; 34 Del. Laws, c. 106, § 1; Code 1935, § 1725; 15 Del. C. 1953, § 2108; 50 Del. Laws, c. 171, § 1.)

§ 2109. Alternate registrars.

All the powers and duties conferred or enjoined upon registration officers by this chapter are expressly made the powers and duties of all alternate registration officers in the absence of any registration officer from his election district or his disability to perform the duties imposed upon such registration officer by this chapter. (21 Del. Laws, c. 36, § 18; Code 1915, § 1639; 34 Del. Laws, c. 106, § 1; Code 1935, § 1726; 15 Del. C. 1953, § 2109; 49 Del. Laws, c. 4, § 4; 49 Del. Laws, c. 17, § 16; 50 Del. Laws, c. 171, § 1.)

§ 2110. Order by court.

The court hearing any appeal shall order and direct the department to make such entries in the registration records as the law and the facts shall warrant. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, § 1724; 15 Del. C. 1953, § 2110; 50 Del. Laws, c. 171, § 1.)

§ 2111. Finality of decisions.

The decision of the court on any appeal provided for in this chapter shall be final. (Code 1935, § 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2111; 50 Del. Laws, c. 171, § 1.)

§ 2112. Costs.

The person who makes the affidavit taking such appeal shall pay all the costs of the appeal if the appeal is finally dismissed. The costs shall be fixed by the court and taxed upon the appellant at the time of such dismissal. (Code 1915, § 1637; 37 Del. Laws, c. 117, § 9A; Code 1935, § 1724; 15 Del. C. 1953, § 2112; 50 Del. Laws, c. 171, § 1.)

§ 2113. Registration appeal dockets.

(a) The department for each county shall provide books of permanent record to be known as "registration appeal dockets", in which a permanent record shall be made and preserved of all registration appeals made to, and acted upon by, the court hearing registration appeals. The dockets shall contain the following information in respect to each appeal:

- (1) Date of the appeal;
- (2) Name of the appellee;
- (3) The ground or grounds of each appeal;
- (4) The name of the person or persons making the affidavit or affidavits on each appeal;
- (5) The determination of the court on each of the grounds of appeal asserted in each such appeal.

(b) The docket may contain such other information or data as may be required to make a complete record of each appeal acted upon. All entries in the dockets shall be under the supervision and direction of the court and the record of each appeal shall be approved by the court hearing the appeal. The record of each appeal shall fully disclose each and every ground upon which the appeal is filed. The registration appeal dockets shall remain in the care and custody of the department having jurisdiction and shall be produced be-

fore the court by the department whenever required by the court sitting for the purpose of hearing appeals. (45 Del. Laws, c. 148, § 35; 45 Del. Laws, c. 149, § 35; 15 Del. C. 1953, § 2113; 50 Del. Laws, c. 171, § 1.)

CHAPTER 23. PENAL AND ENFORCEMENT PROVISIONS

Sec.	Sec.
2301. Neglect of duty; corrupt or fraudulent conduct; penalty.	2305. Intimidation of registration officers; penalty.
2302. Wrongful registration; assault; riot; breach of peace; penalty.	2306. Notice to Attorney General of violations of registration laws.
2303. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; penalty.	2307. Unauthorized entering of registration area; interference with registration; penalty.
2304. Alcoholic liquor in registration places; penalty.	

Cross references. — As to exclusive, original jurisdiction of Superior Court over offenses under this title, see § 5101 of this title.

§ 2301. Neglect of duty; corrupt or fraudulent conduct; penalty.

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of the same shall be fined not more than \$200 or imprisoned not more than 2 years or both. (45 Del. Laws, c. 144, § 8; 45 Del. Laws, c. 148, § 8; 45 Del. Laws, c. 149, § 8; 15 Del. C. 1953, § 2301.)

§ 2302. Wrongful registration; assault; riot; breach of peace; penalty.

Whoever causes or attempts to cause himself to be registered in: (1) The name of any other person living or dead or under any fictitious name; or (2) any election district in this State, knowing that he has not the right to be registered; or (3) whoever, knowing himself to be registered in any election district in this State, causes or attempts to cause himself to be registered in any other election district in this State without having first caused his record to be removed from the Election District Record in which his original permanent registration record may have been previously entered; or (4) whoever, knowing himself to be disqualified as a voter at the next following general election, causes or attempts to cause himself to be entered in the Election District Record in any election district in this State as a registered voter therein or unlawfully interferes with any registrar, alternate registrar or assistant registrar in the discharge of his duties under this title; or (5)

whoever makes any assault or commits any assault and battery or incites or creates any riot or breach of the peace at or near to any place of registration in this State during the sitting of any registration officers; shall be fined not less than \$50 or more than \$200 or imprisoned not less than 30 days or more than 2 years or both. (19 Del. Laws, c. 38, § 21; 21 Del. Laws, c. 36, § 24; Code 1915, § 1645; 34 Del. Laws, c. 106, § 1; Code 1935, § 1732; 15 Del. C. 1953, § 2302; 50 Del. Laws, c. 170, § 1.)

Cross references. — As to assaults and related offenses, see §§ 601 to 627 of Title 11. As to tampering with public records, see §§ 873 and 876 of Title 11. As to riots, disorderly conduct and related offenses, see §§ 1301 to 1338 of Title 11.

Sufficiency of indictment. — Where an indictment alleged that defendant, "at a certain

general registration of all qualified voters, unlawfully and fraudulently registered in . . . City of Wilmington [without] . . . having lawful right to register therein", defendant was not given sufficient notice of the charge against him and the indictment was quashed and the defendant was discharged. *State v. Vincent*, Del. Gen. Sess., 41 A. 199 (1895).

§ 2303. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; penalty.

(a) Whoever, being a registrar, alternate registrar or assistant registrar:

(1) Fraudulently enters or permits to be entered in any registration record the name of any person as a registered voter who is not entitled to be entered therein as a registered voter; or

(2) Fraudulently refuses or omits to register or fraudulently misspells in any registration record in his charge the name of any person entitled under this title to have his name entered in such registration records; or

(3) Fraudulently removes from any Election District Record in his charge the original permanent registration record of any person entered therein; or

(4) Makes any entry in any registration record, except at the time and in the manner in this title provided; or

(5) Does anything which is by this title forbidden by him to do; or

(6) Whoever, being a registrar, alternate registrar or assistant registrar, inspector or judge of election:

a. Loses any registration records which may be in his charge or custody; or

b. Willfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes any registration record; or

c. Knowingly makes any false entry in or false copy of any registration record or any part thereof; or

d. Fraudulently makes any entry, erasure or alteration in any registration record;

shall be deemed to have knowingly and willfully violated his official duty and shall be fined in such amount or imprisoned for such term or both as the court in its discretion may determine.

(b) Whoever, other than the officials referred to in subsection (a) of this section, makes, alters or obliterates any entry in any registration record, or willfully destroys, mutilates, defaces, falsifies or removes or secretes any registration record, shall be fined in such amount or imprisoned for such term, or both, as the court in its discretion may determine. (19 Del. Laws, c. 38, §§ 20, 22; 21 Del. Laws, c. 36, § 25; Code 1915, § 1644; 34 Del. Laws, c. 106, § 1; Code 1935, § 1731; 15 Del. C. 1953, § 2303; 50 Del. Laws, c. 170, § 2.)

Cross references. — As to making a false written statement, see § 1233 of Title 11.

§ 2304. Alcoholic liquor in registration places; penalty.

Whoever, during the sitting of the registration officers in any election district in this State, brings, takes, orders or sends into, or attempts to bring, take or send into, any place of registration any alcoholic liquor, or, at any such time or place, drinks or partakes of any such liquor, shall be fined not more than \$100 or imprisoned not more than 90 days, or both. (19 Del. Laws, c. 39, § 32; 21 Del. Laws, c. 36, § 22; Code 1915, § 1643; 34 Del. Laws, c. 106, § 1; Code 1935, § 1730; 15 Del. C. 1953, § 2304.)

Cross references. — As to alcoholic liquors generally, see Title 4.

§ 2305. Intimidation of registration officers; penalty.

If any person, firm, corporation or employer existing or doing business in this State hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed a registration officer under the laws of this State from qualifying and performing his duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, he or they shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State.

In any trial under this section the acts of any officer of a corporation, so far as they affect an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether special or general authority as to such acts from the corporation is shown or not.

Nothing contained in this section shall be construed to relieve any officer of a corporation from individual liability under this section. (45 Del. Laws, c. 144, § 24; 45 Del. Laws, c. 148, § 24; 45 Del. Laws, c. 149, § 24; 15 Del. C. 1953, § 2305.)

§ 2306. Notice to Attorney General of violations of registration laws.

Each department shall notify the Attorney General of all violations of the registration laws. (45 Del. Laws, c. 144, § 9; 45 Del. Laws, c. 148, § 9; 45 Del. Laws, c. 149, § 9; 15 Del. C. 1953, § 2306; 49 Del. Laws, c. 4, § 5.)

§ 2307. Unauthorized entering of registration area; interference with registration; penalty.

(a) Whoever, not being a registration officer or other department of elections personnel, enters the prohibited registration area, as stipulated in § 1724 of this title, during the hours of registration other than to register to vote shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the prohibited registration area, as stipulated in § 1724 of this title, during the hours of registration for the purpose of interfering with the registration officers in the discharge of their duties or whoever attempts to molest, disturb or prevent the registration officers or any of those seeking to register from proceeding regularly with registration, shall be fined not less than \$500 nor more than \$1,000 or imprisoned not less than 90 days nor more than 3 years, or both. (15 Del. C. 1953, § 2307; 58 Del. Laws, c. 401, § 3.)

PART III

Primary Elections and Nominations of Candidates

CHAPTER 30. BALLOT QUALIFICATIONS

Sec.

3001. Political parties.

3002. Unaffiliated candidates.

§ 3001. Political parties.

No political party shall be listed on any general election ballot unless, 21 days prior to the date of the primary election, there shall be registered in the name of that party a number of voters equal to at least $\frac{5}{100}$ of 1 percent of the total number of voters registered in the State as of December 31 of the year immediately preceding the general election year. (61 Del. Laws, c. 418, § 7.)

Burden of organization not required to correspond to size of party. — With respect to political parties, the equal protection doctrine does not require that the burden of organization correspond to the size of the party. The burdens are to be measured only against themselves and not in relation to the capacities of the parties. This section and § 1749 of this title do not impose greater burdens on small parties than major parties. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Section protects electoral system by limiting parties on ballot. — This section, in conjunction with § 1749 of this title, protects the electoral system by limiting the parties on the ballot to those which have demonstrated

some degree of popular support, thereby insuring that the ballot is not filled with an abundance of candidates serving only to divide and confuse rather than to consolidate the support of the populace. A state has a legitimate interest in regulating the number of candidates on the ballot for these purposes. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Party required to legitimate itself by demonstrating popular support. — One of the purposes of this section and § 1749 of this title is to require that a party legitimize itself by demonstrating some modicum of popular support. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

§ 3002. Unaffiliated candidates.

(a) No person shall qualify to appear on the general election ballot of this State as a candidate unaffiliated with a political party unless he fulfills the requirements of this chapter and is so certified by the State Election Commissioner, if a statewide candidate, or the appropriate county department of elections, if not a statewide candidate.

(b) No individual shall be listed as an unaffiliated candidate on any general election ballot unless he shall have filed, on or before the close of the official business day on September 1 of the general election year, a sworn declaration with the State Election Commissioner, if a statewide candidate, or the appro-

priate county department of elections, if a nonstatewide candidate, stating that he is an unaffiliated candidate and has not been affiliated with any political party for at least 3 months prior to the filing of his declaration, as required by this title, and shall have filed nominating petitions, as prescribed in this chapter, and signed by not less than 1 percent of the total number of voters registered, as of December 31 of the year immediately preceding the general election year in the State, or if a nonstatewide candidate, of those voters eligible to vote for that office which he seeks.

(c) The nominating petition shall contain such information and be on a form as prescribed by the State Election Commission. The following information shall, however, be contained in the petition:

(1) Name of the unaffiliated candidate and the office for which he is filing;

(2) Signature, printed name, address at which registered, social security number and date on which signed by signer;

(3) A statement that the signer understands that by intentionally entering false information on the petition he may be subject to prosecution for perjury;

(4) A sworn notarized statement of the person circulating the petition that he witnessed the placing of each signature on the petition.

(d) Such petition shall be circulated and executed between January 1 and July 15 of the year in which the general election is held. Each registered voter signing shall do so upon a petition prepared for the county in which he is registered, and the petition shall be filed with the department of elections for the county in which the petitioners reside. The signatures and other information thereon shall be verified by the department receiving the petition.

(e) Signatures may be rejected for the following reasons:

(1) The signer was not a registered voter on the date he signed the petition;

(2) The signer's place of residence or his social security number do not match those appearing in the permanent registration record;

(3) The signer did not list his social security number;

(4) It appears that the signature is a forgery;

(5) The signer's identity cannot be verified because the information and/or signature submitted is illegible, incomplete or obscured.

(f) Where a petition or a part thereof is rejected, the individual submitting same shall have the right to learn the reason(s) for such rejection and an opportunity to examine the signatures rejected. (61 Del. Laws, c. 418, § 7; 67 Del. Laws, c. 354, § 20.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "July 15" for "August 15" in the first sentence of (d).

PRIMARY ELECTIONS

CHAPTER 31. PRIMARY ELECTIONS

Subchapter I. General Provisions

Sec.

- 3101. Nomination, withdrawal and primary election dates.
- 3101A. Direct primary elections.
- 3102. Primary elections in all districts to be held on same day.
- 3103. Filing fees.
- 3104. Hours at polling places.
- 3105. Procedure when no contest.
- 3106. Filing of candidacy for nomination at a primary election; withdrawal.
- 3107. Determination of nominee.
- 3108. Primary election districts; conduct of primary elections.
- 3109. Public notice of time and place.
- 3110. Qualifications of voters.
- 3111. Expenses paid by State.
- 3112. Sale of alcoholic liquor on day of primary election.
- 3113. Nominating conventions.

Subchapter II. Books, Ballots, Supplies and Polling Places

- 3121. Registration records used.
- 3122. Delivery of registration records to proper inspectors; penalty.
- 3123. Use of ballot.
- 3124. Ballots for voting machines.
- 3125. Departments of election to furnish voting machines, flags, supplies and instructions for polling places.
- 3126. Voting to be by voting machines.
- 3127. Designation of polling places.

Subchapter III. Election Officers

- 3141. Form of oath.
- 3142. Powers to preserve peace.
- 3143. Compensation.

Subchapter IV. Procedure at Polling Places

- 3161. Voting procedure.

Sec.

- 3162. Return of registration records; failure; penalty.
- 3163. Receiving illegal or refusing legal votes; penalty.
- 3164. Challengers.
- 3165. Challenges; oath of voter; penalty.
- 3166. Illegal election conduct; general penalties.
- 3167. Bribery at primary elections; penalty.
- 3168. Stealing, destroying or falsifying registration records; penalty.
- 3169. Alcoholic liquor in locale of primary election; penalty.
- 3170. Tabulation of vote.
- 3171. Certification of results.
- 3172. Calculation of votes; ties.
- 3173. Vote required for nomination.
- 3174. Death, physical, mental or other incapacity of nominee.

Subchapter V. Presidential Primary Election

- 3181. Primary to be held.
- 3182. Conduct of election.
- 3183. Nomination, withdrawal and primary election dates.
- 3184. Candidates for presidential election.
- 3185. Selection of delegates to national conventions; forwarding of rules to State Election Commissioner.
- 3186. Delegate and alternate delegate commitments; authorization required; petitions.
- 3187. Filing fees.
- 3188. Nomination of delegates and alternate delegates; qualifications.
- 3189. Voting in presidential primary election; ballots.
- 3190. Polling places; minimum requirement.

*Subchapter I. General Provisions***§ 3101. Nomination, withdrawal and primary election dates.**

The following schedule shall apply for all candidates:

(1) Notification of candidacy shall be on or before 12:00 noon of the last Friday in July. In the event the last Friday in July is a legal holiday, then the last day to give notification shall be the next day which is not a Saturday, Sunday or a legal holiday.

(2) Such notification of candidacy may be withdrawn on or before 12:00 noon of the first Friday in August. In the event the first Friday in August is a legal holiday, then the final day to withdraw shall be the next day which is not a Saturday, Sunday or a legal holiday.

(3) Primary elections for all political parties shall be conducted on the first Saturday next following the first Monday in September.

(4) After the deadline for notification of candidacy set forth in subdivision (1) of this section and before the deadline for withdrawal set forth in subdivision (2) of this section, a candidate may change his candidacy and become a candidate for a different office in the coming election. Such change of candidacy shall be deemed to be irrevocable withdrawal from candidacy for the first announced office. (20 Del. Laws, c. 393, § 18; 22 Del. Laws, c. 285, § 1; 27 Del. Laws, c. 66, § 1; Code 1915, § 1692; 40 Del. Laws, c. 142, § 7; Code 1935, § 1780; 45 Del. Laws, Sp. Sess., c. 3, § 1; 45 Del. Laws, c. 150, § 5; 15 Del. C. 1953, § 3102; 50 Del. Laws, c. 426, § 1; 57 Del. Laws, c. 241, § 2; 58 Del. Laws, c. 258, §§ 1, 2; 58 Del. Laws, c. 368, § 1; 60 Del. Laws, c. 712, § 2; 61 Del. Laws, c. 418, § 9.)

§ 3101A. Direct primary elections.

The nominations of candidates by all major political parties for all offices to be decided at a general election shall be conducted by direct primary. All such primaries shall be conducted by the county departments of election under the applicable provisions of this title. (60 Del. Laws, c. 712, § 1; 61 Del. Laws, c. 418, § 10.)

§ 3102. Primary elections in all districts to be held on same day.

The primary elections for all political parties shall be held in the various districts on the same day as elsewhere provided in this title. (20 Del. Laws, c.

393, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1679; Code 1935, § 1770; 15 Del. C. 1953, § 3103; 50 Del. Laws, c. 426, § 7; 57 Del. Laws, c. 241, § 3.)

§ 3103. Filing fees.

(a) Filing fees for primary election for candidates for any office of any political party shall be set in the following manner:

(1) Candidates for statewide office shall be set by the state executive committee of the respective political party;

(2) Candidates for county or countywide office and members of the General Assembly shall be set by the county executive committee of the respective political party of the county in which the contest is to be held;

(3) Candidates for municipal office for any municipality which holds its election at the time of the general election shall be set by the city executive committee of the respective political party of the city in which the contest is to be held;

(4) [Repealed].

(b) The filing fee shall not be greater than 1% of the total salary for the entire term of office for which the candidate is filing, except that no filing fee shall be required where a person is indigent and qualifies as a candidate as provided in subsection (g) of § 3106 of this title.

(c) The state chairman, county chairman and city chairmen of each political party shall notify the State Election Commissioner and the respective departments of elections of the amount of the filing fee set pursuant to this section. The notification shall be no later than July 1 of each general election year. (15 Del. C. 1953, § 3104; 57 Del. Laws, c. 241, § 4; 57 Del. Laws, c. 567, § 18B; 58 Del. Laws, c. 519; 60 Del. Laws, c. 398, § 1; 60 Del. Laws, c. 712, §§ 3-5; 61 Del. Laws, c. 418, § 11.)

Standing alone, filing fee requirement is not invalid addition to qualifications for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Fee is requirement for candidacy not for office. — A filing fee paid as part of the election process does not, per se, add to the qualification for office. It is a requirement for candidacy, not for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Implicit in this section are legitimate state purposes and interests to which fee requirements seem reasonably and rationally related. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Interests served by section. — The State may, in pursuit of the interest in regulating the number of candidates on the ballot and to perform the duty to protect the integrity of the political process from frivolous or fraudulent candidacies, require payment of a reasonable filing fee. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

State interest in objectives served by this section remains valid in attack by nonindigent candidate. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Absence of specificity does not invalidate this section. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

§ 3104. Hours at polling places.

The time for opening the polls for the purpose of conducting a primary election shall be 7:00 in the morning, and the time for closing the polls at such primary election shall be 8:00 in the evening. (20 Del. Laws, c. 393, § 18; 22 Del. Laws, c. 285, § 1; 27 Del. Laws, c. 66, § 1; Code 1915, § 1692; 40 Del. Laws, c. 142, § 7; Code 1935, § 1780; 45 Del. Laws, c. 150, § 5; 15 Del. C. 1953, § 3105; 50 Del. Laws, c. 426, § 8.)

§ 3105. Procedure when no contest.

In case there be no contest for any office in any particular election district or districts the department shall be governed accordingly and shall not hold a primary election in any such election district or districts. (Code 1935, § 1780; 45 Del. Laws, c. 150, § 5; 15 Del. C. 1953, § 3106; 50 Del. Laws, c. 426, § 9.)

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

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

(1) Candidates for statewide office:

a. Any statewide candidate shall notify the chairman of the state committee of his respective political party, or his designee in writing, on forms prescribed by the State Election Commissioner on or before the deadline set forth in § 3101(1) of this title.

b. At the time of giving notice as required above, each candidate shall tender the required filing fee, if any, by giving a check to the State Election Commissioner, payable to the state committee of the candidate's political party, together with a copy of the notice given the party's state chairman. At such time, the Commissioner shall receipt a third copy of said notice, to be provided the candidate.

c. [Repealed].

(2) Candidates for all other offices:

a. All candidates for county or countywide office, members of the General Assembly and/or municipal office for any municipality holding its election at the time of the general election shall notify the county chairman, or his designee, in writing (or the city chairman, or his 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 set forth in § 3101(1) of this title.

b. At the time of giving notice as required above, each candidate shall tender the required filing fee, if any, by giving a check to the county department of elections, 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 chairman. At such time, the department shall receipt a third copy of the notice, to be provided the candidate.

(b) If any of the filing fees mentioned in subsection (a) of this section are not required, each candidate shall still give notice to the election agency having jurisdiction, as specified in paragraphs (1) and (2) of subsection (a) of this section, and shall receive a receipted copy of the prescribed form.

(c) Any candidate who has filed for nomination as required above may withdraw said filing by notifying the respective elections agency with whom he filed on forms prescribed by the State Election Commissioner on or before the deadline set forth in § 3101(2) of this title. The elections agency having jurisdiction shall promptly notify the same political party chairman who received the original notice of filing. The filing fee of the candidate so withdrawing shall be returned to him. In the event a candidate withdraws after the deadline set forth in § 3101(2) of this title, he shall forfeit the filing fee to the political party. In cases where no filing fee was required, any candidate withdrawing after the deadline shall submit to the respective elections agency a check payable to the Treasurer of the State in the amount of \$50.

(d) Following the deadline for withdrawal of candidates, the State Election Commissioner shall promptly turn over the filing fee checks of the statewide candidates to the state chairmen of their respective political parties. At the same time, the Commissioner shall notify each county department of elections of all those statewide candidates who have qualified under this section. The county departments shall also at this time submit to the county chairman (or city chairman, if applicable) all filing fee checks from candidates of their respective political parties and shall notify the Commissioner of all persons who have qualified as candidates.

(e) Any notice of candidacy or withdrawal of candidacy required by this section shall include the signature of each candidate, together with his proper and correct name typed or printed, and the address from which he is registered to vote at the time of filing. (20 Del. Laws, c. 393, § 39; 27 Del. Laws, c. 66, § 1; Code 1915, § 1713; Code 1935, § 1801; 45 Del. Laws, c. 150, § 10; 15 Del. C. 1953, § 3107; 57 Del. Laws, c. 241, § 5; 57 Del. Laws, c. 567, § 18C; 58 Del. Laws, c. 148, § 34; 58 Del. Laws, c. 215, § 18; 58 Del. Laws, c. 258, §§ 3-5; 58 Del. Laws, c. 368, §§ 2, 3; 60 Del. Laws, c. 398, § 2; 60 Del. Laws, c. 712, § 6; 61 Del. Laws, c. 484, § 1; 67 Del. Laws, c. 354, § 21.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, added "at the time of filing" at the end of (e).

Standing alone, the filing fee requirement is not invalid addition to qualifications for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Fee is requirement for candidacy not for office. — A filing fee paid as part of the election process does not, per se, add to the qualification for office. It is a requirement for candidacy, not for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Implicit in this section are legitimate

state purposes and interests to which fee requirements seem reasonably and rationally related. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Interests served by section. — The State may, in pursuit of the interest in regulating the number of candidates on the ballot and to perform the duty to protect the integrity of the political process from frivolous or fraudulent candidacies, require payment of a reasonable filing fee. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

State interest in objectives served by this section remains valid in attack by nonindi-

gent candidate. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Absence of specificity does not invalidate this section. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Timely payment of filing fee. — The statutory requirement of timely payment of the designated filing fee is directory in nature, in which event a technical noncompliance may be excused by a good faith effort. *Bartley v. Davis*, Del. Supr., 519 A.2d 662 (1986).

§ 3107. Determination of nominee.

Any candidate for party nomination to any office who receives a plurality of the votes cast in his party's primary election for that office shall be the nominee of his party for such office. (20 Del. Laws, c. 393, § 19; 22 Del. Laws, c. 285, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1693; 34 Del. Laws, c. 108, § 5; Code 1935, § 1781; 45 Del. Laws, c. 150, § 6; 15 Del. C. 1953, § 3108; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 276, § 2; 50 Del. Laws, c. 426, § 10; 57 Del. Laws, c. 241, § 6; 57 Del. Laws, c. 567, §§ 18D, 18E; 58 Del. Laws, c. 258, §§ 6, 7; 58 Del. Laws, c. 368, § 4; 60 Del. Laws, c. 712, § 7.)

§ 3108. Primary election districts; conduct of primary elections.

The county departments of elections shall, at least 2 weeks before a primary election, determine and establish primary election districts, each of which shall consist of 1 or more entire election districts in the same representative district.

The county departments of elections and the election officers shall conduct the primary elections in the same way that general elections are conducted and in accordance with the applicable provisions of this title, except that the voting machines shall be operated so that the only levers open to each voter shall be the levers for candidates of the party of the voter's party affiliation as shown by the voter's original permanent registration record.

The primary election officers and clerks shall be chosen by the department from among the election officers and clerks selected for the general election for the election district or districts contained in the primary election district, and for each such primary election district the election officers and clerks shall be divided as equally as possible between the 2 principal parties. (20 Del. Laws, c. 393, § 23; 27 Del. Laws, c. 66, § 1; Code 1915, § 1697; Code 1935, § 1785; 15 Del. C. 1953, § 3109; 50 Del. Laws, c. 426, § 11; 50 Del. Laws, c. 631, § 1; 51 Del. Laws, c. 107, § 1; 52 Del. Laws, c. 87; 57 Del. Laws, c. 567, § 17.)

§ 3109. Public notice of time and place.

Notice of all primary elections shall be given either by suitable news media or by publishing the same each day for 5 days before the time of holding same in 1 or more daily newspapers printed in the county in which the primary election shall be held or in the last issue of each of 2 weekly newspapers printed in the county before the time of holding primary elections, in case no daily newspaper is published in the county. (20 Del. Laws, c. 393, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1679; Code 1935, § 1770; 15 Del. C. 1953, § 3110; 51 Del. Laws, c. 107, § 2; 58 Del. Laws, c. 215, § 19.)

§ 3110. Qualifications of voters.

An elector may vote in the primary election of a political party only if he is a duly registered voter and if it appears upon his original permanent registration record that his party affiliation is the same as the party which is holding the primary election and that he was registered 21 days prior to the day of the primary election. (20 Del. Laws, c. 393, § 20; 22 Del. Laws, c. 285, § 3; 27 Del. Laws, c. 66, § 1; Code 1915, § 1694; 40 Del. Laws, c. 142, § 8; Code 1935, § 1782; 45 Del. Laws, c. 150, § 7; 15 Del. C. 1953, § 3111; 50 Del. Laws, c. 426, § 2; 57 Del. Laws, c. 181, § 42.)

§ 3111. Expenses paid by State.

The expenses for holding primary elections under this chapter, including stationery, and pay of officers and clerks shall be paid by the State. (20 Del. Laws, c. 393, § 35; 27 Del. Laws, c. 66, § 1; Code 1915, § 1709; 30 Del. Laws, c. 102, § 1; Code 1935, § 1797; 45 Del. Laws, c. 150, § 9; 15 Del. C. 1953, § 3113; 51 Del. Laws, c. 149, § 3.)

§ 3112. Sale of alcoholic liquor on day of primary election.

The laws prohibiting the sale of alcoholic liquors on the day of any general, special or municipal election are excepted and shall not apply to any election contemplated by this chapter. (20 Del. Laws, c. 393, § 41; 27 Del. Laws, c. 66, § 1; Code 1915, § 1715; Code 1935, § 1804; 15 Del. C. 1953, § 3115.)

Cross references. — As to prohibition against sale of alcoholic liquor on Election Day, see § 714 of Title 4.

§ 3113. Nominating conventions.

The method of nominating candidates for the national Electoral College, for offices within a particular political party and for formulation of the party platform may be by convention. (15 Del. C. 1953, § 3116; 57 Del. Laws, c. 241, § 8; 57 Del. Laws, c. 567, § 18F; 58 Del. Laws, c. 258, § 8; 60 Del. Laws, c. 712, § 8.)

Freedom of association of political parties. — The ability of any political party in Delaware to organize itself on a district rather than an at-large basis may be, or is believed to be, significantly related to its pursuit of the power to impose its policies upon government. The freedom to associate for such a pursuit is the heart of the right of association guaranteed

by the First Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Republican state convention is "state action" within meaning of **Fourteenth Amendment**. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Subchapter II. Books, Ballots, Supplies and Polling Places

§ 3121. Registration records used.

The registration records for each election district in this State used for registration purposes for general, supplementary and additional registrations shall be used for all primary elections held under this chapter.

The registration records for each election district in the City of Wilmington shall be used for primary election purposes in accordance with this chapter, and all persons, and only they, whose names appear on such registration books after the same have been added to, revised and corrected, as provided by law, shall be entitled to vote at a primary election to nominate candidates to be voted for at a subsequent municipal election in the City of Wilmington. (20 Del. Laws, c. 393, § 18; 22 Del. Laws, c. 285, § 1; 27 Del. Laws, c. 66, § 1; Code 1915, § 1692; 40 Del. Laws, c. 142, § 7; Code 1935, §§ 1776, 1780; 45 Del. Laws, c. 150, §§ 2, 5; 15 Del. C. 1953, § 3121; 50 Del. Laws, c. 426, § 4.)

§ 3122. Delivery of registration records to proper inspectors; penalty.

The Department of Elections for New Castle County, the Department of Elections for Kent County and the Department of Elections for Sussex County, respectively, shall before 7:00 a.m. of the day on which a primary election is held in their county by any political party deliver to the proper inspector the registration records for each general election district that may be contained within each primary election district, and the inspector shall have the registration records at the place of holding the primary election at the time for opening the polls on primary election day.

In each year in which a municipal election is held in the City of Wilmington the inspector for each primary election district within such City, before 7:00 a.m. of the day on which such primary election is held, shall be furnished by the Department of Registration for New Castle County with the registration records for each general election district that may be contained within such inspector's primary election district, and each inspector shall have the registration records at the place of holding the primary election in his district at the time for opening the polls on primary election day.

Whoever, being a member of the Department of Registration for New Castle County or of the Department of Elections for Kent or Sussex Counties, refuses, neglects or fails to deliver to each inspector of any primary election to be held within his county the registration records for each general election district that may be contained in the primary election district to which such registration records apply; or whoever, being an inspector, refuses, neglects or fails to have such registration records at the place of holding the primary election for any general or special election or any municipal election in the City of Wilmington at the time designated in this chapter; shall, for each such offense, be fined \$100, and his office shall be forfeited.

Each day of refusal, neglect or failure shall constitute a separate offense under this section. (20 Del. Laws, c. 393, § 24; 22 Del. Laws, c. 285, § 4; 27 Del. Laws, c. 66, § 1; Code 1915, § 1698; 34 Del. Laws, c. 108, § 7; Code 1935, § 1786; 43 Del. Laws, c. 127, § 3; 45 Del. Laws, c. 150, § 8; 15 Del. C. 1953, § 3122; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 426, §§ 4, 12; 57 Del. Laws, c. 567, § 18.)

§ 3123. Use of ballot.

All primary elections shall be by ballot. (20 Del. Laws, c. 393, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1679; Code 1935, § 1770; 15 Del. C. 1953, § 3123.)

§ 3124. Ballots for voting machines.

(a) The department of elections in any county where a primary election is to be held shall cause to be printed the ballots to be used at such election and shall cause the same to be placed in voting machines for the proper district prior to the delivery of the voting machines.

(b) The names of all candidates for nomination for the same office shall be placed under the title of such office, the surname of candidates to be placed in alphabetical order, and shall not be separated one from another by any other matter.

(c) [Repealed].

(d) The department shall also provide and cause to be posted in each primary election district 2 sheets of instructions to voters and 2 sample ballots, as prescribed in subsections (a) and (b) of § 4910 of this title. (20 Del. Laws, c. 393, § 39; 27 Del. Laws, c. 66, § 1; Code 1915, § 1713; Code 1935, § 1801; 45 Del. Laws, c. 150, § 10; 15 Del. C. 1953, § 3124; 49 Del. Laws, c. 276, § 3; 51 Del. Laws, c. 107, § 3; 57 Del. Laws, c. 567, § 19; 58 Del. Laws, c. 148, §§ 35-37; 60 Del. Laws, c. 414, § 7; 61 Del. Laws, c. 480, § 4.)

§ 3125. Departments of election to furnish voting machines, flags, supplies and instructions for polling places.

For each polling place in their respective counties where primary elections are to be held, the respective departments shall furnish the following:

(1) A white muslin flag, preferably staffed, of suitable size for the lettering thereon in 4 inch letters including the following words: Registration and polling place;

(2) A flag of the United States of America no smaller in size than the polling place flag above described in subdivision (1) of this section;

(3) Poll list, stationery and other such supplies customary and necessary for the use of the officers conducting such primary election;

(4) Written instructions and excerpts from those parts of this title as the department shall deem necessary and appropriate to assist the election officers in the proper performance of their duties;

(5) A proper number of voting machines of the type used in general elections, which machines shall be duly inspected, prepared and certified in the same manner as provided for under Chapter 50 of this title for general elections. (20 Del. Laws, c. 393, § 26; 27 Del. Laws, c. 66, § 1; Code 1915, § 1700; Code 1935, § 1788; 42 Del. Laws, c. 117, § 1; 43 Del. Laws, c. 127, § 4; 15 Del. C. 1953, § 3125; 49 Del. Laws, c. 276, § 4; 55 Del. Laws, c. 458, § 1; 57 Del. Laws, c. 567, § 20; 58 Del. Laws, c. 148, §§ 38, 39; 60 Del. Laws, c. 414, § 8; 61 Del. Laws, c. 480, § 5.)

§ 3126. Voting to be by voting machines.

In every primary election district in which a primary election is to be held under this chapter, voting machines of the type used in general elections, as provided for in Chapter 50 of this title, shall be used to record the votes, and the manner of voting shall be the same as that set forth in Chapter 49 of this title. (20 Del. Laws, c. 393, § 27; 27 Del. Laws, c. 66, § 1; Code 1915, § 1701; Code 1935, § 1789; 15 Del. C. 1953, § 3126; 57 Del. Laws, c. 567, § 21; 61 Del. Laws, c. 480, § 6.)

§ 3127. Designation of polling places.

The department of elections shall, at least 2 weeks prior to the primary election, designate the place for holding a primary election in each primary election district in the same manner as it designates polling places for a general election. (20 Del. Laws, c. 393, § 23; 27 Del. Laws, c. 66, § 1; Code 1915, § 1697; Code 1935, § 1785; 15 Del. C. 1953, § 3128; 50 Del. Laws, c. 426, § 15; 50 Del. Laws, c. 631, § 2; 58 Del. Laws, c. 148, § 40.)

*Subchapter III. Election Officers***§ 3141. Form of oath.**

Before opening the election, the presiding officers and judges shall each take and subscribe an oath according to the following form: "I do solemnly swear (or affirm) that in the primary election to be held on the day of A. D. I will not knowingly or willfully receive or consent to the receiving of the vote of any alien, and also that I will not receive or consent to the receiving of the vote of any person whom I shall believe not entitled to vote, unless my associates shall adjudge such person to be entitled to vote. That I will not receive or reject, nor concur in receiving or rejecting any vote through partiality or under bias, and that I will determine every matter that shall come before me and perform every act and duty by law required of me, touching the primary election, truly, faithfully and impartially, according to the best of my skill and judgment; that I will cause the ballots that shall be taken at such primary election to be fully read and ascertained, and a true statement thereof to be made, according to the best of my knowledge and ability; that I have not received, nor will I receive directly or indirectly from or through any candidate to be voted for at such primary election, or any representative of any candidate or other person, any money, pay or other valuable thing or reward; that I have not been promised, or in any manner been led to believe that I will at any time directly or indirectly receive any money, pay or other valuable thing or reward from such candidate or representative of such candidate or other person other than that provided by law and if I shall discover any partiality, unfairness or corruption in the conducting of the primary election, I shall disclose the same to the executive authority that shall have directed the holding of the primary election and to the Attorney General to the end that the subject may be investigated, so help me God (or so I solemnly affirm)." (20 Del. Laws, c. 393, § 5; 27 Del. Laws, c. 66, § 1; Code 1915, § 1682; Code 1935, § 1773; 15 Del. C. 1953, § 3143.)

§ 3142. Powers to preserve peace.

Each of the election officers of any primary election shall have the same powers as provided in § 4946 of this title. (20 Del. Laws, c. 393, § 34; 27 Del. Laws, c. 66, § 1; Code 1915, § 1708; Code 1935, § 1796; 15 Del. C. 1953, § 3147; 58 Del. Laws, c. 148, § 41.)

§ 3143. Compensation.

Compensation of the officers and clerks for the holding of primary elections shall be the same as the compensation for officers and clerks in general elections. (20 Del. Laws, c. 393, § 35; 27 Del. Laws, c. 66, § 1; Code 1915, § 1709; 30 Del. Laws, c. 102, § 1; Code 1935, § 1797; 45 Del. Laws, c. 150, § 9; 15 Del. C. 1953, § 3148; 50 Del. Laws, c. 555; 52 Del. Laws, c. 14.)

*Subchapter IV. Procedure at Polling Places***§ 3161. Voting procedure.**

The voting procedure at any primary election shall be the same as at any general election, except that the officers shall first determine from the voter's original permanent registration record whether the voter's party affiliation is 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 the primary election. (20 Del. Laws, c. 393, § 20; 22 Del. Laws, c. 285, § 3; 27 Del. Laws, c. 66, § 1; Code 1915, § 1694; 40 Del. Laws, c. 142, § 8; Code 1935, § 1782; 45 Del. Laws, c. 150, § 7; 15 Del. C. 1953, § 3161; 50 Del. Laws, c. 426, § 5; 51 Del. Laws, c. 107, § 5; 57 Del. Laws, c. 567, § 23.)

§ 3162. Return of registration records; failure; penalty.

The inspector, immediately after the close of the primary election, shall return the registration records used by him at any primary election to the department from whom he received the same, which shall preserve them.

Whoever, being an inspector, neglects, refuses or fails to return the registration records as directed in this section shall, for each such offense, be fined in such amount or imprisoned for such term, or both, as the court in its discretion may determine. (20 Del. Laws, c. 393, § 20; 22 Del. Laws, c. 285, § 3; 27 Del. Laws, c. 66, § 1; Code 1915, § 1694; 40 Del. Laws, c. 142, § 8; Code 1935, § 1782; 45 Del. Laws, c. 150, § 7; 15 Del. C. 1953, § 3164; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 426, §§ 4, 6.)

§ 3163. Receiving illegal or refusing legal votes; penalty.

Whoever, at any primary election, being a presiding officer or judge, knowingly and willfully receives, or advises or consents to the receiving of, the vote of any person not entitled to vote at such primary election; or whoever, at any primary election, being a presiding officer or judge, knowingly and willfully refuses to receive the vote of any person entitled to vote at such primary election, shall, for every such offense, pay \$100 to any person who sues for the same or be fined not less than \$100, and, in either case, be imprisoned until the judgments, fines and costs are paid in full or discharged by the court. (20 Del. Laws, c. 393, § 21; 27 Del. Laws, c. 66, § 1; Code 1915, § 1695; Code 1935, § 1783; 15 Del. C. 1953, § 3165.)

§ 3164. Challengers.

(a) Each candidate for nomination at any primary election may appoint and accredit some suitable person as a challenger. One challenger for each candidate whose name appears on the ballot for that election district may be present inside the polling place and shall be permitted to observe the conduct of the primary election and all the election records. The challengers may be changed and their places filled in like manner during the day.

(b) The duties, privileges and activities of these challengers shall be governed by § 4934(b) and (c) and other pertinent sections of this title, consistent with this chapter. (20 Del. Laws, c. 393, § 32; 27 Del. Laws, c. 66, § 1; Code 1915, § 1706; Code 1935, § 1794; 15 Del. C. 1953, § 3166; 50 Del. Laws, c. 426, § 16; 57 Del. Laws, c. 181, § 43; 58 Del. Laws, c. 148, § 43.)

§ 3165. Challenges; oath of voter; penalty.

(a) Any recognized member of the political party, in whose interest any primary election is held, may challenge the right of any person offering to vote at a primary election.

(b) The board of election officers holding the same shall determine whether the person so offering is entitled to vote and shall receive or reject such vote, as the evidence for or against the right of the person to vote shall warrant.

(c) The officers may, of their own motion or in case of challenge if there be doubt of the propriety of receiving the offered vote, require of the person so offering to vote his oath or affirmation, which shall be administered by the presiding officer, who may administer the same in the following form: "Do you solemnly swear (or affirm) that you are a legally qualified voter under the rules of the party authorizing this primary election, that you will be legally qualified to vote at the following election for which candidates are now being selected to be voted for, that you are at this time a bona fide resident of

this primary election district, that you have not voted or you will not vote at any other voting place this day, that you have not voted or you will not vote at the primary election of any other political party, organization or association held for the purpose of nominating or selecting candidates to be voted for at the ensuing election, so help you God (or so you solemnly affirm).”

(d) After the voter has taken the oath or affirmation, such voter shall be allowed to cast his vote; and if any person offering to vote at any primary election declines to make the oath or affirmation demanded, his vote shall be rejected.

(e) If at the time a person proposed to vote is challenged and there are several persons waiting their turn to vote, such challenged person shall stand to 1 side until unchallenged voters have had an opportunity to vote, when his case shall be taken up and disposed of.

(f) Whoever challenges a qualified voter, resident of such primary election district, well-known as a member of the political party holding such primary election, for the purpose of annoying or delaying voters shall, for each and every such offense, be fined \$100 or imprisoned not more than 6 months, or both. (20 Del. Laws, c. 393, § 33; 27 Del. Laws, c. 66, § 1; Code 1915, § 1707; Code 1935, § 1795; 15 Del. C. 1953, § 3167; 57 Del. Laws, c. 567, § 25.)

§ 3166. Illegal election conduct; general penalties.

(a) Whoever, at any primary election:

(1) Falsely personates any elector or other person and votes or attempts to vote in or upon the name of any person, whether living or dead, or in or upon any false, assumed or fictitious name, or in or upon any name not his own; or

(2) Knowingly, willfully or fraudulently votes more than once for any candidate for the same office; or

(3) Votes in any other primary election district than the one in which he is a bona fide resident; or

(4) Votes or attempts to vote more than 1 ballot at any primary election district; or

(5) Solicits from any candidate or from any other person or receives, directly or indirectly from such candidate or from any other person, any money, or promise of place or position, or any valuable consideration of any kind, for his vote or support; or

(6) Not being entitled thereto, votes or attempts or offers to vote in any primary election district; or

(7) Having once voted, attempts or offers to vote again; or

(8) Knowingly, willfully or fraudulently does any unlawful act to secure opportunity for himself or for any other person to vote; or

(9) By force, threat, menace, intimidation, bribery or reward or offer to or promise thereof, or otherwise unlawfully either directly or indirectly, influences or attempts to influence any elector in giving his vote; or

(10) Promises any place or position for the purpose of securing any voter's support; or

(11) Prevents or hinders or attempts to prevent or hinder any qualified voter from freely exercising the rights of suffrage; or

(12) By any such means induces or attempts to induce any such voter to refuse to exercise any such right; or

(13) By any such means or otherwise compels or induces or attempts to compel or induce any inspector of any primary election or other officer of any primary election to receive the vote of any person not legally qualified or entitled to vote at the primary election in such district; or

(14) Knowingly, willfully or fraudulently interferes with, delays or hinders in any manner any inspector of any primary election, clerk or other officer of such election in the discharge of his duty; or

(15) By any such means or other unlawful means, knowingly, willfully or fraudulently counsels, advises, induces or attempts to induce any inspector of any primary election, clerk or other officer of any primary election, whose duty it is to ascertain, proclaim, announce or declare the result of any such primary election or to give or make any certificate, document, report, return or other evidence in relation thereto, to refuse or neglect to comply with his duty or to violate any law regulating the same, or to receive the vote of any person in any primary election district not entitled to vote therein or to refuse to receive the vote of any person entitled to vote therein; or

(16) Aids, counsels or advises, procures or assists any voter, person or inspector of any primary election or other officer of such primary election to do any act by law forbidden, or in this chapter constituted an offense, or to omit to do any act by law directed to be done,

shall, when not in this chapter otherwise particularly specified, for each offense be fined not more than \$200 or imprisoned not more than 2 years, or both.

(b) Whoever votes at the primary election of more than 1 political party before any 1 general election shall be punished as provided in subsection (a) of this section.

(c) Any act or deed declared an offense by the general laws of this State concerning elections and not in this section particularly mentioned shall also be an offense in all primary elections, and shall be punished in the same form and manner as is provided for the punishment of similar offenses by the general laws; and all the penalties and provisions of the general laws shall apply in such case with equal force and shall be as effective as though fully set

out in this chapter. (20 Del. Laws, c. 393, § 22; 27 Del. Laws, c. 66, § 1; Code 1915, § 1696; Code 1935, § 1784; 15 Del. C. 1953, § 3168.)

§ 3167. Bribery at primary elections; penalty.

Whoever, either in or out of this State, receives or accepts, or offers to receive or accept, or pays, transfers or delivers, or offers, or promises to pay, transfer or deliver, or contributes or offers, or promises to contribute to another to be paid or used, any money, or other valuable thing as a compensation, inducement or reward for the giving or withholding or in any manner influencing the giving or withholding a vote at any primary election held for the purpose of selecting delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates for public office or for the purpose of selecting delegates to a national political convention thereafter to be held for the purpose of nominating candidates for the office of President and Vice-President of the United States, shall be fined not less than \$100 nor more than \$5,000 or imprisoned not less than 1 month nor more than 3 years, or both. (Code 1915, § 1715A; 29 Del. Laws, c. 109, § 1; Code 1935, § 1803; 15 Del. C. 1953, § 3169.)

Cross references. — As to bribery not involving public servants, see §§ 881 and 882 of Title 11.

§ 3168. Stealing, destroying or falsifying registration records; penalty.

(a) Whoever, being an inspector of any primary election, clerk or other officer or person having the custody of any registration records, oaths, return of votes, certificates, poll lists or any paper, document or evidence of any description in this chapter directed to be made, filed or preserved, steals, willfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes the whole or any part thereof, or fraudulently makes any entry, erasure or alteration therein, except as allowed and directed by this chapter, or permits any other person to do so, shall, for every such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both.

(b) Whoever, other than an officer mentioned in subsection (a) of this section, commits any of the acts specified in such subsection (a) or advises, procures or abets the commission of the same shall, for every such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both. (20 Del. Laws, c. 393, §§ 16, 17; 27 Del. Laws, c. 66, § 1; Code 1915, §§ 1690, 1691; Code 1935, §§ 1778, 1779; 45 Del. Laws, c. 150, § 4; 15 Del. C. 1953, § 3170; 50 Del. Laws, c. 426, § 4.)

Cross references. — As to tampering with public records, see §§ 873 and 876 of Title 11.

Ballots cast at an election are "papers" or "evidence" within the meaning of this section. *State v. Tyre*, Del. Gen. Sess., 67 A. 199 (1907).

Any unlawful and wilful changing or destruction of ballots constitutes an offense under this section, the purpose being to pre-

vent any such false and fraudulent acts. *State v. Tyre*, Del. Gen. Sess., 67 A. 199 (1907).

Willfully reading wrong candidate's name constitutes offense. — If, at the time of the counting of the votes at the close of the polls, an inspector willfully read the name of a candidate other than the one voted for, that would constitute a violation of the act by him. *State v. Tyre*, Del. Gen. Sess., 67 A. 199 (1907).

§ 3169. Alcoholic liquor in locale of primary election; penalty.

Whoever, during the time that any primary election is in progress in any primary election district or during the time the ballots cast thereat are being counted:

(1) Brings, takes, orders or sends into, or attempts to bring, take or send into any place of holding any primary election, any alcoholic liquor whatever; or

(2) At any such time and place drinks or partakes of any alcoholic liquor,

shall, for every such offense, be fined not less than \$5 nor more than \$10. (20 Del. Laws, c. 393, § 25; 27 Del. Laws, c. 66, § 1; Code 1915, § 1699; Code 1935, § 1787; 15 Del. C. 1953, § 3171.)

Cross references. — As to alcoholic liquors generally, see Title 4.

§ 3170. Tabulation of vote.

As soon as the polls are closed at a primary election, the votes shall be tabulated as set forth in Chapter 49 of this title. (20 Del. Laws, c. 393, § 28; 27 Del. Laws, c. 66, § 1; Code 1915, § 1702; Code 1935, § 1790; 15 Del. C. 1953, § 3172; 57 Del. Laws, c. 567, § 26; 58 Del. Laws, c. 148, § 44.)

§ 3171. Certification of results.

Each judge shall record on a certificate furnished for that purpose the total vote cast for each candidate in the election district. Both certificates shall then be signed by the inspector, judges and clerks and sealed in an envelope, which shall be signed across its sealed fold by each election officer. This envelope, together with other required records and supplies, shall immediately be delivered to the department of elections by the inspector. (20 Del. Laws, c. 393, § 29; 27 Del. Laws, c. 66, § 1; Code 1915, § 1703; Code 1935,

§ 1791; 15 Del. C. 1953, § 3173; 49 Del. Laws, c. 276, § 6; 50 Del. Laws, c. 426, § 17; 57 Del. Laws, c. 567, § 27; 58 Del. Laws, c. 148, § 144.)

§ 3172. Calculation of votes; ties.

(a) The department of elections shall forthwith calculate the total number of votes cast for each candidate in any contest held within its county and certify the candidate or candidates receiving the highest number of votes. In cases of statewide contests, the department shall report the results to the State Election Commissioner.

(b) In the case of any objection or dispute, the board of elections for the county involved shall convene within 48 hours of the closing of the polls to examine the matter, reviewing such records and hearing such testimony as it shall deem necessary. The board shall determine the result of the contested election and certify the name of the winning candidate or candidates. In the case of statewide contests, the State Election Commissioner shall be immediately notified of the board's determination.

(c) In all cases of a tie vote, the department shall immediately notify the chairman and secretary of the county committee of the political party holding the primary election. This committee shall convene within 5 days of such notification to determine which candidate shall be entitled to the nomination.

(d) In cases where there is a tie vote in a statewide contest, the State Election Commissioner shall immediately notify the chairman and secretary of the state committee of the political party involved, and that committee shall convene within 5 days, as provided above, to decide upon the nomination. (20 Del. Laws, c. 393, § 38; 27 Del. Laws, c. 66, § 1; Code 1915, § 1712; Code 1935, § 1800; 15 Del. C. 1953, § 3174; 58 Del. Laws, c. 148, § 145.)

§ 3173. Vote required for nomination.

In all cases the candidate receiving the highest number of votes shall be declared the nominee of the political party holding a primary election. (20 Del. Laws, c. 393, § 37; 27 Del. Laws, c. 66, § 1; Code 1915, § 1711; Code 1935, § 1799; 15 Del. C. 1953, § 3175.)

§ 3174. Death, physical, mental or other incapacity of nominee.

Whenever it shall be determined that a duly nominated candidate will be unable to serve if elected because of death, physical, mental or other incapacity, the vacancy shall be filled as provided in § 3303 of this title. If the vacancy occurs subsequent to the dates specified in § 3303 of this title, it shall be filled in accordance with § 3306 of this title. (20 Del. Laws, c. 393, § 37; 27

Del. Laws, c. 66, § 1; Code 1915, § 1711; Code 1935, § 1799; 15 Del. C. 1953, § 3176; 60 Del. Laws, c. 414, § 9.)

Designation of a successor on the ballot is governed by the provisions of this section where it has been found that the person

nominated in a primary election is ineligible to hold office. *Fonville v. McLaughlin*, Del. Supr., 270 A.2d 529 (1970).

Subchapter V. Presidential Primary Election

Revisor's note. — This subchapter became effective upon the signature of the Governor on July 13, 1992.

§ 3181. Primary to be held.

(a) Except as provided in subsection (b) of this section, a presidential primary election for all political parties shall be conducted in any year in which a President of the United States is to be elected.

(b) The requirements of this subchapter shall not require a presidential primary election for a political party in any year in which such a primary election would otherwise be required under the provisions of this subchapter, if the chairman of the political party notifies the State Election Commissioner in writing at least 30 days prior to the deadline set forth in § 3183(a) of this title that such political party elects not to be governed by the provisions of this subchapter. (68 Del. Laws, c. 365, § 1.)

§ 3182. Conduct of election.

Except as otherwise provided in this subchapter, the presidential primary election shall be conducted in accordance with the laws governing statewide office primaries. (68 Del. Laws, c. 365, § 1.)

§ 3183. Nomination, withdrawal and primary election dates.

(a) Notification of candidacy shall be on or before 12:00 noon of the 1st Friday in January. In the event the 1st Friday in January is a legal holiday, then the last day to give notification shall be the next day which is not a Saturday, Sunday or a legal holiday.

(b) Such notification of candidacy may be withdrawn on or before 12:00 noon of the 1st Friday in February. In the event the 1st Friday in February is a legal holiday, then the final day to withdraw shall be the next day which is not a Saturday, Sunday or a legal holiday.

(c) The presidential primary election for all political parties shall be conducted on the 1st Saturday after the presidential primary election conducted by the State of New Hampshire is held in any year in which a President of the United States is to be elected. (68 Del. Laws, c. 365, § 1.)

§ 3184. Candidates for presidential election.

A candidate shall be eligible for the presidential primary election if:

(1) Such candidate is affiliated with a political party recognized pursuant to § 3001 of this title, and has become eligible to receive payments from the Presidential Primary Matching Payment Account of the Internal Revenue Code; or

(2) Such candidate files a petition with the State Election Commissioner bearing at least 500 valid signatures of registered voters of this State of the same political party as the candidate. (68 Del. Laws, c. 365, § 1.)

§ 3185. Selection of delegates to national conventions; forwarding of rules to State Election Commissioner.

Delegates and alternate delegates to a national convention of a political party shall be apportioned, selected and/or elected in such manner as the rules of the party may provide. The chairman of any political party shall certify and forward to the State Election Commissioner a copy of the party rules at least 30 days prior to the last day on which candidates for the President of the United States must provide notification of their candidacy pursuant to this subchapter. (68 Del. Laws, c. 365, § 1.)

§ 3186. Delegate and alternate delegate commitments; authorization required; petitions.

(a) Whenever the rules of a party provide that a candidate for delegate or alternate delegate to a national convention of a political party may pledge his/her support to a presidential candidate, he/she shall be committed to support and vote for the nomination of that candidate as President as party rules provide.

(b) No candidate for delegate or alternate delegate shall make a commitment unless he/she has obtained prior authorization to do so from the presidential candidate to whom he/she is pledging support. No candidate for delegate or alternate delegate shall be allowed to commit himself to any presidential candidate unless the presidential candidate forwards notice to the State Election Commissioner upon a form prescribed by the Commissioner, that

he/she is a candidate for the nomination of President of the United States and that he/she authorizes delegates and alternate delegates to pledge their support and commit themselves to him/her.

(c) Nominations for delegates and alternate delegates committed to a particular presidential candidate shall be made only by the presidential candidate or his/her duly authorized representative who is certified by the State Election Commissioner as being authorized by the candidate to act on his/her behalf. (68 Del. Laws, c. 365, § 1.)

§ 3187. Filing fees.

A candidate filing for the presidential primary election shall tender a filing fee in the sum of \$2,000 to the State Election Commissioner, payable to the state committee of the candidate's political party. (68 Del. Laws, c. 365, § 1.)

§ 3188. Nomination of delegates and alternate delegates; qualifications.

(a) Each candidate for the presidential primary election shall submit to the State Election Commissioner and the state chairman of his or her political party, prior to the deadline established by this subchapter for withdrawal of his/her candidacy, a slate of proposed delegates and alternate delegates to the national convention of the candidate's party. The number of proposed delegates and alternate delegates submitted by any candidate shall not exceed the number of delegates and alternate delegates to the national convention authorized by the rules of the candidate's party, excluding any delegates that are preselected under party rules.

(b) Proposed delegates and alternate delegates must be of the same political party as the candidate who submits their names to the State Election Commissioner and eligible to vote in the presidential primary election. (68 Del. Laws, c. 365, § 1.)

§ 3189. Voting in presidential primary election; ballots.

The name of each presidential candidate in the presidential primary shall appear on the primary ballot. Each voter shall be permitted to vote for 1 presidential candidate. Delegates and alternate delegates to the national convention of a political party, excluding any delegates that are preselected under party rules, shall be apportioned based on the popular vote of each presidential candidate and selected by the state committee of the candidate's political party pursuant to that party's rules from the slate of proposed delegates and alternate delegates submitted under § 3188 of this title. (68 Del. Laws, c. 365, § 1.)

§ 3190. Polling places; minimum requirement.

The Department of Elections shall have at least 4 polling places open in each representative district for the presidential primary election. (68 Del. Laws, c. 365, § 1.)

CHAPTER 33. NOMINATIONS OF CANDIDATES BY PARTIES

Sec.	Sec.
3301. Certificates of nominations.	3305. Preservation of certificates for 6 months.
3302. Party title, figure or device.	3306. Supplemental certificates of nomination.
3303. Time of filing certificates.	3307. Publication of nominations.
3304. Duties of State Election Commissioner.	3308. Penalties.

§ 3301. Certificates of nominations.

(a) The nominations of the candidates for electors of President and Vice-President of the United States, together with the names of the candidates for President and Vice-President, and for United States Senator, Representative in Congress, Governor and all other state offices shall be certified to the State Election Commissioner by the presiding officer and secretary of the state convention or committee of each political party eligible to place candidates upon the ballot. The Commissioner shall forthwith send copies of each certificate of nomination to each county department of elections.

(b) The nominations of the candidates for State Senator, State Representative and the various county offices shall be certified to the department of elections for the county in which the contests are to be held, by the presiding officer and secretary of the county committee of each political party eligible to place candidates upon the ballot. Each department shall forthwith send copies of each certificate of nomination to the State Election Commissioner.

In the case of minor political parties not required to select candidates pursuant to Chapter 31 of this title, candidates shall be selected at each party's county nominating convention.

(c) The certificates shall be in writing and, in each case, shall contain the name of each person nominated, his residence and the office for which he is nominated, other than the names of the candidates for President and Vice-President for which no residence need be given. The persons making such certificates shall add to their signatures their respective places of residence and shall acknowledge such certificate before an officer duly authorized to take acknowledgments of deeds, and a certificate of such acknowledgment shall be fixed to the instrument.

(d) No candidate for the office of elector of President and Vice-President, United States Senator, Representative in Congress, Governor or other state officer to be voted for on a statewide basis shall be deemed nominated and no certificate of nomination for such candidate shall be made or filed, nor shall the name of any such candidate be placed on the ballot in any general election in this State, unless the candidate:

(1) Shall have been so nominated by receiving more than 50% of the eligible delegate vote on the final polled vote of a state nominating con-

vention of the political party advancing his candidacy, at a convention held not later than the fourth Saturday in August in the year of such general election and who was not required to run in a primary election; or

(2) Shall have received a majority of the votes cast by registered voters of the political party advancing his candidacy at a statewide primary election held pursuant to Chapter 31 of this title.

(e) No such state nominating convention shall have completed its business relative to such nominations until such time as 1 nominee for each of the aforesaid offices shall have received a vote greater than 50% of the total number of eligible delegate votes at such convention, which polled vote shall be considered final.

(f) The State Election Commissioner shall see to it that the nominations of candidates submitted to him and the eligibility of each political party to make such nominations conform to those requirements set forth in this title. Each county department of elections shall perform the same duty concerning those certificates of nomination submitted to it. (19 Del. Laws, c. 37, § 4; 27 Del. Laws, c. 65, § 4; Code 1915, § 1722; Code 1935, § 1811; 43 Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 15 Del. C. 1953, § 3301; 57 Del. Laws, c. 241, § 9; 57 Del. Laws, c. 567, §§ 28, 29; 58 Del. Laws, c. 258, § 9; 60 Del. Laws, c. 447, §§ 1-4; 61 Del. Laws, c. 418, §§ 12, 13.)

Republican state convention is "state action" within meaning of Fourteenth Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

State action which frustrates party organization is highly suspect. — If a given party chooses to organize by districts, but to allocate delegate strength to a district in which it has fewer numbers but a greater opportunity to achieve the practical advancement of the political ideas for the pursuit of which the association was formed, state action which frustrates that choice is highly suspect. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Party's right to freedom of association. — The ability of any political party in Delaware to organize itself on a district rather than an at large basis may be, or is believed to be,

significantly related to its pursuit of the power to impose its policies upon government. The freedom to associate for such a pursuit is the heart of the right of association guaranteed by the First Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Mandamus petition not required to state names or eligibility of candidates. — A mandamus petition to compel the county clerk of the peace to cause to be printed on a general election ballot a ticket designating a new political party was not required to state the names or eligibility of the candidates of the party; it was sufficient that the petition state that conventions were held, candidates for office selected and the names of the nominees filed in a certificate with the county clerk of the peace. *State ex rel. Shallcroff v. Slaughtner*, Del. Super., 16 A.2d 116 (1940).

§ 3302. Party title, figure or device.

(a) The certificates of nomination shall designate a title for the party which the convention or committee represents, together with any simple figure or device by which its lists of candidates may be designated on the ballot. The figure or title or device selected and designated by the state conventions or committee of any party shall be used by that party throughout this State. Only 1 figure or device shall be used by a party at any election. The same title, figure or device shall not be used by more than 1 party, and the party first certifying a name, title, figure or device to the county departments of elections shall have prior right to use the same, and provided further that the Democratic Party and the Republican Party shall have exclusive use of such title and no other party shall use the word "Democratic" or "Republican" or any variation thereof in its title. Such figure or device may be the figure of a star, an eagle, a plow, or some such appropriate symbol, but the coat of arms or seal of this State or of the United States or the flag of the United States or of this State shall not be used as such figure or device.

(b) In case of a division in any party and claim by 2 or more factions to the same party name or title, figure or device, if the division occurs at a state convention or extends throughout this State, the department of election of the several counties shall, within 10 days after any one of them has received the certificates of the contending factions, assemble in Dover, with the State Election Commissioner presiding and having the right to vote in event of a tie, and determine to which faction the name, title or figure properly belongs, giving the preference to the convention held at the time and place designated in the call of the regularly constituted party authorities; if, within 5 days after, the other faction presents no other party name or title, figure or device and certifies the same to the department of election, the latter shall again immediately assemble and select some suitable title, figure or device for such faction and the name shall be placed above the list of its candidates on the ballots. If the certificate of the contending factions are not received by the department of election in time for them to assemble at Dover before publishing the device and list of candidates in the newspapers, then and in that case each department of elections shall determine for itself which faction shall be entitled to the name, title, figure or device and shall select a name, title, figure or device for the other faction. In case of division in any party extending only throughout a county, district or hundred, the department of elections of the county in which such division occurs, upon the receipt of certificates from the contending factions, shall determine which faction is entitled to the party name, figure or device, and to have their nominations printed in the proper party column, and should the other faction fail to do so, the department of elections shall select for them a name or title, figure or device. (19 Del. Laws, c. 37, § 4; 27 Del. Laws, c. 65, § 4; Code 1915, § 1722; Code 1935, § 1811; 43

Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 15 Del. C. 1953, § 3302; 55 Del. Laws, c. 15; 60 Del. Laws, c. 447, §§ 5-7.)

Party name "Independent-Democrat" the ballot in a town election. Democratic permitted. — Subsection (a) of this section, standing alone, did not prevent the inclusion of the party name "Independent-Democrat" on Comm. v. Mayor of Elsmere, Del. Super., 373 A.2d 227 (1977).

§ 3303. Time of filing certificates.

Certificates of nomination to be filed with the State Election Commissioner or the departments of election, as the case may be, shall be filed before the close of the official business day on or before the 1st day of September of the year of any general election, and if the 1st day of September is a Sunday or legal holiday, then on the next official business day. In any case, where a candidate named on these certificates shall not already have given notice on the form provided by the State Election Commissioner and stipulated in § 3107 of this title, such notice shall accompany the filing of the respective certificate of nomination. However, when there is a contest in a primary election yet to be held, the winner of any such contest shall be named on a certificate of nomination to be filed before 12:00 noon the Tuesday following said primary election. (19 Del. Laws, c. 37, § 6; 27 Del. Laws, c. 65, § 6; Code 1915, § 1723; Code 1935, § 1812; 43 Del. Laws, c. 129, § 2; 45 Del. Laws, Sp. Sess., c. 4, § 1; 15 Del. C. 1953, § 3303; 55 Del. Laws, c. 324; 56 Del. Laws, c. 433, § 1; 58 Del. Laws, c. 258, § 10; 60 Del. Laws, c. 412, § 1; 60 Del. Laws, c. 447, § 8.)

§ 3304. Duties of State Election Commissioner.

(a) The State Election Commissioner, upon receiving the certificates of the several party conventions or committees, or any supplemental certificate, of the respective nominations of the candidates for electors of President and Vice-President of the United States and the names of the candidates for President and Vice-President of the United States as provided in this chapter, not less than 50 days before the day fixed by law for the ensuing general election, under his hand and seal of office, shall certify to the department of elections in each county the names of the candidates for President and Vice-President of the United States of the political parties, together with the designated title of each party and the figure or device of each party as certified to him.

(b) The State Election Commissioner, before the day of the ensuing general election, under his hand and seal of office, shall certify to the Prothonotary of the Superior Court in each county the nominations of the candidates for electors of President and Vice-President of the United States and the names of the candidates for President and Vice-President of the United States of each polit-

ical party as shall have been duly certified to him, which certificates shall be presented by the Prothonotary to the Superior Court of the county upon its convening for the performance of the duties imposed upon it by article V of the Constitution of this State. (Code 1935, § 1811; 44 Del. Laws, c. 119, § 1; 45 Del. Laws, c. 154, § 1; 15 Del. C. 1953, § 3304; 60 Del. Laws, c. 447, § 9.)

§ 3305. Preservation of certificates for 6 months.

The State Election Commissioner and the departments of election shall cause to be preserved in their respective offices all certificates of nomination filed under this chapter for 6 months after the date of filing thereof. (19 Del. Laws, c. 37, § 5; 27 Del. Laws, c. 65, § 5; Code 1915, § 1723; Code 1935, § 1812; 43 Del. Laws, c. 129, § 2; 45 Del. Laws, Sp. Sess., c. 4, § 1; 15 Del. C. 1953, § 3305; 60 Del. Laws, c. 447, § 10.)

§ 3306. Supplemental certificates of nomination.

(a) Whenever it shall be determined, subsequent to the dates specified in § 3303 of this title, that a duly nominated candidate will be unable to serve if elected because of death, physical, mental or other incapacity, the state, county or city (if a municipality holds its election at the time of the general election) committee shall convene within 24 hours of said determination to authorize the filing of a supplemental certificate of nomination for a substitute candidate, or to decline to issue such a certificate. However, in the case of the death of a candidate, said committee may convene within a reasonable period of time sufficient to have the new candidate's name placed on the ballot, but in no case later than 5 days from the date of death.

(b) Such certificate, if issued, shall be delivered to the officer or officers to whom the original certificate was submitted no later than 12:00 noon of the day following that meeting at which the certificate was authorized. However, if said meeting shall occur within 5 days of the day of election, the certificate shall be delivered immediately. (19 Del. Laws, c. 37, § 4; 27 Del. Laws, c. 65, § 4; Code 1915, § 1722; Code 1935, § 1811; 43 Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 274, § 1; 15 Del. C. 1953, § 3306; 60 Del. Laws, c. 412, § 2.)

§ 3307. Publication of nominations.

The department of elections for each county, at least 10 days before an election to fill any public office, except special elections, shall cause to be published in at least 2 newspapers within his county the nominations to office certified to him. The departments of election in each county shall make no less than 2 publications in each newspaper before such election. Such publications

shall be made in 2 newspapers representing the 2 principal political parties. In all cities where a daily newspaper is published, such notice shall also be published in 2 daily newspapers representing such political parties, if such there be. Such publications by the respective departments of election shall be arranged, so far as practicable, in the order and form in which they will appear when printed on the ballots and shall designate the devices under which the list of candidates of each party shall be printed. The departments of election shall not include in the publications to be made according to this section the name of any candidate whose certificate of nomination shall have been filed in their office, who shall have notified the department of elections in writing duly signed and acknowledged that he will not accept the nomination. The name of such candidate shall not be included with the names of the candidates to be printed on the ballots as in this chapter provided. (19 Del. Laws, c. 37, § 7; 27 Del. Laws, c. 65, § 7; Code 1915, § 1724; Code 1935, § 1813; 43 Del. Laws, c. 129, § 3; 44 Del. Laws, c. 119, § 2; 45 Del. Laws, c. 154, § 2; 47 Del. Laws, c. 149, § 2; 15 Del. C. 1953, § 3307; 60 Del. Laws, c. 447, § 11.)

§ 3308. Penalties.

Whoever:

- (1) Falsely makes or fraudulently defaces or fraudulently destroys any certificate of nomination or any part thereof; or
- (2) Files any certificate of nomination, knowing the same or any part thereof to be falsely made; or
- (3) Suppresses any certificate of nomination which has been duly filed or any part thereof; or
- (4) Conspires with other persons, induces or attempts to induce any other person to do any of such acts, whether or not any of such acts are committed or attempted to be committed;

shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 5 years. (19 Del. Laws, c. 37, § 30; 27 Del. Laws, c. 65, § 27; Code 1915, § 1734; Code 1935, § 1823; 15 Del. C. 1953, § 3308.)

PART IV

General Elections

Cross references. — As to constitutional requirements that all elections be free and equal, see Del. Const., art. I, § 3. As to time and manner of holding general election, see Del. Const., art. V, § 1. As to election of County Executive in New Castle County, see § 1111 of Title 9. As to election of County Ex-

ecutive and officials of the county governing body in New Castle County, see § 1166 of Title 9. As to election on question of establishment of sanitary and water districts in Sussex County, see § 6506 of Title 9. As to election of Receiver of Taxes and County Treasurer for Kent County, see § 8401 of Title 9.

CHAPTER 41. GENERAL PROVISIONS

Sec.	Sec.
4101. Residency requirements for candidates.	4105. Composition of election districts.
4102. Election districts; boundaries.	4106. Voting places.
4103. Division of election districts.	4107. [Transferred.]
4104. [Repealed.]	

§ 4101. Residency requirements for candidates.

The residency requirements for candidates for elective office shall be as set forth in the municipal charter, state statute or state Constitution governing the qualifications of candidates for elective office in the city, county, area or district in which the candidate proposes to seek elective office. In instances where a court has declared a residency requirement to be unconstitutional and until such time as a new residency requirement becomes effective, no person may be a candidate for elective office unless such person has been a resident of the city, county, area or district for a period of at least 1 year prior to seeking elective office. (15 Del. C. 1953, § 4101; 58 Del. Laws, c. 520.)

§ 4102. Election districts; boundaries.

The boundaries of the election districts in each county shall be established and designated by the department of elections for the county, subject to the limitations in this chapter. (Code 1935, § 1750; 46 Del. Laws, c. 315, § 1; 15 Del. C. 1953, § 4102.)

§ 4103. Division of election districts.

(a) Each department may divide such of the election districts, and such only, as by the election last preceding such division shall be found to contain a greater number of voters than can conveniently vote therein. Each election district so divided shall be at all times wholly within boundaries of 1 representative district.

(b) The department shall designate each election district by an appropriate title that will distinguish it from every other election district.

(c) The division of election districts shall be made at any time after a general election is held and before March 1 of the next succeeding general election year. (Code 1935, § 1750; 45 Del. Laws, c. 148, § 10; 45 Del. Laws, c. 149, § 10; 46 Del. Laws, c. 315, § 1; 15 Del. C. 1953, § 4103; 51 Del. Laws, c. 236.)

Purpose. — The main purpose of the General Assembly in providing for the establishment of several election districts in the respective representative districts was to facilitate

and make more convenient the casting of ballots by the qualified electors. State ex rel. Morford v. Tatnall, Del. Supr., 21 A.2d 185 (1941).

§ 4104. Notice of change of election district boundaries in New Castle County.

Repealed by 61 Del. Laws, c. 480, § 7, eff. July 11, 1978.

§ 4105. Composition of election districts.

(a) Each department shall create election districts consisting of a minimum of 500 registered voters and a maximum of 1800 registered voters, except where such composition would cause a conflict with representative, senatorial or councilmanic boundary lines.

(b) Allowance for individual exceptions may be made by the State Election Commissioner.

(c) Each department shall designate all election districts before the 1st day of March in any election year. (15 Del. C. 1953, § 4105; 55 Del. Laws, c. 259; 57 Del. Laws, c. 181, § 45; 58 Del. Laws, c. 215, § 44; 60 Del. Laws, c. 405, § 1.)

§ 4106. Voting places.

(a) Wherever possible, the department will use the same locations for both registration and voting.

(b) If it is not possible for the same location to be used for registration and voting, the board shall make a request for a different location for voting to the

State Election Commissioner who is authorized to grant such request. (15 Del. C. 1953, § 4106; 57 Del. Laws, c. 181, § 46.)

§ 4107. Maps at each polling place.

[Transferred.]

Revisor's note. — The material formerly codified under this section was transferred and now appears as § 4911(c) of this title.

CHAPTER 43. PRESIDENTIAL ELECTORS, UNITED STATES SENATORS, REPRESENTATIVES IN CONGRESS, GOVERNOR AND LIEUTENANT GOVERNOR

Sec.

4301. Presidential electors; election.
 4302. Proclamation of number to be chosen.
 4303. Meeting and voting of electors.
 4304. Substitute electors.
 4305. Clerk of electors; compensation.

Sec.

4306. Compensation of electors and clerk.
 4307. United States Senator.
 4308. Representative in Congress.
 4309. [Repealed.]
 4310. Qualifications of voters.

§ 4301. Presidential electors; election.

Electors of a President and Vice-President of the United States shall be chosen at the general election held in the year of a presidential election. The election of such electors shall be conducted in the same places, manner and form and by the same persons and officers, and under the same regulations in all respects, as the general election for the same year. (Code 1852, §§ 399, 401; 11 Del. Laws, c. 8; Code 1915, §§ 1856, 1858; Code 1935, §§ 1975, 1977; 15 Del. C. 1953, § 4301.)

o

Cross references. — As to procedure in case of failure to elect electors, see §§ 7331 to 7334 of this title.

§ 4302. Proclamation of number to be chosen.

The Governor in October next preceding every election of presidential electors shall by proclamation make known the number of presidential electors to be chosen and the day of the election. (Code 1852, § 400; Code 1915, § 1857; Code 1935, § 1976; 15 Del. C. 1953, § 4302.)

§ 4303. Meeting and voting of electors.

(a) The electors chosen or appointed in this State for the election of a President and Vice-President of the United States shall meet and give their votes at Dover on the day determined by Congress for that purpose.

(b) In all cases, the electors chosen or appointed in this State for the election of a President and Vice-President of the United States under this chapter shall be required to cast their individual votes in accordance with the plural-vote of the voters in this State. (Code 1852, § 408; Code 1915, § 1865; Code 1935, § 1984; 15 Del. C. 1953, § 4303; 68 Del. Laws, c. 436, §§ 1, 2.)

Effect of amendments. — 68 Del. Laws, c. 436, effective July 22, 1992, added (b).

§ 4304. Substitute electors.

In case of the death or inability to attend of either of the electors or if either of the electors be not present at the time and place of meeting by 12:00 noon, the electors present shall appoint an elector in the place of him not present. (Code 1852, § 409; Code 1915, § 1866; Code 1935, § 1985; 15 Del. C. 1953, § 4304.)

§ 4305. Clerk of electors; compensation.

The electors may employ a clerk, who shall receive for his services the sum of \$10. (Code 1852, § 410; Code 1915, § 1867; Code 1935, § 1986; 15 Del. C. 1953, § 4305.)

§ 4306. Compensation of electors and clerk.

The electors respectively shall receive for attendance and travel the same compensation as members of the General Assembly, to be paid, as also the compensation of the clerk, by the State Treasurer on a warrant signed by the electors out of any money in the treasury not otherwise appropriated. (Code 1852, § 411; Code 1915, § 1868; Code 1935, § 1987; 15 Del. C. 1953, § 4306.)

§ 4307. United States Senator.

A Senator from this State in the Senate of the United States shall be chosen by election at the general elections held in 1954 and in every sixth year thereafter and in 1958 and in every sixth year thereafter. The election of a United States Senator shall be conducted in the same places, manner and form and by the same persons and officers and under the same regulations in all respects as the general election for the same year. (Code 1915, § 1888; Code 1935, § 2007; 15 Del. C. 1953, § 4307.)

Cross references. — As to temporary or ad interim appointment whenever vacancy occurs by death, resignation or otherwise, see § 7321 of this title.

§ 4308. Representative in Congress.

A Representative for the people of this State in the Congress of the United States shall be chosen at the biennial general election. The election of a Representative in Congress shall be conducted in the same places, manner and form and by the same persons and officers and under the same regulations in all respects, as the election for members of the General Assembly, and

the votes given for Representative in Congress shall be calculated and ascertained at the same time and place, in the same manner and by and under the same means and regulations as those for members of the General Assembly. (Code 1852, §§ 412, 413; 11 Del. Laws, c. 362, § 2; Code 1915, §§ 1877, 1878; Code 1935, §§ 1996, 1997; 15 Del. C. 1953, § 4308.)

Cross references. — As to filling of vacancies in Office of Representative of the United States Congress, see §§ 7301 to 7307 of this title.

§ 4309. Governor and Lieutenant Governor; joint election.

Repealed by 61 Del. Laws, c. 480, § 9, eff. July 11, 1978.

§ 4310. Qualifications of voters.

All citizens of this State having the right to vote for representatives in the General Assembly are qualified to vote for presidential electors, United States Senator and Representative in Congress. (Code 1852, § 398; Code 1915, §§ 1855, 1889; Code 1935, §§ 1974, 2008; 15 Del. C. 1953, § 4309; 57 Del. Laws, c. 169, § 2.)

**CHAPTER 44. REGISTRATION AND VOTING FOR
PRESIDENTIAL ELECTORS ONLY BY UNITED
STATES CITIZENS WHO FAIL TO FULFILL
CERTAIN RESIDENCE REQUIREMENTS**

Sec.

4401. Registration qualifications.
4402. Time of registration.
4403. Place of registration; records.
4404. Method of registration.
4405. Place of voting; eligibility for absentee voting.

Sec.

4406. Voting officials.
4407. Voting procedure.
4408. Tallying and recording of vote.

§ 4401. Registration qualifications.

The department in each of the 3 counties of this State shall permit registration by:

(1) Any citizen of this State who shall have changed his residence from 1 county, hundred, or election district to another located within the State, but who has not resided therein for a sufficient time so as to be otherwise eligible to register from his new place of residence; provided that such citizen would have been eligible to register within this State had he not moved; and provided that he is not entitled to vote in any other place; and provided further that such citizen would be otherwise qualified to register under the Constitution of this State.

(2) Any citizen of the United States who is a bona fide resident of this State as of the day of final registration next preceding a presidential election and provided that he is not entitled to vote in any other state. (15 Del. C. 1953, § 4401; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 2.)

§ 4402. Time of registration.

The department of each county shall be open for registration by citizens qualifying under this chapter, during regular registration hours otherwise set by law, but no sooner than 90 days before such presidential election and no later than the last general registration day. (15 Del. C. 1953, § 4402; 56 Del. Laws, c. 96.)

§ 4403. Place of registration; records.

The departments of election shall permit aforementioned registration under this chapter only in the central office and the names and addresses of persons so registered shall be kept in a separate poll book. (15 Del. C. 1953, § 4403; 56 Del. Laws, c. 96.)

§ 4404. Method of registration.

(a) Each person who shall apply at the office of any department of elections for registration under this chapter shall be examined under oath or affirmation as to his name, age, address, qualification as a voter and his right to register pursuant to this chapter as such on forms supplied by the departments of elections.

(b) Any person who so qualifies under this chapter may register absentee by applying in writing to the department in the county in which he resides for an absentee registration affidavit at any time during the year in which a presidential election is to be held, up to but not after 30 days before the date the presidential election is to be held, and by returning such affidavit to the said department not later than 30 days prior to the date of the presidential election. The absentee registration affidavit shall state, at least, the name, age, address, qualification as a voter and the right to register pursuant to this chapter, and shall be made out by the applicant before an officer authorized by law to administer oaths. (15 Del. C. 1953, § 4404; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 3.)

§ 4405. Place of voting; eligibility for absentee voting.

(a) Each department shall designate 1 centrally located polling place in its county where those persons who are qualified to vote pursuant to this chapter in their county shall be permitted to vote.

(b) Absentee voting shall be allowed for those covered in this chapter provided they meet the requirements set up in § 5502 of this title. (15 Del. C. 1953, § 4405; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 3.)

§ 4406. Voting officials.

Election officers for the polling places designated pursuant to § 4405 of this title shall be appointed by each department pursuant to Chapter 47 of this title. (15 Del. C. 1953, § 4406; 56 Del. Laws, c. 96.)

§ 4407. Voting procedure.

(a) After proper verification of registration, registrants under this chapter shall be permitted to vote by voting machine for presidential electors only. The voting hours shall be the same as general voting hours.

(b) Any person duly registered pursuant to § 4404 of this title who shall be unable to appear to cast his ballot at any presidential election at the regular polling place of the election district in which he is registered may cast an absentee ballot. Such duly qualified registrant must apply in writing to the

department of elections of the county in which he is registered not later than 7 days immediately prior to said election and must return said ballot to the appropriate department of elections not later than the time of the closing of the polls on the day of said election. (15 Del. C. 1953, § 4407; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 4.)

§ 4408. Tallying and recording of vote.

At the close of voting hours on election day, the election officers appointed under this chapter shall read the results from the voting machine and the absentee ballots, record them on forms supplied by the department of elections, attest to their accuracy by signature of all election officers present and return such form to the department of elections office. The returns so reported shall be then added to the county vote for presidential electors and be so presented to the boards of canvass. (15 Del. C. 1953, § 4408; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 5.)

CHAPTER 45. BALLOTS, ELECTION SUPPLIES AND POLLING PLACES

Sec.

- 4501. Single ballot for all candidates.
- 4502. Form and designation of ballots.
- 4503. Printing of ballots.
- 4504. Envelopes for ballots and other election supplies; obtaining and packaging.
- 4505. Substitution of candidate's name after printing of ballots.
- 4506. Tally sheets.
- 4507. Sheet containing oaths of election officers, certificate of qualification, laws.
- 4508. Certificates of the vote cast in each election district.

Sec.

- 4509. Election supplies to be furnished by department of elections.
- 4510. Supplies for election officers; custody of records and supplies; maps and lists of election districts.
- 4511. Reuse of election supplies.
- 4512. Polling places; designation and preparation.
- 4513. Substitute polling places.
- 4514. Expenses of general election.
- 4515. Payment procedure; source of pay.

§ 4501. Single ballot for all candidates.

There shall be a single ballot for Presidential, Vice-Presidential, state, county and district candidates. (Code 1915, § 1725; Code 1935, § 1811; 43 Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 149, § 1; 15 Del. C. 1953, § 4501.)

§ 4502. Form and designation of ballots.

(a) For each election, the party emblem adopted by each political party and its name shall appear on the ballot with the names of its candidates, arranged in line with the titles of the offices for which they are contesting, along with space for the voter to write in the name of any candidate of his choice, as prescribed in § 5005(b) of this title. In those years in which a President and Vice-President of the United States are to be elected the ballot shall be designated "Presidential, Vice-Presidential, State, County and District Ballot"; in other years the ballot shall be designated "State, County and District Ballot." The names of all candidates of any party shall be placed under the title and device of such party as designated in the certificate filed with the department of elections by such party's authorized agent or agents or, if none is designated, under some suitable title or device to be selected by the department of elections. When a President and Vice-President are to be elected, the names of the candidates for those offices shall be placed at the top of the list of candidates for all offices to be voted upon. The device named and chosen and the lists of candidates of the Democratic Party shall be placed in the first column on the left-hand side of the ballot, of the Republican Party in the second column, and of any other party, and the space for the voter to write in the name of any candidate of his choice for any office, in such order as the department of elections shall decide. The names of unaffiliated candidates shall appear in alphabetical order, under the heading "Unaffiliated Candidates," after the listing of various political parties. Where there are more political

parties and unaffiliated candidates than can be accommodated in parallel columns on the voting machine and/or absentee ballot, names of political party candidates or unaffiliated candidates may be placed in the same column, in such manner as may be determined by each county department of elections.

(b) All ballots for the same election shall be of uniform size, of the same quality and color of paper and sufficiently thick that the printing cannot be distinguished from the back. The arrangement of the ballots shall in general conform, as nearly as possible, to the sample ballot set forth in this section.

(c) The ballots prepared under this chapter shall have the representative district number printed in the margin at the top. In a presidential year they shall conform to the following design. In a nonpresidential year they shall conform as nearly as possible to such design.

OFFICIAL BALLOT
 Representative District Number _____
 Presidential, Vice-Presidential, State,
 County and District Ballot

WRITE-IN		PARTY EMBLEM	PARTY EMBLEM	PARTY EMBLEM
		Name of Party	Name of Party	Name of Party
	For President	JOHN DOE	JOHN DOE	JOHN DOE
	For Vice-President	JOHN DOE	JOHN DOE	JOHN DOE
	For United States Senator	JOHN DOE	JOHN DOE	JOHN DOE
	For Representative in Congress	JOHN DOE	JOHN DOE	JOHN DOE
	For Governor	JOHN DOE	JOHN DOE	JOHN DOE
	For Lieutenant Governor	JOHN DOE	JOHN DOE	JOHN DOE

(d) Absentee ballots shall be prepared in accordance with this section. (19 Del. Laws, c. 37, § 8; 20 Del. Laws, c. 396, § 2; 27 Del. Laws, c. 65, § 8; Code 1915, §§ 1725, 1725A; 28 Del. Laws, c. 95; Code 1935, § 1814; 43 Del. Laws, c. 129, § 4; 44 Del. Laws, c. 119, § 3; 45 Del. Laws, Sp. Sess., c. 4, § 3; 47 Del. Laws, c. 149, § 3; 15 Del. C. 1953, § 4502; 59 Del. Laws, c. 54, § 1; 61 Del. Laws, c. 418, § 14; 61 Del. Laws, c. 480, §§ 10, 11.)

Regulations imposed by Delaware laws upon candidates of political parties seeking to obtain a ballot position are not invalidated. *Maddox v. Wrightson*, 421 F. Supp. 1249 (D. Del. 1976).

Placement of Democratic party candidates on ballot. — Subsection (a) of this sec-

tion, standing alone, did not prevent the placing of the Democratic party candidates in the third column from the left on the ballot for a town election as directed by town council. *Democratic Comm. v. Mayor of Elsmere, Del. Super.*, 373 A.2d 227 (1977).

§ 4503. Printing of ballots.

(a) The department of elections in each county shall print the ballots to be used in the voting machines in accordance with §§ 4502, 5005 and 5006 of this title.

(b) In addition to the ballots mentioned in subsection (a) of this section, the department of elections in each county shall have printed and shall deliver to the department of elections for its county, taking its receipt therefor, the ballots and the official envelopes for absentee voters authorized by the absentee voting laws of this State, as soon as possible after the final date of the filing of nominations, but in any event 45 days prior to the date of the ensuing general election. The quantity of ballots to be printed pursuant to this subsection shall not exceed 2 times the estimated number of absentee voters eligible to vote at the ensuing general election, as shall be estimated by the department of elections according to the best information it can obtain. (19 Del. Laws, c. 37, § 11; 20 Del. Laws, c. 396, § 8; 22 Del. Laws, c. 62, § 3; 27 Del. Laws, c. 65, § 10; Code 1915, § 1728; 28 Del. Laws, c. 96; Code 1935, § 1817; 42 Del. Laws, c. 118; 43 Del. Laws, c. 129, § 5; 45 Del. Laws, Sp. Sess., c. 4, § 2; 45 Del. Laws, c. 154, § 3; 47 Del. Laws, c. 149, § 4; 48 Del. Laws, c. 375, § 1; 15 Del. C. 1953, § 4503; 49 Del. Laws, c. 294, §§ 2, 3; 54 Del. Laws, c. 69, § 1; 57 Del. Laws, c. 567, §§ 32, 33; 58 Del. Laws, c. 148, §§ 45, 46.)

§ 4504. Envelopes for ballots and other election supplies; obtaining and packaging.

(a) The department in each county shall provide ungummed envelopes of a sufficient size to contain the absentee ballots to be used at any election. Each envelope shall have printed thereon:

**OFFICIAL ENVELOPE
FOR**

Representative District Number
Date of Election
.....
.....

Clerks of Election

and shall be so printed to enable the clerks of election to write their full names on the lines above the words "Clerks of Election."

(b) The number of envelopes to be provided and printed by the department shall be equal to the number of official absentee ballots printed. (19 Del. Laws, c. 37, § 11; 20 Del. Laws, c. 396, § 8; 22 Del. Laws, c. 62, § 3; 27 Del. Laws, c. 65, § 10; Code 1915, § 1728; 28 Del. Laws, c. 96; Code 1935, § 1817; 42 Del. Laws, c. 118; 48 Del. Laws, c. 375; 15 Del. C. 1953, § 4504; 49 Del. Laws, c. 294, § 4; 54 Del. Laws, c. 69, § 1; 55 Del. Laws, c. 92, § 1; 57 Del. Laws, c. 567, §§ 34-36.)

§ 4505. Substitution of candidate's name after printing of ballots.

Whenever a supplemental certificate of nomination is filed naming a substitute candidate, as elsewhere provided in this title, the department of elections shall promptly provide new ballots or, if necessary, pasters. If the new ballots or pasters are received by the department too late to put them in the voting machines prior to the preparation, sealing and inspection of the machines, then the department shall deliver the necessary number of pasters to the inspectors of the appropriate election districts, who shall see to it that the pasters are placed and maintained on the voting machines and certificates of election. (19 Del. Laws, c. 37, § 9; 27 Del. Laws, c. 65, § 9; Code 1915, § 1726; Code 1935, § 1815; 15 Del. C. 1953, § 4506; 58 Del. Laws, c. 148, § 47; 61 Del. Laws, c. 480, § 12.)

§ 4506. Tally sheets.

There shall be furnished for each election district absentee ballot tally sheets and write-in vote tally sheets each of which shall consist of a margin on the left for the names of the persons voted for and squares formed by parallel lines drawn from the bottom to the top of the sheet, each square to be sufficient to contain 5 distinct rows of 5 distinct marks in each row, and there shall be a sufficient number of squares in each row of squares from left to right to contain more marks than any person will probably receive votes in the election district. (21 Del. Laws, c. 38, § 5; Code 1915, § 1744; Code 1935, § 1833; 15 Del. C. 1953, § 4511; 49 Del. Laws, c. 294, § 9; 58 Del. Laws, c. 148, § 49.)

§ 4507. Sheet containing oaths of election officers, certificate of qualification, laws.

Each department shall have printed on a single sheet the following items in the following order:

(1) Three distinct forms of the oaths or affirmations prescribed in § 4904 of this title for the inspector and judges of election, which forms shall be numbered and distinguished as No. 1, No. 2 and No. 3.

(2) A form of the certificate of the qualification of the inspector and judges of election, which shall be as follows:

"..... County and Election District Representative District, ss.: We, subscribers, Inspector (or other officers authorized by law to hold the election) and the Judges, for said Election District of the general election, therein held on the Tuesday next after the first Monday in November in the year of our Lord one thousand nine hundred and certify that on said day, before opening the said election in said election district, the foregoing oath or affirmation was duly administered to each of us, according to law."

All blanks in such certificate shall be filled in by the department before the sheet containing it is delivered to the registrar.

(3) Subsection (a) of § 4905 of this title.

(4) Form of oath or affirmation prescribed in § 4906 of this title for clerks of election.

(5) Section 4907 of this title.

(6) Section 5123 of this title. (19 Del. Laws, c. 37, § 25; 21 Del. Laws, c. 38, § 7; 27 Del. Laws, c. 65, §§ 20, 22; Code 1915, §§ 1746, 1761; Code 1935, §§ 1835, 1850; 15 Del. C. 1953, § 4513.)

§ 4508. Certificates of the vote cast in each election district.

(a) Each department shall print 3 forms of a certificate of the votes cast in each election district in the county. The certificate shall be in the same sequence as is shown on the official ballot. In a presidential year it shall conform to the following design. In a nonpresidential year it shall conform as nearly as possible to such design.

" _____ County and _____

_____ Representative District, ss: At the general election held in the said election district, on the Tuesday next after the first Monday in November, A.D. nineteen hundred and _____ the votes stand as follows:

For President of the United States

..... Received Votes
..... Received Votes

For Vice-President of the United States

..... Received Votes
..... Received Votes

For Senator in the Senate of the United States

..... Received Votes
..... Received Votes

For Representative in Congress

..... Received Votes
..... Received Votes

For Governor

..... Received Votes
..... Received Votes

For Lt. Governor

..... Received Votes
..... Received Votes

For Attorney General

.....	Received	.....	Votes
.....	Received	.....	Votes

For Insurance Commissioner

.....	Received	.....	Votes
.....	Received	.....	Votes

For State Treasurer

.....	Received	.....	Votes
.....	Received	.....	Votes

For Auditor of Accounts

.....	Received	.....	Votes
.....	Received	.....	Votes

For Senator in the General Assembly

.....	Received	.....	Votes
.....	Received	.....	Votes

For Representative in General Assembly

.....	Received	.....	Votes
.....	Received	.....	Votes

For Prothonotary

.....	Received	.....	Votes
.....	Received	.....	Votes

For Clerk of the Peace

.....	Received	.....	Votes
.....	Received	.....	Votes

For Register of Wills

.....	Received	.....	Votes
.....	Received	.....	Votes

For Recorder

.....	Received	.....	Votes
.....	Received	.....	Votes

For Register of Chancery

.....	Received	.....	Votes
.....	Received	.....	Votes

County Executive

.....	Received	.....	Votes
.....	Received	.....	Votes

County Council or Levy Court

.....	Received	.....	Votes
.....	Received	.....	Votes

For Receiver of Taxes and County Treasurer

.....	Received	.....	Votes
.....	Received	.....	Votes

For County Comptroller

.....	Received	.....	Votes
.....	Received	.....	Votes

For Sheriff

.....	Received	.....	Votes
.....	Received	.....	Votes

And we further certify that the Clerks of Election were duly sworn or affirmed according to law, and that we were duly sworn or affirmed.

In Testimony, we the Judges of Election for said election district have hereunto set our hands the day and year aforesaid.

(Signature)"

(b) In the printed forms of certificates before the same shall be delivered by the department of elections as above directed, the name of the county and election district and of representative district and the date of the year shall be inserted in the blanks for said purposes in the foregoing form, and the offices to be filled at the election shall be inserted with blanks under each to contain the names of the persons who may be voted for, with the number of votes, and

the offices not to be filled at the election shall be omitted. The certificate shall include for each candidate the number of votes received as follows: "Voting machine no. —," "absentee ballots" and "totals." There shall be a space provided to record the number of absentee ballots counted and the number of absentee ballots rejected. (21 Del. Laws, c. 38, § 6; Code 1915, § 1745; Code 1935, § 1834; 44 Del. Laws, c. 119, § 5; 15 Del. C. 1953, § 4514; 52 Del. Laws, c. 221, § 4; 57 Del. Laws, c. 567, § 39; 58 Del. Laws, c. 148, § 50; 59 Del. Laws, c. 54, § 2.)

§ 4509. Election supplies to be furnished by department of elections.

The department for each county shall, after the 23rd day of October and prior to the opening of the polls in each year in which a general election is held, deliver to the inspector of each election district in the county:

- (1) Three printed forms of a certificate of the votes cast in the election district;
- (2) A printed form of poll list;
- (3) One sheet of instructions to election officers;
- (4) One printed form for the oath or affirmation of inspectors, judges and clerks of election authorized to hold the election and containing the certificate of administering such oath or affirmation; and
- (5) Fifteen blank forms of oaths provided for in § 4940 of this title;
- (6) A sufficient supply of voter signature cards which shall be of a sufficient size to record the voter's signature, his permanent significant registration number and the data specified in § 4937(a) of this title when applicable. The form of the voter signature cards shall be determined by the Commissioner, and shall be uniform throughout the State. (19 Del. Laws, c. 37, § 32; 21 Del. Laws, c. 38, § 3; 26 Del. Laws, c. 48, § 1; 27 Del. Laws, c. 65, § 29; Code 1915, §§ 1735, 1742; Code 1935, §§ 1824, 1831; 44 Del. Laws, c. 120, § 1; 44 Del. Laws, c. 123, § 1; 45 Del. Laws, c. 148, § 31; 45 Del. Laws, c. 149, § 31; 45 Del. Laws, c. 154, §§ 5, 7; 15 Del. C. 1953, § 4515; 49 Del. Laws, c. 294, § 11; 50 Del. Laws, c. 175, § 1; 58 Del. Laws, c. 148, §§ 51-54; 60 Del. Laws, c. 414, § 10.)

§ 4510. Supplies for election officers; custody of records and supplies; maps and lists of election districts.

The departments shall prepare and furnish all necessary maps, forms, oaths, certificates, blanks and instructions for the use of election officers and

provide for the furnishing of such officers therewith and with all necessary supplies and also a copy of the registration and election laws.

Each department shall have and retain the custody of all books, maps, forms, oaths of office and of removal, blanks, instructions and all other records and supplies of every kind or description pertaining to the department.

Each department shall furnish to each of its election districts a map of the representative district in which it is located of sufficient size to show clearly the boundaries of its election districts and the location of the polling places. Each election district shall also be provided with a list of all election districts and polling places within its respective county. (19 Del. Laws, c. 39, § 4; Code 1915, § 1673; Code 1935, § 1760; 44 Del. Laws, c. 112, § 2; 15 Del. C. 1953, § 4516; 58 Del. Laws, c. 215, § 20.)

§ 4511. Reuse of election supplies.

All supplies furnished to the election officers shall be prepared, so far as practicable, in such a manner so that such supplies as are not used at such election or thereafter by law destroyed, can be used at the next general or special election or elections and the officers and departments required by law to furnish such supplies shall use the supplies as have theretofore been returned to and as are otherwise in the possession of the respective departments and the officers and departments required by law to furnish such supplies shall only purchase or contract for the amount of supplies as are required by law in excess of such amount so returned to and otherwise in the hands and possession of the respective departments. (27 Del. Laws, c. 65, § 34; Code 1915, §§ 1815, 1815A; 34 Del. Laws, c. 110, § 3; Code 1935, § 1904; 45 Del. Laws, c. 154, § 17; 15 Del. C. 1953, § 4517.)

§ 4512. Polling places; designation and preparation.

(a) Each department shall designate and procure for each election district in its county a polling place, which shall be the same as its registration place, wherever possible. The suitability, convenience and accessibility of the polling place to the voters of the election district must be given prime consideration in its selection. This selection shall be determined according to this order of preference: (1) Within the geographical boundaries of the election district to be served; (2) within the boundaries of an election district which immediately adjoins the district to be served and is in the same representative district; (3) within the boundaries of an election district which immediately adjoins the district to be served, but is in a different representative district, provided such designation is made by a unanimous vote of the members present at a meeting of the board of elections for the county.

(b) The departments of elections shall designate only conveniently located and readily accessible polling places for each election district. Such polling places, whenever possible, shall be located in public buildings which shall include suitable government buildings, schools, firehouses, community buildings, churches, financial institutions, lobbies or other gathering places at least 350 square feet in size or apartment buildings or complexes consisting of 50 or more units or other such similar structures; however, in the event that no such public building is available in a conveniently located and readily accessible place, then and in that event, the board of elections, by unanimous consent, may with the concurrence of the Election Commissioner, designate a suitable, conveniently located and readily accessible private business establishment, but in no event shall the department of elections designate a private residence as a polling place.

(c) The same public building may be designated as housing the polling place for 1, 2, or 3 election districts, in the discretion of the departments, if suitable precautions are taken to separate and identify the specific polling place within the building to be used for each election district.

(d) The election officers of each election district shall fit out the room in the polling place in which the election will be conducted for their election district with the necessary number of voting machines and shall do everything else required to be done in order to prepare and furnish such election room. The room shall have a door or entrance of easy access and, if practical, a separate means of exit. The table shall occupy such a position in the room as to enable the election officers and the challengers to easily communicate with each other.

(e) Whenever the department has designated as polling places facilities owned or leased by agencies or subdivisions of this State, it shall be the duty of the officials of such agencies or subdivisions to make these facilities available and to provide a suitable and acceptable location, heat, lighting and other services necessary for the conduct of the election, so long as such use is not incompatible with the primary function of the agency or subdivision.

(f) The department of elections shall publish in a newspaper of general circulation, either as an advertisement or as a separate insert, a listing of all polling places by district, at least once during the week preceeding the election. (19 Del. Laws, c. 39, § 3; 19 Del. Laws, c. 37, § 1; 21 Del. Laws, c. 38, § 2; 27 Del. Laws, c. 65, § 1; Code 1915, §§ 1672, 1738; 37 Del. Laws, c. 125; Code 1935, §§ 1759, 1827; 42 Del. Laws, c. 115, § 10; 42 Del. Laws, c. 116, § 1; 43 Del. Laws, c. 124, § 1; 44 Del. Laws, c. 112, § 1; 44 Del. Laws, c. 122, § 1; 45 Del. Laws, c. 148, § 25; 45 Del. Laws, c. 149, § 25; 15 Del. C. 1953, § 4518; 57 Del. Laws, c. 181, § 47; 57 Del. Laws, c. 567, § 39A; 58 Del. Laws, c. 148, §§ 55-58; 58 Del. Laws, c. 215, § 21; 58 Del. Laws, c. 398, § 2; 61 Del. Laws, c. 480, § 13; 63 Del. Laws, c. 26, § 1.)

§ 4513. Substitute polling places.

If at any time it becomes impracticable to hold an election in the public building designated by a department for any election district or districts, such department may designate another public building as near as can be conveniently obtained to the place previously selected. In such event, sufficient public notice thereof shall be given by suitable news media. (19 Del. Laws, c. 37, § 1; 21 Del. Laws, c. 38, § 2; 27 Del. Laws, c. 65, § 1; Code 1915, § 1738; 37 Del. Laws, c. 125; Code 1935, § 1827; 44 Del. Laws, c. 122, § 1; 15 Del. C. 1953, § 4519; 57 Del. Laws, c. 181, § 48; 58 Del. Laws, c. 215, § 22.)

§ 4514. Expenses of general election.

Except where otherwise provided by statute, all necessary costs and expenses incurred in carrying into effect Part IV of this title shall be paid by the State.

The compensation of the election officers and clerks and the rent for polling places shall be paid in the month in which the general election is held. (27 Del. Laws, c. 65, § 34; Code 1915, §§ 1675, 1815; 38 Del. Laws, c. 88, § 1; Code 1935, §§ 1762, 1766, 1904; 42 Del. Laws, c. 115, § 11; 45 Del. Laws, c. 147, § 14; 45 Del. Laws, c. 148, §§ 28, 31, 32; 45 Del. Laws, c. 149, §§ 28, 31, 32; 15 Del. C. 1953, § 4520; 51 Del. Laws, c. 149, § 4.)

§ 4515. Payment procedure; source of pay.

Each department, in the month of November, in each year in which a general election is held, shall ascertain the amount of compensation due inspectors of election, the judges of election and the clerks of election, in its county, and when so ascertained the president and administrative director of the department shall certify the same to the State Treasurer, who shall thereupon pay to the persons entitled the sums severally due them. (19 Del. Laws, c. 39, § 28; Code 1915, § 1675; Code 1935, §§ 1762, 1766; 42 Del. Laws, c. 115, § 11; 45 Del. Laws, c. 147, § 14; 45 Del. Laws, c. 148, §§ 28, 32; 45 Del. Laws, c. 149, §§ 28, 32; 15 Del. C. 1953, § 4521; 51 Del. Laws, c. 149, § 5; 58 Del. Laws, c. 148, § 59.)

CHAPTER 47. ELECTION OFFICERS

Subchapter I. Appointment of Election Officers

Sec.

4701. Appointment; term.
 4702. Appearance of election officers for taking of oath and instruction.
 4703. Oath of office for election officers.
 4704. Certificate of appointment.
 4705. Removal from office.

Sec.

4706. Vacancies; alternates.
 4707. Compensation.
 4708. Exemptions from military duty and service as inspector, judge of election or clerk.

Subchapter II. Instruction of Election Officers

4741. Instruction of election officers.

Subchapter I. Appointment of Election Officers

§ 4701. Appointment; term.

(a) The county executive committee of each of the 2 principal political parties shall submit to the department no later than February 1 of each general election year a list containing the names of 8 registered voters for each election district in the county. The department shall appoint all election officers, including clerks, from these lists; provided, that if the lists are not filed with the department by February 1 or if the number of names submitted are not sufficient, the department shall select some qualified person or persons shown on its records to be registered in the appropriate political party.

(b)(1) During the month of April in each general election year, each department shall appoint for each election district in its county 1 inspector; 2 judges of election, 1 from each of the 2 principal political parties; and 2 clerks of election, 1 from each of the 2 principal political parties, provided that where the election district has fewer than 100 voters of a principal political party, the department may appoint such party's clerk or clerks of election from a different election district within the same representative district. The terms of the inspectors, judges, and clerks of election shall extend from the day of their appointment to April 1 of the next general election year. They shall appear before the department to qualify by subscribing to the prescribed oath (or affirmation) and receiving suitable instruction in the manner provided for all officers in §§ 4702 and 4703 of this title.

(2) Whenever an election district is to be provided more than 1 voting machine, 2 additional clerks, 1 from each principal political party, shall be appointed for each additional voting machine. These additional appointments shall be made in April whenever the number of additional voting machines is known to the department. Subsequent additional appointments shall be made as soon as practicable after the department determines the need for additional voting machines in an election district.

(19 Del. Laws, c. 39, § 3; 20 Del. Laws, c. 393, § 10; 21 Del. Laws, c. 40, § 3; 21 Del. Laws, c. 41, § 1; Code 1915, §§ 1665, 1666, 1717; 37 Del. Laws, c. 119; Code 1935, §§ 1752, 1753, 1806; 42 Del. Laws, c. 115, §§ 6, 7; 43 Del. Laws, c. 128, § 1; 45 Del. Laws, c. 147, §§ 5, 6; 45 Del. Laws, c. 148, § 30; 45 Del. Laws, c. 149, § 30; 45 Del. Laws, c. 151, § 2; 15 Del. C. 1953, § 4701; 49 Del. Laws, c. 4, § 5; 58 Del. Laws, c. 215, § 24; 67 Del. Laws, c. 354, § 22.)

Cross references. — As to penalty for refusal of inspector or judge of election to serve, see § 5112 of this title.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, rewrote the section.

Election not invalidated by failure to

have full number of officers present. — The failure to have present at the election the full number of election officers required by law is not reason enough to invalidate the election, if it has otherwise been honestly and properly conducted. *Kelley v. Mayor of Dover*, Del. Ch., 300 A.2d 31 (1972).

§ 4702. Appearance of election officers for taking of oath and instruction.

Each person appointed under § 4701 of this title shall appear before the department to qualify by taking and subscribing to the prescribed oath (or affirmation) and to receive suitable instruction after due notice from the department, which shall be given at least 7 days before the times appointed for the appearance of the election officers. No person shall be excused from the obligation unless he shall have become disqualified by sickness, disability or otherwise. (67 Del. Laws, c. 354, § 25.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4702 to be present § 4705 and enacted present section 4702.

§ 4703. Oath of office for election officers.

(a) Each person appointed under § 4701 of this title shall take and subscribe before the department before beginning his duties the following oath (or affirmation):

I, _____, residing in _____ election district of the _____ representative district in _____ county, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of election officer for the _____ election district of the _____ representative district in _____ county, according to the best of my ability.

(b) Any board of elections member, administrative director, deputy administrative director or other authorized agent of the department may administer this oath (or affirmation). (67 Del. Laws, c. 354, § 26.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4703 to be present § 4706 and enacted present § 4703.

§ 4704. Certificate of appointment.

Each department shall deliver a certificate of appointment to whomever it shall appoint and who shall be sworn into office as inspector, judge or clerk of election. Such certificate shall be in such form as shall be prescribed by the department and shall specify the election district for which the persons to whom it is issued is appointed and the date of the expiration of this term of office. (67 Del. Laws, c. 354, § 27.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4704 to be present § 4707 and enacted present § 4704.

§ 4705. Removal from office.

Each department may remove from office any inspector or judge of election or clerk appointed by it for want of requisite qualifications or for cause. Such removal, unless made while such person is actually on duty on a day of election and for improper conduct as an inspector or judge of election or clerk, shall only be made after notice which shall set forth clearly and distinctly the reasons for the removal. (21 Del. Laws, c. 40, § 3; Code 1915, §§ 1665, 1666; 37 Del. Laws, c. 119; Code 1935, §§ 1752, 1753; 45 Del. Laws, c. 147, §§ 5, 6; 45 Del. Laws, c. 148, § 30; 45 Del. Laws, c. 149, § 30; 15 Del. C. 1953, § 4705; 58 Del. Laws, c. 148, § 63; 67 Del. Laws, c. 354, § 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4702 to be present § 4705 and enacted present § 4702.

§ 4706. Vacancies; alternates.

(a) If any vacancy occurs in the office of inspector, judge of election or clerk, before the expiration of the full term from any cause whatever, the department of elections having jurisdiction shall appoint a person to fill such vacancy from the unused names if any there be from the list furnished to such department of elections by the political party from which the department made the appointment for the office which has become vacant. The person to fill the vacancy shall serve for the residue of the unexpired term. Such person shall possess the same qualifications and be qualified in the same manner, possess the same powers and perform the same duties as the original appointee. Every person appointed to fill a vacancy shall qualify forthwith. The neglect or refusal of any person appointed to fill a vacancy, to appear and qualify forthwith shall create a vacancy in such office.

(b) If any election officer shall be temporarily unable to perform his duties on the day of a primary or special election because of illness, disability or any other cause deemed reasonable by the department, an alternate shall be appointed by the department. If the inspector is unable to serve, the judge of election of the same political party as the inspector shall be named to serve as his alternate, whenever possible. If a judge is unable to serve, a clerk of election of the same party as the judge shall be appointed alternate, whenever possible. In all other cases and in finding alternates or substitutes for clerks of election, the department shall give preference in making these temporary appointments to those persons named on the lists submitted by the political parties in accord with § 1501(b) of this title, if it is feasible to do so. (21 Del. Laws, c. 40, § 3; Code 1915, §§ 1666, 1669; 37 Del. Laws, c. 119; Code 1935, §§ 1753, 1756; 45 Del. Laws, c. 147, §§ 6, 9; 45 Del. Laws, c. 148, § 30; 45 Del. Laws, c. 149, § 30; 15 Del. C. 1953, § 4706; 49 Del. Laws, c. 294, § 12; 58 Del. Laws, c. 148, §§ 64, 65; 67 Del. Laws, c. 354, §§ 23, 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, in (a), deleted "registrar or assistant registrar" following "judge of election, clerk" in the first sentence; and made minor stylistic changes. 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4703 to be present § 4706.

§ 4707. Compensation.

(a) Each inspector of election shall be paid \$60 for each day's service in holding any general, primary or special election, plus \$10 for delivering the election records and supplies to the department the night of election day and \$5 for overseeing preparation of the polling place prior to election day.

(b) Each judge of election shall be paid \$60 for each day of an election.

(c) Each clerk of election shall be paid \$55 for each day of an election.

(d) Each of these officers shall also be paid \$15 for each day's service in performing any duty required on a day other than a day of an election, except as heretofore or otherwise provided. (26 Del. Laws, c. 42; Code 1915, § 1792; 30 Del. Laws, c. 104; Code 1935, § 1881; 45 Del. Laws, c. 154, § 15; 48 Del. Laws, c. 69, § 1; 15 Del. C. 1953, § 4707; 57 Del. Laws, c. 181, § 49; 58 Del. Laws, c. 215, § 26; 61 Del. Laws, c. 335, §§ 2-3; 64 Del. Laws, c. 408, § 1; 66 Del. Laws, c. 303, § 262(b), (c); 67 Del. Laws, c. 354, § 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4704 to be present § 4707.

§ 4708. Exemptions from military duty and service as inspector, judge of election or clerk.

The inspector or judge of election or clerk during the time he holds his office shall be exempt from the performance of military duty.

No person who by the laws of this State is exempt from jury duty shall be required to serve as an inspector or judge of election or clerk. (19 Del. Laws, c. 39, § 3; 24 Del. Laws, c. 244, § 1; 25 Del. Laws, c. 235, § 1; Code 1915, § 1719; Code 1935, §§ 1753, 1808; 45 Del. Laws, c. 147, § 6; 15 Del. C. 1953, § 4708; 58 Del. Laws, c. 148, § 66; 67 Del. Laws, c. 354, § 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4705 to be present § 4708.

*Subchapter II. Instruction of Election Officers***§ 4741. Instruction of election officers.**

During the 30 days prior to the day of election, the department shall cause the election officers who are to serve in an election district to be instructed in all their duties in connection therewith. The department shall give to each election officer who has received such instruction and is fully qualified to properly conduct the election with the machine, a certificate to that effect. For the purpose of giving such instructions the department shall call such meetings of the election officers as shall be necessary. The department shall within 5 days file a report which shall be a public record in the department stating that the election officers have been properly instructed. The election officers shall attend such meetings as shall be called for the purpose of receiving such instruction concerning their duties as shall be deemed necessary for the proper conduct of the election with voting machines. The department of elections may require the inspector to attend an additional instruction meeting at a place designated by the department. Attendance at such instruction session shall be compensable pursuant to § 4704 of this title. (15 Del. C. 1953, § 4741; 57 Del. Laws, c. 181, § 52; 58 Del. Laws, c. 148, § 73.)

ELECTION LAWS

CHAPTER 49. CONDUCT OF ELECTION

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Subchapter I. Procedure Prior to Opening Polls

§ 4901. Notice of election.

Notice of an election shall be given by suitable news media and/or by publishing the same at least 5 days prior to any election. (21 Del. Laws, c. 38, § 8; Code 1915, § 1747; Code 1935, § 1836; 45 Del. Laws, c. 154, § 8; 15 Del. C. 1953, § 4901; 58 Del. Laws, c. 215, § 34.)

§ 4902. Absence of election officer on election day; notice to department.

If on the day of holding an election any election officer authorized by law to serve at the election in any election district shall be absent from the place of election at 7:00 in the forenoon, the inspector, if present, or, in the absence of the inspector, then any judge who may be present, shall immediately notify the department of elections for his county of such absence. (21 Del. Laws, c. 38, § 9; Code 1915, § 1748; Code 1935, § 1837; 45 Del. Laws, c. 154, § 9; 15 Del. C. 1953, § 4902; 58 Del. Laws, c. 148, §§ 74, 75.)

§ 4903. Reading of election law provisions to election officers.

Following the selection of the inspector and before the oaths prescribed in §§ 4904 and 4906 of this title are administered, the inspector shall read distinctly to the assembled election officers §§ 5123, 5124, and 5125 of this title. (19 Del. Laws, c. 37, § 25; 27 Del. Laws, c. 65, §§ 22, 32; Code 1915, §§ 1761, 1763; Code 1935, §§ 1850, 1852; 15 Del. C. 1953, § 4903.)

§ 4904. Oath at polling place before opening election.

Before opening the election the inspector of election and the judges of election shall each take the following oath or affirmation:

"I, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Inspector (or Judge) of Election for Election District in Representative District in County, according to the best of my ability."
(21 Del. Laws, c. 38, §§ 7, 12; Code 1915, §§ 1746, 1751; Code 1935, §§ 1835, 1840; 15 Del. C. 1953, § 4904.)

§ 4905. Meaning and scope of inspector's or judge's oath.

(a) The oath of the inspector or of any judge of election that he will faithfully discharge the duties of his office means that in addition to performing all the duties of his office imposed upon him by the election laws of the State:

(1) He will not knowingly or willfully receive, or consent to the receiving of, the vote of any person whom he shall believe not entitled to vote, unless his associates shall adjudge such persons to be entitled to vote;

(2) He will not receive or reject, nor concur in receiving or rejecting, any vote through partiality or undue bias;

(3) He will determine every matter that shall come before him, and perform every act and duty by law required of him touching the election, truly, faithfully and impartially according to the best of his skill, judgment and ability;

(4) He will cause the ballots that shall be taken at the election to be fairly read and ascertained and a true statement thereof to be made according to the best of his knowledge and ability; and

(5) If he discovers any partiality, unfairness or corruption in the conducting of the election, he will disclose the same to the Attorney General to the end that the subject may be investigated.

(b) Subsection (a) of this section shall be printed upon every sheet containing the forms of oath for inspector and judges of election and shall be read to each such person at the time he takes the oath prescribed in § 4904 of this title. (21 Del. Laws, c. 38, § 7; Code 1915, § 1746; Code 1935, § 1835; 15 Del. C. 1953, § 4905.)

§ 4906. Oath of clerk of elections on election day.

Before the election is opened and at the polling place in his election district, each clerk of election shall take and subscribe an oath or affirmation which shall be administered to him by the inspector or 1 of the judges. The form of such oath or affirmation shall be as follows:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Clerk of the Election for Election District in Representative District in County, according to the best of my ability."

(21 Del. Laws, c. 38, § 13; Code 1915, § 1752; Code 1935, § 1841; 45 Del. Laws, c. 154, § 11; 15 Del. C. 1953, § 4906.)

§ 4907. Meaning and scope of clerk's oath.

The oath of the clerk of election that he will faithfully discharge the duties of his office means that in addition to performing all the duties of his office imposed upon him by the election laws of the State he will not use or assent to any falsehood, fraud or deceit, and that he will keep the polls and perform his duties truly, faithfully and impartially. (21 Del. Laws, c. 38, § 13; Code 1915, § 1752; Code 1935, § 1841; 15 Del. C. 1953, § 4907.)

§ 4908. Reading of sections declaring meaning and scope of oaths.

When the oaths prescribed in §§ 4904 and 4906 of this title are administered to the respective election officers, the person administering the oath shall read § 4905 of this title to each inspector and judge of election taking the oath and § 4907 of this title to each clerk taking the oath. (21 Del. Laws, c. 38, §§ 7, 13; Code 1915, §§ 1746, 1752; Code 1935, §§ 1835, 1841; 15 Del. C. 1953, § 4908.)

§ 4909. Administering and signing oath and certificate of qualification.

(a) The oath required by § 4904 of this title shall be administered to the judges by the inspector and by 1 of them to him.

(b) They shall each, after taking such oath or affirmation, sign 1 of the printed forms thereof furnished by the department of elections. The form distinguished as No. 1 shall be signed by the inspector, his name being first inserted in the blank, form No. 2 shall be signed by 1 of the judges, his name being first inserted in the blank, and form No. 3 shall be signed by the other judge, his name being first inserted in the blank. Before signing the forms, it shall be ascertained whether the inspector or either of the judges conscientiously refuses to take an oath and, in case of such conscientious refusal, the form for the person so refusing shall be made correct by effacing the words "swear or" in the beginning of the form; as to the person who shall not conscientiously refuse to take an oath the form shall be made correct by effacing the words "or affirm" in the beginning of the form.

(c) The inspector and the judges shall also sign the certificate of their qualification printed upon the sheet containing the oath forms. (21 Del. Laws, c. 38, § 12; Code 1915, § 1751; Code 1935, § 1840; 15 Del. C. 1953, § 4909.)

§ 4910. Instruction sheets; sample ballots.

(a) Two sheets of instructions to voters shall be posted in the polling place prior to the opening of the polls. One of the sheets shall be placed near the door to the voting room.

(b) The department shall also provide for each election district 2 sample ballots applicable to such election district, which ballots shall measure approximately 10 inches by 12 inches and shall be arranged in the form of a diagram showing such portion of the front of the voting machine as will appear after the official ballots are arranged therein for voting. Such sample ballots shall be posted in a conspicuous place in each polling place on each election day. Such sample ballots shall be delivered to the department which shall in turn deliver them with the other election supplies to the proper election officers throughout the county.

(c) The department shall deliver to the county chairman of each political party, free of charge, 15 sample ballots for each election district in the county.

(d) In addition to the sample ballots mentioned in subsections (b) and (c) of this section, the department in each county shall cause to be printed such further number of sample ballots as shall be directed by the chairman of any committee of any political party in any county. However, the department of elections shall not have printed any sample ballots upon the order or request of any chairman of any committee of any political party unless the request shall have been made to him in writing at least 65 days prior to the holding of the election at which the sample ballots are to be used, nor unless a deposit sufficient to cover the cost of the sample ballots be paid at the time they are ordered.

(e) The sample ballots to which the political parties shall be entitled hereunder shall be delivered to the county chairman of a political party or to his agent upon his request not more than 10 days and not less than 5 days before the election for which said sample ballots have been prepared. (19 Del. Laws, c. 37, § 16; 27 Del. Laws, c. 65, § 14; Code 1915, § 1736; Code 1935, § 1825; 45 Del. Laws, c. 154, § 6; 15 Del. C. 1953, § 4910; 49 Del. Laws, c. 294, § 13; 54 Del. Laws, c. 69, § 1; 58 Del. Laws, c. 148, § 76.)

§ 4911. Display of flags, signs and maps at polling places.

(a) During the hours that a primary, general or special election is open, there shall be displayed at or near the entrance of each polling place so as to be readily visible, a United States flag and a black and white flag or paper-board sign at least 20 inches by 30 inches in size. The flags or signs shall be provided by the department. The black and white flags and signs shall be white with black letters bearing the words "POLLING PLACE."

(b) The department of elections shall print individual, large-size wall maps for each representative district within the State. The individual maps shall also designate the boundaries of all election districts within each representative district, with every polling place therein plainly marked on the map.

The representative district maps printed in compliance with this section shall be displayed in a prominent location in each polling place of such representative district during regular voting hours. Any voter shall be allowed access to said map to determine correct voting places, election districts and representative districts so long as there is no unreasonable interference with voting procedures. (Code 1935, § 1759; 42 Del. Laws, c. 116, § 1; 43 Del. Laws, c. 124, § 1; 44 Del. Laws, c. 112, § 1; 45 Del. Laws, c. 148, § 27; 45 Del. Laws, c. 149, § 27; 15 Del. C. 1953, §§ 4107, 4912; 55 Del. Laws, c. 458, § 2; 58 Del. Laws, c. 92; 58 Del. Laws, c. 148, § 78; 61 Del. Laws, c. 480, § 8; 67 Del. Laws, c. 354, § 28.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, rewrote (a); deleted former (b); and redesignated former (c) as present (b).

§ 4912. Procedure prior to opening of polls.

(a) The election officers of each election district shall attend at the polling place three quarters of an hour before the time set for opening of the polls and shall proceed to arrange the furniture, stationery and voting machine for the conduct of the election. The department of elections shall have the voting machines, ballots and stationery required to be delivered to the polling place for such election. If not previously done, the election officers shall insert in their proper places on the voting machine the ballot containing the names of offices to be filled at such election and the names of candidates nominated therefor. The election officers shall cause to be posted conspicuously within the polling place the 2 instruction cards and 2 sample ballots. They shall see that the light for the voting machine is in good order and that it is lighted, if that is necessary, in order that the names upon the ballot shall be clearly visible. They shall inspect the screen, hood or curtain of the machine to make certain that it has not been damaged or tampered with so as in any manner to lessen or endanger the secrecy of voting. They shall see to it that no mirror is placed or allowed to remain in such a position so as to permit a view of any part of the front, sides or top of the voting machine.

(b) The keys to the voting machine shall be delivered to the election officers at least three quarters of an hour before the time set for opening the polls, in a sealed envelope, on which shall appear the number and location of the voting machine, the number of the seal, the number registered on the protective counter or device and on the write-in paper roll. The envelope containing the keys shall not be opened until at least 1 election official from each of the 2

political parties shall be present at the polling place and shall have examined the envelope to see that it has not been opened. Before opening the envelope, all election officers present shall examine the number on the seal of the machine, the number registered on the protective counter and also at the top of the write-in paper roll and shall see if they are the same as the number written on the envelope, and if they are not the same, the machine must not be opened until a representative of the department shall have presented himself at the polling place for the purpose of reexamining such machine and shall certify that it is properly arranged.

(c) If the numbers on the seal and protective counter are found to agree with the numbers on the envelope, the election officers shall proceed to open the doors concealing the counters and each officer shall carefully examine every counter and see that it registers zero (000) and the same shall be subject to the inspection of official challengers. The machine shall remain locked against voting until the polls are formally opened and shall not be operated except by voters in voting. The doors concealing the counters shall be locked before any vote is cast on the voting machine and shall remain locked until after the polls have closed. If any counter is found not to register zero (000), the election officers shall immediately notify the department of elections which shall cause each counter to be tested for accuracy by casting votes upon it and when it is ascertained that all of the counters are correctly registering each vote, the counters shall be adjusted to zero (000). The reading of the protective counter shall then be read and recorded. If it is impracticable for a member or representative of the department of elections to arrive in time to so adjust such counters before the time set for opening the polls, the election officers shall immediately make a written statement of the number on each counter and shall sign and post the same upon the wall of the polling room where it shall remain throughout the election day, and in filling out the statement of canvass, they shall subtract such number from the number then registered thereon. (19 Del. Laws, c. 37, § 15; 27 Del. Laws, c. 65, § 13; Code 1915, § 1764; Code 1935, § 1853; 15 Del. C. 1953, § 4913; 49 Del. Laws, c. 294, § 15; 58 Del. Laws, c. 148, § 79.)

§ 4913. Presence of party representative to aid in qualification of election officers; presence of other persons.

(a) A single representative of each political party which has nominated a ticket and which is represented on the ballot then printed for any general or special election may at the opening of the election be present to aid in the proper qualification of the election officers, but as soon as the election officers shall be qualified or ready to open the election, or the proper hour therefor

having arrived, such representatives of such political party shall immediately retire from the voting room or the place where the election is held.

(b) No person, other than the election officers, and the party representatives mentioned in subsection (a) of this section shall enter the room in which the voting is to take place before the opening of the polls. (21 Del. Laws, c. 38, § 16; Code 1915, § 1755; Code 1935, § 1844; 15 Del. C. 1953, § 4915.)

Subchapter II. Regulations Governing Conduct of Elections During Hours of Voting

§ 4931. Time and manner of opening election.

The general election shall be opened in every election district at 7:00 in the morning, by the inspector making proclamation that the election is open. (21 Del. Laws, c. 38, § 17; 23 Del. Laws, c. 57; Code 1915, § 1756; 32 Del. Laws, c. 100, § 1; Code 1935, § 1845; 44 Del. Laws, c. 124; 15 Del. C. 1953, § 4931; 50 Del. Laws, c. 22, § 1; 50 Del. Laws, c. 172, § 1.)

§ 4932. Location of election officers within voting room; location and care of voting machine.

(a) The inspector, judges and clerks shall remain in the polling place at all times while the polls are open. They shall locate themselves in a place separate from all other electors.

(b) The election officers shall so place the voting machine and shall seat or locate themselves in such a manner that they can plainly see the ballots on the face of the machine at all times when the machine is not in use by a voter. During the hours for voting, no voting machine shall be hidden, concealed or obscured in any way from the full view of the election officers, the challengers and all electors entering the voting room to cast their ballots. The election officers shall not themselves be, nor permit any other person to be, in any position which might permit one to observe how an elector has voted.

The election officer attending the machine shall inspect its face after each voter has cast his vote to make certain the ballots on the face of the machine are in proper condition and that the machine has not been harmed in any way. The door of the counter compartment shall not be unlocked or open or the vote counters exposed at any time. If it shall become necessary for a representative of the department to open the rear counter compartment door or to expose the counters because of a failure on the voting machine which cannot be repaired otherwise, a statement of this fact shall be written down, signed by the election officers and the department representative and submitted to the department with the election records. (21 Del. Laws, c. 38, § 15; 22 Del. Laws, c. 63;

27 Del. Laws, c. 65, § 20; Code 1915, § 1754; Code 1935, § 1843; 15 Del. C. 1953, § 4932; 58 Del. Laws, c. 148, § 81.)

§ 4933. Persons permitted in the voting room.

No person, other than members of the departments, employees of the department who shall be identified by a badge from the department, election officers, State Election Commissioner, employees of the State Election Commissioner's office, who shall be identified by a badge from the Commissioner, persons actually voting and 1 challenger from any political party which is represented by a candidate in that district as provided in § 4934 of this title, shall be admitted within the voting room nor within 50 feet of the entrance thereof, except for the purpose of offering his vote or except as provided in this title. Other persons necessary to the conduct of the election may be admitted within the voting room or within 50 feet of the entrance thereof upon first obtaining unanimous consent of the inspector and judges. (21 Del. Laws, c. 38, §§ 15, 16; 22 Del. Laws, c. 63; Code 1915, §§ 1754, 1755; Code 1935, §§ 1843, 1844; 15 Del. C. 1953, § 4933; 57 Del. Laws, c. 181, § 53; 58 Del. Laws, c. 148, § 82.)

§ 4934. Challengers; appointment and powers.

(a) Each of the political parties, acting through their respective county committees, may appoint and accredit some suitable person as a challenger. One challenger from any political party which is represented by a candidate in that district may be present inside the polling place and shall be permitted to observe the conduct of the election and all the election records. The challengers may be changed and their places filled in like manner during the day.

(b) The challengers shall be peace officers with the same powers preserving the peace as election officers and the challengers shall be protected in the discharge of their duty by the election officers; provided, however, the challengers shall not create any disturbance or obstruction and shall not unreasonably prolong any challenge or inquiry. The inspector and judges shall each have the duty to caution the challengers concerning the foregoing and, if the challenger persists, he may be ejected by a majority vote of the judges and the inspector. Provided, further, that nothing in this subsection shall be construed to prevent a substitution of another challenger for one who has been ejected.

(c) If a challenger is ejected as provided in subsection (b) of this section and the inspector or judges who voted for such ejection willfully voted for ejection without cause, each such inspector or judge so voting shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 37, § 2; 19 Del. Laws, c. 39, § 14; 20 Del. Laws, c. 396, § 3; 27 Del. Laws, c. 65, § 2; Code

1915, § 1740; Code 1935, § 1829; 15 Del. C. 1953, § 4934; 57 Del. Laws, c. 181, § 54.)

Challenger entitled to inspect all records on absentee voters. — The candidates have the same opportunity to discover prior recorded irregularities in absentee ballots as they have with respect to other voters, since the chal-

lenger appointed by each political party is entitled to inspect all records on absentee voters at the polling place. *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

§ 4935. Special officers at entrance of polling place.

The Democratic and Republican county committees may each select and designate 1 suitable, reputable and sober person as a special officer to stand at the entrance of the polling place, to be not less than 50 feet away from the entrance to the voting room, to regulate the admission of persons to the polling place. While so stationed and performing their duties, such special officers shall be peace officers of this State and shall have the same powers for preserving the peace as election officers have. (20 Del. Laws, c. 396, § 6; Code 1915, § 1741; Code 1935, § 1830; 15 Del. C. 1953, § 4935; 57 Del. Laws, c. 181, § 55.)

§ 4936. Order of voting; determination of challenge.

Voters shall approach and enter the passage in the order in which they appear for the purpose of voting. If any person offering to vote is challenged by 1 of the challengers or by any 1 of the election officers, his right to vote shall be at once determined by the proper officer, and, if his vote is refused, he shall immediately stand aside, give place to the person next in line and retire without delay from within the 50 feet space around the entrance to the room. (19 Del. Laws, c. 37, § 17; 27 Del. Laws, c. 65, § 15; Code 1915, § 1757; Code 1935, § 1846; 15 Del. C. 1953, § 4937; 57 Del. Laws, c. 181, § 57.)

§ 4937. Voting procedure.

(a) A voter, upon entering the room where an election is being held, shall announce his name and address, whereupon the clerks shall place a mark or make a notation of his name upon the poll list.

(b) The election officers shall first determine whether the Election District Record contains an original, permanent registration record for the voter. If it appears that the voter is properly registered, an election officer shall hand to the voter a voter signature card which the voter shall sign. An election officer shall then place the voter's permanent, significant registration number upon the voter signature card unless it is already recorded thereon. Two election officers, 1 from each political party, shall then compare the signature of the

voter as it appears upon the voter signature card with the signature of the voter as it appears upon the voter's original permanent registration record in the Election District Record. If the 2 election officers are not satisfied that the voter who signed the voter signature card is the same voter who signed the voter's original permanent registration record, the voter shall not be permitted to vote.

(c) In the event that the voter is unable to sign a voter signature card for any reason or in the event that the voter's original permanent registration record is unsigned, or both, the 2 election officers shall determine the identity of the voter by means other than by comparison of signatures. The election officers shall then make note of the pertinent facts upon a voter signature card which shall bear the name and permanent significant registration number of the voter.

(d) In the event of a disagreement as to the identity of the voter, his right to vote shall be determined by a majority vote of the inspector and the 2 judges of the election. In the event that the voter is not permitted to vote, his voter signature card shall be marked "not permitted to vote" and signed by 2 election officers and shall be forwarded to the department at the same time and in the same manner as other voter signature cards are sent to the department.

(e) If the voter is not challenged or if a challenge is decided in his 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 him to pass through the entrance to the booth of the voting machine for the purpose of casting his vote. The judges shall then cause the original permanent registration record of the voter to be appropriately marked to indicate the voter has voted in the election. No voter shall remain in the voting machine booth longer than 3 minutes, unless for good and sufficient reason he be granted a longer period of time by the election officers in charge. When the voter has cast his vote, the voter shall at once leave the room. If he refuses to leave after a reasonable period, he shall be removed by the election officers. No voter, after having entered and emerged from the voting machine booth shall be permitted to reenter the same on any pretext whatever. Only 1 voter at a time 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.

(f) The rest of this title notwithstanding, any voter permitted to enter the voting machine may be accompanied by 1 of his or her children or wards of not more than 10 years of age. Any challenge as to the relationship of the voter to the child and/or the age of the child shall be resolved by the voter signing an affidavit (which shall be prepared by the Election Commissioner) that he or she is the parent or guardian of the child in question and/or that the child is not more than 10 years of age. (19 Del. Laws, c. 37, § 19; 19 Del. Laws, c. 576; 21 Del. Laws, c. 38, § 18; 22 Del. Laws, c. 62; 27 Del. Laws, c. 65, § 16; Code

1915, §§ 1767, 1772; 34 Del. Laws, c. 111, § 1; Code 1935, §§ 1856, 1861; 45 Del. Laws, c. 154, § 12; 15 Del. C. 1953, § 4939; 57 Del. Laws, c. 181, § 58; 58 Del. Laws, c. 148, § 84; 68 Del. Laws, c. 222, § 1.)

Effect of amendments. — 68 Del. Laws, c. 222, effective Apr. 9, 1992, added (f).

§ 4938. Grounds for refusing to admit to voting machine.

The inspector shall not at any election admit to a voting machine any person offering to vote until his original permanent registration record shall have been found in the Election District Record and the judges or a majority of them shall be satisfied that the person so offering to vote is the person named in the record; but no objection to the vote of any person whose original permanent registration record shall have been found in the Election District Record shall be entered or considered by the judges except for the following reasons:

- (1) The person offering to vote is not the person whose original permanent registration record appears in the Election District Record;
- (2) The person offering to vote is disqualified from voting under § 4940 of this title;
- (3) The person offering to vote is not a bona fide resident of the election district in whose record his name appears. (21 Del. Laws, c. 38, § 19; Code 1915, § 1773; 34 Del. Laws, c. 111, § 2; Code 1935, § 1862; 15 Del. C. 1953, § 4944; 50 Del. Laws, c. 172, § 3; 57 Del. Laws, c. 567, § 40; 58 Del. Laws, c. 148, § 85; 60 Del. Laws, c. 414, § 11.)

§ 4939. Determination of challenge based on identity of voter.

If a vote is objected to for the reason that the person offering to vote is not the person whose original permanent registration record appears in the Election District Record, its admission or rejection shall be determined according to the opinion of a majority of the inspector and judges. (21 Del. Laws, c. 38, § 19; Code 1915, § 1773; 34 Del. Laws, c. 111, § 2; Code 1935, § 1862; 15 Del. C. 1953, § 4945; 50 Del. Laws, c. 172, § 4; 58 Del. Laws, c. 148, § 86.)

§ 4940. Disqualification because of bribery; determination of challenge.

(a) No person who receives or accepts or offers to receive or accept, or pays, transfers or delivers, or offers or promises to pay, transfer or deliver, or contributes or offers or promises to contribute to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register or for giving or withholding or in any manner influencing the giving or withholding a vote at any general election in this State, shall vote at such election unless such person being challenged for any of said causes takes and subscribes to the following oath or affirmation, which shall be administered by the inspector:

* Meant to have a
letter of invitation to
get in?

Div 2
1250
Div 3 337
10,000
Div 4
15,000
144,000/10
1440.2
Programs/Project
205/10/100

"I, do solemnly swear (or affirm) that I have not received or accepted, or offered to receive or accept, paid or transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed or offered or promised to contribute to another to be paid or used any money or other valuable thing as compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register, or for the giving or withholding a vote at this election.

Signed

Sworn and subscribed to before me this day of November, A. D. 19....
 Inspector."

(b) Such oath or affirmation shall be conclusive evidence to the election officers of the truth of such oath or affirmation, but if any such oath or affirmation shall be false, the person making the same shall be guilty of perjury, and no conviction thereof shall bar any prosecution under § 8 of Article V of the Constitution of this State. Such oath or affirmation, when signed and attested as provided in this section, shall be competent evidence in any proceeding against the party making the same.

(c) In order to enable the election officers to carry into effect this section, the department of each county shall cause to be prepared not less than 15 blank forms of the oath or affirmation provided for in this section and shall cause said oaths to be delivered to each inspector in each of the election districts of his county at the time provided in § 4509 of this title. (21 Del. Laws, c. 38, § 19; Code 1915, § 1773; 34 Del. Laws, c. 111, § 2; Code 1935, § 1862; 15 Del. C. 1953, § 4946; 55 Del. Laws, c. 67.)

§ 4941. Residency of voter.

If a vote is objected to for the reason that the person is not a bona fide resident of the election district in whose record his name appears, the following rules shall apply:

(1) If any person who has resided within this State actually moves outside this State with the intention of remaining there for an indefinite time as a place of present domicile, he shall lose his qualification of residence within the State, notwithstanding any floating intention he may entertain to return at some future time.

(2) The above principle shall also apply in determining the domicile of persons moving from one place to another within this State. However, if any such person shall have changed his residence to another election district within this State within the 30 days immediately preceding the day of election, he shall be considered a resident of the election district from which he has moved for the purpose of voting. (15 Del. C. 1953, § 4947; 58 Del. Laws, c. 215, § 35; 60 Del. Laws, c. 414, § 12; 61 Del. Laws, c. 480, § 14.)

§ 4942. Electioneering in polling place; penalties; definitions.

(a) No election officer, challenger or any other person within the polling place or within 50 feet of the entrance to the building in which the voting room is located shall electioneer during the conduct of the election. No political headquarters or gathering shall be permitted within that building during the conduct of the election.

(b) Whoever violates subsection (a) of this section shall be fined not more than \$200 or imprisoned not more than 90 days, or both.

(c) Whoever, being an election officer, violates subsection (a) of this section shall be deemed to have knowingly and willfully violated his official duty.

(d) For the purposes of this section the following definition shall apply:

"Electioneering" includes political discussion of issues, candidates or partisan topics, the wearing of any button, banner or other object referring to issues, candidates or partisan topics, the display, distribution or other handling of literature or any writing or drawing referring to issues, candidates or partisan topics, the deliberate projection of sound referring to issues, candidates or partisan topics from loudspeakers or otherwise into the polling place or the area within 50 feet of the entrance to the building in which the voting room is located. (19 Del. Laws, c. 39, § 31; Code 1915, § 1793; Code 1935, § 1882; 45 Del. Laws, c. 154, § 16; 15 Del. C. 1953, § 4949; 57 Del. Laws, c. 181, § 63; 58 Del. Laws, c. 148, § 88; 58 Del. Laws, c. 215, § 36.)

§ 4943. Assistance for blind and physically disabled voters; instructions for voters.

(a) Any qualified elector who is blind or otherwise physically unable to operate the voting machine or to reach the voting room alone with safety shall be permitted to bring with him into the voting room and the voting machine booth 1 elector or 2 electors, if necessary, of his own choosing in order to receive whatever assistance he may need in order to vote. No voter shall receive any other assistance in voting than that authorized by this subsection.

(b) Any election officer may provide instruction or information for a voter through use of 1 of the sample ballots posted in the voting room.

(c) Whenever a voter requests further instructions in the manner of voting or the operation of the voting machine after having entered the voting machine booth, 2 election officers of opposite political parties shall jointly give such instructions. In doing so, the officers shall take care not to assist the voter in any manner that might influence his vote. After giving instructions, both officers shall retire before the voter begins to register his vote, which he shall do in secret at all times. (20 Del. Laws, c. 396, §§ 1, 10; 27 Del. Laws, c.

65, § 20; Code 1915, § 1739; Code 1935, § 1828; 15 Del. C. 1953, § 4950; 58 Del. Laws, c. 148, § 89.)

Cross references. — As to feigning a physical disability to obtain assistance in voting, see § 5119 of this title.

§ 4944. Vote for candidates for President and Vice-President as vote for their electors.

A vote for the candidates of a political party for President and Vice-President of the United States shall be a vote for all the electors of President and Vice-President of such party, the names of whom are on file with the Secretary of State, and shall be as effective as if the vote was given directly for the electors. (Code 1935, § 1814A; 44 Del. Laws, c. 119, § 4; 15 Del. C. 1953, § 4951.)

§ 4945. Majority vote of inspector and judges of election.

The concurrence or assent of a majority of the inspector of election and 2 judges of election in any election district is required for the valid exercise by such persons of any power, authority or duty conferred upon or required of them by this title, unless specifically provided otherwise. (19 Del. Laws, c. 39, § 23; Code 1915, § 1790; Code 1935, § 1879; 15 Del. C. 1953, § 4952.)

§ 4946. Powers of election officers to preserve order during election; penalty.

(a) The inspectors of election, from the opening of the election until all the duties and proceedings connected therewith are fully completed, may:

- (1) Command the peace; and
- (2) Require sureties of the peace from any person disturbing the election, or the officers thereof in the performance of their duties; and
- (3) Commit to prison for refusal or neglect to find such surety.

Whoever, being an officer or other person, disobeys the lawful commands of any inspector of election, shall be fined \$50.

(b) The election officers in each election district, while discharging any of the duties imposed upon them by this title, may:

- (1) Preserve order and enforce obedience to their lawful commands at and around the place of election during the time of any election and counting of votes;
- (2) Keep the access to such places open and unobstructed;

(3) Prevent and suppress riots, tumult, violence, disorder and all improper practices tending to the intimidation or obstruction of voters, the disturbance or interruption of the voting or counting of votes; and

(4) Protect the voters and challengers from intimidation and violence, and the registers, poll books, boxes, envelopes and ballots from violence and fraud; and

(5) Deputize, if necessary, 1 or more electors to communicate their orders and directions and to assist in the enforcement thereof. (Code 1852, § 304; 19 Del. Laws, c. 39, § 27; 21 Del. Laws, c. 36, § 20; Code 1915, § 1791; Code 1935, § 1880; 15 Del. C. 1953, § 4953.)

Cross references. — As to election officers of any primary election having same powers as under this section, see § 3142 of this title.

§ 4947. Time and manner of closing election.

The election shall be continued open until 8:00 p.m. when it shall be closed. In closing the election the inspector and the judges shall, nevertheless, permit those electors to vote who have presented themselves and have offered to vote prior to 8:00 p.m., provided that at 8:00 p.m. they shall be in a line awaiting their turn to vote within the voting room itself or if the line extends outside of the voting room itself within that line; any person who has not voted or who has not presented himself and offered to vote and is not waiting in line by 8:00 p.m. shall not be permitted to vote after the hour of 8:00 p.m. The inspector shall one-half hour before closing the election make proclamation that the election will be closed in that time. (21 Del. Laws, c. 38, § 20; Code 1915, § 1774; 32 Del. Laws, c. 100, § 1; Code 1935, §§ 1768, 1863; 15 Del. C. 1953, § 4954; 50 Del. Laws, c. 22, § 1; 50 Del. Laws, c. 172, § 5; 57 Del. Laws, c. 181, § 64.)

Subchapter III. Counting Votes and Post-Election Regulations

§ 4971. Counting absentee votes; penalty for disclosure.

(a) Any time after all absentee ballots have been voted in accordance with § 5515 of this title and securely deposited in a locked ballot box, the inspector may announce that tabulation of these ballots is to begin. The inspector shall then openly unlock the ballot box containing the absentee ballots. In the presence of the other election officers and the challengers authorized to be in the voting room, he shall then take the envelopes containing the ballots from the box one by one, and remove the ballot from the envelope. Each of the

judges shall then examine each ballot. They shall then pass the ballot to the inspector, who shall also examine the ballot. If the ballot is not disputed or disqualified, the inspector shall then read the office for which voted, starting at the top of the ballot, and then the name of the candidate for whom the vote was cast.

(b) The 2 clerks shall keep count of the votes announced by the inspector by individually marking these votes on separate tally sheets. They shall do so by making a distinct mark with a pen in the squares provided on the tally sheet. Each clerk, upon making a mark, shall repeat the name of the person voted for. Each square, when full, shall contain 5 marks. When the clerk shall make the fifth mark in a square, he shall also call out "tally" and when he makes the first mark in the next square, he shall call out "1 on the new."

(c) When all the absentee ballots have been counted, the clerks shall first compare their tallies and shall then add up the total number of votes cast for each candidate, with the inspector and judges observing these procedures.

(d) The total number of votes cast for each candidate for each office shall not be announced whenever the count is made prior to the closing of the polls, but shall be read aloud later after the count shown on the voting machine is announced. Until that time, the count of absentee ballots shall be kept secret by the inspector, judges and clerks and any challenger present.

(e) Whoever, being an election officer or any other person having access to the voting room, discloses any or all portions of the count of absentee votes to any persons, other than a fellow election officer of that district, prior to the closing of the polls shall be fined not less than \$100 and may be imprisoned not more than 1 year. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; Code 1915, § 1775; Code 1935, § 1864; 46 Del. Laws, c. 154, § 1; 15 Del. C. 1953, § 4972; 57 Del. Laws, c. 567, §§ 42, 42A; 58 Del. Laws, c. 148, § 90.)

§ 4972. Rules for determining voter's intention.

All ballots cast at any election shall be counted for the persons for whom they were intended, so far as such intention can be ascertained therefrom, and in determining the intention the following rules shall be observed:

(1) When the voter places a mark against 2 or more names for the same office, he shall be deemed to have voted for none of them and the ballot shall not be counted for either candidate, but shall be counted for such other candidates as it is the evident intention of the voter to vote for.

(2) When the elector makes a mark in the square at the right of the name of a person in the proper place, he shall be deemed to have voted for that person, although he omits to erase or scratch out the name printed in any other column for the same office.

(3) A ballot put in without any marks shall not be counted.

(4) Any ballot, or part of a ballot, from which it is impossible to determine the elector's choice of candidates shall not be counted as to the candidate or candidates affected thereby. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; 27 Del. Laws, c. 65, § 23; Code 1915, §§ 1769, 1770; 40 Del. Laws, c. 143, § 1; Code 1935, §§ 1858, 1859; 44 Del. Laws, c. 122, § 2; 15 Del. C. 1953, § 4974; 58 Del. Laws, c. 148, §§ 92, 93; 61 Del. Laws, c. 480, § 15.)

Proportionate deduction rule improperly applied. — Where 101 of 296 ballots were illegally counted without being signed by both clerks but no fraud or misdealing was shown and there was no way to separate or identify

the illegal ballots, the board of canvass should not have applied the proportionate deduction rule by subtracting votes pro rata from each candidate. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

§ 4973. Disqualified ballots.

In the counting of the votes any ballot contained in an envelope which is not endorsed with the names of the clerks, as required by § 5515 of this title, or any ballot which bears such a mark, impression or device that it is apparent that such was placed thereon with the intent of distinguishing such ballot, or any ballot which is contained in any envelope which bears any such distinguishing mark, impression or device, shall be void and shall not be counted. If any envelope contains more than 1 official ballot, none of the ballots contained therein shall be counted. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; Code 1915, § 1770; 34 Del. Laws, c. 110, § 1; Code 1935, § 1859; 44 Del. Laws, c. 122, § 2; 15 Del. C. 1953, § 4975; 57 Del. Laws, c. 567, § 42B.)

The provisions of this section are mandatory. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

The declaration in this section that a ballot in an unendorsed envelope is void and shall not be counted is a plain legislative command and the court cannot ignore it. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

And they are intended to prevent fraud. — The statutory provisions requiring the use of envelopes signed by both clerks in voting are among many provisions intended to identify the official ballots and to prevent fraud. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

The provisions in this section relating to the effect of distinguishing marks on the ballots are of great importance in safeguarding against fraud in elections. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

This section applies to absentee ballots. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

Absentee ballots in envelopes not signed by both clerks, when voted, were illegal and should have been rejected by the election officers in making the count. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949); State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

Rejection of entire vote. — When illegal ballots have been voted in an election district in such numbers as to affect the result, or at least to make it uncertain and cannot be identified and separated from the valid ballots, there are cases where justice requires that the entire vote of that election district be rejected in making the count. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

The allegation of a losing candidate that 101 of the 296 ballots cast were enclosed in enve-

lopes not signed by both clerks does not constitute an allegation of fraud; without such allegation and without the ability to separate bal-

lots alleged illegal, a court will avoid rejecting the vote of an entire district. *State ex rel. Wahl v. Richards*, Del. Supr., 64 A.2d 400 (1949).

§ 4974. Notation and preservation of disqualified or disputed ballots and envelopes.

(a) All disqualified ballots and envelopes and all disputed ballots and envelopes shall be preserved by the inspector and, at the close of the count, shall be placed with the seals of the envelope packages in the box into which the ballots shall have been put when read.

(b) The election officers shall record the number of all disqualified or disputed ballots on the certificate of elections in the space provided. They shall record on each absentee ballot tally sheet the name and permanent significant registration number of each person whose ballot was disqualified or disputed, with the reason therefor. In any contest of election, any such ballots and envelopes may be submitted in evidence. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; Code 1915, § 1770; Code 1935, § 1859; 44 Del. Laws, c. 122, § 2; 15 Del. C. 1953, § 4976; 58 Del. Laws, c. 215, § 37.)

§ 4975. Tabulation of votes shown on voting machine.

(a) As soon as the last voter has left the voting machine booth, the inspector shall see to it that the machine is locked against further voting by leaving the officers' control lever on the side of the machine in the inactive or "in" position. The inspector shall sign the certificate stating that the machine is locked against voting, the number of voters shown on the public counter, the number on the seal and the number on the protective counter. The other election officers shall witness the filling out of this information.

(b) With the assistance of the inspector and utilizing the voting machine keys held by them, the judges shall then open the counting compartments on the front of the machine in the presence of all persons who may lawfully be in the voting room at that time.

(c) The inspector shall then read in distinct tones the votes recorded on the counters for each office and each candidate. He shall read first each office, starting at the top of the ballot, and shall read across left to right the number of votes cast for each candidate for that office. He shall also read aloud the votes cast on each question on the ballot, in like manner. The judge of the opposite political party from the inspector shall stand by him at the front of the machine to verify the counts being called off.

(d) While the inspector is reading the votes cast, these votes shall be recorded on the individual certificates of election by 2 clerks and the judge of the same political party as the inspector. The count from each voting machine shall be recorded separately on each certificate.

(e) If not already counted, the absentee ballots shall then be tabulated as provided in § 4971 of this title. (21 Del. Laws, c. 38, § 22; Code 1915, § 1776; Code 1935, § 1865; 15 Del. C. 1953, § 4977; 49 Del. Laws, c. 294, § 19; 58 Del. Laws, c. 148, § 94.)

§ 4976. Counting of write-in votes.

(a) After all other votes cast in the election have been tabulated, the inspector shall unlock the door leading to the paper roll, in the presence of the other election officers and any others authorized by law to be in the voting room.

(b) He shall read the number now appearing at the top of the paper roll, in view either immediately or by turning the roll, and cause it to be recorded on the certificates of election. The judge of the opposite political party shall verify this number. If the number is the same as that recorded at the opening of the polls, then this shall be sufficient evidence that no write-in votes have been cast.

(c) However, if the number is different, then the inspector shall proceed to remove all that portion of the paper roll which has been voted upon. He shall then spread out the removed section of the paper roll on a table or other flat surface. The lines on the paper roll shall be matched up with a duplicate of the ballot strip placed in the voting machine listing the offices voted for. (If this method is not satisfactory to the election officers, the paper roll may be spread across the face of the machine and its horizontal lines matched with the rows for the offices to be voted for shown on the ballot.)

(d) The inspector shall then proceed to read distinctly each office voted for, starting from the top of the ballot, and the names of the persons for whom votes were cast. If the name of the person voted for is not clear, the inspector and 2 judges shall examine the paper roll and determine, by majority vote, if necessary, the name to be entered on the certificate of elections. The judge of the opposite political party shall stand or sit with the inspector while he reads off the write-in votes to verify the votes cast.

(e) Each clerk shall enter the name of the person voted for on the separate tally sheet provided for that purpose and shall mark the number of votes cast for each person in the same manner as provided for absentee ballots in § 4971 of this title.

(f) After the counting is completed, the clerks shall compare their tallies and add up the number of votes cast for each person in the presence of the inspector and judges. They shall then announce the names of the persons voted for and the total number of votes cast for each person. The paper roll shall be placed in the envelope which shall contain the certificate of elections to be delivered to the Prothonotary. (21 Del. Laws, c. 38, §§ 23, 24; Code 1915, §§ 1777, 1778; Code 1935, §§ 1866, 1867; 15 Del. C. 1953, § 4978; 49 Del. Laws, c. 294, § 20; 50 Del. Laws, c. 172, § 6; 57 Del. Laws, c. 567, § 43; 58 Del. Laws, c. 148, § 95.)

§ 4977. Persons authorized to be present during the count and tabulation.

Any candidate and any duly accredited challenger may be admitted to the voting room after the closing of the polls to observe the counting and tabulation of votes. Such persons shall be afforded full opportunity to examine the face and counters of the voting machine, the tally sheets for absentee and write-in votes and the certificates of election after the tabulation is completed. (21 Del. Laws, c. 38, § 29; Code 1915, § 1783; 34 Del. Laws, c. 111, § 3; Code 1935, § 1872; 45 Del. Laws, c. 154, § 13; 46 Del. Laws, c. 153, § 2; 15 Del. C. 1953, § 4979; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 172, § 7; 55 Del. Laws, c. 92, § 3; 57 Del. Laws, c. 567, §§ 44, 45; 58 Del. Laws, c. 148, § 96.)

§ 4978. Certificates of election; tally lists.

(a) When the reading and counting of the votes is completed, the inspector, judges and clerks shall forthwith make and sign 3 certificates of the election in their election district, according to the form prescribed in § 4508 of this title, stating every office for which votes shall have been given at the election, the name of every person to whom any vote shall have been given for such office and the number of votes given to such person for the office.

(b) Each copy of such certificate shall be put in separate envelopes, which shall be furnished by the departments of election, and the envelopes shall be endorsed on the face thereof with the words "Certificate of the votes cast in, Election District of, Representative District at the general election in County, A.D.," and on the back of each envelope, after the same shall have been sealed, the inspector and judges shall respectively write their name crosswise the sealing.

(c) The tally lists shall be signed by the inspector, judges and clerks. They shall be enclosed and sealed in the envelopes containing the certificates of election to be delivered the night of election day to the Prothonotary and the department of elections. The other certificate shall be placed by itself in an envelope and turned over to the judge of the opposite political party from the inspector, who shall file this certificate with the department of elections any time prior to 12:00 noon the second day following the election, at which time the department shall present said certificate to the Superior Court serving as the board of canvass. (15 Del. C. 1953, § 4980; 50 Del. Laws, c. 172, § 8; 58 Del. Laws, c. 148, § 97; 61 Del. Laws, c. 480, § 16.)

Cross references. — As to general powers and duties of State Election Commissioner, see § 302 of this title.

§ 4979. Delivery of certificates, election records and supplies, voting machines and absentee ballot boxes.

(a) After the close of election, the inspector shall deliver 1 of the certificates of election, together with the absentee ballot box and the write-in paper roll, if any, to the Prothonotary of the Superior Court for his county. The Prothonotary shall, at 12:00 noon on the second day after the election, present such certificates, paper rolls, ballot boxes and other pertinent papers to the Court. If the inspector of any election district dies or is prevented by sickness or accident from delivering the above-mentioned items to the Prothonotary the night of election day, the certificate of election, absentee ballot boxes and write-in paper roll, if any, shall be sent by safe and secure conveyance to the Prothonotary on the day following the election, and the inspector, his executors, administrators or heirs shall be responsible for such delivery. The same shall apply to the certificate of election, poll lists, election records and supplies which the inspector is obligated to return to the department of elections the night of election day.

(b) At the end of the day of election, each inspector shall deliver to the office of the department of elections of his county these items:

- (1) One certificate of elections;
- (2) Poll list;
- (3) Oaths (or affirmations) signed by the election officers;
- (4) The key to the doors of the voting machines or machines used in his election district;
- (5) The book, or books, of original permanent registration records provided him as the Election District Record;
- (6) All voter signature cards provided by the department;
- (7) All tally sheets;
- (8) All other supplies provided him by the department, including the flag of the United States of America and the polling place flag.

(c) All certificates, poll lists, oaths (or affirmations), voter signature cards, tally sheets and other records of the election shall be filed in the department of elections for not less than 1 year following the election and shall be public records and, as such, admissible in evidence. (15 Del. C. 1953, § 4981; 58 Del. Laws, c. 148, § 98.)

§ 4980. Return and custody of voting machines and keys.

(a) After the final and complete tabulation of the vote has been ended by the election officers, and no sooner, the inspector shall lock the front door and the paper roll door of each voting machine. These doors shall remain locked unless and until authorized otherwise by this title. He shall then place the appropriate key in an envelope supplied by the department of elections on which shall be written the number of the machine, the number of the seal and the number registered on the protective counter and on the write-in paper roll and the election and representative district where used. This envelope containing the key shall be returned to the department of elections immediately following the close of the election, as provided in § 4979(b) of this title. No unauthorized person shall have in his possession any key of any voting machine and any persons entrusted with such keys for election purposes shall not retain them any longer than necessary to comply with this title.

(b) Immediately after the election, and within the 2 days immediately following the day of election, the voting machines and absentee ballot boxes shall be stored in some safe and secure place provided by the department of elections. While the board of canvass is conducting its canvass of the vote, the machines and ballot boxes shall be in the custody of the Prothonotary. While in his custody the voting machines and the absentee ballot boxes may be opened and examined by order of the board of canvass or any other court of competent jurisdiction.

(c) After the board of canvass has completed its canvass of the vote, the Prothonotary shall turn custody of the voting machine and absentee ballot boxes over to the department of elections. The department shall leave the machines and ballot boxes undisturbed and locked until the following February 1. During this period, the machines and ballot boxes may be opened for inspection by any duly authorized member or agent of the General Assembly or the Attorney General. After February 1 the department shall be free to unlock, clean out, inspect and repair any voting machine or absentee ballot box. (15 Del. C. 1953, § 4982; 58 Del. Laws, c. 148, § 99; 60 Del. Laws, c. 403, § 1.)

§ 4981. Duties of department of elections and Election Commissioner following an election.

(a) Immediately following an election the department shall take each voter signature card and compare it with the voter's original permanent registration record in the Election District Record to determine whether the election officers have properly noted that the voter voted at the election and have properly compared the signature on the voter signature card with that on the original permanent registration record in the Election District Record. The

department shall cause a proper notation to be made upon the duplicate permanent registration record in the County Master Record of the fact that the voter has voted in the election. The department shall notify the Commissioner of the names of each voter who voted in the election and the Commissioner shall indicate on the elector's record in the Commissioner's files that the elector has voted in the election.

(b) Voter signature cards and all other forms and records not of a permanent nature, which are used in the conduct of an election, shall be retained by the department for not less than 1 year following the election. The Commissioner may require that the department send the voter signature cards used in the election to the Commissioner to carry out his duties under this section. In such event, the Commissioner shall return the voter signature cards to the department not more than 6 months following their delivery to the Commissioner. (15 Del. C. 1953, § 4983; 58 Del. Laws, c. 148, § 100.)

CHAPTER 50. VOTING MACHINES

Sec.

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§ 5001. Requirements.

(a) Any voting machine may be adopted, purchased or used which shall be so constructed as to fulfill the following requirements:

(1) Each voting machine shall have a serial number permanently attached to or stamped on the machine;

(2) It shall secure to the voter secrecy in the act of voting for or against as many questions as may be submitted;

(3) It shall permit the voter to vote for the candidates of 1 or more parties, or to write in the name of any candidate of his choice for any office;

(4) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more;

(5) It shall prevent the voter from voting for the same person more than once for the same office;

(6) It shall permit the voter to vote for or against any question he may have the right to vote upon, but no other;

(7) If used in primary elections, it shall be so equipped that the election officials can lock out all rows except those of the voter's party by a single adjustment on the outside of the machine;

(8) It shall correctly register or record and accurately count all votes cast for any and all candidates of a political party, and for or against any and all questions, and correctly register or record the names of all candidates written in by voters;

(9) It shall be provided with a protective counter or protective device whereby any operation of the machine before or after the election will be detected;

(10) It shall be provided with a counter which will show at all times during any election the total number of persons who have voted;

(11) It shall be so equipped that it shall prevent the voter from voting for all the candidates of 1 party by the use of a single lever; however, it shall be provided with 1 device for each party, for voting for all presidential electors of that party by 1 operation.

(b) Every voting machine shall be furnished with a means of providing sufficient light to enable voters while in the voting booth to read the ballots and suitable for use by the election officers in examining the counters. All voting machines used in any election shall be provided with a screen, hood or curtain which shall be so made and adjusted as to conceal the voter and his action while voting.

(c) Voting machines of different kinds may be adopted for use in different districts of the same county. (15 Del. C. 1953, § 5002; 49 Del. Laws, c. 18, § 1; 57 Del. Laws, c. 181, § 65; 57 Del. Laws, c. 695, §§ 5, 6.)

Machines must permit the writing-in of names which do not appear on the ballot.

— If voting machines are used in the annual municipal election in Frederica, the machines must be operated in such a way as to permit the writing-in of the names of persons whose names do not appear on the ballot. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

Subsection (a)(3) requirements do not apply where no contest exists in municipal election. — The requirements of paragraph (3)

of subsection (a) of this section that a voting machine shall permit the voter to write in the name of any candidate of his choice for any office does not apply where no contest exists in a municipal election. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

There is no general state statute which requires that write-in ballots be provided in municipal elections where no one has filed for office. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

§ 5002. Compliance guarantee.

Before any voting machine is purchased, rented or otherwise acquired, or used, the person owning or manufacturing such machine must give an adequate guarantee in writing and post a bond accompanied by satisfactory surety with the department of elections guaranteeing and securing that such machines comply fully with the requirements contained in § 5001 of this title and will correctly, accurately and continuously register and record every vote cast and further guaranteeing such machine against defects in workmanship and materials for a period of 5 years from the date of acquisition thereof, or, in the case of rented machines, for the period of rental. (15 Del. C. 1953, § 5003; 49 Del. Laws, c. 18, § 1.)

§ 5003. Use of voting machines; costs in municipal elections.

Voting machines shall be used throughout this State in all primary, general and special elections and in all municipal elections in all incorporated cities and towns of this State. In the event no contest exists in municipal elections voting machines shall not be required. Voting machines shall be used in elections held under Title 14. Incorporated cities or towns may use voting machines in the custody of the department of elections of the same county upon payment of all costs and expenses incident to their use. (15 Del. C. 1953,

§ 5004; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 182; 57 Del. Laws, c. 181, § 66; 57 Del. Laws, c. 353; 58 Del. Laws, c. 48; 58 Del. Laws, c. 148, § 102; 66 Del. Laws, c. 359, § 1.)

Revisor's note. — Section 5 of 66 Del. Laws, c. 359, provides that "Notwithstanding any other provision within Title 14 to the contrary, the provisions of this act shall prevail; namely, that voting machines shall be utilized in all school-related elections."

Effect of amendments. — 66 Del. Laws, c. 359, effective July 12, 1988, substituted "shall" for "may" in the third sentence.

Use of paper ballots in annexation election is not improper. — Neither the annexation provisions of the Dover City Charter nor 22 Del. C. § 101, requiring weighted voting, based on assessed property value, in annexation proceedings, was repealed by the enactment of this section. The General Assembly simply intended that 22 Del. C. § 101 and the charter provisions should continue in force as exceptions to the otherwise broad sweep of this section. Thus, the use of paper ballots in an annexation election was not improper. *Kelley v. Mayor of Dover*, Del. Ch., 300 A.2d 31 (1972).

Minor procedural defects will not void election. — Minor procedural defects in the conduct of an election unaccompanied by fraud or unfair dealing, and not affecting the result, will not void an election otherwise valid. *State ex rel. Stabler v. Whittington*, Del. Super., 290 A.2d 659 (1972).

Such as failure to use voting machines. — In an election where all but 1 candidate ran without opposition and where the candidate who defeated the only losing candidate received 50% more votes than the loser, the failure to use voting machines is a procedural irregularity which does not void the election.

State ex rel. Stabler v. Whittington, Del. Super., 290 A.2d 659 (1972).

But voting machines serve an important function by insuring that elections are carried out honestly and expeditiously. *State ex rel. Stabler v. Whittington*, Del. Super., 290 A.2d 659 (1972).

And failure to use voting machines may cause future elections to be set aside. — If in the future any municipality persists in ignoring the now much publicized and clear provisions of this section, the Superior Court will be mindful of the notice given to all municipalities by this case and will be free to impose appropriate remedies including the setting aside of the election. *State ex rel. Stabler v. Whittington*, Del. Super., 290 A.2d 659 (1972).

Requirement that machine allow write-in not applicable where no contest exists. — The requirements of § 5001(a)(3) of this title that a voting machine shall permit the voter to write in the name of any candidate of his choice for any office does not apply where no contest exists in a municipal election. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

Question of whether write-in ballots must be permitted in uncontested municipal elections in Delaware is not controlled by any general statute. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

There is no general state statute which requires that write-in ballots be provided in municipal elections where no one has filed for office. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

§ 5004. Number of voting machines per election district.

(a) In all general or primary elections every election district or polling place shall be supplied with at least 1 voting machine for every 600 registered voters or a majority fraction thereof.

(b) In all special elections every election district or polling place shall be supplied with as many voting machines as the department of elections shall deem necessary to conduct an election properly and efficiently, provided, however, that there shall be not less than 1 voting machine for each polling place nor more than 1 voting machine for every 600 registered voters or a majority

fraction thereof. (15 Del. C. 1953, § 5005; 58 Del. Laws, c. 148, § 103; 59 Del. Laws, c. 120, § 1.)

§ 5005. Printing of official ballots for voting machines; adjustment of machines for ballots; distribution of ballots.

(a) All ballots provided for voting machines shall be printed in black ink on clear, white material of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The face of the ballot shall be completely covered with a protective covering of smooth, hard, transparent material so that it shall be impossible to alter the face of the ballot without removing or breaking such covering.

(b) The party emblem which has been duly adopted by such party in accordance with law and the party name or other designation for each political party represented on the machine shall appear on the ballot. The titles of offices may be arranged horizontally, with the names of candidates for an office arranged vertically under the title of the office or the titles of offices may be arranged vertically, with the names of candidates for an office arranged horizontally opposite the title of the office, each office to occupy as many columns or rows on the machine as the number of candidates to be elected to that office. The names of all candidates nominated by any party for an office shall always appear in the row or column containing generally the names of candidates nominated by such party for other offices, except as provided in this chapter.

(c) The machine shall be so adjusted that when 1 or more knobs or the slide mechanism for write-in voting equalling the total number of persons to be elected to the offices shall have been operated, other knobs or the slide mechanism for write-in voting used in connection with those offices shall be thereby locked. After the last candidate's name at the right in any horizontal row, or below the last candidate's name in any vertical column, the knob or knobs, if there be any, under or opposite the title or titles of office or offices shall be locked; all knobs with the exception of the slide mechanism for write-in voting shall be locked in any row or column which contains no names of candidates; and all knobs with the exception of the slide mechanism for write-in voting shall be locked in spaces, if any, which do not contain names of candidates even though the names of candidates appear in other spaces in the same row or column.

(d) Official ballots provided for voting machines shall be prepared and furnished by the department of each county in the same manner as now provided by law, and shall be delivered to the department not later than 15 days prior to the next succeeding election. (15 Del. C. 1953, § 5008; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 69, § 2; 57 Del. Laws, c. 695, § 7.)

§ 5006. Number of official ballots to be furnished.

The department shall provide and furnish 2 sets of official ballots for each voting machine. One set thereof shall be placed in the voting machine and the other shall be retained in the custody of the department unless it becomes necessary during the course of the election to make use of the same in a voting machine. (15 Del. C. 1953, § 5009; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 69, § 3.)

§ 5007. Substitute ballots.

If the official ballots for an election district are not delivered in time for use on election day or after delivery shall be lost, destroyed or stolen, the department shall cause other ballots to be prepared, printed or written as nearly as may be of the form and description of the official ballots, and the department shall cause the ballots so substituted to be used at the election in the same manner, as nearly as may be, as the official ballots would have been. (15 Del. C. 1953, § 5010; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 69, § 4.)

§ 5008. Preparation of voting machines.

(a) The department of elections shall cause sufficient voting machines to be delivered to the proper polling places prior to the time appointed for the election officers to report for duty. The department shall make sure that each machine to be used in an election has been properly prepared and inspected.

(b) The department shall mail written notices to the chairman of the county committee of each of the 2 principal political parties, stating the time and place at which the voting machines will be inspected. Each principal political party may have 1 representative present during this inspection.

(c) The board of elections shall designate at least 2 representatives of opposite political affiliation, other than the person or persons preparing the machine:

(1) To inspect each machine to make certain it is in good order and that the proper ballots have been placed in it;

(2) To test the lever beside the name of each candidate and the write-in roll slot to make certain they are operating properly; and

(3) To certify such inspections and testing upon a record provided by the department.

(d) The department shall cause all registering counters to be set at zero (000) and the paper in the write-in roll slots to be blank. The ballot frames of each machine shall be sealed with a numbered metal seal. Two representatives of the board of elections, of opposite political affiliation, shall examine each machine to make certain this has been done. They shall:

(1) Certify the numbers on the machines and the election districts for which they are designated;

(2) Certify that all registering counters and write-in slots are set at zero (000) or are blank;

(3) Certify that the ballot frames are sealed; and

(4) Record and certify the number on the protective counter, the numbered seal and the write-in paper roll.

(e) The department shall make sure each machine is properly prepared in all respects for the election, that its doors are locked and the necessary keys prepared for delivery to the election officers. Two representatives of the board of elections, of opposite political affiliation, shall certify that this has been done.

(f) The certification required by this section shall be a public record in the office of the department of elections.

(g) The department shall require that all persons entrusted with custody of the machines, either for delivery or storage before and after the election, shall insure the machines' safety and protection. (15 Del. C. 1953, § 5012; 49 Del. Laws, c. 18, § 1; 58 Del. Laws, c. 148, §§ 105, 106; 60 Del. Laws, c. 404, § 1.)

§ 5009. Instruction of voters before election.

Each department shall designate suitable and adequate times and places where voting machines containing sample ballots showing titles of offices to be filled, and so far as practicable, the names of candidates to be voted for at the next election shall be exhibited for the purpose of giving instructions as to the use of voting machines to all voters who apply for the same. No voting machine which is to be assigned for use in an election shall be used for such instruction after having been prepared and sealed for the election. During public exhibition of any voting machine for the instruction of voters previous to an election, the counting mechanism thereof shall be concealed from view. (15 Del. C. 1953, § 5014; 49 Del. Laws, c. 18, § 1.)

§ 5010. Voting machine out of order; procedure.

In case any voting machine used in any election district shall during the time the polls are open become injured so as to render it inoperative in whole or in part, the department shall substitute a perfect machine for the injured machine, and at the close of the polls, the record of both machines shall be taken, and the votes shown on their counters shall be added together in ascertaining and determining the results of the election. The department shall maintain and hold in readiness a reasonable number of extra voting machines to be supplied to election districts where a voting machine has become inoperative, and the department shall take reasonable steps to insure rapid delivery

in such event. (15 Del. C. 1953, § 5015; 49 Del. Laws, c. 18, § 1; 50 Del. Laws, c. 172, § 13.)

§ 5011. Voting machine curtains.

Curtains on all voting machines shall be securely sealed or fastened before being used in any election so that the clearance lever cannot be operated without opening or closing curtains. (15 Del. C. 1953, § 5019; 49 Del. Laws, c. 18, § 1.)

CHAPTER 50A. ELECTRONIC VOTING SYSTEMS

Sec.	Sec.
5000A. Use in lieu of voting machines.	5006A. Number of official ballots to be furnished.
5001A. Requirements.	5007A. Substitute ballots.
5002A. Compliance guarantee.	5008A. Preparation of voting devices.
5003A. Use of voting devices; costs in municipal elections.	5009A. Instruction model.
5004A. Number of voting devices per election district.	5010A. Inoperative voting devices.
5005A. Printing of ballots; distribution of ballots.	5011A. Voting device curtains; absentee voting.

§ 5000A. Use in lieu of voting machines.

In any general, special or primary elections, an electronic voting system may alternatively be used in lieu of a voting machine as required by Chapter 50 of this title so long as the voting system complies with the requirements of this chapter. (63 Del. Laws, c. 409, § 1.)

§ 5001A. Requirements.

(a) Any electronic voting system may be adopted, purchased or used which shall be so constructed as to fulfill the following requirements:

(1) Each voting device shall have a serial number permanently attached to or stamped to the device;

(2) It shall secure to the voter secrecy in the act of voting for or against as many questions as may be submitted;

(3) It shall permit the voter to vote for the candidates of 1 or more parties, or to write in the name or candidate of his choice for any office;

(4) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, and the automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot card if the number of such choices exceeds the number to which a voter is entitled;

(5) It shall prevent the voter from voting for the same person more than once for the same office;

(6) It shall permit the voter to vote for or against any question he may have the right to vote upon, but no other;

(7) It shall permit each voter in primary elections to vote only for the candidates of the party with which he has declared his affiliation, and preclude him from voting for any candidate seeking nomination by any other political party;

(8) It shall correctly record and accurately count all votes cast for any and all candidates of a political party, and for or against any and all

questions, and correctly record the names of all candidates written in by votes;

(9) It shall be provided with means for sealing the vote recording devices to prevent its use and to prevent tampering with ballot labels, both before and after the polls are open or before the operation of the vote recording device for any election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(10) It shall provide a serialized stub number for each ballot issued to a voter to be retained by the poll worker which will show at all times during any election the total number of persons who have voted;

(11) It shall be so equipped that it shall prevent the voter from voting for all the candidates of 1 party by the use of a single mark or punch; however, it shall be provided with a device or method for each party, for voting for all presidential electors of that party by 1 mark or punch.

(b) Every voting device or booth shall be provided with a means of providing sufficient light to enable voters while in the voting booth to read the ballots or ballot labels. All voting devices used in any election shall be provided with side curtains and front shield to insure that no person can see or know for whom any voter has voted or is voting.

(c) Electronic voting systems of different kinds may be adopted for use in different districts in the same county. (63 Del. Laws, c. 409, § 1.)

§ 5002A. Compliance guarantee.

Before any electronic voting system is purchased, rented or otherwise acquired, or used, the person owning or manufacturing such voting device must give an adequate guarantee in writing and post a bond accompanied by satisfactory surety with the Department of Elections guaranteeing and securing that such voting devices comply fully with the requirements contained in § 5001A of this title and will correctly and accurately record every vote cast and further guaranteeing such voting device against defects in workmanship and materials for a period of 5 years from the date of acquisition thereof, or, in the case of rented voting devices, for the period of rental. (63 Del. Laws, c. 409, § 1.)

§ 5003A. Use of voting devices; costs in municipal elections.

Electronic voting devices may be used throughout this State in all primary, general and special elections and in all municipal elections in all incorporated cities and towns of this State. In the event no contest exists, in municipal

elections voting devices shall not be required. Voting devices may be used in elections held under Title 14. Incorporated cities or towns may use voting devices in the custody of the department of elections of the same county upon payment of all costs and expenses incident to their use. (63 Del. Laws, c. 409, § 1.)

§ 5004A. Number of voting devices per election district.

(a) In all general or primary elections every election district or polling place shall be supplied with at least 1 voting device for every 600 registered voters or a majority fraction thereof.

(b) In all special elections every election district or polling place shall be supplied with as many voting devices as the department of elections shall deem necessary to conduct an election properly and efficiently; provided, however, that there shall be not less than 1 voting device for every 180 registered voters or a majority fraction thereof. (63 Del. Laws, c. 409, § 1.)

§ 5005A. Printing of ballots; distribution of ballots.

(a) All ballot labels and ballot cards shall be printed in black ink on clear, white material of such size as will fit the ballot frame for the general or special elections. Ballot labels and ballot cards for the primary elections shall be printed in black ink on material colored to distinguish 1 party from another; providing, however, that the colors used shall provide easy readability by the voter. All ballot labels shall be secured in the ballot frame to make tampering or removal difficult.

(b) The party emblem which has been duly adopted by such party in accordance with law and the party name or other designation for each political party represented on the voting device shall appear on the ballot label. The titles of offices may be arranged to the left of the candidate names and placed in booklet form.

(c) Separate voting devices for each party shall be provided for the primary election and write-in voting may be accomplished on the ballot card or a separate secrecy envelope.

(d) Official ballot labels and cards for voting devices shall be prepared and furnished by the department of each county in the same manner as now provided by law, and shall be delivered to the department not later than 15 days prior to the next succeeding election. (63 Del. Laws, c. 409, § 1.)

§ 5006A. Number of official ballots to be furnished.

The department shall provide and furnish 110 official ballots per 100 registered voters and retain ballot labels at the department in a quantity sufficient to repair voting devices if it becomes necessary during the course of the election, but in no case, less than 25% of the ballot labels in actual use during the election. (63 Del. Laws, c. 409, § 1.)

§ 5007A. Substitute ballots.

If the official ballots for an election district are not delivered in time for use on election day or after delivery shall be lost, destroyed or stolen, the department shall cause other ballots to be prepared, printed or written as nearly as may be of the form and description of the official ballots, and the department shall cause the ballots so substituted to be used at the election in the same manner, as nearly as may be, as the official ballots would have been. (63 Del. Laws, c. 409, § 1.)

§ 5008A. Preparation of voting devices.

(a) The department of elections shall cause sufficient voting devices to be delivered to the proper polling places prior to the time appointed for the election officers to report for duty. The department shall make sure that each device to be used in an election has been properly prepared and inspected.

(b) The department shall mail written notices to the chairman of the county committee of each of the 2 principal parties, stating the time and place at which the voting device will be inspected. Each principal political party may have 1 representative present during this inspection.

(c) The board of elections shall designate at least 2 representatives of opposite political affiliation, other than the person preparing the devices:

- (1) To inspect each device to make certain it is in good working order and that the proper ballot labels have been placed in it;
- (2) To test each voting position for proper registration;
- (3) To certify such inspections and testing upon a record provided by the department.

(d) The department shall cause all ballot cards to be sealed in a metal transfer carrier and the seal number recorded. Two representatives of the board of elections, of opposite political affiliation, shall examine each voting device and insure that each voting device is sealed with a numbered seal. They shall:

- (1) Certify the numbers on the voting devices and the election districts for which they are designated;
- (2) Certify that all voting devices are in proper working condition;
- (3) Certify that the voting devices are properly sealed.

(e) The department shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be published and the test conducted within 5 days of the election. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved. Two representatives of the board of elections, of opposite political affiliation, shall certify that this has been done.

(f) The certification required by this section shall be a public record in the office of the department of elections.

(g) The department shall require that all persons with custody of the voting devices, either for delivery or storage before and after the election, shall insure the voting devices' safety and protection. (63 Del. Laws, c. 409, § 1.)

§ 5009A. Instruction model.

For the instructions of the voters on any election day there shall be provided for each polling place an instruction model constructed so as to provide a replica of a vote recording device, and shall contain the arrangement of the ballot labels, party columns or rows and questions. Fictitious names shall be inserted in the ballot labels of the models. Each voter upon request, before voting, shall be offered instruction by the election officials in the operation of the vote recording device by use of the instruction model, and each voter shall be given ample opportunity to operate the model himself. (63 Del. Laws, c. 409, § 1.)

§ 5010A. Inoperative voting devices.

If during the conduct of an election a vote recording device becomes inoperative, the election officers shall seal it in such manner as to prevent further voting thereon. The department shall maintain and hold in readiness a reasonable number of extra voting devices to be supplied to election districts where a voting device has become inoperative, and the department shall take reasonable steps to insure rapid delivery in such event. (63 Del. Laws, c. 409, § 1.)

§ 5011A. Voting device curtains; absentee voting.

Side curtains on all voting devices shall be securely fastened before being used in any election. An electronic voting system providing a method of voting absentee utilizing a ballot card may be used for all absentee voting providing it meets all requirements of the law. (63 Del. Laws, c. 409, § 1.)

ELECTION LAWS

CHAPTER 51. CRIMINAL OFFENSES

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§ 8. As to limitation on the power of General Assembly over election offenses, see Del. Const., art. V, § 9.

*Subchapter I. General Provisions***§ 5101. Jurisdiction of Court.**

The Superior Court shall have exclusive, original jurisdiction of offenses under this title and no prosecution for the violation of any section of this title shall be brought in any other court. (15 Del. C. 1953, § 5101.)

Cross references. — As to penal and enforcement provisions generally, see Chapter 23 of this title.

§ 5102. Prosecution by Attorney General; duty to report violations.

(a) The Attorney General shall immediately prosecute to final judgment all complaints which may be made of a violation of this title.

(b) Each department of election and all election officers shall notify the Attorney General of all violations of this title. (19 Del. Laws, c. 39, § 53; Code 1915, § 1810; Code 1935, § 1899; 45 Del. Laws, c. 144, § 9; 45 Del. Laws, c. 148, § 9; 45 Del. Laws, c. 149, § 9; 15 Del. C. 1953, § 5102; 49 Del. Laws, c. 4, § 5.)

§ 5103. Irregularities or defects in election as a defense.

Irregularities or defects in the mode of noticing, canvassing, polling or conducting any election shall not be a defense to a prosecution for any violation of this title. (19 Del. Laws, c. 39, § 51; Code 1915, § 1809; Code 1935, § 1898; 15 Del. C. 1953, § 5103.)

§ 5104. Honest belief as a defense.

Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any fact tending to show that he honestly believed upon good reason that the vote complained of was a lawful one. (19 Del. Laws, c. 39, § 52; Code 1915, § 1809; Code 1935, § 1898; 15 Del. C. 1953, § 5104.)

§ 5105. Application to school elections.

The provisions of this chapter shall additionally be applicable to any local school elections held under Title 14. (67 Del. Laws, c. 243, § 10.)

Revisor's note. — This section became effective upon the signature of the Governor on June 25, 1990.

*Subchapter II. Particular Offenses***§ 5111. Neglect of duty by department member; corrupt or fraudulent conduct; penalty.**

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of the same, shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (45 Del. Laws, c. 144, § 8; 45 Del. Laws, c. 148, § 8; 45 Del. Laws, c. 149, § 8; 15 Del. C. 1953, § 5111.)

§ 5112. Refusal of inspector or judge of election to serve; penalty.

Whoever, having been appointed an inspector or judge of election in any election district, refuses to serve shall be fined \$50. (21 Del. Laws, c. 38, § 11; Code 1915, § 1750; Code 1935, § 1839; 15 Del. C. 1953, § 5112.)

§ 5113. Refusal of clerk of election to qualify or serve; penalty.

Whoever, having been appointed a clerk of election, refuses to qualify or having qualified fails or refuses to perform any of the duties of his office shall be fined not less than \$50 nor more than \$100. (Code 1915, § 1677A; 28 Del. Laws, c. 92; 37 Del. Laws, c. 120; Code 1935, § 1765; 42 Del. Laws, c. 115, § 13; 45 Del. Laws, c. 148, § 29; 45 Del. Laws, c. 149, § 29; 15 Del. C. 1953, § 5113.)

§ 5114. Improper conduct of printer of ballots and ballot envelopes; penalty.

If the printer of the ballot or envelope or any person employed in printing the same:

(1) Knowingly gives or delivers or knowingly permits to be taken any ballots or envelopes by any person other than the department of elections for whom such ballots and envelopes are being printed; or

(2) Prints or causes or permits to be printed any ballot or envelope in any other form than the one prescribed by this title or with any other names thereon than those authorized by the department of elections or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the department of elections he shall be fined not less than \$100 nor more than \$500 or imprisoned not less than 1 nor more than 5 years, or both. (19 Del. Laws, c. 37, § 10; 27 Del. Laws, c. 65; Code 1915, § 1727; Code 1935, § 1816; 15 Del. C. 1953, § 5115; 58 Del. Laws, c. 148, § 119.)

§ 5115. Improper use of ballot or envelope; penalty.

Whoever:

(1) Forges or falsely makes the official endorsement of any ballot or envelope; or

(2) Prints or causes to be printed any imitation ballot or envelope or circulates the same; or

(3) Conspires with other persons or induces or attempts to induce any other person to do any of such acts, whether or not any of such acts are committed or attempted to be committed,

shall be fined not less than \$100 nor more than \$500 or may be imprisoned not more than 5 years. (19 Del. Laws, c. 37, § 30; 27 Del. Laws, c. 65, § 27; Code 1915, § 1734; Code 1935, § 1823; 15 Del. C. 1953, § 5116.)

§ 5116. Tampering with voting machines; penalties.

Whoever before the opening of the election registers any vote on a voting machine or at any time tampers with, disarranges, defaces, impairs in any manner or destroys a voting machine or any part thereof, including the ballots on its face, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not less than 1 nor more than 2 years. (19 Del. Laws, c. 37, § 13; 27 Del. Laws, c. 65, § 11; Code 1915, § 1730; Code 1935, § 1819; 15 Del. C. 1953, § 5117; 49 Del. Laws, c. 18, § 2; 58 Del. Laws, c. 148, § 120.)

§ 5117. Unauthorized entering of voting room; penalties.

(a) Whoever does not meet the qualifications of § 4933 of this title, and enters the voting room on the day of election other than to vote, shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the voting room on the day of election for the purpose of disrupting the election shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 1 year nor more than 5 years. (21 Del. Laws, c. 38, § 15; Code 1915, § 1754; Code 1935, § 1843; 15 Del. C. 1953, § 5118; 57 Del. Laws, c. 181, § 71.)

§ 5118. Interference with election; penalties.

(a) Whoever enters or attempts to enter the voting room before the hour of opening the polls on the day of election or at the time of opening the election, or at any time during the day of the election and before the hour of closing the election for the purpose of interfering with the election officers in the discharge of their duties as such or for any purpose; or

Whoever attempts to molest, disturb or prevent the election officers from proceeding regularly with any general or special election; or

Whoever takes charge or attempts to take charge of any voting room or place where the election is held within the time mentioned in this subsection for the purpose of preventing or delaying an election or for any other purpose on election day,

shall be fined not less than \$500 nor more than \$1,000, and imprisoned not more than 3 years.

(b) Whoever, not in this title authorized so to do, enters or attempts to enter the election room or within the railing leading to the entrance of the election room, or remains within 30 feet of the polling place, contrary to this title, shall be fined not more than \$200.

(c) Whoever resists a challenger appointed pursuant to §§ 3164 and 4934 of this title or a special officer appointed pursuant to § 4935 of this title shall be fined not more than \$100 or imprisoned not more than one year. (19 Del. Laws, c. 37, §§ 2, 17, 33; 19 Del. Laws, c. 39, § 14; 20 Del. Laws, c. 396, §§ 3, 6; 21 Del. Laws, c. 38, § 16; 26 Del. Laws, c. 49; 27 Del. Laws, c. 65, §§ 2, 15, 30; Code 1915, §§ 1740, 1741, 1755, 1757; Code 1935, §§ 1829, 1830, 1844, 1846; 15 Del. C. 1953, § 5119; 58 Del. Laws, c. 148, § 121.)

§ 5119. Feigning a physical disability to obtain assistance in voting; penalty.

(a) Whoever, being an elector, feigns a physical defect or disability in order to be permitted to bring with him into the election room or voting booth another person, shall be fined \$100 and shall be imprisoned not more than 2 years.

(b) Whoever, being an elector selected to assist any person by reason of such person's physical defects, reveals how such elector has voted or what persons were voted for by him on any ballot or gives any information concerning the appearance of any ballot voted, shall be fined \$100 and imprisoned not less than 1 nor more than 3 years. (20 Del. Laws, c. 396, § 1; 27 Del. Laws, c. 65, § 20; Code 1915, § 1739; Code 1935, § 1828; 15 Del. C. 1953, § 5121.)

Cross references. — As to assistance for blind and physically disabled voters, see § 4943 of this title.

§ 5120. Secreting person in election room; penalty.

Whoever, other than the election officers, secretes or attempts to secrete himself in any part of the polling room during the hours of the election for any purpose whatsoever, shall be fined not less than \$100 and may be imprisoned not more than 1 year. (20 Del. Laws, c. 396, § 12; Code 1915, § 1758; Code 1935, § 1847; 15 Del. C. 1953, § 5122.)

§ 5121. Removal or destruction of election supplies or equipment or voting machines; penalty.

(a) Whoever, during the general election:

(1) Removes or destroys any of the supplies or other conveniences placed in the booths or delivered to the voter for the purpose of enabling him to prepare his ballot; or

(2) Removes, tears down or defaces the cards printed for the instruction of the voters; or

(3) Destroys or removes any booth, railing or other conveniences provided for such election; or

(4) Tampers with, disarranges, defaces or impairs in any manner the use of or destroys any voting machine or the ballots on the face of a voting machine,

shall be imprisoned not less than 6 months nor more than 1 year.

(b) Whoever induces or attempts to induce any person to commit any of the acts described in subsection (a) of this section, whether or not any such acts are committed or attempted to be committed shall be imprisoned not less than

6 months nor more than 1 year. (19 Del. Laws, c. 37, § 36; 27 Del. Laws, c. 65, § 33; Code 1915, § 1759; Code 1935, § 1848; 15 Del. C. 1953, § 5123; 49 Del. Laws, c. 18, § 4.)

§ 5122. Disclosures by election officers; penalty.

Whoever, being an election officer:

(1) Reveals to any person how any elector has voted or what persons were voted for by him on any ballot; or

(2) Gives any information concerning the appearance of any ballot voted or envelope used,

shall be fined not more than \$500 and imprisoned not less than 2 nor more than 5 years. (20 Del. Laws, c. 396, § 11; 27 Del. Laws, c. 396, § 11; Code 1915, § 1760; Code 1935, § 1849; 15 Del. C. 1953, § 5124.)

§ 5123. Intimidation, persuasion or bribery by election officer; penalty.

Whoever, being an election officer:

(1) In any manner attempts to influence, persuade, intimidate, bribe or coerce any voter in the marking of his ballot, or in the making of the choice of the persons for whom he votes; or

(2) Discloses the manner in which any person has voted;

shall be deemed to have knowingly and wilfully violated his official duty, shall be guilty of wilful and deliberate perjury, and, in addition to the penalties and disabilities annexed to such crime, be fined not more than \$500 and may be imprisoned not more than 2 years. (19 Del. Laws, c. 37, § 25; 27 Del. Laws, c. 65, § 22; Code 1915, § 1761; Code 1935, § 1850; 15 Del. C. 1953, § 5125.)

Cross references. — As to duty of Inspector of Elections to read this section to election officers before administering oath, see § 4903 of this title.

§ 5124. Inducing the making of distinguishing mark on ballot; penalty.

Whoever induces or attempts to induce any elector to write, paste or otherwise place on his ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such elector has voted; or whoever enters into or attempts to form any agreement or conspiracy with any other person to induce or attempt to induce any elector to so place any distinguishing mark or name on his ballot, whether or not such act be committed or attempted to be committed; shall be imprisoned

not more than 2 years. (19 Del. Laws, c. 37, § 34; 27 Del. Laws, c. 65, § 31; Code 1915, § 1762; Code 1935, § 1851; 15 Del. C. 1953, § 5126.)

Cross references. — As to duty of Inspector of Elections to read this section to election officers before administering oath, see § 4903 of this title.

§ 5125. Inducing election officers to violate election laws; penalty.

Whoever induces or attempts to induce any election officers to violate any of the provisions of this title whether or not such election officers violate or attempt to violate any of such provisions shall be imprisoned not more than 5 years. (27 Del. Laws, c. 65, § 32; Code 1915, § 1763; Code 1935, § 1852; 15 Del. C. 1953, § 5127.)

Cross references. — As to duty of Inspector of Elections to read this section to election officers before administering oath, see § 4903 of this title.

§ 5126. Violations by officials; penalties.

Whoever, being a clerk of the peace, an official, or other individual as designated in this title, willfully violates this title in the performance of any duty imposed upon him for the violation of which no other punishment is provided by law, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not more than 3 years. (20 Del. Laws, c. 396, § 13; 27 Del. Laws, c. 65, § 28; Code 1915, § 1787; Code 1935, § 1876; 15 Del. C. 1953, § 5128; 57 Del. Laws, c. 181, § 73.)

§ 5127. Bribery of person expecting to be election or registration officer; penalty.

Whoever bribes or attempts to bribe anyone expecting to hold any official position under the election or registration laws of this State, either as registrar, inspector, judge or otherwise, by giving money or the promise of money, office or the promise of office or position either under the state or federal government, to perform any service for any political party in this State or to favor any candidate for political office shall be fined not more than \$1,000 and may be imprisoned not more than 6 months. (19 Del. Laws, c. 575; Code 1915, § 1788; Code 1935, § 1877; 15 Del. C. 1953, § 5129.)

Cross references. — As to bribery and improper influence, see §§ 1201 to 1209 of Title 11.

§ 5128. Fraudulent voting; penalty.

Whoever, at any general or special election:

(1) Falsely personates any elector or other person and votes or attempts or offers to vote in or upon the name of such elector or other person; or

(2) Votes or attempts to vote in or upon the name of any other person whether living or dead or in or upon any false, assumed or fictitious name; or

(3) Knowingly, willfully or fraudulently votes more than once for any candidate at any election for the same office; or

(4) Votes or attempts or offers to vote in any election district without having a lawful right to vote therein, or to vote more than once or to vote in more than 1 election district; or

(5) Having once voted, votes or attempts or offers to vote again; or

(6) Fraudulently delivers or offers to an election officer more than a single ballot; or

(7) Knowingly, willfully or fraudulently does any unlawful act to secure an opportunity for himself or for any other person to vote,

shall be fined not less than \$50 or more than \$200, or imprisoned not less than 30 days or more than 2 years, or both. (Code 1852, § 312; 19 Del. Laws, c. 39, § 34; Code 1915, § 1794; Code 1935, § 1883; 15 Del. C. 1953, § 5130; 50 Del. Laws, c. 174, § 1.)

§ 5129. False entries by clerk of election.

Whoever, being a clerk of election or other election officer performing the duty of such clerk:

(1) Willfully keeps a false poll list; or

(2) Knowingly inserts in his poll list any false statement, or any name, statement, check, letter or mark, except as provided by law;

shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 35; Code 1915, § 1795; Code 1935, § 1884; 15 Del. C. 1953, § 5131.)

Cross references. — As to official misconduct, see § 1211 of Title 11.

§ 5130. Failure of election officer to perform duties.

Whoever, being an election officer, willfully:

(1) Excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election; or

(2) Receives a vote from any person who has been duly challenged in relation to his right to vote at such election without exacting from such person such oath or other proof of qualification as may be required by law; or

(3) Omits to challenge any person offering to vote whom he knows or suspects not to be entitled to vote and who has not been challenged by any other person

shall be deemed to have violated his official duty. (19 Del. Laws, c. 39, § 36; Code 1915, § 1796; Code 1935, § 1885; 15 Del. C. 1953, § 5132.)

Cross references. — As to official misconduct, see § 1211 of Title 11.

§ 5131. False count or certification by election officer.

Whoever, being an election officer, willfully:

(1) Makes any false count of votes cast at any election, or makes, signs, publishes or delivers any false return of such election or any false certificate or statement of the result of such election, knowing the same to be false; or

(2) Defaces, destroys or conceals any statement or certificate entrusted to his care or custody

shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 37; Code 1915, § 1797; Code 1935, § 1886; 15 Del. C. 1953, § 5133.)

§ 5132. Fraudulent deposit or alteration of ballots or entering voting machine booth or casting vote; penalty.

(a) Whoever, being an election officer, at any election:

(1) Knowingly and willfully puts or causes to be put any ballot or ballots or other paper having the semblance thereof into any box used at such election for the reception of votes; or

(2) Knowingly and willfully causes or permits any ballot to be in the ballot box at the opening of the polls and before voting shall have commenced; or

(3) Knowingly or willfully or fraudulently puts any ballot or other paper having the semblance thereof into any ballot box unless the same is offered by an elector and his name has been found and checked upon the Election District Record; or

(4) Fraudulently before, during or after the reading and count of the ballot, in any manner changes, substitutes or alters any ballot; or

(5) Removes any ballot or semblance thereof from, or adds any ballot or semblance thereof to, the ballots found in any such ballot box upon the closing of the polls; or

(6) Knowingly and willfully causes or permits any vote to be registered on a voting machine, unless the vote is cast by an elector whose name has been found and checked upon the books of registered voters and who has not previously voted, or knowingly or willfully enters or permits anyone to enter a voting machine booth, unless the person is an elector whose name has been found or checked upon the books of registered voters and who has not previously voted or is an election officer or member or employee of the department of elections whose entrance into the voting machine booth is required by the provisions of this title

shall be deemed to have knowingly and willfully violated his official duty.

(b) Whoever, not being an election officer, does or causes to be done any of the acts, matters or things mentioned in subsection (a) of this section, shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 38; Code 1915, § 1798; Code 1935, § 1887; 15 Del. C. 1953, § 5134; 49 Del. Laws, c. 18, § 3; 50 Del. Laws, c. 174, § 2.)

§ 5133. Wilful neglect of duty by election officers.

Whoever, being an election officer of whom any duty is required in this title, is guilty of any wilful neglect of such duty or of any corrupt or fraudulent conduct or practice in the execution of the same shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 39; Code 1915, § 1799; Code 1935, § 1888; 15 Del. C. 1953, § 5135.)

§ 5134. Stealing, destroying or secreting records; penalty.

(a) Whoever, being an election officer having the custody of any registration records, or copy thereof, oath, return of votes, certificate, poll list or any paper, document, or evidence of any description, in this title directed to be made, filed or preserved:

(1) Steals, willfully destroys, mutilates, defaces, falsifies, or fraudulently removes or secretes the whole or any part thereof; or

(2) Fraudulently makes any entry, erasure, or alteration therein, except as allowed and directed by this title; or

(3) Permits any other person to do so,

shall be deemed to have knowingly and willfully violated his official duty.

(b) Whoever, not being an election officer and having such custody, does or commits any of the acts, matters or things mentioned in subsection (a) of this section, or whoever, not being an election officer, advises, procures or abets the commission of any of the acts mentioned in this section shall, for each such

offense, be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, §§ 40, 41; Code 1915, §§ 1800, 1801; Code 1935, §§ 1889, 1890; 15 Del. C. 1953, § 5136; 50 Del. Laws, c. 174, § 3.)

§ 5135. Perjury; subornation of perjury.

(a) Whoever is convicted of wilful false swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this title is guilty of perjury.

(b) Whoever willfully or corruptly instigates, advises, induces or procures any person to swear or affirm falsely, or attempts or offers so to do, is guilty of subornation of perjury, and shall suffer the punishment directed by law in cases of perjury. (19 Del. Laws, c. 39, §§ 42, 43; Code 1915, § 1802; Code 1935, § 1891; 15 Del. C. 1953, § 5137.)

Cross references. — As to false oath or affirmation relating to elections, see Del. Const., art. V, § 3. As to perjury and related offenses, see §§ 1221 to 1235 of Title 11.

§ 5136. Tampering with ballots or deceiving voters; penalty.

Whoever:

(1) Fraudulently changes or alters the ballot of any elector, or substitutes 1 ballot for another, or fraudulently furnishes any elector with a ballot containing more than the proper number of names; or

(2) Intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote and to have the same thrown out and not counted, or to have the same counted for a person or candidate other than the person or candidate for whom such elector intended to vote; or

(3) Otherwise defrauds the elector of his vote

shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 44; Code 1915, § 1803; Code 1935, § 1892; 15 Del. C. 1953, § 5138.)

§ 5137. Disobeying election officers; penalty.

Whoever willfully disobeys any lawful command of any election officer, given in the execution of his duty as such at any election, shall be fined not more than \$200 or imprisoned not more than 1 year, or both. (19 Del. Laws, c. 39, § 45; Code 1915, § 1804; Code 1935, § 1893; 15 Del. C. 1953, § 5139.)

§ 5138. Breach of peace or violence on election day; penalty.

Whoever on any day of election or during the reading and counting of the votes cast thereat causes any breach of the peace or uses any violence or threats of violence whereby any such election or reading and counting of ballots is impeded or hindered or whereby the lawful proceedings of election officers or challengers at such election are interfered with shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 46; Code 1915, § 1805; Code 1935, § 1894; 15 Del. C. 1953, § 5140.)

Cross references. — As to disorderly conduct, see § 1301 of Title 11.

§ 5139. Interference with election officer or challenger; penalty.

Whoever knowingly or willfully obstructs, hinders, assaults or by bribery, solicitation or otherwise interferes with any election officer or challenger in the performance of any duty required of him or which he may by law be authorized or permitted to perform; or whoever by any means before mentioned or otherwise unlawfully on the day of election hinders or prevents any election officer or challenger in his free attendance and presence at the place of election in the election district in which he is appointed to serve, or in his full and free access and egress to and from any such place of election, or molests, interferes with, removes or ejects from any such place of election any such election officer or challenger, or unlawfully threatens or attempts or offers so to do shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 47; Code 1915, § 1806; Code 1935, § 1895; 15 Del. C. 1953, § 5141.)

§ 5140. Failure of inspector to preserve order.

Whoever, being an inspector of election, willfully neglects or when called on willfully declines to exercise the powers conferred on him to preserve order shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 48; Code 1915, § 1807; Code 1935, § 1896; 15 Del. C. 1953, § 5142.)

§ 5141. Stealing or destroying ballot box, ballot, poll list; penalty.

Whoever, not being an election officer:

(1) Steals or willfully breaks or destroys any ballot box used or intended to be used at any election; or

(2) Willfully or fraudulently conceals, secretes or removes any ballot box from the custody of the election officers; or

(3) Alters, defaces, injures, destroys or conceals any ballot or envelope which has been deposited in any ballot box at such election or any poll list used or intended to be used at such election or any report, return, certificate or other evidence in this title required or provided for;

shall, for each such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 49; 27 Del. Laws, c. 65; Code 1915, § 1808; Code 1935, § 1897; 15 Del. C. 1953, § 5143.)

Circumstantial evidence. — In order to justify a conviction on inferential or circumstantial evidence, the jury must be satisfied from the proof in this case that ballots could

have disappeared in no other reasonable way than by burning or other destruction. *State v. Mundy*, Del. Gen. Sess., 43 A. 260 (1895).

§ 5142. Requiring unauthorized oath; penalty.

Whoever, being an election officer or other person, administers or causes to be administered to any legal voter any oath or affirmation not authorized by the Constitution or laws of this State for that purpose as a prerequisite or condition of voting at any election, except when such oath or affirmation is administered in order to satisfy such election officer or other person that such vote is a legal vote according to the Constitution and laws of this State, shall for each such offense be fined not less than \$500 nor more than \$1,000 and imprisoned 10 days. (12 Del. Laws, c. 326, § 3; Code 1915, § 1827; Code 1935, § 1916; 15 Del. C. 1953, § 5144.)

§ 5143. Candidate for General Assembly not to make written pledge; penalty.

(a) No candidate for State Senator or Representative in the General Assembly shall make any written pledge to give or withhold his vote on any proposed law or legislation, nor shall any other person seek to influence any such candidate in his attitude upon any proposed law or legislation by offer or promise of a vote or votes or of any support at any primary or election.

(b) Whoever violates subsection (a) of this section shall be fined not less than \$50 nor more than \$1,000, or imprisoned not less than 1 month nor more

than 2 years, or both. (Code 1915, § 1876D; 29 Del. Laws, c. 112; 30 Del. Laws, c. 105; Code 1935, § 1944; 15 Del. C. 1953, § 5145.)

Subchapter III. Offenses Carrying Civil Liability

§ 5161. Intimidation of election officers; penalty.

If any person, firm, corporation or employer existing or doing business in this State, hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed an election officer under the laws of this State from qualifying and performing his duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, he or they shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State. (45 Del. Laws, c. 144, § 24; 45 Del. Laws, c. 148, § 24; 45 Del. Laws, c. 149, § 24; 15 Del. C. 1953, § 5161.)

§ 5162. Intimidation of electors; penalty.

If any person, or corporation existing or doing business in this State, hinders, controls, coerces or intimidates or attempts to hinder, control, coerce or intimidate any qualified elector of this State from or in the exercise of his right to vote at any general, special or municipal election held under the laws of this State, by means of bribery or by threats of depriving such elector of employment or occupation, absolutely or contingently, directly or indirectly, every elector so aggrieved may, in a civil action brought for that purpose, sue for and recover from the person or corporation so offending the sum of \$500. (16 Del. Laws, c. 329, §§ 1, 2; Code 1915, § 1789; Code 1935, § 1878; 15 Del. C. 1953, § 5162.)

§ 5163. Liability of corporation or officers.

In any trial under § 5161 or 5162 of this title, the acts of any officer of a corporation, insofar as they affect or concern an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether general or special authority as to such acts from the corporation is shown or not.

Nothing contained in § 5161 or 5162 of this title or in this section shall be construed to relieve any officer of a corporation from individual liability under such sections. (16 Del. Laws, c. 329, §§ 1, 2; Code 1915, § 1789; Code 1935, § 1878; 45 Del. Laws, c. 147, § 24; 45 Del. Laws, c. 148, § 24; 45 Del. Laws, c. 149, § 24; 15 Del. C. 1953, § 5163.)

§ 5164. Liability of stakeholder for paying election bet.

If any stakeholder, or person with whom any money or thing, laid as a wager or bet on the result of any election, or on the election or defeat of any candidate or person voted for thereat, shall be deposited, shall at any time either before or after such bet shall have been decided, pay over or deliver to either or both of the persons betting the same, or to any other person by the order or for the use of them, or either of them, the money or thing so illegally betted, every such stakeholder or depository shall forfeit and pay to any person who will sue for the same, double the amount of such wager or bet or double the value of the thing betted.

Either of the persons betting shall be competent witnesses against the stakeholder. (Code 1852, §§ 314, 315; Code 1915, § 1813; Code 1935, § 1902; 15 Del. C. 1953, § 5164.)

CHAPTER 53. MILITARY OR OTHER INTERFERENCE WITH ELECTIONS

- Sec.
5301. Bringing armed soldiers into State to interfere with elections; penalty.
5302. Abetting or counseling military interference with elections; penalty.
5303. Civil remedy for interference with voting.
5304. Duty to disclose information as to interference with elections.
5305. Ten year limitation on civil actions for voting interference.
5306. Special polling place and voting procedure in case of military interference.

- Sec.
5307. Duties of inspector at special polling place.
5308. Canvass of ballots from special polling place.
5309. Procedure in case of military interference with board of canvass.
5310. Number of special polling places not limited.
5311. Special clerk; appointment; oath.
5312. Compensation of special election officers.

§ 5301. Bringing armed soldiers into State to interfere with elections; penalty.

Whoever, being a citizen or inhabitant of this State:

(1) Sends or causes to be sent, brings or causes to be brought into this State, or aids, abets, procures, advises, counsels or in any manner assists in sending or bringing into this State any armed soldier to be present at any voting place in this State or within 5 miles thereof, on the day of any general, special or other election held in this State; or

(2) Aids, abets, procures, advises, counsels or in any manner assists the presence or attendance of any armed soldier at any such voting place, or within 5 miles thereof, on any such election day

shall be guilty of a felony, and shall be fined not less than \$1,000 nor more than \$10,000, and imprisoned not less than 1 nor more than 5 years, and shall forever thereafter be incapable of exercising the right of suffrage in this State. (12 Del. Laws, c. 326, § 1; Code 1915, § 1825; Code 1935, § 1914; 15 Del. C. 1953, § 5302.)

§ 5302. Abetting or counseling military interference with elections; penalty.

Whoever, being a citizen or inhabitant of this State, aids, abets, procures, advises, counsels or in any manner assists or is guilty of military interference in any manner with the freedom of any election in this State shall be guilty of felony, and shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned not less than 1 nor more than 5 years, and shall forever thereafter be incapable of exercising the right of suffrage in this State. (12 Del. Laws, c. 326, § 2; Code 1915, § 1826; Code 1935, § 1915; 15 Del. C. 1953, § 5303.)

§ 5303. Civil remedy for interference with voting.

Whoever, being a duly qualified elector of this State according to the Constitution and laws thereof, is prevented from voting, or obstructed in his effort to vote at any election, by reason of any interference by any person or persons, or military power, or other power, exercising or attempting to exercise force, intimidation or threats, or requiring any qualifications or conditions unknown to such Constitution and laws, shall be deemed and taken to have suffered private damage and injury, and shall have civil remedy therefor, in the courts of this State, by civil action against every person who promoted such interference, whether by active participation, or by advising, counseling, or in anywise encouraging the same; and in any trial under this section or § 5304 of this title, the court or jury, if, in their opinion the circumstances will warrant it, may give exemplary damages. (12 Del. Laws, c. 487, § 1; Code 1915, § 1828; Code 1935, § 1917; 15 Del. C. 1953, § 5304.)

§ 5304. Duty to disclose information as to interference with elections.

Every citizen of this State who has knowledge of any design on the part of any other citizen or citizens of this State to promote interference with elections, either by soliciting or advising the presence of a military force at or near the place or places of holding such elections or by the employment of any other organized or unorganized body of men, or by intimidation or threats shall forthwith make public disclosure of such knowledge, stating names, by an affidavit to be made before any one of the Superior Court Judges of this State, and shall file the same in the office of the Prothonotary of the county where the Judge resides, and if any such citizen, having such knowledge, fails to make such affidavit and cause the same to be filed, he shall be treated as a promoter of the interference mentioned in § 5303 of this title and be liable as is provided in such § 5303. (12 Del. Laws, c. 487, § 2; Code 1915, § 1829; Code 1935, § 1918; 15 Del. C. 1953, § 5305.)

§ 5305. Ten year limitation on civil actions for voting interference.

The limitation of actions commenced under §§ 5303 and 5304 of this title shall be 10 years from the time of the accruing of the cause of action. (12 Del. Laws, c. 487, § 3; Code 1915, § 1830; Code 1935, § 1919; 15 Del. C. 1953, § 5306.)

§ 5306. Special polling place and voting procedure in case of military interference.

If it happens that by reason of the presence of any military force at or near the place of holding an election in this State, electors duly qualified by the Constitution and laws of this State to vote at such place at the election shall be prevented from or interfered with by military force or by the requirement of oaths unknown to the Constitution and laws in casting their votes, any number of electors not less than 5 may withdraw from the place to any other place within the voting district where such prevention or interference shall take place, and having there, by a majority of the electors present, selected a duly qualified elector of the district, who shall be a freeholder, to act as inspector, deliver to him there their respective ballots. The inspector shall receive the ballots and record the name of the voter upon a list to be kept by him for that purpose and immediately write upon each ballot the name of the person who delivered the same to him, the inspector having first administered to each person offering to vote an oath or affirmation in the following words: "You do solemnly swear (or affirm) that you are now a duly registered voter of this election district, that you have not voted and will not vote on this day at any other place in this or any other election district, and that you have been hindered or prevented from casting your vote at the regular place of holding the election in this district, by military interference, or by the requirement of oaths unauthorized by the Constitution and laws of this State." (12 Del. Laws, c. 491, § 1; Code 1915, § 1831; Code 1935, § 1920; 15 Del. C. 1953, § 5307.)

§ 5307. Duties of inspector at special polling place.

The polls authorized to be held by § 5306 of this title shall be held at the place where they are opened unless it be impracticable to hold them there in which event they shall be adjourned to some other place, or places, if necessary, in the election district where they are opened, and there held, and they shall be kept open until 6:00 in the afternoon, when the inspector shall close them. As soon as such polls are closed, the inspector holding them, having first ascertained the number of ballots cast, and for whom and for what office the votes were given, and made a certificate thereof, shall seal up the ballots received by him in a box or envelope, and keep them safely, together with the list of the names of the electors who have deposited their ballots with him, until the time of the meeting of the Superior Court of his county, constituted as provided by § 6, article V, of the Constitution of this State, provided by the election laws, when he shall appear before the Court with the ballots and list of voters and his certificate, and deliver his certificate to the Court, with an affidavit made by him upon the same, that it contains a true and faithful statement of the number of ballots received by him, the names of the electors

who cast them, the number of votes for the different persons voted for and that at the poll held by him, he did not knowingly receive the ballot of any person not a duly qualified voter within his election district according to the Constitution and laws of this State and did not refuse to receive the ballot of any person so qualified, who had been prevented from voting at the regular place of voting by military force or the requirement of an oath unauthorized by the Constitution and laws of this State, and that he determined every matter that came before him and performed every act and duty required of him by law touching the election held by him, truly, faithfully and impartially, according to the best of his skill and judgment. (12 Del. Laws, c. 491, § 2; Code 1915, § 1832; Code 1935, § 1921; 15 Del. C. 1953, § 5308.)

§ 5308. Canvass of ballots from special polling place.

The Superior Court, sitting as a board of canvass, shall receive the certificate, and in ascertaining and certifying the state of the election shall take into consideration the number of ballots certified by the inspector to have been received by him and for whom and what office the votes were given, and give the certificate the same force and effect as a certificate of the election officers at any of the regular places of holding the election. The votes so given shall be reckoned among the number of votes given in the election district where they were received by the inspector, in the same manner as if they had been given at the regular place of voting in the district; provided always, however, that the Court shall be required to hear and determine challenges as to the right of any person, who delivered his ballot to the inspector, and reject any ballot if the person who cast the same had not a right to vote under the Constitution and laws of this State, either from want of qualification, or by reason of his having voted at any other place in the State where he was entitled to vote on the same day. Such of the ballots so received by the inspector, as are not rejected by the Court and also the list of voters, and the certificate shall be deposited by the Court in the regular ballot box of the election district where they were cast, and the box shall then be immediately resealed by the Court. The Court may also open the ballot box for the purpose. The Court may also examine on oath the inspector touching any matter connected with the holding of the election by him, and may if it appear to it that the election was not fairly held by such inspector, reject his certificate and throw out the vote returned by him. (12 Del. Laws, c. 491, § 3; Code 1915, § 1833; Code 1935, § 1922; 15 Del. C. 1953, § 5309.)

§ 5309. Procedure in case of military interference with board of canvass.

If it is apparent to the Court sitting as board of canvass that any interference with the performance of its duties will be attempted by military force, or if, after it has met, any such interference is attempted, it may meet at any other place within its county to perform its duties. And further, if any member of the Court, or any such inspector created by virtue of this title, or any inspector of election, is prevented, by reason of such interference from attending the meeting of the Court, or if the Court, being met, shall be prevented by such interference from performing the duties incumbent on it, the Court shall adjourn to meet at some other time and other place, if necessary, to perform its duties under the laws of this State, and so adjourn from time to time until such duties can be performed. The duty of attendance upon the Court on the part of such an inspector created by authority of this chapter, and the penalties upon him for not appearing shall be the same as in the case of the inspectors regularly elected or appointed according to law. (12 Del. Laws, c. 491, § 4; Code 1915, § 1834; Code 1935, § 1923; 15 Del. C. 1953, § 5310.)

§ 5310. Number of special polling places not limited.

Nothing contained in §§ 5306-5312 of this title shall limit the voting places to 2 in an election district, but, the emergency contemplated in §§ 5306-5309 of this title arising, as many different polls may be held as there are numbers of voters of 5 or more, who under the circumstances withdraw from the regular place of holding the election for the purpose of casting their ballots without intimidation or interference. (12 Del. Laws, c. 491, § 5; Code 1915, § 1835; Code 1935, § 1924; 15 Del. C. 1953, § 5311.)

§ 5311. Special clerk; appointment; oath.

Each inspector chosen under § 5306 of this title may appoint a clerk to aid him in the discharge of such duties as are clerical and shall administer to him before he enters upon the discharge of the duties to be assigned to him an oath or affirmation in these words: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Clerk of the Election for this election in Election District in Representative District in County, according to the best of my ability." (12 Del. Laws, c. 491, § 6; Code 1915, § 1836; Code 1935, § 1925; 15 Del. C. 1953, § 5312.)

§ 5312. Compensation of special election officers.

The special inspectors and clerks elected and appointed under this chapter shall receive the same compensation as inspectors and clerks elected and appointed under the provisions of law for a general election. (12 Del. Laws, c. 491, § 6; Code 1915, § 1836; Code 1935, § 1925; 15 Del. C. 1953, § 5313.)

CHAPTER 55. ABSENTEE VOTING

Sec.

5501. Purpose of chapter.
 5502. Persons eligible to vote by absentee ballot.
 5503. Affidavits required of persons applying for absentee ballots.
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 5505. Distribution of ballots, envelopes and instructions.
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Sec.

5514. Requirements for absentee ballots received by election officers.
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 5518. Validity of absentee voter's ballot for wrong district.
 5519. Procedure if requests or ballots sent to wrong official.
 5520. Persons before whom affidavits may be taken.
 5521. File of absentee voters.
 5522. Authority to alter forms in certain cases; procedure.
 5523. One absentee ballot request to cover all elections for members of the armed forces and certain other electors.
 5524. Procedures for voting with special written absentee ballot by qualified absentee electors.
 5525. Penalties.

Cross references. — As to general laws for absentee voting, see Del. Const., art. V, § 4A.

As to uniform laws for absentee registration, see Del. Const., art. V, § 4B.

§ 5501. Purpose of chapter.

This chapter shall provide that those qualified electors of this State who shall be unable to appear to cast their ballots at the polling place of their election district at any general or special election may be able to cast such a ballot to be counted in the election district if such a privilege has been granted them by article V, § 4A, Delaware Constitution. (44 Del. Laws, c. 118, § 20; 47 Del. Laws, c. 316, § 4; 15 Del. C. 1953, § 5501; 49 Del. Laws, c. 278, § 1; 58 Del. Laws, c. 148, § 122; 63 Del. Laws, c. 455, § 1.)

Precaution against fraudulent abuse. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible

precaution against fraudulent abuse of the privilege. State ex rel. Smith v. Carey, Del. Supr., 112 A.2d 26 (1955).

§ 5502. Persons eligible to vote by absentee ballot.

Any qualified elector, duly registered, of this State may cast his vote by absentee ballot in any general or special election, primary election choosing candidates for statewide or local offices or special election held under the provisions of Chapter 73 of this title, such votes to be counted in the total for the election district in which he is registered if he is unable to appear at the polling place of his election district due to the following reasons:

(1) Because such person is in the public service of the United States or of this State, or is a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or his spouse or dependents when residing with or accompanying him, or is absent from this State because of illness or injury received while serving in the armed forces of the United States; or

(2) Because such person is in the armed forces of the United States or the merchant marine of the United States, or attached to and serving with the armed forces of the United States in the American Red Cross or United Service Organizations; or

(3) Because of the nature of such person's business or occupation; or

(4) Because such person is sick or physically disabled; or

(5) Because such person is absent from the district while on vacation; or

(6) Because such person is unable to vote at a certain time or on a certain day due to the tenets or teachings of his religion. (44 Del. Laws, c. 118, § 1; 47 Del. Laws, c. 316, § 1; 15 Del. C. 1953, § 5503; 49 Del. Laws, c. 278, § 3; 57 Del. Laws, c. 181, § 75; 58 Del. Laws, c. 148, § 123; 58 Del. Laws, c. 397, § 8; 61 Del. Laws, c. 252, § 1; 63 Del. Laws, c. 67, §§ 1-3; 63 Del. Laws, c. 455, § 2; 65 Del. Laws, c. 455, § 1; 68 Del. Laws, c. 301, §§ 1, 2.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, deleted "Society of Friends" following "American Red Cross" in (2); and rewrote (3).

Classifications in subdivision (2) are unconstitutional limitations, insofar as general elections are concerned. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

And the classification in subdivision (3) is also an unconstitutional enlargement, upon the "business or occupation" classification of absentee voters contained in Del.

Const., art. V, § 4A. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

The mandate of Del. Const., art. V, § 4A, that the "General Assembly shall enact general laws" for absentee voting at general elections is not met by this section insofar as the "business or occupation" classification in § 4A is concerned. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

Primaries were formerly special province of parties. — Until the enactment of 15 Del. C. § 3113 and this section, primary elections, like nominating conventions, were considered the special province of the political parties, to be conducted by them under party rules and regulations. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

General Assembly may provide for absentee voting in primaries. — The General Assembly may constitutionally provide by statute for absentee voting by any person in an election other than a general election. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

The framers of the Constitution intentionally and successfully avoided any limitation upon the legislative powers of the General Assembly as to primary elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

Subdivision (3) of this section shall be deemed to read: "(3) Unavoidably absent from the county in which he resides on the day of the election, or" As thus read, there is no constitutional problem as to primary elections

caused by subdivision (3). Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

Instructions governing absentee voting in primaries. — The State Election Commissioner and the several departments of elections have ample authority to promulgate and issue instructions governing absentee voting in primary elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

There is no constitutional requirement for statutory instructions for absentee voters at primary elections. Therefore, the absence of a statutory provision for such instructions creates no constitutional difficulty. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

§ 5503. Affidavits required of persons applying for absentee ballots.

Any voter desiring to receive an absentee ballot because he qualifies under any of the reasons set forth in § 5502 of this title shall file an affidavit with the department of elections for that county, subscribed and sworn to by him before an officer authorized by law to administer oaths; provided, however, that the affidavit of any voter desiring to receive an absentee ballot because he qualifies under any of the reasons set forth in § 5502(1) or (2) of this title may be subscribed and sworn to before a commissioned officer of the armed forces; and provided further that the affidavit of any voter desiring to receive an absentee ballot because he is physically disabled may be self-administered. The affidavit shall be dated during the calendar year in which the election is to be held. The affidavit shall state the reason why he cannot appear at the regular polling place for his election district on the day of the election, his birth date, his social security number, his expected location, including his address and a telephone number (if available) to be used for the purpose of challenge on election day and, if sick or disabled, the name and address of a physician or Christian Science practitioner who can attest to the voter's inability to go to his polling place on the day of election. The department shall mail or deliver the official ballot, envelopes and instructions to the voter as soon as possible after receiving the affidavit. (44 Del. Laws, c. 118, § 1; 47 Del. Laws, c. 316, § 1; 15 Del. C. 1953, § 5504; 49 Del. Laws, c. 278, § 4; 50 Del. Laws, c. 173, § 1; 58 Del. Laws, c. 148, §§ 124-126; 60 Del. Laws, c. 414, § 13; 65 Del. Laws, c. 455, §§ 2, 3; 68 Del. Laws, c. 301, § 3.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, rewrote this section.

§ 5504. Request for ballot.

Any elector who is qualified under § 5502 of this title to vote by absentee ballot and who desires to do so shall, not later than 12:00 noon of the day prior to any such election, request the department of the county in which the election district of such elector is located for an official ballot to be voted at such election. (44 Del. Laws, c. 118, § 2; 45 Del. Laws, Sp. Sess., c. 5, § 1; 45 Del. Laws, c. 155, § 2; 15 Del. C. 1953, § 5505; 49 Del. Laws, c. 278, § 5; 52 Del. Laws, c. 92, § 3; 52 Del. Laws, c. 223; 58 Del. Laws, c. 148, § 127; 61 Del. Laws, c. 480, § 17.)

§ 5505. Distribution of ballots, envelopes and instructions.

Upon receipt of a request from an elector, together with an affidavit if required by § 5503 of this title, the department, not more than 60 nor less than 3 days prior to a general or special election and within 3 days after the ballots, envelopes and instructions for absentee voters become available, as provided by the general or special election law, shall mail to the elector, postage prepaid, an official ballot for the representative district in which the elector resides enclosed in an official envelope along with a voucher envelope marked "voucher envelope," a copy of the instructions to absentee voters and a mailing envelope marked "mailing envelope." Nothing contained in this section shall prevent the issuance of an absentee ballot to those lawfully entitled thereto prior to 12:00 noon of the day prior to any general or special election when the request is made less than 3 days prior to the general election. (44 Del. Laws, c. 118, §§ 4, 7; 45 Del. Laws, Sp. Sess., c. 5, § 2; 45 Del. Laws, c. 155, §§ 3, 6; 46 Del. Laws, c. 181, § 1; 15 Del. C. 1953, § 5506; 60 Del. Laws, c. 414, § 14; 63 Del. Laws, c. 455, § 3.)

§ 5506. Affidavit of eligibility on voucher envelope; form.

There shall be printed on the face of each voucher envelope a self-administered affidavit in substantially the following form:

I do solemnly swear (affirm) that I am a resident of the State of Delaware and that my voting address is
..... in or near
Street Address City
..... Election District, of the Representative District of
..... County.

I do also solemnly swear (affirm) under penalty of perjury that I have not received or accepted, or offered to receive or accept any money or other item of value as compensation, inducement or reward for the giving or withhold-

ing of a vote at this election, nor that I am acting under duress or threat of duress or harm.

.....
Date Sign name here

.....
Print name here

(44 Del. Laws, c. 118, § 5; 45 Del. Laws, c. 155, § 4; 47 Del. Laws, c. 316, § 2; 15 Del. C. 1953, § 5507; 49 Del. Laws, c. 278, § 7; 50 Del. Laws, c. 173, § 10; 58 Del. Laws, c. 148, § 128; 60 Del. Laws, c. 414, § 15; 65 Del. Laws, c. 455, § 4; 68 Del. Laws, c. 301, § 4.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, rewrote the section.

§ 5507. Envelope specifications; approval by Attorney General.

(a) The voucher envelope shall be of the type known as a security mailing envelope and shall be such as to securely protect the contents thereof from tampering, removal or substitution without detection. Such envelopes shall be successively numbered beginning with Number 1 printed in red ink in the upper right-hand corner thereof.

(b) The mailing envelope shall be large enough to carry the voucher envelope.

(c) All envelopes used under this chapter, including all envelopes in which the department shall forward to an absentee voter an official ballot accompanied by the official envelope, the voucher envelope, a mailing envelope and instructions to absentee voters, and the carrier envelope used by the department for forwarding the returned marked ballot to the polls of the various election districts shall be uniform throughout the State. The Attorney General shall personally approve each kind or type of envelope and no department shall purchase, use, have printed upon, mail or deliver any envelope for use under this chapter unless such type or kind of such envelope has first been approved personally by the Attorney General. (44 Del. Laws, c. 118, §§ 5, 7, 8; 45 Del. Laws, c. 155, §§ 4, 6, 7; 15 Del. C. 1953, § 5508; 60 Del. Laws, c. 414, §§ 16, 17.)

§ 5508. Instructions to absentee voter.

The Attorney General shall prepare a list of instructions to assist an absentee voter in properly marking and returning his ballot under this chapter which shall be known as "instructions to absentee voter." Before each general election the Attorney General shall deliver a copy thereof to each department in sufficient time for such departments to have such instructions printed and forwarded to absentee electors requesting an official ballot for the ensuing general election. (44 Del. Laws, c. 118, § 9; 45 Del. Laws, c. 155, § 8; 15 Del. C. 1953, § 5509.)

§ 5509. Voting procedure; execution of affidavit; return of ballot.

The absentee voter who qualified for his ballot under any of the reasons set forth in § 5502 of this title shall mark his ballot and deposit the ballot in the official envelope. The voter shall then deposit the official envelope containing the ballot in the voucher envelope and securely seal the voucher envelope. The voter shall then execute the self-administered affidavit on the voucher envelope. Thereupon the voter shall enclose the voucher envelope containing the marked ballot in the mailing envelope received by the voter from the department and after the voter has enclosed the voucher envelope containing the marked ballot in the mailing envelope, he shall securely seal the mailing envelope and mail it, postage prepaid, to the department of the county issuing the ballot or deliver it to the department before 12:00 noon of the day before the election and not thereafter; provided, however, that a ballot received after 12:00 noon of the day before the election shall be counted to the extent required under federal law. (44 Del. Laws, c. 118, § 6; 45 Del. Laws, c. 155, § 5; 15 Del. C. 1953, § 5510; 55 Del. Laws, c. 150; 60 Del. Laws, c. 414, § 18; 65 Del. Laws, c. 455, §§ 5, 6; 68 Del. Laws, c. 301, § 5.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, rewrote the section.

§ 5510. Time limit for return of ballot; late ballots.

The absentee voter shall return his marked ballot enclosed in the voucher envelope to the department of elections of the county where the voter resides before 12:00 noon of the day before the election; and any absentee ballot received by any department of elections after 12:00 noon of the day before the election shall not be forwarded to the polls; provided, however, that any absentee ballot received by any department of elections after 12:00 noon of the

day before the election but before 8:00 p.m. of the day of the election shall be forwarded to a polling place designated by the department of elections of the county where the voter resides to be counted to the extent required under federal law. The department shall endorse the time of receipt on the voucher envelope of all ballots received after 12:00 noon of the day before the election and shall retain the unopened voucher envelopes containing all ballots received after 8:00 p.m. on the day of the election until the last day of February next after the election, and longer if directed by proper authority. (44 Del. Laws, c. 118, § 11; 45 Del. Laws, c. 155, § 10; 15 Del. C. 1953, § 5511; 49 Del. Laws, c. 278, § 8; 50 Del. Laws, c. 173, § 3; 52 Del. Laws, c. 92, §§ 1, 2; 58 Del. Laws, c. 148, § 129; 68 Del. Laws, c. 301, § 6.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, rewrote the section.

§ 5511. Procedure on receipt of absentee ballot by department.

(a) Upon receipt of the mailing envelope from the absentee voter, the department or person authorized by it to do so shall open only the mailing envelope and take therefrom the voucher envelope containing the ballot of the absentee voter and shall ascertain from the address the proper election district to which the ballot shall be forwarded as indicated on the voucher envelope or as designated by the department of elections.

(b) No member of the department (the administrative director or any other person) shall open or attempt to open the enclosed voucher envelope containing the ballot of the absentee voter, or change or alter, or attempt to do so, the envelope or any writing, printing or anything whatsoever thereon.

(c) [Repealed]. (44 Del. Laws, c. 118, § 10; 45 Del. Laws, c. 155, § 9; 15 Del. C. 1953, § 5512; 57 Del. Laws, c. 567, § 48; 58 Del. Laws, c. 148, §§ 130, 131; 60 Del. Laws, c. 414, §§ 19, 20; 68 Del. Laws, c. 301, § 7.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, in (a), substituted "on the voucher envelope or as designated by the department of elections" for "by the elector in his affidavit thereon."

§ 5512. Special carrier envelope used to convey absentee ballots to polling place; form.

Before the absentee ballots are conveyed to each polling place, the department shall securely seal all absentee ballots for each election district in 1 or more carrier envelopes which shall have printed thereon the following:

ABSENTEE BALLOTS

for the

..... Election District, of the Representative District, of County.

This carrier envelope contains absentee voter ballots and shall be opened only at the polls of said election district on election day. This carrier envelope and the enclosed voucher envelope(s) shall be preserved by the inspector and at the close of the count, shall be placed in the ballot box, into which the ballots have been put when read, and returned therewith.

(44 Del. Laws, c. 118, § 10; 45 Del. Laws, c. 155, § 9; 15 Del. C. 1953, § 5513; 49 Del. Laws, c. 278, § 9; 50 Del. Laws, c. 173, § 4; 58 Del. Laws, c. 148, § 132; 60 Del. Laws, c. 414, § 21; 68 Del. Laws, c. 301, § 8.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1991, deleted "while said polls are open" following "election day" in the third paragraph.

§ 5513. Delivery of absentee ballots to polling places.

When an absentee voter's ballot is received by any department, the voucher envelope containing the marked ballot shall be safely and securely kept in its office until the day of the election when it shall be delivered to the election district in which, according to the voucher envelope, the absentee voter is a resident; provided, however, that any ballot received after 12:00 noon of the day before the election but before 8:00 p.m. of the day of the election shall be forwarded to a polling place designated by the department of elections of the county where the voter resides to be counted to the extent required under federal law.

A duly authorized representative of the department shall deliver all such voucher envelopes, sealed in 1 or more carrier envelopes as set forth in § 5512 of this title, to the inspector of elections at the polling places of the absentee voters' respective election districts after the opening of the polls and at least 4 hours before the closing of the polls; provided, however, that voucher envelopes received after 12:00 noon of the day before the election but before 8:00 p.m. of the day of the election shall be forwarded to a polling place designated by the department of elections of the county where the voter resides to be counted to the extent required under federal law. The representative, who shall carry suitable identification provided by the department, shall obtain a receipt from each inspector for delivery of the absentee ballots. (44 Del. Laws, c. 118, § 11; 45 Del. Laws, c. 155, § 10; 15 Del. C. 1953, § 5514; 49 Del. Laws, c. 278, § 10; 50 Del. Laws, c. 173, § 5; 57 Del. Laws, c. 567, § 49; 60 Del. Laws, c. 414, § 22; 68 Del. Laws, c. 301, §§ 9, 10.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, added the proviso at the end of the first paragraph, following "the absentee voter is a resident"; and added the proviso at the end of the first sentence in the second paragraph.

§ 5514. Requirements for absentee ballots received by election officers.

The election officers shall refuse to receive any absentee voter's ballot from any person other than a member of the department of their county, or a duly deputized agent. (15 Del. C. 1953, § 5515; 50 Del. Laws, c. 173, § 6; 57 Del. Laws, c. 567, § 50; 58 Del. Laws, c. 148, § 133.)

§ 5515. Procedure at polling place.

At any time between the opening and the closing of the polls on election day the inspector or a judge of election of the election district shall open the outer or carrier envelope containing all ballots received before 12:00 noon of the day before the election and ascertain the name of the absentee voter as appears by the self-administered affidavit of the absentee voter on the voucher envelope enclosing the marked ballot, whereupon he shall announce the absentee voter's name for the purpose of challenges and upon the determination that such person is a duly registered voter of said election district by comparing the voter's signature upon the voucher envelope with the signature of the voter appearing in the Election District Record, and that such elector has not voted in person at the election he shall open the voucher envelope containing such absentee voter's ballot in such a manner as not to deface or destroy the number thereof, or the self-administered affidavit thereon, and take therefrom the official envelope containing the marked ballot, and without opening or permitting the official envelope to be opened or the contents examined, shall cause the 2 clerks to write their names on the official envelope, and the clerks shall enter the name and address of the absentee voter on the poll lists. The ballot shall then be voted by depositing same (still in its official envelope) in the ballot box provided for receipt of absentee ballots, and the proper notations of such vote shall then be recorded in the election records in the same fashion as if the voter had appeared to cast his vote in person.

All voucher envelopes from which ballots have been taken and voted and all voucher envelopes containing ballots which have been rejected and endorsed as provided in § 5517 of this title, shall be preserved by the inspector, and at the close of the count shall be placed in the ballot box as provided by the general election laws. The judges shall see to it that a voter signature card marked with the absentee voter's name and permanent significant registration number and bearing a notation that the person has voted absentee shall be placed with the voter signature cards of all those persons who have cast their ballot on the voting machine.

The same procedure shall be followed in voting any absentee ballot received after 12:00 noon but before 8:00 p.m. of the day of the election to the extent to which it is required to be counted under federal law at a polling place designated by the department of elections of the county where the voter resides except that such ballot may be voted after the polls close. In the event that there is no polling place for the election of federal offices, only, the several departments of election are hereby empowered to open, record and vote any absentee ballot received after 12:00 noon of the day before the election and before 8:00 p.m. of the day of the election, to the extent required by federal law. Such counting of federal absentee ballots shall be certified in exactly the same manner as the absentee ballots are certified in the normal polling places, with representatives of both major political parties certifying the total votes counted. (15 Del. C. 1953, § 5516; 50 Del. Laws, c. 173, § 7; 57 Del. Laws, c. 567, § 51; 58 Del. Laws, c. 148, § 134; 68 Del. Laws, c. 301, §§ 11-14.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, in the first sentence of the first paragraph, substituted "containing all ballots received before 12:00 noon of the day before the election" for "only" near the beginning and substituted "self-administered affidavits" for "executed affidavits" and for "affidavit"; and added the third paragraph.

Ballots in envelopes not signed by both clerks, when voted, are illegal and should be rejected by the election officers in making the count. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

§ 5516. Challenges.

The vote of any absentee voter may be challenged for the same causes and in the same manner as provided in this title for other voters. In addition, the vote of an absentee voter may be challenged on the ground that the affidavit filed by the voter in compliance with § 5503 of this title is false. Upon challenge, proceedings thereon shall be as provided elsewhere in this title. (44 Del. Laws, c. 118, § 14; 15 Del. C. 1953, § 5517; 50 Del. Laws, c. 173, § 2; 58 Del. Laws, c. 148, § 135.)

Absentee ballots not excepted from contests. — The adoption of laws providing for absentee ballot voting was not accompanied by an intent that such ballots be excepted from

the conditions set out in § 5945 of this title for a contest based on the ground of "illegal votes." Chandler v. Workman, Del. Super., 348 A.2d 185 (1975).

§ 5517. Rejected ballots.

(a) In case the affidavit of the absentee voter is found to be insufficient, or the absentee voter is not a duly registered elector in such election district, or the voucher envelope is open, or has been opened and resealed, or it is evident that the voucher envelope has been tampered with or altered, or such ballot has been forwarded to the polls by someone other than the department of the

county, such vote shall not be accepted or counted. If the voucher envelope has not been opened at the time the election officers decide that the offered ballot contained therein should be rejected for any of the foregoing reasons, it shall not be opened by the election officers, but they shall endorse thereon, "REJECTED," giving reason therefor, and if the voucher envelope has been opened and the ballot is rejected, the official envelope containing the ballot shall be replaced in the same voucher envelope from which it was taken and the election officers shall endorse on the voucher envelope, "REJECTED," giving reason therefor.

(b) Whenever it is made to appear by due proof to the inspector and judges of election that any absentee voter, who has marked and forwarded his ballot, has died, the voucher envelope containing the ballot shall not be opened but shall be marked "REJECTED, dead," and shall be preserved and disposed of as other rejected ballots.

(c) Whenever a ballot has not been counted but has been rejected for any reason, the election officers shall make the required notation on the absentee ballot tally sheet and shall note the number of ballots so rejected on the certificates of election. (15 Del. C. 1953, § 5518; 50 Del. Laws, c. 173, § 8; 58 Del. Laws, c. 215, § 38.)

Ballots in envelopes not signed by both clerks, when voted, are illegal and should be rejected by the election officers in making the

count. State ex rel. Annett v. Stiffler, Del. Supr., 148 A.2d 106 (1959).

§ 5518. Validity of absentee voter's ballot for wrong district.

If an absentee voter marks and returns an official ballot for an election district other than the one of which he or she is a resident and a duly registered elector, such ballot, because thereof, shall not be adjudged invalid, but, as indicated by the marking of the ballot by the voter, shall be counted as a vote for every candidate appearing thereon who is a candidate for an office to be duly voted for in the election district. (44 Del. Laws, c. 118, § 17; 15 Del. C. 1953, § 5519.)

§ 5519. Procedure if requests or ballots sent to wrong official.

If any request for an absentee ballot and accompanying envelopes or any marked ballot of any such elector are addressed to and returned to the Secretary of State of this State, or to any official other than the department of the county of residence of the absentee elector, then the Secretary of State, or other official, shall immediately transmit such request or returned marked

ballot to the department of the county of residence of such elector, to be acted upon by the department as provided by this chapter. (44 Del. Laws, c. 118, § 24; 45 Del. Laws, Sp. Sess., c. 5, § 4; 45 Del. Laws, c. 155, § 16; 15 Del. C. 1953, § 5520.)

§ 5520. Persons before whom affidavits may be taken.

Any notarized affidavit required under this chapter may be taken before any person with authority to administer oaths and affirmations in the place where such affidavits may be taken, and whenever taken outside this State, the authority of such person shall be conclusively presumed. (44 Del. Laws, c. 118, §§ 19, 19A; 45 Del. Laws, Sp. Sess., c. 5, § 3; 15 Del. C. 1953, § 5521; 68 Del. Laws, c. 301, § 15.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, rewrote the section.

§ 5521. File of absentee voters.

(a) The department of elections of each county shall maintain records providing for the prevention of fraud and to make possible the tracing and detection of any attempt to do so. Such records shall include the following entries: Name of elector; address at which he is registered; address where ballot is to be mailed; date affidavit received in department; the election and representative district; voucher number; date ballot mailed or delivered to the elector; date ballot is returned; the names of any physicians or Christian Science practitioner who can attest to a sick or disabled voter's inability to go to the polling place on the day of the election; and the names of all officers administering oaths for all affidavits received.

(b) The departments shall compile from their files a list of names and addresses of all applicants for absentee ballots, and shall send current and complete copies thereof without cost to all political parties with candidates on the ballot in the forthcoming election. Such lists shall be provided no later than 2 weeks prior to the date of the election and copies of the lists must be mailed on the same date to the respective chairmen of each political party involved in the election. Comparable information from the file shall also be made available to representatives of all political parties at the office of each department during the remaining 2 weeks before the election, such information to be recorded by such representatives from the daily records of the departments with the cooperation and assistance of the employees of the departments. (44 Del. Laws, c. 118, § 16; 45 Del. Laws, c. 155, § 13; 47 Del. Laws, c. 316, § 3; 15 Del. C. 1953, § 5522; 57 Del. Laws, c. 181, § 76; 58 Del. Laws, c. 148, § 136; 68 Del. Laws, c. 301, § 16.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, substituted "or Christian Science practitioner who can attest to a sick or disabled voter's inability to go to the polling place on the day of the election" for "executing affidavits for sick or disabled persons" near the end of (a).

Challenger entitled to inspect all records

on absentee voters. — The candidates have the same opportunity to discover prior recorded irregularities in absentee ballots as they have with respect to other voters, since the challenger appointed by each political party is entitled to inspect all records on absentee voters at the polling place. *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

§ 5522. Authority to alter forms in certain cases; procedure.

(a) If, on or before the 1st day of September in the year of a general election, in the joint judgment of the Governor, Secretary of State and the Attorney General of this State, it is deemed expedient to make certain changes in the size, weight or material of the ballots, envelopes, instructions to absentee voters, form of request for ballot, form of affidavit of elector, the address or any other direction or printing or endorsement upon the voucher or carrier envelopes, postage or manner of transmission, then such officers jointly shall cause to be made effective any or all such changes, provided, however, that the plan and arrangement of any official ballot and the list of candidates thereon, as provided for by the general election law, shall not be changed or altered under any circumstances. Such changes shall be uniform for absentee voting throughout this State.

(b) Upon the making of any such changes, the Governor, Secretary of State and Attorney General shall jointly in writing forthwith notify the department of each county of such changes, and each such department shall cause such changes to be carried into effect, and the ballots, envelopes, instructions or other election forms, as so changed, to be so printed, transmitted and distributed; provided, however, that nothing in this section shall invalidate any votes duly cast during the election year when such changes are made using the ballots, envelopes, instructions or other election forms distributed prior to such changes. (44 Del. Laws, c. 118, § 23; 45 Del. Laws, Sp. Sess., c. 5, § 4; 45 Del. Laws, c. 155, § 15; 15 Del. C. 1953, § 5523; 50 Del. Laws, c. 173, § 9; 68 Del. Laws, c. 301, §§ 17-22.)

Effect of amendments. — 68 Del. Laws, c. 301, effective July 2, 1992, in (a), deleted "to the end that there shall be extended to the absentee voters listed in subsection (b) of this section full opportunity to receive and return a marked ballot to the department for delivery to the poll of his residence on election day to be acted upon and counted as other votes person-

ally cast at such poll" preceding "provided, however" in the first sentence and added the second sentence; deleted former (b), and redesignated former (c) as present (b); and, in present (b) substituted ", instructions or other election forms" for "and instructions" and added the proviso at the end.

§ 5523. One absentee ballot request to cover all elections for members of the armed forces and certain other electors.

Any qualified elector who has applied for an absentee ballot because he qualifies under any of the reasons set forth in § 5502(1) or § 5502(2) of this title shall qualify for an absentee ballot in any primary, general or special election occurring during the calendar year in which he has qualified for an absentee ballot in any election. (65 Del. Laws, c. 455, § 7.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, redesignated former § 5523 of this title to be present § 5525 of this title.

Section 7 of 65 Del. Laws, c. 455, provides:

"The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5524. Procedures for voting with special write-in absentee ballot by qualified absentee electors.

(a) Notwithstanding any other provisions of this title, an elector who qualifies under any of the reasons set forth in § 5502(1) or § 5502(2) of this title may apply during the calendar year in which an election is to be held for President, United States Senator, or Representative in Congress for a special write-in absentee ballot. This ballot shall be for President, United States Senator, or Representative in Congress.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form or on a form prescribed by the Commissioner of Elections.

(c) In order to qualify for a special write-in absentee ballot, the voter must state under oath and under penalty of perjury that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the Commissioner of Elections and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of such application, the appropriate department of elections may hold said application until 90 days prior to an election and mail the ballot as soon thereafter as possible. The special write-in absentee ballot shall be in a form prescribed and provided by the Commissioner of Elections and shall permit the elector to vote by writing in a party preference for each office, or the name of the person whom the voter prefers for each office. (65 Del. Laws, c. 455, § 7.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5525. Penalties.

(a) Whoever willfully makes a false affidavit shall be guilty of perjury and shall be punished as in such case by law provided.

(b) Whoever, other than election officials on the day of a general election and at the polls, or the board of canvass, opens or attempts to open any sealed voucher or carrier envelope; or whoever prints or causes to be printed any envelope identical or purportedly similar to the voucher envelope or either carrier envelope, other than the printing of such envelopes by the official printer selected by the department for the printing of such envelopes pursuant to this chapter; or whoever aids or abets, or attempts to aid or abet, any fraud in connection with any vote cast, or to be cast, under this chapter; shall be imprisoned not less than 1 year nor more than 5 years.

(c) Whoever fraudulently signs the name of a voter to the affidavit on any voucher envelope shall be guilty of forgery and shall be punished for such crime as by law provided.

(d) Whoever, being an election officer or public official: (1) Knowingly violates this chapter and thereby aids in any way the illegal casting of a vote, or attempting to cast a vote; or (2) connives to nullify any provision of this chapter, in order that fraud may be perpetrated; shall be guilty of a felony and shall be fined not less than \$500 nor more than \$5,000 and imprisoned not less than 1 year nor more than 10 years.

(e) Whoever, in any way in voting or attempting to vote himself, or any other person pursuant to this chapter who violates any of the laws of this State enacted to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation, shall be punished as provided thereby. (44 Del. Laws, c. 118, § 18; 45 Del. Laws, c. 155, § 14; 15 Del. C. 1953, § 5524; 58 Del. Laws, c. 148, § 137; 65 Del. Laws, c. 455, § 7.)

Cross references. — As to forgery, see § 861 of Title 11.

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

CHAPTER 57. CANVASS OF VOTE AND PROCLAMATION OF RESULTS OF ELECTION

Sec.	Sec.
5701. Superior Court as board of canvass; convening and composition of Court.	error of results of election of state officers.
5702. Duties of Court.	5711. Electors for President and Vice-President; announcements and certifications of election.
5703. Vote required for election.	5712. Representative in the Congress of the United States; announcement and certification of election.
5704. Votes for President and Vice-President as votes for their electors.	5713. United States Senator; announcement and certification of election; form.
5705. Certificates of the results of the election; number required.	5714. Costs.
5706. Form of certificates.	5715. State senatorial districts.
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5708. Tie vote; certificate.	
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Cross references. — As to certificate of election, see Del. Const., art. V, § 6.

§ 5701. Superior Court as board of canvass; convening and composition of Court.

(a) The Superior Court shall convene in each county on the second day after the general election, at 12:00 noon, for the performance of the duties imposed upon it by § 6 of article V of the Constitution of this State and by this chapter. Thereupon the Court, with the aid of such of its officers and such sworn assistants as it shall appoint, shall publicly ascertain the state of the election throughout the county and in the respective hundreds and election districts by calculating the aggregate amount of all the votes for each office that shall have been given in all the hundreds and election districts of the county for every person voted for for such office. For this purpose, the court shall utilize certificates of election for each election district provided by the Prothonotary, the minority judge of each election district and the department of elections for its county, whose representatives shall sit as observers and assistants to the Court during said calculation of the vote.

(b) For the purposes of this chapter, the Superior Court shall consist in New Castle County of the President Judge and the Resident Associate Judge; in Kent County of the Chancellor and the Resident Associate Judge; and in Sussex County of the Resident Associate Judge and the remaining Associate Judge. For the purpose of this chapter, the Superior Court in each county, as so constituted, shall be a board of canvass for the respective counties of this

State. (Code 1852, § 402; 21 Del. Laws, c. 38, § 23; Code 1915, §§ 1777, 1859; Code 1935, §§ 1866, 1978; 15 Del. C. 1953, § 5701; 61 Del. Laws, c. 480, § 18.)

Cross references. — As to duties and composition of court, see Del. Const., art. V, § 6.

The phrase "general election" does not include school or municipal elections. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

Judges as parties to class action challenging apportionment of General Assembly. — The Superior Court, is specially constituted by this section, to perform the duties imposed by art. V, § 6, Del. Const., and the judges of the Superior Court are proper, if not necessary, parties to a class action challenging the

constitutionality of the apportionment of the General Assembly. *Sincock v. Terry*, 210 F. Supp. 395 (D. Del. 1962), aff'd, 377 U.S. 695, 84 S. Ct. 1449, 12 L. Ed. 2d 620 (1964).

The fact that municipal officers are elected on the day of the general election by the same voting mechanics does not convert the municipal election into a general election or make the municipal election a part of "the general election" as the phrase is used in this section. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

§ 5702. Duties of Court.

(a) Whenever the certificate of election for any election district is not produced when the Court convenes or whenever any absentee ballot box, voting machine or write-in paper roll is not available at that time, the Court may issue summary process against the election officers of such election district or any other persons to bring such documents or objects forthwith into the Court or to make them available for inspection by the Court.

(b) Whenever the certificates produced do not agree or there is a complaint under oath of fraud or mistake in any such certificate, or if fraud, mistake or omission is apparent on the face of such certificate, the Court shall:

(1) Open and examine the necessary voting machines and/or absentee ballot boxes, and, if applicable, examine the necessary write-in paper rolls;

(2) Make a recount of the votes contained therein;

(3) Correct any fraud, mistake or omission in any certificate or paper relating to the election.

(c) Any candidate for statewide office in a general election may apply to the Court for a recount of all the ballots cast and recorded for such office if the number of votes separating such candidate and the closest opposing candidate is less than 1,000 votes or less than $\frac{1}{2}$ of 1 percent of all votes cast for the two candidates, whichever amount is less. Such recount shall thereupon be conducted by the Court at state expense. The request for a recount under this subsection must be presented before the adjournment of the board of canvass for the election in question and any recount that takes place shall not extend beyond the petitioner's contest.

(d) The Court shall also receive from the department of election for its county a report of the number of absentee ballots delivered to each election district, from which it shall determine and make certain that all these ballots

are recorded on the certificates of election for each election district receiving absentee ballots, either in the total number of ballots counted or in the number of ballots rejected. (21 Del. Laws, c. 38, § 23; Code 1915, § 1777; Code 1935, § 1866; 15 Del. C. 1953, § 5702; 58 Del. Laws, c. 215, § 39; 61 Del. Laws, c. 480, § 19; 65 Del. Laws, c. 519, § 1.)

Cross references. — As to powers of court, see Del. Const., art. V, § 6.

The jurisdiction of the Superior Court as a board of canvass is limited, and, although the General Assembly is given power to add to the powers of the court, it is expressly not given power to add to the jurisdiction of the court. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

The Superior Court, as a board of canvass, is a body specially created and constituted for a limited purpose, to perform specified duties, largely ministerial in nature. The framers of the Constitution, in transferring to the Superior Court the powers and duties of the former boards of canvass, added certain specified powers and no others. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

Board of canvass exercises quasi-judicial powers, e.g., in rejecting ballots illegal on their face. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

But such powers do not extend to hearing and determining every act of fraud or wrongdoing in the conduct of the election. The powers of the board are primarily directed to the existence of fraud or mistake in any such certificate, e.g., questions of its genuineness, or of a defect apparent on its face, or the like; and what may be called the newly added powers are largely, if not wholly, limited to an examination of the election papers and of the contents of the ballot box. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

The power of the board of canvass to correct any fraud or mistake in any certificate, is clearly confined to errors resulting from the examination of the election papers and the contents of the ballot box. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

Board of canvass has no power to inquire into misconduct of the election officers and is under no legal duty to act upon a petition alleging such misconduct. *State ex rel.*

Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Mandamus. — The power of the Supreme Court to issue mandamus to the board of canvass to compel the counting of the vote in accordance with law is well settled. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Mandamus is a discretionary remedy, and its use to review the rulings of the board might conceivably be inappropriate in certain cases. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951); *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

The convening of the House of Representatives does not necessarily strip the Supreme Court of its jurisdiction theretofore acquired to issue mandamus to the board of canvass, but mandamus is a discretionary remedy, and its use to review the ruling of the board might conceivably be inappropriate in certain cases. Where the House has assumed jurisdiction of a contest, the Supreme Court should decline to exercise its jurisdiction over the board of canvass. The matter is one for the decision of the House. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Jurisdiction of House of Representatives extends to questions of law and fact. — Where the House of Representatives has assumed jurisdiction of an election contest, its jurisdiction extends to questions of law as well as of fact. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Certificates are only prima facie evidence of title to office. — The certificates of election issued by the board of canvass upon the completion of the count are only prima facie title to office. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

Mistakes in certificates may be shown by extrinsic evidence. — Mistakes in the election certificates may be shown not only by reference to the documents themselves, but by recourse to credible extrinsic evidence. *Woo v. Robinson*, Del. Supr., 484 A.2d 950 (1984).

§ 5703. Vote required for election.

In all elections, unless it be otherwise expressly provided, a plurality or the highest number of votes shall make a choice, except where this principle is defeated by 2 or more persons having the same and the highest number of votes for the same office. (Code 1852, § 300; Code 1915, § 1811; Code 1935, § 1900; 15 Del. C. 1953, § 5703.)

§ 5704. Votes for President and Vice-President as votes for their electors.

The Court shall calculate the votes given for the candidates for President and Vice-President of a political party as votes given for each and all the electors of President and Vice-President of such party, the names of whom are on file with the State Election Commissioner and as certified to the Court by the State Election Commissioner, and the Court shall make its certificates accordingly in the form and manner provided by §§ 5705-5707 of this title. (Code 1935, § 1814A; 44 Del. Laws, c. 119, § 4; 15 Del. C. 1953, § 5704; 61 Del. Laws, c. 480, § 20.)

§ 5705. Certificates of the results of the election; number required.

(a) After the state of the election has been ascertained by calculating the votes, the Court shall make, under the seal of the Court, the certificates of the results of the election as provided in this section and §§ 5706 and 5707 of this title.

(b) The number of such certificates to be prepared by the Court for each office shall be as follows:

- Electors for President and Vice-President of the United States, 3;
- Governor, 4;
- Lieutenant Governor, 4;
- Senator in the Senate of the United States, 2;
- Representative in the House of Representatives of the United States, 2;
- Attorney General, 4;
- Insurance Commissioner, 4;
- State Treasurer, 4;
- Auditor of Accounts, 4;
- Senator to the General Assembly, 2 for each Senator;
- Representative to the General Assembly, 2 for each Representative;
- Prothonotary, 2;
- Clerk of the Peace, 2;
- Register of Wills, 2;

Recorder, 2;
 Register in Chancery, 2;
 Levy Court Commissioner, 1 for each Commissioner;
 Receiver of Taxes and County Treasurer, 1;
 County Comptroller, 1;
 Sheriff, 2;
 Coroner, 2;
 County Executive of New Castle County, 1;
 County Councilmen of New Castle County, 1 for each Councilman;
 County Councilman of Sussex County, 1 for each Councilman. (21 Del. Laws, c. 38, § 25; Code 1915, § 1779; Code 1935, § 1868; 15 Del. C. 1953, § 5705; 55 Del. Laws, c. 85, § 34B; 57 Del. Laws, c. 762, § 33B.)

Cross references. — As to certificates of election, see Del. Const., art. V, § 6. As to compelling delivery of election certificates to the Senate or House of Representatives, see § 703 of Title 29.

§ 5706. Form of certificates.

(a) The certificates of the Court of the results of the election in its county may be according to the following form:

"The State of Delaware, County, ss.

Be it Remembered, that at the general election held on the Tuesday next after the first Monday in November, in the year of our Lord One Thousand Nine Hundred and for County, according to the Constitution and laws of the State of Delaware (here insert, to wit: If the certificate be of an election of electors of President and Vice-President, of Governor and Lieutenant Governor, of Senator in the Senate of the United States, of Representative in Congress, of Attorney General, of Insurance Commissioner, of State Treasurer, of Auditor of Accounts, the number in words at length of votes given for each person voted for, for such respective offices; if the certificate be of an election of Senator or Representative in the General Assembly, or, of Prothonotary, of clerk of the peace, of register of wills, of recorder, of Register in Chancery, of Levy Court Commissioner or Commissioners, of receiver of taxes and county treasurer, of county comptroller, of sheriff, of county executive, of county councilman, the names of the persons elected), which is manifest by calculating and ascertaining the aggregate amount of all votes given for each person voted for in all the hundreds and election districts of the county, according to the provisions made by law in this behalf.

In testimony, whereof, we and constituting the Superior Court for County, who have met and ascertained the state of the election throughout the said County, as the law requires, have hereunto set our hands and caused the seal of the said Superior Court to

be hereunto affixed at the Court House in said County, on this day of November, A. D.”

(b) The manner of making the insertion may be as follows:

In case of Electors of President and Vice-President

..... votes were given for for Elector
..... votes were given for for Elector and so on, naming each person voted for.

In case of Governor

..... votes were given for for Governor
..... votes were given for for Governor and so on, naming each person voted for.

In case of Lieutenant Governor

..... votes were given for for Lieutenant Governor
..... votes were given for for Lieutenant Governor and so on, naming each person voted for.

In case of Senator in the Senate of the United States

..... votes were given for for United States Senator
..... votes were given for for United States Senator and so on, naming each person voted for.

In case of Representative to Congress

..... votes were given for for Representative to Congress
..... votes were given for for Representative to Congress and so on, naming each person voted for.

In case of Attorney General

..... votes were given for for Attorney General
..... votes were given for for Attorney General and so on, naming each person voted for.

In case of Insurance Commissioner

..... votes were given for for Insurance Commissioner
..... votes were given for for Insurance Commissioner and so on, naming each person voted for.

In case of State Treasurer

..... votes were given for for State Treasurer
..... votes were given for for State Treasurer and so on, naming each person voted for.

In case of Auditor of Accounts

..... votes were given for for Auditor of Accounts
..... votes were given for for Auditor of Accounts and so on, naming each person voted for.

In case of Senators to General Assembly

..... was duly elected Senator for the Senatorial District for said County in the General Assembly, (and so on, giving certificates for each Senator elected in the respective senatorial districts of the county) and was duly elected Senator for the Senatorial District for said County in lieu of late Senator for said Senatorial District of said County in the General Assembly (and so on, giving certificates for each Senator elected in lieu of any other Senator for any senatorial district for said county in the General Assembly).

In case of Representatives to General Assembly

..... was duly elected Representative for the Representative District for said County in the General Assembly (and so on, giving certificates for each Representative elected in the respective representative districts of the County).

In case of Prothonotary

..... was duly elected Prothonotary for County.

In case of Clerk of the Peace

..... was duly elected Clerk of the Peace for County.

In case of Register of Wills

..... was duly elected Register of Wills for County.

In case of Recorder

..... was duly elected Recorder for County.

In case of Register in Chancery

..... was duly elected Register in Chancery for County.

In case of the County Executive for New Castle County

..... was duly elected County Executive for New Castle County.

In case of County Councilman for New Castle County

..... was duly elected County Councilman for the Councilmanic District in New Castle County; and so on, giving a certificate for each Councilman elected in each Councilmanic District in New Castle County.

In case of County Councilmen for Sussex County

..... was duly elected Councilman for the Councilmanic District in Sussex County; and so on, giving a certificate for each Councilman elected in each Councilmanic District in Sussex County.

In case of Levy Court Commissioners for Kent County

..... was duly elected Levy Court Commissioner for District in said County (and so on, giving a certificate for each Levy Court Commissioner elected in each District in said County).

In case of Receiver of Taxes and County Treasurer

..... was duly elected Receiver of Taxes and County Treasurer for County.

In case of County Comptroller

..... was duly elected County Comptroller for County.

In case of Sheriff

..... was duly elected Sheriff for County.

(21 Del. Laws, c. 38, § 26; Code 1915, § 1780; Code 1935, § 1869; 15 Del. C. 1953, § 5706; 55 Del. Laws, c. 85, §§ 34C, 34D; 57 Del. Laws, c. 169, § 5; 57 Del. Laws, c. 762, § 33D.)

§ 5707. Enclosing certificates in envelopes.

The Court shall enclose and seal up each certificate separately in an envelope, with an endorsement thereon describing the certificate enclosed. Upon the paper enclosing the certificates of the election of Senator or Representative in the General Assembly the name of the person chosen shall be endorsed. (21 Del. Laws, c. 38, § 25; Code 1915, § 1779; Code 1935, § 1868; 15 Del. C. 1953, § 5707.)

§ 5708. Tie vote; certificate.

If, by reason of an equal number of votes having been cast for 2 or more persons for the office of Senator or Representative in the General Assembly, Prothonotary, clerk of the peace, register of wills, recorder, Register in Chancery, levy court commissioner, receiver of taxes and county treasurer, county comptroller or sheriff, county executive or county councilman, it appears to the Court that a vacancy will occur in the office, a certificate of such fact shall thereupon be made under the hands of the Court, and under its seal, which certificate shall be transmitted by the Court to the Governor, and such certificate shall be delivered as provided in § 5709 of this title. (21 Del. Laws, c. 38, § 27; Code 1915, § 1781; Code 1935, § 1870; 15 Del. C. 1953, § 5708; 55 Del. Laws, c. 85, § 34E.)

§ 5709. Disposition of certificates by the Court.

The Court shall, within 3 days after making the certificates of the result of the election for electors of President and Vice-President, either personally or by a person deputed by it for that purpose, transmit, deliver and lodge the certificates of the result of the election for electors of President and Vice-President, 1 to the Governor, another to the Secretary of State, and the other to the Prothonotary of the county; and shall transmit, deliver and lodge the certificates of the result of the election for Governor, according to the directions of the Constitution in that behalf; and shall transmit, deliver and lodge 1 of the certificates of the result of the election for Lieutenant Governor to the President of the Senate, or in case of a vacancy in the office of President of the Senate, or his absence from the State, to the Secretary of State, who shall keep the same until a President of the Senate shall be chosen, to whom they shall be immediately transmitted after his election, who shall open and publish the same in the presence of the members of both Houses of the General Assembly, duplicates of which certificate shall also be immediately lodged with the Prothonotary of each county; and shall transmit, deliver and lodge 1 of each of the certificates of the result of the election for Senator, or Senators, from the State in the Senate of the United States, to the Governor, and lodge the other of such certificates in the office of the clerk of the peace of the county; and shall

transmit, deliver and lodge 1 of each certificate of the result of the election for Representative, or Representatives, in the House of Representatives of the United States, to the Governor, and lodge the other certificate in the office of the clerk of the peace of the county; and shall transmit, deliver and lodge 1 certificate of the result of the election for Attorney General, for Insurance Commissioner, for State Treasurer and for Auditor of Accounts to the Governor and the other certificate in the office of the Prothonotary of the county; and shall transmit and deliver 1 certificate of the result of the election of Senator and 1 certificate of the election of Representative in the General Assembly, in the office of the Prothonotary for Kent County, and further shall deliver, on the first day of the meeting of the General Assembly after the election, the other certificate of the election of Senator to the Senate, and the other certificate of the election of Representatives to the House of Representatives; and shall transmit and deliver 1 certificate of the election of Prothonotary, of the clerk of the peace, of register of wills, of recorder, of register in chancery, of sheriff and of coroner, to the Governor, and the other certificate to the clerk of the peace of the county, except the 1 for clerk of the peace, which shall be delivered to the Prothonotary; and shall transmit and deliver the certificate of the election of each Levy Court Commissioner or County Councilman, in New Castle, Kent and Sussex Counties, to the clerk of the peace of the respective county; and shall deliver the certificate of election of the receiver of taxes and county treasurer, and of comptroller, to the clerk of the peace of the county; and shall send 1 for each of such officers to the sheriff of the county to be by him delivered to the respective parties certified to have been elected.

The Prothonotary of Kent County shall, on any day of the meeting of the General Assembly, deliver, if required, the certificates of election of Senators or of Representatives to the order of the House to which it belongs, or to the person named in the endorsement thereon.

In addition to making the disposition of the aforesaid certificates, the Court, within 3 days after making such certificates, shall, either personally or by a person designated by it for that purpose, transmit, deliver and lodge a duly executed copy of each of the aforesaid certificates with the State Election Commissioner who shall be the master repository of all such certificates. (21 Del. Laws, c. 38, § 28; Code 1915, § 1782; 34 Del. Laws, c. 110, § 2; Code 1935, § 1871; 46 Del. Laws, c. 153, § 1; 15 Del. C. 1953, § 5709; 57 Del. Laws, c. 567, § 52.)

§ 5710. Certification and proclamation by Governor of results of election of state officers.

The Governor, after receiving the certificates of the results of the election in each county, under the seal of the Superior Court, for the office of Attorney General, Insurance Commissioner, State Treasurer and Auditor of Accounts, or any of whom shall have been voted for at the preceding general election, shall, without delay, examine the returns and declare the persons elected, and shall issue certificates of such election under his hand, and the same, together with the aforesaid certificates of the results of the election in each county, shall be filed in the office of the Secretary of State, and the Governor shall by proclamation make public the state of the vote by causing the same to be published in 1 or more of the public newspapers of the respective counties of this State, and shall issue commissions to the persons. (21 Del. Laws, c. 38, § 32; Code 1915, § 1786; Code 1935, § 1875; 15 Del. C. 1953, § 5711.)

§ 5711. Electors for President and Vice-President; announcements and certifications of election.

The Governor, after receiving the certificates under the seal of the Superior Court, of the results of the election in each county for electors of President and Vice-President of the United States, shall without delay examine the certificates and ascertain the electors chosen, and make known the same by proclamation, and cause notice of his election to be transmitted to each elector. He shall also cause 3 lists of the names of the electors, duly made and certified, to be delivered to the electors, according to the Act of Congress in that behalf on or before the day appointed for their meeting. (Code 1852, §§ 402, 403; Code 1915, §§ 1859, 1860; Code 1935, §§ 1978, 1979; 15 Del. C. 1953, § 5712.)

§ 5712. Representative in the Congress of the United States; announcement and certification of election.

The Governor, after receiving the certificates, under the seal of the Superior Court, of the results of the election in each county for Representative in the Congress of the United States, shall without delay examine such certificates and declare the person elected, and shall issue certificates of such election, 1 of which he shall transmit to the Secretary of State of the United States, and 1 to the person elected, under his hand and the Great Seal of the State. The certificates of the result of the election in each county shall be filed in the office of the Secretary of State. The Governor shall by proclamation make public the state of the vote by causing the same to be published in 1 or more of

the public newspapers of this State. (Code 1852, § 414; Code 1915, § 1879; Code 1935, § 1998; 15 Del. C. 1953, § 5713.)

§ 5713. United States Senator; announcement and certification of election; form.

(a) The Governor, after receiving the certificates under the seal of the Superior Court, of the results of the election in each county for Senator from this State in the Senate of the United States, shall issue certificates of such election and deliver and file the same and shall, by proclamation, make public the state of the vote, in the same manner and form, by the same persons and officers, and under the same regulations in all respects as is provided in § 5712 of this title for the election of Representative in Congress.

(b) The Governor shall certify the election or appointment of any Senator elected or appointed as provided by law, under the Great Seal of the State, to the President of the Senate of the United States. Such certificate shall be countersigned by the Secretary of State.

(c) The certificate, in case of an election, may be according to the following form:

"To the President of the Senate of the United States: Be it known that at an election, in due manner held according to the form of the Act of the General Assembly of the State of Delaware, and of the Act of Congress in such case made and provided, on the first Tuesday after the first Monday of the month of November, 19..., was elected to be a Senator from the said State in the Senate of the United States for the constitutional term to commence at noon on the third day of January A. D. 19.....

Given under our hands in obedience to the said Act of the General Assembly and of the said Act of Congress this day of A. D. 19....."

(Code 1915, §§ 1889, 1892; Code 1935, §§ 2008, 2010; 15 Del. C. 1953, § 5714.)

§ 5714. Costs.

All necessary costs and expenses incurred in carrying out the duties of this chapter including compensation of all personnel involved shall be paid by the State Treasurer from any moneys in the State Treasury not otherwise appropriated. (15 Del. C. 1953, § 5717; 57 Del. Laws, c. 567, § 53; 66 Del. Laws, c. 53, § 1.)

Effect of amendments. — 66 Del. Laws, c. 53, effective June 24, 1987, deleted "upon proper warrants and vouchers submitted to the

Governor and approved by the Budget Director" following "not otherwise appropriated" at the end of the section.

§ 5715. State senatorial districts.

(a) The Court shall calculate the total votes given for the candidates for Senator to the General Assembly where the senatorial district is located in 2 or more counties as follows:

(1) For those senatorial districts in which a majority of the election districts are in New Castle County, the President Judge of the Superior Court shall total together the votes cast in each county for each candidate.

(2) For those senatorial districts in which a majority of the election districts are in Kent County, the Chancellor shall total together the votes cast in each county for each candidate.

(3) For those senatorial districts in which a majority of the election districts are in Sussex County, the Resident Associate Judge of Sussex County shall total together the votes cast in each county for each candidate.

(b) The total vote, as ascertained in subsection (a) above shall then be inserted on the certificates of the Court as provided in § 5706 of this title. (15 Del. C. 1953, § 5718; 58 Del. Laws, c. 445.)

CHAPTER 59. CONTESTED ELECTIONS

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Cross references. — As to contested elections of Governor or Lieutenant-Governor, see Del. Const., art. III, § 4. As to procedure in

contested elections conforming to Rules of Superior Court, see Civil Rule 81 of the Superior Court.

Subchapter I. Members of the General Assembly

§ 5901. Notice of intention to contest; specifications.

Any person intending to contest the election or the eligibility of any one returned by the board of canvass as a member of either branch of the General Assembly from any of the counties of this State shall at least 20 days before the meeting of the General Assembly give written notice of such intention to the person whose seat he intends to contest, and within 10 days after the notice shall deliver to him a written specification of the several grounds upon which he intends to contest the election or the eligibility of such person. If 1 of such grounds shall be that illegal votes were given at such election for the person so returned, then such specification shall particularly set forth the name of each alleged illegal voter, with the several objections to the legality of

his vote. (Code 1852, § 427; Code 1915, § 1893; Code 1935, § 2011; 15 Del. C. 1953, § 5901.)

Jurisdiction of House of Representatives extends to questions of law and fact. — Where the House of Representatives has assumed jurisdiction of an election contest, its jurisdiction extends to questions of law as well as of fact. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Mandamus. — Where a losing candidate for election to the General Assembly did not have a remedy by writ of error, certiorari or election contest, a writ of mandamus was the proper way to proceed to contest the election, in which 101 of 296 ballots cast in a certain district were in envelopes not signed by clerks as required.

State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

The convening of the House of Representatives does not necessarily strip the Supreme Court of its jurisdiction theretofore acquired to issue mandamus to the board of canvass, but mandamus is a discretionary remedy, and its use to review the ruling of the board might conceivably be inappropriate in certain cases. Where the House has assumed jurisdiction of a contest, the Supreme Court should decline to exercise its jurisdiction over the board of canvass. The matter is one for the decision of the House. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 5902. Counter specifications.

The person returned by the board of canvass as having been elected shall, within 15 days after receiving the notice specified in § 5901 of this title, deliver to the person contesting his seat a like specification of objections to the right of the contestant to such seat. (Code 1852, § 428; Code 1915, § 1894; Code 1935, § 2012; 15 Del. C. 1953, § 5902.)

§ 5903. Verification of specifications.

Every specification shall be verified by affidavit of the party delivering the same, stating that he verily believes that the grounds of objection set forth are substantially true, and that the voters specified as illegal voters were not entitled by law to vote at the election in question. (Code 1852, § 429; Code 1915, § 1895; Code 1935, § 2013; 15 Del. C. 1953, § 5903.)

§ 5904. Delivery of notice and specification to presiding officer of Senate or House.

Copies of the notice and specifications verified as provided in § 5903 of this title shall be delivered to the Speaker or President, as the case may be, of the house having cognizance of the matter. The contestant shall deliver his notice and specifications with his petition on the first day of the session, and the sitting member shall deliver a copy of his specifications to the Speaker or President when he delivers them to the contestant. (Code 1852, § 430; Code 1915, § 1896; Code 1935, § 2014; 15 Del. C. 1953, § 5904.)

§ 5905. Inquiry restricted to grounds specified.

In the trial of the case of a contested election, the parties shall be restricted to the grounds of objection in the specifications set forth and shall not examine into the illegality of any votes other than those specified as illegal nor impeach such votes for any causes other than those specified. (Code 1852, § 431; Code 1915, § 1897; Code 1935, § 2015; 15 Del. C. 1953, § 5905.)

§ 5906. Costs when sitting member unseated.

If the house having cognizance of the matter determines that the sitting member is not entitled to his seat, it may order that the costs incurred by such contested election be paid by the State. (Code 1852, § 432; Code 1915, § 1898; Code 1935, § 2016; 15 Del. C. 1953, § 5906; 51 Del. Laws, c. 149, § 7.)

§ 5907. Costs when sitting member is not unseated.

The house in determining against the claim of the contestant may also decide that the proceeding on his part is frivolous and vexatious and may order that he shall pay all the costs of the contested election, but without such order the contestant shall not be liable to costs and the same shall be paid by the State. (Code 1852, § 433; Code 1915, § 1899; Code 1935, § 2017; 15 Del. C. 1953, § 5907.)

§ 5908. Execution when costs are to be paid by contestant.

Any order for the payment of costs by the contestant shall be enforced by a writ issued by the Speaker or President, as the case may be, of the house in which such election was contested to the Sheriff of Kent County, directing him to levy and make the amount thereof of the goods and chattels, lands and tenements of the petitioner, under which writ the Sheriff shall sell the same, or such part thereof as may be necessary to satisfy the writ, upon 15 days notice posted as required in cases of sale on execution process, and shall pay over the amount by him received upon the writ to the State Treasurer for the purpose of reimbursing to the Treasury the sums drawn therefrom to pay the costs of the contested election. (Code 1852, § 434; Code 1915, § 1900; Code 1935, § 2018; 15 Del. C. 1953, § 5908.)

*Subchapter II. Electors for President and Vice-President***§ 5921. Notice of contest; specification.**

Any person intending to contest the election of any one declared by the Governor to have been chosen an elector of President and Vice-President of the United States, shall, within 10 days after such declaration by proclamation of the Governor, give written notice of such intention to the person whose election he intends to contest and also to the Governor, and within 5 days after the delivery of such notice, shall deliver to the person whose election he contests and to the Governor written specification of the grounds upon which he intends to contest the election of the person so declared to have been elected. If 1 of the grounds shall be that illegal votes were given at such election for the person declared to have been elected then such specification shall particularly set forth the name of each alleged illegal voter, with the several objections to the legality of his vote, and shall also distinctly set forth and state the election district at which the alleged illegal vote was cast. (18 Del. Laws, c. 22, § 1; Code 1915, § 1869; Code 1935, § 1988; 15 Del. C. 1953, § 5921.)

§ 5922. Specification in answer.

The person declared to have been elected and who has received notice of contest shall, within 10 days after receiving specification of the grounds of contest, deliver to the person so contesting his election, and to the Governor, a like specification of objections to the right of the contestant to be declared an elector, and in such specification may also state any other ground upon which he rests the validity of his election. (18 Del. Laws, c. 22, § 2; Code 1915, § 1870; Code 1935, § 1989; 15 Del. C. 1953, § 5922.)

§ 5923. Verification of specifications.

Every specification shall be verified by the affidavit of the party delivering the same, stating that he verily believes that the grounds of objection set forth are substantially true, and that the voters specified as illegal voters were not entitled by law to vote at the election in question. (18 Del. Laws, c. 22, § 3; Code 1915, § 1871; Code 1935, § 1990; 15 Del. C. 1953, § 5923.)

§ 5924. Delivery of documents to special board of canvass.

The notice and specification which have been delivered to the Governor shall be by him delivered to the special board of canvass provided for in § 5927 of this title, together with the certificates of the votes given for each person voted for for elector as returned to him by the respective boards of canvass under Chapter 57 of this title on the first day of the assembling of the special board of canvass. (18 Del. Laws, c. 22, § 4; Code 1915, § 1872; Code 1935, § 1991; 15 Del. C. 1953, § 5924.)

§ 5925. Inquiry restricted to grounds of objection in specifications.

In the trial of the case of a contested election, the parties shall be restricted to the grounds of objection in the specifications set forth and to the statement of the other grounds upon which the person declared to have been elected rests the validity of his election and shall not examine into the illegality of any other vote than those specified as illegal nor impeach such votes for any causes other than those so specified. (18 Del. Laws, c. 22, § 5; Code 1915, § 1873; Code 1935, § 1992; 15 Del. C. 1953, § 5925.)

§ 5926. Subpoenas for witnesses.

Where any contestant or person who has been declared elected and whose election is contested is desirous of obtaining testimony respecting a contested election, he may apply to the Prothonotary of the Superior Court in Kent County, for a subpoena or subpoenas for summoning such witnesses as he may wish to appear before the special board of canvass at such time as shall be in the subpoenas designated. Such subpoena shall be directed to the sheriff of the county in which the witness or witnesses reside, and shall be served in the same manner as subpoenas for witnesses in civil cases are served. The sheriff to whom a subpoena may be directed shall make return of his service thereon to the special board of canvass on the first day of its meeting to hear the contest. (18 Del. Laws, c. 22, § 6; Code 1915, § 1874; Code 1935, § 1993; 15 Del. C. 1953, § 5926.)

§ 5927. Superior Court for Kent County declared a special board of canvass to hear contest.

The Superior Court for Kent County is continued and declared to be a special board of canvass to hear and determine all contests of elections of electors of President and Vice-President with power to regulate and determine the mode of procedure, and all other matters pertaining thereto as may be

necessary in carrying out the provision of this subchapter and the Act of Congress fixing the day of the meeting of electors. The Governor whenever a notice of contest is served upon him shall immediately make proclamation convening such Superior Court in special session at the Courthouse in Dover on a day to be by him named, which shall not be later than the 20th day of December, next succeeding the day of the election in the year in which the election was held. (18 Del. Laws, c. 22, § 7; Code 1915, § 1875; Code 1935, § 1994; 15 Del. C. 1953, § 5927.)

§ 5928. Certification by Superior Court.

The Superior Court, after hearing any contest of election of an elector or electors, shall make out and certify under the seal of the Court the ascertainment of the vote of the State for electors, and also certify the names of the persons chosen as electors, and cause such ascertainment and certificate, together with all the papers and certificates filed in the case, to be delivered to the Governor on or before the 1st day of January next succeeding the day of the election at which electors were chosen. (18 Del. Laws, c. 22, § 8; Code 1915, § 1876; Code 1935, § 1995; 15 Del. C. 1953, § 5928.)

Subchapter III. Other Offices

§ 5941. Who may contest; causes.

Any person claiming to be elected to an office to be exercised in and for any county, district or hundred may contest the right of any person declared to be duly elected to such office for any of the following causes:

(1) For malconduct on the part of the election officers or clerks holding the election, or any one of them;

(2) When the person whose right to the office is contested was not at the time of the election eligible to such office;

(3) When the person whose right is contested has given to any elector or inspector, judge or clerk of election, any bribe or reward or shall have offered any bribe or reward for the purpose of procuring his election;

(4) On account of illegal votes. (17 Del. Laws, c. 33, § 1; Code 1915, § 1901; Code 1935, § 2019; 15 Del. C. 1953, § 5941.)

§ 5942. Irregularities not invalidating election.

No inequality or improper conduct in the proceedings of the election officers or clerks or any one of them, shall be construed to amount to such malconduct as to annul or set aside any election unless the inequality or improper conduct shall have been such as to procure the person whose right to the office may be contested to be declared duly elected when he has not received the highest number of legal votes cast at the election. (17 Del. Laws, c. 33, § 2; Code 1915, § 1902; Code 1935, § 2020; 15 Del. C. 1953, § 5942.)

§ 5943. Requirements to set aside election because of illegal voting.

Nothing in this chapter shall be so construed as to authorize an election to be set aside or annulled on account of illegal votes unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person. (17 Del. Laws, c. 33, § 4; Code 1915, § 1903; Code 1935, § 2021; 15 Del. C. 1953, § 5943.)

§ 5944. Circumstances under which contestant need not claim to have been elected.

When an election is contested because of alleged malconduct of the election officers holding the election or because the person whose right to office is contested was not eligible for such office, a proceeding may be instituted under this chapter against such person by the person who received the next highest number of votes for the office at the election under which such ineligible person was declared elected, notwithstanding the person so contesting the election does not claim to have been elected. (17 Del. Laws, c. 33, § 5; Code 1915, § 1904; Code 1935, § 2022; 15 Del. C. 1953, § 5944.)

§ 5945. Statement of contestant; contents.

When any person authorized to do so under this chapter desires to contest the right of any person declared duly elected to such office, he shall, within 20 days after the result of the election shall have been officially ascertained by the board of canvass, or officers legally authorized to ascertain the same, and at least 60 days before the first day of the term of court at which the contest shall be tried or called for trial, file with the Prothonotary in the county in which the contest is made a full, particular and explicit statement setting

forth fully and specifically the names of any and all election officers upon the malconduct of whom he will rely and respecting which he intends to procure evidence, and setting forth the election districts of such election officers and the particular malconduct of each, respectively, the names and residences of the witnesses and the substance of their testimony, by whom he expects to prove such malconduct. If such contest is based upon ineligibility of a person to hold the office, the statement shall specifically, fully and explicitly state the grounds and causes of the ineligibility of the person whose right to the office is contested. When such contest is based on alleged bribe or reward or the offer of a bribe or reward, the statement shall explicitly, fully and clearly state the name of any elector, election officer or other person to whom any bribe or reward shall have been offered and the time, place and amount of such bribe or reward and the name and residence of the witnesses by whom the contestant expects to prove the offering of any bribe or reward, with a brief statement of their testimony. When the contest shall be on the ground of illegal votes, the statement shall specifically, fully and explicitly set forth the names, residences and respective causes of disqualification of each person alleged to have illegally voted, the polls at which such illegal vote has been received, the names of the election officers favoring the acceptance of such vote, whether such vote was challenged by the duly accredited challenger of the party of which the contestant was the candidate, and whether all the judges or inspectors present at such polls concurred in accepting and receiving such vote. If it appears that all of such judges or inspectors concurred in accepting or receiving such vote or that the right of the voters, respectively, to deposit such votes was not at the time challenged by the duly accredited challenger of the party of which the contestant was a candidate, the legality or illegality of such vote shall not be brought into question in any such contest. The statement shall further set forth the names and residences of the witnesses who shall be produced on behalf of the contestant to prove such illegal votes and the substance of the testimony to be given by each. (17 Del. Laws, c. 33, § 6; 19 Del. Laws, c. 572, § 1; Code 1915, § 1905; Code 1935, § 2023; 15 Del. C. 1953, § 5945.)

Election contest petitions must strictly comply with statutory requirements. — Since election contests are statutory creations and are not derived from the common law, election contest petitions normally must strictly comply with the statutory requirements to be valid. *Walker v. Wrightson*, Del. Super., 374 A.2d 570 (1977).

Necessity for alleging that contestee was benefited or that correction would change result. — The burden is upon a contestant in seeking an election contest to allege that the

wrongs complained of accrued to the benefit of the contestee, or that by a correction thereof the result of the election would be changed, or he must allege facts from which such is necessarily inferred. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

Allegations as to fraud or irregularities should be set forth with particularity. — If fraud practiced by the election officers in rejecting legal votes is relied upon by a contestant as a basis for his contest petition in seeking the rejection of an entire district or dis-

tricts, then it is essential, if the grounds and specifications are to be set forth with particularity, to allege facts which clearly indicate the fraud complained of or facts from which fraud may be inferred, the district or districts in which the fraud was practiced, and that the fraud complained of accrued to the benefit of the contestee or changed the result of the election, unless the result is necessarily to be inferred from the facts alleged. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

If irregularities resulting in illegal voting are relied upon by a contestant as a basis for his contest petition in seeking a recount of the votes cast at a municipal election, then it is essential, if the grounds and specifications are to be set forth with particularity, to allege facts which clearly indicate the irregularities or illegal voting complained of, the district or districts in which either or both occurred, and that the votes involved in the wrongs complained of accrued to the benefit of the contestee or changed the result of the election, unless the result is necessarily to be inferred from the facts alleged. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

Names of those denied vote need not be

alleged. — In a contest petition, in the absence of a statutory requirement, necessity does not require the alleging of the names of the legal voters denied the right to vote. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

Absentee ballots not excepted from contests. — The adoption of laws providing for absentee ballot voting was not accompanied by an intent that such ballots be excepted from the conditions set out in this section for a contest based on the ground of "illegal votes." *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

Where absentee ballots were not challenged at the polling place as required by this section, their legality or illegality may not be brought into question even though the kinds of absentee voter fraud alleged cannot form the basis of an election contest under this section. *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

Amendment to a defective election contest complaint filed after the 20-day period provided by this section did not relate back to the filing of the complaint, and the complaint was dismissed therefor. *Walker v. Wrightson*, Del. Super., 374 A.2d 570 (1977).

§ 5946. Verification of contestant's statement.

The statement shall be verified by the oath of the contestant that the matters therein set forth are, so far as they relate to his own act and deed, true and that what relates to the act and deed of any other person he believes to be true. (17 Del. Laws, c. 33, § 6; 19 Del. Laws, c. 572, § 1; Code 1915, § 1905; Code 1935, § 2023; 15 Del. C. 1953, § 5946.)

§ 5947. Security for costs.

Any person contesting any election under this subchapter shall be required to give security for costs in such amount and manner as the court shall order. Such security, however, shall in no case be enforced unless judgment for costs be rendered against the contestant. (17 Del. Laws, c. 33, § 17; Code 1915, § 1914; Code 1935, § 2032; 15 Del. C. 1953, § 5947.)

§ 5948. Citation; service and return.

Before the statement is filed, the Prothonotary shall docket the case in the appearance docket and immediately issue a citation for the person whose right to the office is contested to appear on the first day of the second term of the Superior Court to make such defense as he may have, which citation shall be delivered to the sheriff or, if he be a party to the contest, to the coroner of the county, and be served by him upon the party defendant in person or, if he cannot be found, by leaving a copy thereof at the house where he last resided at least 5 days before the day to which such citation is returnable. The original citation shall be returned to the Prothonotary on or before the first day of the next term of Court after it is issued, and the manner of service shall be endorsed thereon and signed by the officer serving the same. (17 Del. Laws, c. 33, § 9; 19 Del. Laws, c. 572, § 2; Code 1915, § 1906; Code 1935, § 2024; 15 Del. C. 1953, § 5948.)

§ 5949. Dismissal of proceedings.

The Court may dismiss the proceedings if the statement of the cause or causes of contest do not conform to the requirements set forth in this subchapter or for want of prosecution. (17 Del. Laws, c. 33, § 10; 19 Del. Laws, c. 572, § 3; Code 1915, § 1907; Code 1935, § 2025; 15 Del. C. 1953, § 5949.)

§ 5950. Trial.

If proceedings are not dismissed, the case shall proceed upon its merits and be tried and determined by the Court by the rules of law and evidence governing the determination of questions of law and facts in the Superior Court, so far as the same are applicable. (17 Del. Laws, c. 33, § 10; 19 Del. Laws, c. 572, § 3; Code 1915, § 1907; Code 1935, § 2025; 15 Del. C. 1953, § 5950.)

§ 5951. Trial by Court; by jury.

All cases of contest under this subchapter shall be fully heard and determined by the Court, without the aid or intervention of a jury, unless 1 or both of the parties to the contest shall claim a trial by jury, and the Court shall, in its judgment, determine that it is a case which, under the Constitution and laws of this State, the party or parties are entitled to a trial by jury. In such case a jury shall be empanelled and the cause proceed according to the rules and practice of the Court in jury trials. (17 Del. Laws, c. 33, § 12; Code 1915, § 1909; Code 1935, § 2027; 15 Del. C. 1953, § 5951.)

§ 5952. Proof and evidence limited by statement.

At the trial of any contest under this subchapter the contestant shall be limited in his proof and in the admission of evidence to the witnesses named in the statement, and the witnesses shall be limited in their testimony to the facts set forth in the statement with respect to which it shall be stated that they will be expected to testify. (17 Del. Laws, c. 33, § 6; 19 Del. Laws, c. 572, § 1; Code 1915, § 1905; Code 1935, § 2023; 15 Del. C. 1953, § 5952.)

§ 5953. Examination of ballots by Court.

In the trial of any contested election under this subchapter, the Court may make an examination of the ballots given in such election, except that wherever the ballot boxes, ballots, poll lists, tally sheets or other books or records pertaining to any election, excepting the certificate of election of the officer against whom the contest may be made, duly signed by the Court constituting the board of canvass and under the seal of court, and delivered according to law, shall have come in any way, legally or illegally, into the possession, care or custody of any person, officially or otherwise, who shall have been a candidate and voted for upon the same official ballot as a candidate of the same political party as the contestant, no such ballot boxes, poll lists, tally sheets or other books or records pertaining to the said election, excepting the certificate of election, shall be offered in evidence in any contest begun or prosecuted under the provisions hereof, and the Court may make and enforce by attachment all necessary orders to obtain possession of the same. (17 Del. Laws, c. 33, § 13; 19 Del. Laws, c. 572, § 4; Code 1915, § 1910; Code 1935, § 2028; 15 Del. C. 1953, § 5953.)

§ 5954. Judgment.

(a) After hearing the allegations and proofs in the cause the Court shall render judgment (in accordance with the verdict of the jury, if a jury shall have tried the cause) either confirming or annulling such election altogether.

(b) If it appear by the judgment of the Court or the verdict of the jury (if there be a jury) that any other person than the one whose election is contested received the highest number of legal votes, judgment shall be rendered declaring such person duly elected.

(c) When the person whose election is contested is proved to be ineligible to the office, judgment shall be rendered declaring the election void and the office vacant, and such proceedings shall then be had as in vacancies happening from any other cause. When it shall appear that 2 persons have received an equal number of legal votes for the same office, the provisions of law for the settlement of such cases shall prevail, if there be any such provision; if there

be none, then the office shall be adjudged and declared vacant, and such proceedings shall then be had as in vacancies happening from any other cause. (17 Del. Laws, c. 33, §§ 13-15; 19 Del. Laws, c. 572, § 4; Code 1915, §§ 1910-1912; Code 1935, §§ 2028-2030; 15 Del. C. 1953, § 5954.)

§ 5955. Costs.

(a) Costs in all cases under this subchapter shall be awarded against the unsuccessful party to the contest.

(b) Charges for costs shall be as near as possible to the charges for similar services in other cases tried in the Superior Court.

(c) Execution may issue to collect costs. (17 Del. Laws, c. 33, §§ 11, 16; Code 1915, §§ 1908, 1913; Code 1935, §§ 2026, 2031; 15 Del. C. 1953, § 5955.)

PART V

Special, Municipal, and Other Elections

Cross references. — As to constitutional requirements that all elections be free and equal, see Del. Const., art. I, § 3. As to elections to authorize bond issue for suburban community improvements, see §§ 507 to 512 of Title 9. As to elections to authorize bond issues for construction of fire hydrants and watermains in suburban communities, see § 556 to 560 of Title 9. As to election to approve suburban park community and authorize bond issue, see §§ 630 to 634 of Title 9. As to calling elections for park districts in New Castle County, see §§ 712 to 720 of Title 9. As to election on question of establishment of sanitary sewer district in New Castle County, see § 2306 of Title 9. As to referendum upon petition for forming sewer districts in Kent County, see § 4607 of Title 9. As to election of Receiver of Taxes and County Treasurer in Kent County, see § 8401 of Title 9. As to elec-

tion of county comptroller in Kent County, see § 9301 of Title 9. As to election of county recorders, see § 9601 of Title 9. As to elections in reorganized school districts, see §§ 1071 to 1085 of Title 14. As to elections relative to local school taxes, see Chapter 19 of Title 14. As to elections to establish free public libraries in school districts, see §§ 7124 to 7127 of Title 14. As to election for purpose of authorizing the borrowing of money for District Library Commission, see §§ 7162 to 7167 of Title 14. As to elections relative to creation of water and/or sewer authorities, see § 1402 of Title 16. As to special elections relative to extension of city or town limits, see § 101 of Title 22. As to election of commissioners for unincorporated towns, see § 102 of Title 22. As to special election for withdrawal or removal of property from city or town, see § 105 of Title 22. As to Home Rule, see Chapter 8 of Title 22.

CHAPTER 71. SPECIAL ELECTION FOR GENERAL ASSEMBLY

Sec.
7101. Vacancies in General Assembly; writs of election.
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§ 7101. Vacancies in General Assembly; writs of election.

Whenever there is a vacancy in either house of the General Assembly, by reason of failure to elect, ineligibility, death, resignation or otherwise, within 30 days of the creation of the vacancy a writ of election shall be issued by the presiding officer of the house in which the vacancy exists, directed to the department of the county in which such vacancy exists or, in case of necessity, in such other manner as shall be provided by law. Whenever there is such vacancy in either house and the General Assembly is not in session, the Governor may issue a writ of election to fill such vacancy, which writ shall be

executed as a writ issued by the presiding officer of either house in case of vacancy. (Code 1852, § 379; Code 1915, § 1816; Code 1935, § 1905; 15 Del. C. 1953, § 7101; 57 Del. Laws, c. 181, § 77.)

Writ of election issued by Speaker without recall by Governor. — When Speaker recessed the House of Representatives "to the call of the Chair," a writ of election could be

issued by the Speaker to fill a vacant House seat without a recall by the Governor. State ex rel. Battaglia v. Delaware Dep't of Elections, Del. Supr., 344 A.2d 225 (1975).

§ 7102. Vacancy in Senate.

If a writ of election to fill a vacancy in the Senate is issued after an adjournment, without day, of the General Assembly and not less than 10 days before the holding of the general election, the writ shall be executed at the time of holding the next general election; the election to fill the vacancy pursuant to the writ being held by the same persons and in all respects as the general election, unless a session of the General Assembly, shall, in the meantime, be convened by the Governor. (Code 1852, § 380; Code 1915, § 1817; Code 1935, § 1906; 15 Del. C. 1953, § 7102.)

§ 7103. Vacancy in House.

If a vacancy happens in the House of Representatives after an adjournment, without day, of the General Assembly, no writ of election shall be issued under § 7101 of this title, unless the Governor shall also issue a writ for convening the General Assembly. (Code 1852, § 381; Code 1915, § 1818; Code 1935, § 1907; 15 Del. C. 1953, § 7103.)

Writ of election issued by Speaker without recall by Governor. — When Speaker recessed the House of Representatives "to the call of the Chair," a writ of election could be

issued by the Speaker to fill a vacant House seat without a recall by the Governor. State ex rel. Battaglia v. Delaware Dep't of Elections, Del. Supr., 344 A.2d 225 (1975).

§ 7104. Day for holding special election.

The department shall set the day for holding a special election for the General Assembly, but such day shall not be more than 11 or less than 10 days next after the day of receiving the writ, exclusive of that day, in case such writ be issued to fill a vacancy occurring or existing while the General Assembly is in session or within 20 days prior to the convening of the General Assembly in regular or special session. If the vacancy occurs or exists 20 days or upwards prior to a general or special session of the General Assembly, the day appointed for holding a special election pursuant to such a writ shall be not more than 40 nor less than 30 days next after the day of receiving the writ, and so as to permit the holding of the special registrations of voters

provided by law in case of a special election, subject, however, to § 7102 of this title, in cases falling within that section. (Code 1852, § 382; Code 1915, § 1819; Code 1935, § 1908; 45 Del. Laws, c. 154, § 18; 15 Del. C. 1953, § 7104; 51 Del. Laws, c. 99, §§ 1, 2.)

§ 7105. Notice to the public.

The department shall, on the next day after receiving a writ of election, unless the same shall be Sunday and then on the Monday next following, put up on the outside of the courthouse door of its county and also in at least 5 of the most public places of each election district of the senatorial or representative district or districts of the county, included in the writ of election, a proclamation reciting the writ and appointing a day for holding a special election and the officer or officers to be chosen. (Code 1852, §§ 382-384; Code 1915, §§ 1819, 1821; Code 1935, §§ 1908, 1910; 45 Del. Laws, c. 154, §§ 18, 20; 15 Del. C. 1953, § 7105.)

§ 7106. Notice to election officers and department.

(a) The department, upon receiving a writ of election, shall notify each inspector, judge of election and clerk of election of each election district within such representative or senatorial district in which such election is to be held.

If any inspector, judge or clerk of election of any election district within such senatorial or representative district shall be dead, removed, unable to serve or shall refuse to serve, the notice shall be delivered to the person or persons appointed to fill such vacancy or vacancies.

(b) [Repealed]. (Code 1852, §§ 383, 384; Code 1915, § 1821; Code 1935, § 1910; 45 Del. Laws, c. 154, § 20; 15 Del. C. 1953, § 7106; 49 Del. Laws, c. 4, § 5; 58 Del. Laws, c. 148, § 141; 61 Del. Laws, c. 480, § 21.)

§ 7107. Election officers and challengers for special election.

The inspectors who served in the election districts at the next preceding election or the persons so appointed or supplied to fill vacancies among such inspectors shall be the presiding officers for the special election. The judges of election, clerks and challengers who served in the election districts within the senatorial or representative district in which the special election is to be held, at the next preceding election, shall serve in such election districts in their several capacities for such special election. (Code 1852, §§ 385, 386; Code 1915, § 1822; Code 1935, § 1911; 15 Del. C. 1953, § 7107.)

§ 7108. Vacancies among election officers or challengers.

In case any inspector, judge or clerk of election or challenger of any election district, within the senatorial or representative district in which any special election is to be held to fill any vacancy in the Senate or House of Representatives, who served at the next preceding general election, shall be dead, removed, unable to serve or shall refuse to serve an inspector, judge or clerk of election or challenger shall be appointed or supplied to fill such vacancy, in the same manner as prescribed in the case of the general election. (Code 1852, §§ 327, 385, 386; 13 Del. Laws, c. 122, § 1; 17 Del. Laws, c. 29, § 1; 20 Del. Laws, c. 394, § 2; Code 1915, §§ 1820, 1822; Code 1935, §§ 1909-1911; 45 Del. Laws, c. 154, §§ 19, 20; 15 Del. C. 1953, § 7108.)

§ 7109. General election laws applicable.

Every special election in a representative or senatorial district shall be provided for, opened, held, conducted and closed and the result thereof ascertained and certified in the same manner, at the same places and subject to the same laws, so far as the same may be applicable, as are prescribed for the general election; provided, however, that the department shall not be required to publish in a newspaper 10 days before the election the nominations made in anywise for such special election. (Code 1852, § 387; Code 1915, § 1823; Code 1935, § 1912; 45 Del. Laws, c. 154, § 21; 15 Del. C. 1953, § 7109.)

§ 7110. Board of canvass.

The Superior Court of any county, in which the special election shall be held, as constituted under article V, § 6 of the State Constitution, shall, at 12:00 on the second day after such special election, convene and perform its duties, prescribed by such section, with reference to such special election, at the same place, with the same powers and in the same manner as for a general election. (Code 1852, § 388; Code 1915, § 1824; Code 1935, § 1913; 15 Del. C. 1953, § 7110.)

§ 7111. Term of office of one elected to fill vacancy.

The person chosen to fill a vacancy in the General Assembly shall hold office for the residue of the term. (Code 1852, § 379; Code 1915, § 1816; Code 1935, § 1905; 15 Del. C. 1953, § 7111.)

§ 7112. Costs of special election.

All necessary costs and expenses incurred in carrying into effect the proclamation of the Governor or of the presiding officer of the house in which the vacancy exists, relative to special elections, unless otherwise provided by the laws of this State, including the compensation of election officers, shall be paid by the State Treasurer from any moneys in the State Treasury not otherwise appropriated, upon proper warrants and vouchers submitted to the Governor and approved by the Auditor of Accounts. (27 Del. Laws, c. 65, § 24; Code 1915, § 1815; 38 Del. Laws, c. 88, § 1; Code 1935, § 1904; 15 Del. C. 1953, § 7112.)

CHAPTER 73. VACANCY IN OFFICE OF REPRESENTATIVE IN CONGRESS, UNITED STATES SENATOR OR PRESIDENTIAL ELECTOR

Subchapter I. Representative in Congress

Sec.

- 7301. Special election to fill vacancy.
- 7302. Time of election; general election.
- 7303. Writs of election.
- 7304. Notice to the public.
- 7305. Notice to election officers and department of elections.
- 7306. Conduct of special election.
- 7307. Vacancies among election officers.

Subchapter II. United States Senator
Sec.

- 7321. Vacancy; temporary appointment; term.
- 7322. Certification of appointment; form.

Subchapter III. Electors of President and Vice-President

- 7331. Procedure in case of failure to elect electors.
- 7332. Mode of choosing by General Assembly.
- 7333. Member of General Assembly ineligible.
- 7334. Certificates of appointment by General Assembly.

Subchapter I. Representative in Congress

§ 7301. Special election to fill vacancy.

Whenever a vacancy shall happen by death, resignation or otherwise in the representation from this State in the House of Representatives of the United States, an election shall be held to fill such vacancy on such day as the Governor shall appoint, in the several counties, at the same places which at the time shall be prescribed by law for holding the general election. (Code 1852, § 415; Code 1915, § 1880; Code 1935, § 1999; 15 Del. C. 1953, § 7301.)

§ 7302. Time of election; general election.

It shall be in the discretion of the Governor whether to appoint a day for holding elections under this chapter, before the day of holding the general election next after the happening of a vacancy, and, if the day of holding the general election shall be appointed, then the election shall be held and conducted and all the proceedings touching the same had as part of the general election. (Code 1852, § 421; Code 1915, § 1887; Code 1935, § 2006; 15 Del. C. 1953, § 7302.)

§ 7303. Writs of election.

The Governor shall issue writs of election to the department of elections of the several counties reciting the vacancy and commanding each department to cause an election to be held in its county on the day mentioned in the writ, at the place by law prescribed for holding the general election in its county, for choosing a Representative in place of him whose seat shall so have become vacant, which writ shall be delivered to each department at least 40 days before the day therein appointed for holding the election. (Code 1852, § 416; Code 1915, § 1881; Code 1935, § 2000; 45 Del. Laws, c. 153, § 1; 15 Del. C. 1953, § 7303.)

§ 7304. Notice to the public.

Each department shall, within 10 days after receiving a writ, advertise by suitable news media or by publishing the same each day for at least 5 days in 1 or more daily newspapers printed in the county or, if no daily newspaper is published in the county, in an edition of each of 2 weekly newspapers. Such notice shall state the day and place of the election and the officer to be chosen. (Code 1852, §§ 417, 418; Code 1915, §§ 1882, 1884; Code 1935, §§ 2001, 2003; 45 Del. Laws, c. 153, §§ 2, 3; 15 Del. C. 1953, § 7304; 58 Del. Laws, c. 215, § 40.)

§ 7305. Notice to election officers and department of elections.

(a) The department shall also, upon receiving a writ, notify the inspector, judges of election and clerks of election of each election district in the respective counties who served at the preceding general election, and, if any such officer of any such election district be dead, removed, unable to serve or shall refuse to serve, then also to the person of any such election district who shall be appointed to fill the vacancy in such office.

(b) [Repealed]. (Code 1852, §§ 417, 418; Code 1915, § 1884; Code 1935, § 2003; 45 Del. Laws, c. 153, § 3; 15 Del. C. 1953, § 7305; 49 Del. Laws, c. 4, § 5; 58 Del. Laws, c. 148, § 142; 61 Del. Laws, c. 480, § 22.)

§ 7306. Conduct of special election.

A special election for Representative in Congress shall be conducted in the same manner and form and by the same persons and officers and under the same regulations in all respects as a special election to supply a vacancy in either house of the General Assembly, and the votes given in each county shall be calculated, ascertained and certified at the same time and place and

in like manner and by the same method and regulation as in case of such special election. (Code 1852, §§ 419, 420; Code 1915, §§ 1885, 1886; Code 1935, §§ 2004, 2005; 15 Del. C. 1953, § 7306.)

§ 7307. Vacancies among election officers.

In case any election officer of any election district who served at the next preceding general election shall be dead, removed, unable to serve or shall refuse to serve, an officer shall be appointed or supplied to fill such vacancy in the same manner as prescribed in the case of the general election. (Code 1852, § 327; 17 Del. Laws, c. 29, § 7; 19 Del. Laws, c. 39, § 3; 21 Del. Laws, c. 41, § 1; Code 1915, § 1883; Code 1935, § 2002; 15 Del. C. 1953, § 7307.)

Subchapter II. United States Senator

§ 7321. Vacancy; temporary appointment; term.

Whenever a vacancy shall happen by death, resignation or otherwise in the office of Senator from this State in the Senate of the United States, the Governor may make a temporary or ad interim appointment from among the qualified electors of this State of some person to fill such vacancy until the same shall be filled at the next ensuing general election in the manner prescribed by law. The office of such temporary appointee shall terminate upon the election, under this title, of a Senator from this State in the Senate of the United States to fill the vacancy. (Code 1915, § 1890; 28 Del. Laws, c. 101; Code 1935, § 2009; 15 Del. C. 1953, § 7321.)

§ 7322. Certification of appointment; form.

(a) If a vacancy in the office of United States Senator is filled by temporary appointment by the Governor, the Governor shall certify the appointment of a Senator from this State in the Senate of the United States, under the Great Seal of the State, to the President of the Senate of the United States. Such certificates shall be countersigned by the Secretary of State of Delaware.

(b) The certificate, in the case of a temporary appointment by the Governor, may be in the following form, viz.:

"To the President of the Senate of the United States: Be it known that I,, Governor of the State of Delaware, according to the form of the Act of the General Assembly of said State, have appointed to be a Senator from the said State in the Senate of the United States, to serve as such Senator until the electors of the said State shall fill the vacancy caused by the death (resignation or otherwise) of, lately Senator from said State, in the Senate of

the United States. Given under our hands, in obedience to the said Act of the General Assembly and of the said Act of Congress, the day of A. D. 19.....”

(Code 1915, § 1892; 28 Del. Laws, c. 101; Code 1935, § 2010; 15 Del. C. 1953, § 7322.)

Subchapter III. Electors of President and Vice-President

§ 7331. Procedure in case of failure to elect electors.

If upon examining the certificates of the boards of canvass it shall appear to the Governor that there has been a failure to choose 1 or more of the electors of a President and Vice-President of the United States to be appointed in this State or, if from any cause such electors shall fail to be chosen, he shall immediately issue writs for convening the General Assembly, at Dover, on the fourth Monday of the same November, and the elector or electors to be appointed in this State for the election of a President and Vice-President of the United States and not chosen at the general election shall be appointed by ballot by the General Assembly so convened in joint meeting of the Senate and House of Representatives. (Code 1852, § 404; Code 1915, § 1861; Code 1935, § 1980; 15 Del. C. 1953, § 7331.)

§ 7332. Mode of choosing by General Assembly.

In the joint meeting provided for by § 7331 of this title there shall be a distinct balloting for each elector, and a majority of all the votes given shall be necessary to an appointment; but if upon any ballotings 2 persons only shall be voted for and each shall receive an equal number of votes, the President of the Senate shall give an additional casting vote; if upon twice balloting in succession more than 2 persons be voted for and 1 of such persons on each balloting receive one half the number of all the votes given, the President of the Senate may, on the second balloting, give an additional casting vote to the person having one half of the number of all the votes given, or, if he decline, the Speaker of the House of Representatives may, if he think proper, give an additional casting vote to the person having one half of such vote. (Code 1852, § 405; Code 1915, § 1862; Code 1935, § 1981; 15 Del. C. 1953, § 7332.)

§ 7333. Member of General Assembly ineligible.

No member of the General Assembly for the time being shall be appointed an elector of President and Vice-President under § 7332 of this title. (Code 1852, § 406; Code 1915, § 1863; Code 1935, § 1982; 15 Del. C. 1953, § 7333.)

§ 7334. Certificates of appointment by General Assembly.

Certificates of appointment of electors by the General Assembly shall be duly made and signed by the President of the Senate and the Speaker of the House of Representatives and attested by the clerks of the houses respectively, and shall be transmitted by the President of the Senate as follows: One to the Governor, in order that lists may be made, certified and delivered, according to the Act of Congress in that behalf and 1 to each of the electors appointed. (Code 1852, § 407; Code 1915, § 1864; Code 1935, § 1983; 15 Del. C. 1953, § 7334.)

CHAPTER 75. MUNICIPAL ELECTIONS

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Subchapter I. General Provisions

§ 7501. Deposit and count of ballots.

The board of elections or other officers conducting any election held in any municipality of this State shall deposit all ballots as the same are voted in a ballot box and shall not remove the ballots until the election is closed.

When the election is closed, the ballots cast shall be removed from the ballot box and shall be counted openly and publicly and in the presence of such citizens of the municipality as shall desire to attend.

This section shall be deemed and taken to be an amendment to all charters granted to any municipality in this State. (41 Del. Laws, c. 127, §§ 1, 2; 15 Del. C. 1953, § 7501.)

Cross references. — As to costs for use of voting machines in municipal elections, see § 5003 of this title.

§ 7502. Local elections when there is only 1 candidate.

In any town or municipal election where there is only 1 official candidate for each office, if none of the official candidates has a formal opponent on the day of election, the official candidates may assume office without the holding of a formal election. (60 Del. Laws, c. 561, § 1; 63 Del. Laws, c. 454, § 1.)

Subchapter II. City of Wilmington

§ 7521. Elections.

Registration and elections in the City of Wilmington for the Mayor, Council and other officers of the City of Wilmington shall in all respects be conducted in conformity with the provisions governing general elections as provided under this title, except that the canvass of the vote shall be conducted by the Department of Elections for New Castle County, which shall certify those candidates elected to office. (45 Del. Laws, c. 144, § 34; 15 Del. C. 1953, § 7521; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 2; 61 Del. Laws, c. 428, § 1.)

Constitutionality. — That part of this section which attempts to require the Superior Court to canvass the vote of the city elections is unconstitutional and void, since under art. V, § 6, Del. Const., the Superior Court's jurisdiction as a board of canvass is limited to general elections and other elections over which the former boards of canvass had jurisdiction. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

The repealing clauses in § 10 of 50 Del. Laws, c. 390 and § 1 of 50 Del. Laws, c. 392 were ineffectual insofar as they attempted to change the method of canvassing the vote of

the city election, since the substituted method of canvassing was void and it could not be supposed that the legislature intended that there should be no canvass whatever. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

The vote of an election in the City of Wilmington should be canvassed by the Department of Elections of New Castle County, where the portion of this section attempting to require the Superior Court to canvass the vote was unconstitutional and void. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

§ 7522. Definition of political party.

A political party existing only within the City of Wilmington shall be qualified to nominate candidates for the municipal election if it is a bona fide organization of registered voters of the City of Wilmington who:

- (1) Elect a city committee and officers of the city committee;
- (2) Nominate candidates for the municipal election by a secret ballot of those enrolled for purposes of the municipal election as members of the party taken at a convention or by some other method of polling the party membership;
- (3) Not later than August 15 of the year of the municipal election, file with the Department of Elections for New Castle County petitions certifying that the party exists and desires to have its candidates placed on the ballot for the forthcoming election. These petitions shall be signed by a number of registered voters of the City of Wilmington not less than 5 percent of the total number of registered voters within the City as of December 31 of the year immediately preceding the municipal election. These petitions shall be prepared between January 1 and August 15 of

the year of the election. They shall include the signature, printed name, address at which registered and social security number of each qualified voter signing the petition. Each petition shall also include the following declaration subscribed to under oath by each person signing the petition:

By dating and affixing my signature to this petition, I hereby swear (or affirm) that: (1) My full name, address at which registered and social security number are as stated herein; (2) I am a duly registered voter of the State of Delaware, New Castle County and the City of Wilmington; (3) For the purposes of the municipal election only, I am a member of the and I support its

name of party

efforts to have its name, party device and candidates listed on the next municipal election ballot; (4) The date entered opposite my signature is the date on which I signed this petition; and (5) I have read and understand this petition, and I understand that by intentionally entering false information hereon I shall be subject to prosecution for perjury.

The petition shall also include a sworn statement, signed by the person gathering the signatures and sworn to before a notary public, that such person witnessed the placing of each signature on the petition and, to the best of his knowledge or belief, all those who signed the petition were duly registered voters of the City of Wilmington. This statement shall be followed by a warning that any person who knowingly signs a statement which contains falsehoods shall be subject to prosecution for perjury. (15 Del. C. 1953, § 7522; 50 Del. Laws, c. 390, § 3; 61 Del. Laws, c. 428, § 2.)

§ 7523. Certificates of nomination.

The nominations made under this subchapter for the various offices of the City of Wilmington, together with the name of the party and its device, shall be certified to the Department of Elections for New Castle County by the presiding officer and secretary of each political party on the date and in the manner prescribed for other nominations for the general election made under this title. (15 Del. C. 1953, § 7523; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 4; 61 Del. Laws, c. 428, § 3.)

§ 7524. Title and device of party.

No party shall use the name of another party appearing anywhere on the ballot either in whole or in part, or any variation thereof, in its own title. The words "Independent" or "Decline," being terms employed in this title, or any variation thereof, shall not be used as the title, or part of the title, of any party. Each party shall select an appropriate figure or device to designate that

party, but the coat of arms, seal or flag of the United States, this State or the City of Wilmington, or any part or variation thereof, shall not be used as such figure or device.

In case of a division in any party qualified under this subchapter and a claim by 2 or more factions to the same party name or title, figure or device, the Board of Elections for New Castle County shall determine to which faction the name and device properly belong. If, within 5 days thereafter, the other faction fails to present and certify some other party title and/or device, the Board shall select some suitable title and/or device to represent that party upon the ballot. (15 Del. C. 1953, § 7524; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 5; 61 Del. Laws, c. 428, § 4.)

§ 7525. Ballots.

The names of the candidates for the Mayor, Council and other officers of the City of Wilmington shall be printed on the single ballot as prescribed by § 4501 of this title and to meet the requirements of §§ 5001-5011 of this title. (15 Del. C. 1953, § 7525; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 6.)

§ 7526. Supplemental certificates of nomination.

Supplemental certificates of nomination for offices of the City of Wilmington shall be issued as prescribed in § 3306 of this title. (15 Del. C. 1953, § 7526; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 7; 58 Del. Laws, c. 148, § 143; 61 Del. Laws, c. 428, § 5.)

§ 7527. Contest of election.

If any candidate for any of the offices before mentioned shall choose to contest the right of any person claiming to have been elected to said office, the causes for such contests and all of the other provisions now set out in §§ 5941-5955 of this title shall be applicable, and all such contests shall be determined pursuant to all of said sections. (15 Del. C. 1953, § 7527; 50 Del. Laws, c. 390, § 8.)

§ 7528. General provisions.

All of the provisions of this title pertaining to elections, including registration of voters, Chapters 11, 13, 15, 17, 19, 21, and 23, primary elections and nomination of candidates, Chapters 31 and 33, general elections, Chapters 41, 45, 47, 49, 51, 53, 55, and 57, as well as Chapter 50 of this title, shall be applicable to the holding of elections in accordance with this subchapter. (15 Del. C. 1953, § 7528; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 9.)

Subchapter III. Special Elections for Annexations for City of Wilmington under Title 22, § 101A

Revisor's note. — Section 3 of 66 Del. Laws, c. 135, provides: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which shall be given effect without the invalid provision or application, and to this

end the provisions of this act are declared to be severable."

Section 4 of 66 Del. Laws, c. 135, provides: "This act shall become effective 30 days after it is enacted." This act was signed by the Governor on July 9, 1987.

§ 7540. Date for election.

(a) Upon the enactment of a county ordinance pursuant to § 101A(a)(2)c of Title 22, for a proposed annexation of territory by the City of Wilmington, and its approval by the County Executive pursuant to § 101A(a)(2)d of Title 22, the County Council, by resolution, shall fix a date for the special election required by § 101A(a)(2)e of Title 22, at which all voters qualified under § 7543 of this title may vote, on the question whether the proposed annexation should be approved.

(b) The special election shall be held not less than 30 days nor more than 60 days after the date of approval of the county ordinance enacted pursuant to § 101A(a)(2)c of Title 22. (66 Del. Laws, c. 135, § 2.)

§ 7541. Contents of notice of special election.

The special election shall be held on the date fixed by County Council pursuant to § 7540 of this title and shall be previously advertised by publishing a notice in a newspaper published within the County and having a general circulation therein, once in each of 2 weeks preceding the week in which the special election is held, and by posting a notice in a prominent place in the building at which County Council meets for the conduct of legislative business. The notices shall state the time and place of the special election and further state that the purpose of the special election is to determine whether a majority of the qualified voters in each parcel of the territory are in favor of the annexation by the City of Wilmington. The posted notice shall also provide a detailed description of the territory, including but not limited to a map showing the territory in relation to the City of Wilmington and the area surrounding the territory. (66 Del. Laws, c. 135, § 2.)

§ 7542. Place, time and manner of voting; duties of Clerk of the Peace.

(a) The special election shall be held in the building in which is situated the offices of the Clerk of the Peace. The polls shall be open from 9:00 a.m. to 6:00 p.m. on the day of the special election and voting shall be by printed ballot, which shall give the qualified voters an opportunity clearly to indicate their consent or objection to the annexation of the territory by the City of Wilmington.

(b) The Clerk of the Peace shall:

- (1) Act as judge of the special election;
- (2) Prepare, publish and post the notices required under § 7541 of this title;
- (3) Prepare the ballots required for the special election; and
- (4) Perform such other duties as provided in this subchapter for the Clerk of the Peace. (66 Del. Laws, c. 135, § 2.)

§ 7543. Qualified voters; voting list.

(a) The following shall be considered qualified voters for a special election held with respect to an annexation initiated pursuant to § 101A of Title 22 for the City of Wilmington and shall be entitled to vote in such election as provided herein:

(1) Every person 18 years of age or older who at least 30 days prior to the date of the special election is a duly registered voter in the election district or districts of the County in which the territory is located, and who resides in said territory, shall be entitled to 1 vote each.

(2) Unless already qualified to vote under paragraph (1) of this subsection and subject to subsection (b) of this section each owner of a parcel of real estate located in the territory, as evidenced by the assessment records of the County, shall be entitled to 1 vote each. Corporations, limited partnerships or other entities which own real estate in the territory shall be entitled to 1 vote each under this subsection, which right to vote shall be permitted by the judge of the election at the special election upon receipt of a sealed, certified copy of a corporate resolution passed by the governing body of the corporation, or the equivalent of such resolution of the entity involved, authorizing an officer, agent or other person to vote on behalf of the entity at the special election.

(3) Unless already qualified to vote under paragraph (1) or (2) of this subsection, each holder of a then-current leasehold interest in a parcel in the territory, as evidenced by a certified copy of the lease reflecting that interest submitted to the judge of the election at the time of the special election, shall be entitled to 1 vote each, which shall be permitted in the

same fashion as if carried out under the provisions of paragraph (1) or (2) of this subsection, as the case may be.

(4) Unless already qualified to vote under paragraph (1), (2) or (3) of this subsection, each person, corporation, limited partnership or other entity, who in the determination of the judge of the election is qualified to vote under the provisions of subsection (b) of this section, shall be entitled to 1 vote each, which shall be permitted in the same fashion as if carried out under the provisions of paragraph (1) or (2) of this subsection, as the case may be.

(5) In no event shall any person, corporation, limited partnership or other entity, or any holder of a leasehold interest, who or which is qualified to vote under this section, be entitled to more than 1 vote in such special election.

(b) Not less than 14 days prior to the special election, the Clerk of the Peace shall prepare from the books and records of the county Board of Assessment a list of the real estate owners of each parcel of the territory for which the special election is to be held. In addition, not less than 21 days prior to the special election the Department of Elections for the County shall provide the Clerk of the Peace with a current list of registered voters in the election district or districts in which the territory is located, who reside in the territory. From the 2 lists prepared pursuant to this subsection the Clerk of the Peace shall compile the voting list of the qualified voters for the special election. The voting list shall be evidence of the right of qualified voters to vote in the special election, except as hereinafter provided:

(1) Real estate owners who sold their property or properties in the territory prior to the date of the special election shall not be permitted to vote but the then owners of the property or properties shall be entitled to vote in their place and stead upon furnishing the judge of the election with the original or a certified copy of the deed to the property or properties, which deed shall clearly evidence that it was duly recorded; provided, however, that if the new owner is a corporation, limited partnership or other entity, the new owner must also comply with the provisions of subsection (a)(2) of this section;

(2) Any person claiming the right to vote at the election as an heir of any real estate owner in the territory who has died since the preparation of the voting list, or as trustee or guardian under the terms of the last will and testament of such real estate owner (who has died since the preparation of the voting list) shall furnish the judge of election with the original or a certified copy of the will or other document evidencing his ownership of, or interest in, the property of such real estate owner, and shall thereupon be permitted to vote as if qualified under subsection (a)(2) of this section; or

(3) Each person, corporation, limited partnership or other entity qualified to vote in the special election pursuant to subsection (a)(3) of this section shall be permitted to vote despite their absence from the voting list prepared by the Clerk of the Peace. (66 Del. Laws, c. 135, § 2.)

§ 7544. Certification of result of special election; retention of ballots.

No later than 3 days after the holding of the special election, the judge of the election shall tabulate the ballots and certify the result to the County Council and to the Wilmington City Council under his or her hand and seal. The ballots shall be retained in the safekeeping of the county government for 1 year before being destroyed. (66 Del. Laws, c. 135, § 2.)

§ 7545. Alternative approval procedure when only 1 qualified voter exists.

If only 1 qualified voter in the territory exists for the purpose of determining whether an annexation initiated pursuant to § 101A of Title 22 for the City of Wilmington shall be approved, notwithstanding any other provisions in this subchapter or in Title 22 the annexation shall be deemed approved if, within 7 days of the County Executive's approval of the county ordinance pursuant to § 101A(a)(2)f of Title 22, the qualified voter files with the Clerk of the Peace a sworn affidavit approving of the annexation. If the qualified voter is a corporation, limited partnership or other entity, such affidavit must be accompanied by a suitable sealed, certified copy of a corporate resolution or its equivalent authorizing an officer, agent or other person to execute the affidavit approving the annexation on behalf of the entity. On receipt of said affidavit, together with the authorization, if any, the Clerk of the Peace shall certify the approval to the County Council and to the Wilmington City Council under his or her hand and seal. Said certification shall, for all intents and purposes, be construed as the required certificate under § 7544 of this title and § 101A(a)(2)f of Title 22. (66 Del. Laws, c. 135, § 2.)

§ 7546. Definitions.

For the purposes of this subchapter, the following terms shall have the meanings described herein:

- (1) "Clerk of the Peace" shall mean the Clerk of the Peace for New Castle County.
- (2) "County" shall mean New Castle County.
- (3) "County Council" shall mean the New Castle County Council.
- (4) "County Executive" shall mean the New Castle County Executive.

(5) "Parcel" shall have the meaning set forth in § 101A(c)(4) of Title 22.

(6) "Territory" shall have the meaning set forth in § 101A(c)(6) of Title 22. (66 Del. Laws, c. 135, § 2.)

CHAPTER 77. CONVENTION TO ACT UPON AMENDMENTS TO FEDERAL CONSTITUTION

Sec.	Sec.
7701. Date of election of delegates; proclamation.	7710. Alternates.
7702. Qualification of voters.	7711. Printing of ballots; to whom delivered; additional ballots.
7703. Registration.	7712. Use of separate ballot; form.
7704. Election, how conducted; results, how ascertained.	7713. Election of nominees; vacancies.
7705. Number and residence of delegates.	7714. Meeting of delegates.
7706. Qualifications of delegates; nomination by petition.	7715. Election of officers and adoption of rules.
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7708. What nominations shall be effective.	7717. Certification of results.
7709. Certification of nominations.	7718. Compensation of delegates, officers and employees; expenses.
	7719. Applicability of act of Congress.

§ 7701. Date of election of delegates; proclamation.

Whenever the Congress of the United States proposes an amendment to the Constitution of the United States and proposes that the same shall be valid when ratified by conventions in three fourths of the several States, the Governor of this State shall fix by proclamation the date of an election for the purpose of electing delegates to such convention of this State. Such election may be either at a special election or may be held at the same time as a general election or special, but shall be held at least as soon as the next general election occurring more than 3 months after the amendment has been proposed by the Congress. (38 Del. Laws, c. 5, § 1; Code 1935, § 6206; 15 Del. C. 1953, § 7701.)

§ 7702. Qualification of voters.

(a) If the election of delegates is held at the same time as a general election, all persons qualified to vote at such general elections for representatives to the General Assembly of this State shall be entitled to vote.

(b) If such election is held at a time other than at the same time as a general election, all persons qualified to vote for representatives to the General Assembly of this State at the last general election next preceding such special election shall be entitled to vote. (38 Del. Laws, c. 5, § 2; Code 1935, § 6207; 15 Del. C. 1953, § 7702.)

§ 7703. Registration.

(a) If the election of delegates is to be held at a date other than the date of a general election, there shall be 1 or more registration days prior to such election. The Governor shall fix the date or dates of such registration and shall include an announcement of the registration dates in his proclamation, fixing the date of the election. No registration shall be held within 10 days next prior to such special election.

(b) On the registration day or days persons whose names are not on the list of registered voters established by law for the last general election may apply for registration, and on such registration day or days applications may be made to strike from the registration list names of persons on such list who are not eligible to vote at such election. (38 Del. Laws, c. 5, § 2; Code 1935, § 6207; 15 Del. C. 1953, § 7703.)

§ 7704. Election, how conducted; results, how ascertained.

Except as in this chapter otherwise provided, the election of delegates shall be conducted and the results thereof ascertained and certified in the same manner as in the case of the election of electors of President and Vice-President in this State and the Governor shall, without delay, examine the certificates and ascertain the delegates to such convention chosen and make known the same by proclamation and cause notice to be given to each delegate so elected of his election as a delegate. All provisions of the laws of this State relative to elections, except as far as inconsistent with this chapter, shall be applicable to such election. (38 Del. Laws, c. 5, § 3; Code 1935, § 6208; 15 Del. C. 1953, § 7704.)

§ 7705. Number and residence of delegates.

The number of delegates to be chosen to such convention shall be 17, to be elected from the State at large. Seven of such delegates shall be residents of New Castle County, 5 of such delegates shall be residents of Kent County, and 5 of such delegates shall be residents of Sussex County. (38 Del. Laws, c. 5, § 4; Code 1935, § 6209; 15 Del. C. 1953, § 7705.)

§ 7706. Qualifications of delegates; nomination by petition.

Candidates for the office of delegate to the convention shall be citizens and qualified voters of this State. Nominations shall be by petition and not otherwise. A single petition may nominate any number of candidates not exceeding the total number of delegates to be elected from each county, and all candidates on any such petition shall be residents of the same county and shall

reside in the county which said candidates propose to represent at such convention and every such petition shall be signed by not less than 100 persons who are qualified voters of the county wherein such candidates reside. Nominating petitions shall be filed with the department of elections of the county which such candidates propose to represent. Nominations shall be without party or political designation, but the nominating petitions shall contain a statement as to each nominee to the effect that he favors ratification or that he opposes ratification or that he remains uncommitted to either ratification or rejection of the proposed amendment to the Constitution of the United States, and no nominating petition shall contain the name of any nominee whose position as stated therein is inconsistent with that of the position of any other nominee as stated therein. (38 Del. Laws, c. 5, § 5; Code 1935, § 6210; 15 Del. C. 1953, § 7706; 61 Del. Laws, c. 480, § 23.)

§ 7707. Determination of nominations.

The sixteenth day before the day fixed for the holding of the election of delegates shall be the last day for the filing of nominating petitions with the respective departments of election or, if such sixteenth day falls upon a Sunday or a legal holiday, the day following shall be the last day for the filing of such nominating petitions, and thereafter nominations for the office of delegate to such convention shall be closed. After the closing of such nominations, the respective departments of election shall forthwith count and determine the number of signatures which each candidate for nomination as delegate to such convention has obtained upon his or their respective nominating petition or petitions. In making such count and determination, the respective departments of election shall only count the signatures of those persons who are qualified voters of the county which the candidates propose to represent at such convention. A signature to such nominating petition shall be prima facie evidence that the person purporting to sign the same did actually sign the same and that such person is a qualified voter of the same county as the county of residence of the candidate or candidates whose names appear in such nominating petition, and all signatures to such nominating petitions shall be counted by the respective departments of election, unless, within 5 days after the closing of nominations, evidence satisfactory to the department of elections shall have been produced before him that a person whose name purports to have been signed to a nominating petition is either a fictitious person or not a qualified voter of the county of residence of the candidate or candidates whose nominating petition he purports to have signed. After the closing of nominations all nominating petitions shall be open to the inspection of any qualified voter of the county in which such petitions have been filed. (38 Del. Laws, c. 5, § 6; Code 1935, § 6211; 15 Del. C. 1953, § 7707; 61 Del. Laws, c. 480, § 23.)

§ 7708. What nominations shall be effective.

No nominations shall be effective except those of the 7 candidates from New Castle County in favor of ratification, the 7 candidates from New Castle County against ratification and the 7 candidates from New Castle County not committed to either ratification or rejection of the proposed amendment, the 5 candidates from Kent County in favor of ratification, the 5 candidates from Kent County against ratification and the 5 candidates from Kent County not committed to either ratification or rejection of the proposed amendment, the 5 candidates from Sussex County in favor of ratification, the 5 candidates from Sussex County against ratification and the 5 candidates from Sussex County not committed to either ratification or rejection of the proposed amendment, whose nomination petitions have respectively been signed by the largest number of qualified persons, ties to be decided by lot drawn by the respective departments of election. (38 Del. Laws, c. 5, § 7; Code 1935, § 6212; 15 Del. C. 1953, § 7708; 61 Del. Laws, c. 480, § 23.)

§ 7709. Certification of nominations.

After the nominees for delegates to the convention are determined by the departments of election, each department of elections shall certify to the other departments of election in this State the names of the nominees from their respective counties to such convention and shall further certify which nominees from their respective counties were nominated as in favor of ratification, which nominees from their respective counties were nominated as opposed to ratification and which nominees from their respective counties were nominated as uncommitted either to ratification or rejection of the proposed amendment. (38 Del. Laws, c. 5, § 8; Code 1935, § 6213; 15 Del. C. 1953, § 7709; 61 Del. Laws, c. 480, § 23.)

§ 7710. Alternates.

Candidates for nomination not nominated as provided in the preceding provisions of this chapter shall be deemed to be alternates to the nominees in their respective groups in the order of the number of signatures which they have respectively received upon their nominating petitions and in the event of the death, resignation or removal of any nominee, the first alternate shall take his place as nominee, and so on, ties to be decided by lot drawn by the respective departments of election. In the event of such death, resignation or removal, the department of elections of the county from which such nominee was nominated shall forthwith certify to the other departments of election the fact of such death, resignation or removal, together with the name of the new nominee. In the event of the death, resignation or removal of any nominee

after the printing of the ballots for such election, the departments of election shall provide the election officers of each election district with a number of pasters containing only the name of such nominee, at least equal to the number of ballots provided for each election district and the clerks of election shall put 1 of such pasters in a careful and proper manner in the proper place on each ballot before they shall deliver the same to voters. (38 Del. Laws, c. 5, § 9; Code 1935, § 6214; 15 Del. C. 1953, § 7710; 61 Del. Laws, c. 480, § 23.)

§ 7711. Printing of ballots; to whom delivered; additional ballots.

The department of elections of each county shall cause to be printed and distributed the ballots for the election of delegates in the quantity and in the manner provided by law for general elections; provided that such ballots as are required under the election laws to be delivered to the chairmen of the various political parties shall, in lieu thereof, be distributed to the various nominees as equally as possible, and provided further that the department of elections in each county, in addition to the ballots mentioned in this section, shall cause to be printed such further number of ballots as shall be directed by any nominee in any county; provided, however, that the department of elections shall not have printed any ballots upon the order or request of any nominee, unless the request shall have been made to him in writing at least 10 days prior to the holding of the election at which the ballots are to be used, nor unless a deposit sufficient to cover the cost of the ballots be made at the time they are ordered. The ballots so ordered by the nominees shall be delivered to the nominees or to their agents upon their request or order at least 5 days before the election at which the ballots are to be used. (38 Del. Laws, c. 5, § 10; Code 1935, § 6215; 15 Del. C. 1953, § 7711; 61 Del. Laws, c. 480, § 23.)

§ 7712. Use of separate ballot; form.

The election shall be by ballot, separate from any ballot to be used at the same election. Such ballot, if used at a general election, shall be enclosed in the same envelope as the ballot for use at such general election, otherwise each ballot cast shall be enclosed in a separate envelope. The ballot shall first state the substance of the proposed amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively in plain type "For Ratification," "Against Ratification" and "Uncommitted." In the column headed "For Ratification" shall be placed the names of the nominees nominated from the entire State as in favor of ratification, in alphabetical order. In the column headed "Against Ratification" shall be placed the names of the nominees nominated from the entire State as against ratification, in alphabetical order. In the

column headed "Uncommitted" shall be placed the names of the nominees nominated from the entire State as uncommitted to either ratification or rejection, in alphabetical order. The voter shall indicate his choice by making 1 or more cross marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross mark is irregular in character. The ballot shall be so arranged that the voter may by making a single cross mark, vote for the entire group of nominees whose names are comprised in any column. The ballot shall be as like as possible to the form of the official ballot now used in this State and substantially in the following form:

CONVENTION TO RATIFY FEDERAL
CONSTITUTIONAL AMENDMENT
OFFICIAL BALLOT
PROPOSED AMENDMENT TO THE
CONSTITUTION OF
UNITED STATES

Delegates to the Convention to Ratify the Proposed Amendment.

The Congress has proposed an amendment to the Constitution of the United States which provides (insert here the substance of the proposed amendment).

The Congress has also proposed that the amendment shall be ratified by Conventions in the States.

INSTRUCTIONS TO VOTERS

Do not vote for more than 17 candidates.

To vote for all candidates in favor of Ratification of the proposed amendment, or for all candidates against Ratification of the proposed amendment, or for all candidates who intend to remain uncommitted to either Ratification or Rejection of the proposed amendment, make a cross mark in the Block at the head of the list of candidates for whom you wish to vote. If you do this, make no other mark.

To vote for an individual candidate make a cross mark in the Block at the left of the name.

RATIFICATION	AGAINST RATIFICATION	UNCOMMITTED
For Delegates to the Con- vention	For Delegates to the Con- vention	For Delegates to the Con- vention
JOHN DOE JOHN DOE JOHN DOE JOHN DOE	JOHN DOE JOHN DOE JOHN DOE JOHN DOE	JOHN DOE JOHN DOE JOHN DOE JOHN DOE

All ballots used at elections for ratifying conventions shall be printed as outlined in this section. However, the Governor may, if he deems it expedient, in his proclamation calling for election of delegates to a ratifying convention, direct that there be printed on the ballots additional information that will be more informative to the electorate on the subject which is being voted upon. (38 Del. Laws, c. 5, § 11; Code 1935, § 6216; 15 Del. C. 1953, § 7712.)

§ 7713. Election of nominees; vacancies.

The 17 nominees who receive the highest number of votes shall be the delegates to the convention. If there is a vacancy in the convention caused by the death or disability of any delegate or any other cause, the same shall be filled by appointment by the majority vote of the delegates comprising the group from which such delegate was elected and, if the convention contains no other delegate of that group, shall be filled by the Governor. (38 Del. Laws, c. 5, § 12; Code 1935, § 6217; 15 Del. C. 1953, § 7713.)

§ 7714. Meeting of delegates.

The delegates to the convention shall meet in the Senate Chamber at the State House in Dover on the twenty-eighth day after their election at 12:00 noon, and shall thereupon constitute a convention to pass upon the question of whether or not the proposed amendment shall be ratified. (38 Del. Laws, c. 5, § 13; Code 1935, § 6218; 15 Del. C. 1953, § 7714.)

§ 7715. Election of officers and adoption of rules.

The convention may elect its president, secretary and other officers and adopt its own rules. (38 Del. Laws, c. 5, § 14; Code 1935, § 6219; 15 Del. C. 1953, § 7715.)

§ 7716. Journal of convention.

The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment. (38 Del. Laws, c. 5, § 15; Code 1935, § 6220; 15 Del. C. 1953, § 7716.)

§ 7717. Certification of results.

After the sense of the majority of the total number of delegates composing the convention is taken upon the question of the ratification of the proposed amendment to the Constitution of the United States, the convention shall certify a resolution of its vote over the hand of the president, attested by the secretary and signed by all of the members of the convention. Such resolution shall be so certified in duplicate originals. The duplicate originals shall then be delivered by the convention to the Secretary of State together with the journal and any other records of the convention.

If it appears from the resolutions so certified to the Secretary of State that the proposed amendment to the Constitution of the United States has been ratified by the convention, the Secretary of State of Delaware shall send to the Secretary of State of the United States 1 of the duplicate originals certified under his hand and the seal of the State. The remaining duplicate original shall be proclaimed by publication and shall be deposited together with the journal and any other records of the convention in the State Archives. If it appears from the resolutions so certified to the Secretary of State that the proposed amendment to the Constitution of the United States has not been ratified, the resolution shall be proclaimed by publication and the duplicate originals of the resolution together with the journal and any other record of the convention shall be deposited in the State Archives. (38 Del. Laws, c. 5, § 16; Code 1935, § 6221; 15 Del. C. 1953, § 7717.)

§ 7718. Compensation of delegates, officers and employees; expenses.

Every delegate to the convention shall receive \$10 for every day he is in attendance at such convention, not exceeding 3, and in addition thereto, 10 cents for each mile necessarily travelled by him in making 1 round trip from the place of his residence to Dover. The president, secretary and other officers shall receive such compensation as may be fixed by the convention not in excess of \$25 for any such officer, in addition to his compensation as such delegate. Disbursements for the purposes mentioned in this and for other necessary expenses of the convention, when approved by the convention and signed by the president, shall be paid by the State Treasurer out of any

moneys not otherwise appropriated. The expenses of holding a special election shall be borne as provided by law for the holding of a general election. (38 Del. Laws, c. 5, § 17; Code 1935, § 6222; 15 Del. C. 1953, § 7718.)

§ 7719. Applicability of act of Congress.

If at or about the time of submitting any such amendment, Congress shall, either in the resolution submitting the same or by a statute, prescribe the manner in which the conventions shall be constituted, and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions, the provisions of this chapter shall be inoperative, the convention shall be constituted and shall operate as the resolution or act of Congress shall direct, and all officers of this State who may by the resolution or statute be authorized or directed to take any action to constitute such a convention for this State shall act thereunder and in obedience thereto with the same force and effect as if acting under a statute of this State. (38 Del. Laws, c. 5, § 18; Code 1935, § 6223; 15 Del. C. 1953, § 7719.)

ELECTION LAWS

PART VI

Election Campaigns

CHAPTER 80. CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

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8046. Short title.

Revision of chapter. — 67 Del. Laws, c. 449, repealed and reenacted this chapter, substituting present §§ 8001 to 8046 for former §§ 8001 to 8013. No detailed explanation of the changes made by c. 449 has been attempted, but where appropriate, historical citations to the former sections have been added to corresponding sections in the revised chapter.

Section 3 of 67 Del. Laws, c. 449, provides: "If any provision of this act, any amendment made to this act or the application of any such provision to any person or circumstance is held in-

valid, the validity of any other such provision and the application of such provision to other persons and circumstances shall not be affected thereby."

Section 4 of 67 Del. Laws, c. 449, provides: "This act shall become effective on January 1, 1991, except that any reports which, under this chapter before the enactment of this act, were required to be filed in January 1991, shall be filed pursuant to this chapter as it existed before the enactment of this act."

*Subchapter I. General Provisions***§ 8001. Purpose.**

The purpose of this chapter is to protect the public interest by requiring full disclosure of the source of all funds used in political campaigns, providing reasonable limits on the amounts of contributions and providing a manner to enforce this law. (67 Del. Laws, c. 449, § 1.)

§ 8002. Definitions.

As used in this chapter:

(1) "Candidate" means a person who seeks nomination for or election to public office, or who has taken action necessary under the law to qualify for nomination or election under the laws of the State, or has authorized the solicitation of any contribution or the making of any expenditure in his or her behalf.

(2) "Candidate committee" means each political committee formed on behalf of a candidate for public office.

(3) "Cash" includes currency, money orders, travelers checks and other negotiable instruments that do not disclose on their face the true name of the contributor.

(4) "Chapter" includes, in addition to the provisions of this chapter, the rules and regulations made by the Commissioner.

(5) "Commissioner" means the State Election Commissioner, or the designee of the Commissioner.

(6) "Contribution" means any advance, deposit, gift, expenditure or transfer, of money or any other thing of value, to or for the benefit of any candidate or political committee involved in an election, including without limitation any:

a. Gift, subscription, advance, deposit, expenditure or transfer of any thing of value;

b. Discount or rebate not available to the general public (except a party's abatement or refund of a filing fee otherwise required under § 3103 of this title);

c. Loan (except a loan of money by a national or state bank, building and loan association or licensed lender made in the ordinary course of business);

d. Purchase of tickets, goods or services sold to raise funds for a campaign, whether or not the tickets, goods or services are used by the buyer;

e. Forgiveness of indebtedness or payment of indebtedness by another person;

f. Service or use of property without full payment therefor (except the contribution of services by an individual, the use of an individual's residence, the contribution of such items as invitations, food and beverages by an individual volunteering personal services or the individual's residence, or the use of the telephone equipment of any person); or

g. Any other thing of value (except an independent expenditure).

(7) "Election" means the action by qualified voters of the State either to nominate by vote a candidate for public office or to select a candidate to fill a public office, whether in a primary, general or special election.

(8) "Election period" means:

a. For a candidate committee:

1. For a candidate for reelection to an office to which the candidate was elected in the most recent election held therefor, the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.

2. For a candidate for reelection to an office which the candidate attained since the last election held therefor (whether the candidate attained the office by succession, appointment or otherwise), the period beginning on the day the candidate succeeded to or was appointed to the office, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.

3. For a candidate for election to an office which the candidate does not hold, the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate's spouse) in support of his or her candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office.

4. Notwithstanding the foregoing, for purposes of the limitations under § 8010 of this title on contributions from persons other than political parties and political action committees, for a candidate in a general election who was nominated for such office in a primary election, the election period shall end on the day of the primary and the next election period shall begin on the day after the primary.

b. For a political party and for a political action committee, the period beginning on the January 1 immediately after a general election, and ending on the December 31 immediately after the next general election.

c. For a candidate committee for a person who does not hold public office and who has not taken action necessary under the law to qualify for nomination or election under the laws of the State, the period beginning on the date the first contribution is received or expenditure is made by the committee and ending on the fourth December 31 following such date; provided, however, that if such person takes action necessary under the law to qualify for nomination or election under the laws of the State, the period shall be determined under sub-subdivision a. of this subdivision.

d. For a person who makes independent expenditures, the election period shall begin and end at the same time as that of the candidate whose election is advocated or opposed by the independent expenditures, without regard to sub-subdivision a.4. of this subdivision.

(9) "Expenditure" means any payment made or debt incurred, by or on behalf of a candidate or political committee, or to assist in the election of any candidate or in connection with any election campaign.

(10) "Independent expenditure" means any expenditure made by any individual or other person (other than a candidate committee or a political party) expressly advocating the election or defeat of a clearly identified candidate, which is made without cooperation or consultation with any candidate, or any committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any committee or agent of such candidate.

(11) "Person" includes any individual, corporation, company, incorporated or unincorporated association, general or limited partnership, society, joint stock company, and any other organization or institution of any nature.

(12) "Political committee" means any organization or association, whether permanent or created for the purposes of a specific political campaign, which accepts contributions or makes expenditures for or against any candidate or candidates, and includes all political parties, political action committees and any candidate committee.

(13) "Political action committee" means a political committee which is neither a political party nor a candidate committee.

(14) "Political party" means an organization eligible to be listed on any general election ballot under § 3001 of this title, or any other organization which desires to be listed on any ballot on any election, and any constituent part of such party which receives contributions and makes expenditures. For purposes of the contribution limits of subchapter II of this chapter, a "political party" includes all constituent parts of such party, including the statewide, county, regional, municipal and district committees, all finance committees and all other committees, subdivisions and organizations related to the political party.

(15) "Public office" means an office of this State or any political subdivision thereof which is required by law to be determined by an election.

(16) "Treasurer" means the individual appointed by a candidate to assist the candidate with the duties imposed by this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8003. Duties of a candidate.

(a) A candidate shall establish a candidate committee. There shall only be 1 candidate committee for any candidate, although such candidate committee may have subcommittees. The candidate committee may continue in existence for more than 1 election period, and with respect to more than 1 elective office. Each candidate committee or subcommittee shall notify the Commissioner as required under § 8005 of this title, and shall comply with all the other requirements of this chapter. A candidate shall be responsible for the lawful operation of his or her candidate committee and all subcommittees thereof.

(b) Except for independent expenditures that meet the requirements of this chapter, all contributions to or on behalf of a candidate shall be placed into the candidate committee, and all expenditures to or on behalf of a candidate shall be made from the candidate committee.

(c) A candidate shall cause his or her candidate committee to keep complete records of all contributions received and all expenditures made by or on behalf of his or her candidacy, and shall retain such records for 3 full years following the election in which he or she was a candidate; provided, however, that the candidate need not keep records of the names and mailing addresses of persons making contributions of \$100 or less in an election period.

(d) A candidate shall file or cause to be filed with the Commissioner the reports required of his or her campaign committee under § 8030 of this title.

(e) A candidate shall designate an individual as treasurer of his or her candidate committee, in order to assist with the duties under this chapter, but nothing shall relieve the candidate from the responsibility for keeping the records and filing the reports required by this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8004. School boards and offices paying under \$1,000.

(a) Notwithstanding anything provided elsewhere in this chapter, no candidate for election to any school board or to any other public office that pays less than \$1,000 per year shall be required to form a candidate committee if he or she signs under penalty of perjury a statement in a form prepared by the Commissioner, certifying that such candidate does not intend nor expect that his or her campaign will receive nor spend, from the date of the first contribution or expenditure on behalf of such candidate's election until the end of the

year in which the election for such office is held, more than \$2,000. If, notwithstanding the execution of such a statement, such candidate's campaign nevertheless receives more than \$2,000 in contributions or expends more than \$2,000 (including any contributions or expenditures by the candidate) before the end of the year in which the election for such office is held, the candidate shall within 7 days thereafter, so notify the Commissioner, and shall cause to be filed all reports that would otherwise have been required theretofore under this chapter.

(b) No candidate who has filed the statement in subsection (a) of this section shall be required to file any reports with the Commissioner; provided, however, that if such candidate's campaign receives more than \$2,000 in contributions or expends more than \$2,000 (including any contributions or expenditures by the candidate) before the end of the year in which the election for such office is held, such committee shall, within 7 days thereafter, so notify the Commissioner and shall file all reports that would otherwise have been required theretofore under this chapter. (67 Del. Laws, c. 449, § 1.)

§ 8005. Duties of a political committee.

A political committee shall:

(1) No later than 7 days after it first receives any contribution or makes any expenditure, file a complete list of its officers with the Commissioner, one of whom shall be an individual named as its treasurer. A political committee must report any change in its officers within 7 days after such change becomes effective.

(2) Keep complete records of all contributions received and all expenditures made by or on behalf of the political committee, and shall retain such records for 3 full years following the election in connection with which the contributions and expenditures were made.

(3) File with the Commissioner a concise statement of its purposes or goals as a political committee.

(4) File with the Commissioner the reports required under this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8006. Prohibitions.

(a) No person shall, directly or through any other person, solicit or promise any contract, any vote, any employment or other service, or any official action or lack of action, in connection with any contribution.

(b) No person shall make, and no candidate, treasurer or other person acting on behalf of a candidate or political committee shall knowingly accept a contribution made in a fictitious name or in the name of another person. No person shall make, and no candidate, treasurer or other person acting on

behalf of a candidate or political committee shall knowingly accept a contribution whose donor's true name and address is not made known to the political committee that receives it. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§§ 8007-8009. Limits on expenditures; Reports and sworn statements; Public disclosure; Certificates of election.

Repealed by 67 Del. Laws, c. 459, § 1 eff. Jan. 1, 1991.

Subchapter II. Contribution Limits

§ 8010. Contribution limits for candidates.

(a) No person (other than a political party) shall make, and no candidate, treasurer or anyone acting on behalf of any candidate or candidate committee shall accept, any contribution which will cause the total amount of such person's contributions to or in support of such candidate to exceed, with respect to a statewide election, \$1200 during an election period, or with respect to any election that is not statewide, \$600 during an election period.

(b) No political party shall make, and no candidate, treasurer or anyone acting on behalf of any candidate or candidate committee shall accept, any contribution which will cause the total amount of contributions from any political party to or in support of a candidate in an election period of such candidate to exceed, for the following offices:

- (1) Governor: \$75,000;
- (2) All other State-wide offices: \$25,000;
- (3) N.C.C. Executives: \$25,000;
- (4) N.C.C. President: \$15,000;
- (5) All other county offices: \$5,000;
- (6) State Senate: \$5,000;
- (7) State House of Representatives: \$3,000;
- (8) All other offices: \$3,000. (67 Del. Laws, c. 449, § 1.)

§ 8011. Contribution limits for parties.

No person shall make any contributions which will cause the total amount of such person's contributions to a political party to exceed \$20,000 during an election period. No treasurer or other person acting on behalf of any political party shall accept any contribution which such person knows will cause the total amount of the donor's contributions to a political party to exceed \$20,000 during an election period. The contribution limits set forth in this chapter

shall not be applicable to any contributions received by a political party from or on behalf of any national political party, any organization subordinate to such national political party or any other national political organization established for the purpose of supporting elections to national, state and local offices including, but not limited to, the Republican and Democratic Senatorial Campaign Committees, the Republican and Democratic Congressional Campaign Committees, the Republican and Democratic Victory Funds, the Republican and Democratic Governors' Associations. (67 Del. Laws, c. 449, § 1.)

§ 8012. Contribution limits generally.

(a) No person shall make, and no candidate, treasurer or any other person acting on behalf of a political committee shall accept, any contribution in excess of \$50 in cash to a political committee during an election period.

(b) No political party shall make any contribution to any political action committee.

(c) Any contribution by a political action committee shall be by a check which discloses the full name and address of said political action committee.

(d) No agency of the State, no political subdivision of the State, no agency of any political subdivision of the State and no agency authorized by an act of the General Assembly shall make any contribution to any political committee or candidate for any elective office. No candidate, treasurer or other person acting on behalf of a political committee shall accept any contribution from any agency of the State, any political subdivision of the State, any agency of any political subdivision of the State or any agency authorized by an act of the General Assembly. Notwithstanding the foregoing, a political subdivision of the State which has enacted an ordinance providing for public financing of elections shall be permitted to make contributions in an amount authorized by such ordinance for campaign expenditures authorized by § 8020 of this title to a candidate committee of a candidate for public office of such political subdivision and the candidate committee shall be permitted to accept such contributions.

(e) A corporation, partnership or other entity (other than a political committee) which makes a contribution to a political committee shall notify such political committee in writing of the names and addresses of all persons who, directly or otherwise, own a legal or equitable interest of 50 percent or greater (whether in the form of stock ownership, percentage of partnership interest, liability for the debts of the entity, entitlement to the profits from the other entity or other indicia of interest) in such corporation, partnership or other entity, or that no such persons exist. The political committee may rely on such notification, and should the notification provided by the representative of the entity be inaccurate or misleading, the person or persons responsible for the

notification, and not the political committee which received the contribution, shall be liable therefor. A ratable portion of the contribution by the corporation, partnership or other entity shall be deemed to be a contribution under this chapter to the political committee by each such person who owns a 50 percent or greater interest in the entity, shall be included within the limit imposed by this section on individual contributions, and shall be so included in the reports filed by the candidate committee with the Commissioner under § 8030 of this title.

(f) Any expenditure made by any political committee on behalf of or in connection with the campaign of any candidate (except an independent expenditure that meets the requirements of this chapter) shall be deemed a contribution under this chapter, shall be included within the limit imposed by § 8010(a) of this title on individual contributions, provided, however, that such expenditures by political parties shall be included within the limit imposed by § 8010(b) of this title on contributions by political parties, and shall be so included in the reports filed by the candidate committee with the Commissioner under § 8030 of this title. Where such an expenditure by any political committee benefits more than 1 candidate, such expenditure shall be prorated among the candidates benefitted for purposes of the limits on contributions. For example, if a billboard depicts 2 candidates' names and likenesses with equal prominence, each candidate is benefitted equally by the expenditure for the billboard.

(g) For purposes of this chapter:

(1) Amounts paid by a political party to compensate individuals working on behalf of all of the candidates of the party, and amounts incurred on behalf of or in connection with 5 or more candidates shall not be deemed to be contributions to the candidates of such political party;

(2) Any reimbursement paid by 1 political committee to another political committee for costs actually incurred by the other political committee on behalf of the political committee that makes the reimbursement shall not be deemed to be a contribution to such other political committee;

(3) If two or more candidate committees share the amount of any expenditure permitted under this chapter, no contribution is made, so long as the amounts respectively paid by the respective candidate committees reasonably reflects the amount of the use made by each candidate committee of goods or services for which the expenditure was made; and

(4) Costs incurred by political parties for voter registration and get-out-the vote activities conducted by a political party shall not be considered contributions to any candidate. (67 Del. Laws, c. 449, § 1; 68 Del. Laws, c. 230, § 1.)

Effect of amendments. — 68 Del. Laws, c. 230, effective Apr. 21, 1992, added the third sentence in (d).

§ 8013. Short title.

Repealed by 67 Del. Laws, c. 459, § 1 eff. Jan. 1, 1991.

*Subchapter III. Expenditures***§ 8020. Authorized campaign expenditures.**

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

- (1) Wages of full-time or part-time campaign staff (but no salary nor wage for a candidate or a candidate's spouse);
- (2) Travel expenses of the candidate and campaign staff;
- (3) Payment of fees or charges for placing the name of the candidate on the ballot, and for collecting the returns of the election;
- (4) Costs of telephone and other communications services;
- (5) Costs of postage and other delivery services;
- (6) Printing and stationery;
- (7) Food, refreshments and related supplies;
- (8) Purchase and preparation of lists of voters;
- (9) Taking polls and making canvasses of voters;
- (10) Payment for election watchers;
- (11) Rental of office and rental and purchase of equipment;
- (12) Advertising and publicity;
- (13) In the case of a candidate committee, purchase of tickets to permit the candidate's attendance at civic or political events; and in the case of a political action committee, contributions within authorized limits, to any other political committee;
- (14) Holding, promoting and furnishing meetings, demonstrations, conventions, and paying musicians and others rendering services thereto;
- (15) Employing attorneys, accountants and other professional advisors;
- (16) In the case of a candidate committee, contributions, within the limits set forth in § 8010(a) of this title, to another candidate committee, or as otherwise provided in § 8022 of this title;
- (17) In the case of a political party or a political action committee, contributions, within authorized limits, to a candidate committee;
- (18) In the case of any political action committee, in addition to any other expenditure authorized by this chapter, contributions to a political party within the limits set forth in § 8011 of this title. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8021. Identification of purchaser.

All campaign literature or advertising, except on items with a surface of less than 9 square inches, shall display prominently the statement: "Paid for by (name of political committee or other person paying for such literature or advertising)." (67 Del. Laws, c. 449, § 1.)

§ 8022. Leftover funds.

Any funds remaining in any political committee which has completed its activities and paid all its creditors shall be paid to a successor committee or committees without being subject to the contribution limits set forth in this chapter or shall be donated to any religious, charitable, educational or scientific organization exempt from Delaware income tax under § 1902(b)(2) of Title 30 or to any volunteer fire company, and to no other person, except that an amount not in excess of the amount listed in § 8011 of this title may be given to the political party eligible to be listed on any general election ballot under § 3001 of this title. For purposes of this section, the term "successor committee" shall include any political committee, or committees, as that term is defined by § 8002(12) of this title; provided, however, that where the successor committee is one other than a candidate committee formed to promote the election of the same candidate to a different office than that for which the candidate's original candidate committee was formed, the contribution limits set forth in this chapter shall apply. (67 Del. Laws, c. 449, § 1.)

§ 8023. Independent expenditures.

(a) All campaign literature, advertising (except on items with a surface of less than 9 square inches) or other message paid for by independent expenditures shall prominently and at all times display the following statement: "Paid for by (name of person paying for the literature, advertising or other message). Not authorized nor paid for by any candidate or by any committee of any candidate. The cost of presenting this message is not subject to any campaign contribution limits." If the independent expenditure is made or reimbursed by a political action committee or other person other than an individual, the names of the president (or other chief officer) and treasurer of such organization shall be prominently displayed with the rest of the above statement.

(b) An expenditure shall constitute an expenditure in coordination, consultation or concert with a candidate and shall not constitute an independent expenditure where:

(1) There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the

person (including any officer, director, employee or agent of such person) making the expenditure;

(2) The person making the expenditure (including any officer, director, employee or agent of such person) has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects or needs relating to the candidate's pursuit of nomination or election, in the same election period, including any advice relating to the candidate's decision to seek office;

(3) The expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects or needs; provided, that the candidate or the candidate's agent is aware that the other person has made or is planning to make expenditures advocating the candidate's election. (67 Del. Laws, c. 449, § 1.)

Subchapter IV. Public Disclosure

§ 8030. Reports of political committees.

(a) Each candidate (except a candidate who is excused from filing a report under § 8004 of this title) and every treasurer (except of a candidate excused from filing a report under § 8004 of this title) shall be responsible for filing with the Commissioner reports of contributions and expenditures on forms prescribed by the Commissioner for every reporting period during which a political committee is in existence. A candidate shall be jointly responsible with the treasurer for the filing of the report of a candidate committee.

(b) A reporting period shall begin on the day after the previous reporting period (except that for a newly-formed committee, the reporting period begins on the date the first contribution is received or expenditure made by or on behalf of such committee) and shall end on the following dates:

(1) December 31 of every year, before or after an election, from the time the committee receives its first contribution or makes its first expenditure, until and including the year in which contributions and expenditures are balanced and the political committee terminates;

(2) 30 days before any election (except for committees of candidates not on the ballot at such election);

(3) 8 days before any election (except for committees of candidates not on the ballot at such election).

(c) Each report required by this section shall either be:

(1) Filed by the political committee and received by the Commissioner by 4:30 p.m. of the 2nd day after the end of the reporting period which is not a state holiday under Chapter 5 of Title 1; or

(2) Mailed to the Commissioner and postmarked by the political committee by the end of the 2nd day after the end of the reporting period which is not a state holiday under Chapter 5 of Title 1.

(d) Each report under this section shall disclose all of the following information, for the entire reporting period:

(1) Amount of cash and other intangible and tangible assets on hand at the beginning of the reporting period;

(2) Full name and mailing address of each person who has made contributions to such political committee (including the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events, whether or not the tickets were used by the person who paid for them) during the election period in an aggregate amount or value in excess of \$100, the total of all contributions from such person during the election period, and the amount and date of all contributions from such person during the reporting period;

(3) Total of contributions made to such political committee during the reporting period and not reported under paragraph (2) of this subsection;

(4) Name and address of each political committee from which the political committee received, or to which the political committee made, any transfer of funds, together with the amounts and dates of all transfers, no matter what the amount;

(5) The amount of each debt in excess of \$50, owed to or owing by such political committee at the end of the reporting period, the full names and mailing addresses of any lender, borrower and endorser of such debt, the date and the interest rate of such loan, and a description of any security given therefor;

(6) Total amount of proceeds from:

a. Sale of tickets to each reception, meal, rally or other fund-raising event;

b. Collections made at such events; and

c. Sales of items such as campaign pins, buttons, badges and similar materials; provided, however, that all payments and contributions by any person, whether as gifts, as purchases of tickets or other goods or services, or partially as gifts and partially as purchases, by any person during any election period, shall be aggregated and, if such aggregate total exceeds \$50 during such election period, shall be reported under paragraph (2) of this subsection;

(7) Each contribution or other receipt in excess of \$100 not otherwise listed under paragraphs (2) through (6) of this subsection;

(8) Total receipts by such political committee or candidate during the reporting period;

(9) Full name and mailing address of each person to whom any expenditure has been made by such political committee during the reporting

period in an aggregate amount in excess of \$100, the amount, date and purpose of each such expenditure and the name of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) Total expenditures made by such political committee or candidate in connection with such campaign; and

(11) All goods and services that are contributed in kind, or at no charge or at a cost less than fair market value (except for services excluded from the definition of "contribution" under § 8002 of this title) to the extent that the fair market value, less any amount paid by the candidate or committee, exceeds \$100.

(e) The reports required to be filed by this section shall be cumulative for the election period to which they relate, but where there has been no change in an item previously reported, only the amount need be carried forward.

(f) Each statement shall be accompanied by an affidavit verified by the candidate or the treasurer of the political committee, which states as follows:

"I solemnly swear [or affirm] that the foregoing statement is in every respect true and correct, and discloses all contributions received and expenditures required by me under Title 15, Chapter 80 of the Delaware Code."

(g) The report required under subsection (b)(3) of this section may omit the information required under subsection (d)(9) of this section; provided, however, that all such information shall be disclosed in the next report required hereunder. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1; 68 Del. Laws, c. 262, § 1; 68 Del. Laws, c. 444, §§ 1-4.)

Revisor's note. — Section 5 of 68 Del. Laws, c. 444, provides: "This act shall be effective Jan. 15, 1993."

Effect of amendments. — 68 Del. Laws, c. 262, effective June 16, 1992, rewrote (c).
68 Del. Laws, c. 444, substituted "30 days"

for "Twenty days" at the beginning of (b)(2); added (b)(3); rewrote (c).

Neither 68 Del. Laws, c. 262 nor c. 444 referred to the other and effect has been given herein to c. 444 as the one signed later by the Governor.

§ 8031. Reports of independent expenditures.

(a) Any person who makes any independent expenditure that causes the aggregate amount of independent expenditures made by such person in an election period to exceed \$100 during such election period shall file a report with the Commissioner. Such report shall be filed in accordance with the deadlines provided under § 8030 of this title, and shall contain the information required under § 8030 of this title for all contributions received by and made by such person. Such report shall also include a list of every person to whom any disbursement has been made during the election period in connection with an independent expenditure, together with the date, amount and purpose of such independent expenditure and a statement under penalty of

perjury whether each such expenditure has been made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any candidate committee or agent of either.

(b) Any person who makes an independent expenditure aggregating more than \$100 after the 20th day, but more than 1 day, before any election shall, within 24 hours after such independent expenditure is made, file with the Commissioner a report under oath or affirmation with respect to such independent expenditure that contains the information required by § 8030 of this title and by this section. (67 Del. Laws, c. 449, § 1.)

§ 8032. Public disclosure.

All reports made to the Commissioner and all rulings made by the Commissioner under this chapter shall be public and shall, immediately upon their filing, be made available by the office of the Commissioner for inspection and copying at reasonable cost by the public, except that the identity of the candidate or committee which requested a ruling shall not be disclosed without the candidate's or committee's consent. The Office of the Election Commissioner shall remain open beyond the ordinary close of business on the day the reports are due to be received under § 8030(c) of this title, until all persons who are present at said office at the time of the ordinary close of business have had an opportunity to make reasonable inspection and copying of said reports. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

Subchapter V. Enforcement

§ 8040. Certificates of election.

No certificate of election shall be granted to any candidate until the Superior Court has certified that such candidate has caused to be filed all reports required by § 8030 of this title to be filed prior to the election. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8041. Duties and powers of Commissioner.

The Commissioner shall:

(1) Make and publish such rules and regulations not inconsistent with the provisions of this chapter as are necessary to implement and enforce this chapter. Upon their adoption under the provisions of the Administrative Procedures Act, such rules and regulations shall have the force and effect of law.

(2) At the request of any person, make a ruling that applies this chapter to a set of facts specified by the person. The entire such ruling shall be

made in writing, and a copy thereof shall be made available to any person, except that the identity of the person that requested the ruling shall not be disclosed without the person's consent. Copies of the ruling shall be mailed immediately to the Governor, the Attorney General and the chair of each political party entitled to be listed on any general election ballot under § 3001 of this title. Within 7 days after any such ruling is made, a summary thereof shall be mailed to each candidate having a committee which has not completed its activities on file in the office of the Commissioner and shall be distributed to any person who has, within the previous 12 months, requested distribution of such summaries. Any candidate or

treasurer who reasonably and in good faith acts in reliance upon any ruling requested by that candidate or treasurer pursuant to this section, shall not be liable nor subject to any penalty with respect to conduct conforming to the ruling, provided there was a full disclosure to the Commissioner of all material facts necessary for the ruling.

(3) Mail to the treasurer of every political committee, to every candidate for whom a political committee has been formed, and to every candidate who has notified the Commissioner of his or her candidacy under § 3101 of this title, a copy of this chapter, the rules and regulations thereunder and a concise explanation of their terms, responsibilities and penalties, not later than 15 days after such political committee has been formed or such candidate has filed for office. In January of every election year, the Commissioner shall send similar documents to the chairs of all political parties' legally recognized political party subdivisions, down to the local organizing district level.

(4) Retain and permit public inspection of all reports required to be filed under this chapter for 10 years after the end of the calendar year to which they pertain. (67 Del. Laws, c. 449, § 1.)

§ 8042. Civil remedies.

For purposes of any civil remedy on behalf of any injured person, the Court of Chancery shall have jurisdiction. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8043. Violations; penalties; jurisdiction in Superior Court.

(a) Any person who knowingly violates any provision of § 8003, § 8004 or § 8005 of this title shall be guilty of a class B misdemeanor.

(b) Any person who knowingly accepts or knowingly makes an unlawful contribution or expenditure in violation of any provision of subchapter II or III or this title shall be guilty of a class A misdemeanor.

(c) Any candidate or treasurer who knowingly files any report required by § 8023 or subchapter IV of this chapter that is false in any material respect, or fails to file any such report shall be guilty of a class A misdemeanor.

(d) Any person who knowingly violates any provision of § 8006 of this title shall be guilty of a class G felony.

(e) A candidate or treasurer who reasonably relies upon information provided by another person which is inaccurate, false or misleading and who has no reason to know that such information was inaccurate, false or misleading, shall not be liable for any report filed by such candidate or treasurer which is inaccurate, false or misleading as a result of such information, if such candi-

date or treasurer, within 30 days after learning that such information was inaccurate, false or misleading, files an amended report with the Commissioner that corrects the inaccurate, false or misleading aspects of the report filed by the candidate or treasurer. Where a candidate or treasurer files an amended report later than 30 days after learning that such information was inaccurate, false or misleading, the candidate or treasurer shall not be liable if the candidate or treasurer shows good cause for filing the amended report beyond the 30-day period.

(f) The Superior Court shall have jurisdiction over all offenses under this chapter.

(g) A candidate and a treasurer shall report immediately to the Commissioner and the Attorney General any attempt to make a prohibited contribution, or to demand a prohibited expenditure, where such attempt is made with intent to violate this chapter.

(h) A candidate or a treasurer who receives a prohibited contribution or makes a prohibited expenditure without any intention to violate this chapter, but who returns the contribution or reimburses the political committee for such expenditure within 7 days after learning that the contribution or expenditure was prohibited, shall not be liable for any violation of this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8044. Tardy reports.

Any candidate, political committee or other person that fails to file or deliver to the Commissioner any report required by § 8023 or § 8030 of this title shall be assessed a fine by the Commissioner of 50 dollars per month, or fraction thereof, that such report is tardy in delivery to the Commissioner. Within 30 days after the Commissioner assesses such a fine, such person shall have the opportunity to show the Commissioner that such tardiness was due to reasonable cause and not wilful neglect. Such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the committee, its treasurer or, in the case of a candidate committee, the candidate, or in the case of an independent expenditure, the person making such expenditure. (67 Del. Laws, c. 449, § 1.)

§ 8045. Attorney General candidates.

Whenever it shall be alleged that an offense under this chapter has been committed by a candidate for the office of Attorney General of Delaware, if the Chancellor of the State of Delaware finds probable cause, based on sworn information, to believe this chapter has been violated, a member of the Bar of the Supreme Court of the State of Delaware shall be appointed as independent counsel by the Chancellor. Such independent counsel shall have the authority

to prosecute any violation of this chapter that has been committed by any candidate for the office of Attorney General. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

Constitutionality. — The Attorney General is not a judicial officer subject to the jurisdiction of the court, and the provisions of a former similar section empowering the court to investigate complaints against candidates for Attorney General, were unconstitutional. In re Oberly, Del. Supr., 524 A.2d 1176 (1987).

The provisions of a former similar section, which required the appointment of a special prosecutor where an action before the courts of Delaware was initiated, was severable from the balance of the section, which was deemed unconstitutional. In re Oberly, Del. Supr., 524 A.2d 1176 (1987).

§ 8046. Short title.

This chapter shall be known as the Campaign Financing and Disclosure Act of 1990. (67 Del. Laws, c. 449, § 1.)



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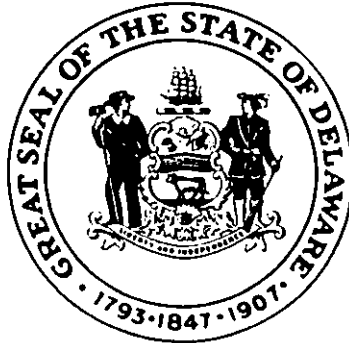
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**ELECTION LAWS
OF THE
STATE OF DELAWARE**



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CONSTITUTION OF THE STATE OF DELAWARE ADOPTED 1897 AS AMENDED

Article V ELECTIONS

Sec.

1. Time and manner of holding general election.
2. Qualifications for voting; members of the Armed Services of the United States stationed within State; persons disqualified; forfeiture of right.
- 2A. Residence requirements in case of intra-state removal; election of President and Vice-President of United States; qualifications.
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3. Influencing voter; loss of vote; challenge; oath and affirmation; perjury.
4. Registration of voters; days for registration; application to strike name from list; appeals; registration as prerequisite for voting.
- 4A. General laws for absentee voting.
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6. Certificate of election and ballots; delivery to Prothonotary; duties and composition of court; quorum.
7. Election offenses; penalties; self-incrimination.
8. Prosecution for election offenses; procedure; appeal; bond.
9. Enumeration of election offenses as limitation on power of General Assembly.

ARTICLE V ELECTIONS

Cross references. — As to requirement that elections be free and equal, see Del. Const., art. 1, § 3. As to number and boundaries of representative and senatorial districts, see Del. Const., art. II, §§ 2, 2A. As to election

of the Governor generally, see Del. Const., art. III. As to elections generally, see Title 15. As to composition of and reapportionment of the General Assembly, see Chapter 8 of Title 29.

§ 1. Time and manner of holding general election.

Section 1. The general election shall be held biennially on the Tuesday next after the first Monday in the month of November, and shall be by ballot; but the General Assembly may by law prescribe the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation thereat.

Term "general election" does not include primary election. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

It is the next general state election to fill vacancy in elective office. — The general election held biennially as provided by Del. Const., art. V, § 1 is the next general election mentioned in Del. Const., art. III, § 9 for the filling vacancies and, therefore, the next general state election in point of time is the proper time to fill a vacancy in elective office, such as in the office of the Levy Court Commissioner, though it was not the next general election at which the office would ordinarily be filled under 9 Del. C. §§ 302, 303. State ex rel. Southland v. Hart, Del. Super., 129 A. 691 (1925).

Precautions must be taken in absentee voters' law. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible precaution against fraudulent abuse of the privilege. State ex rel. Smith v. Carey, Del. Supr., 112 A.2d 26 (1955).

But election not set aside where improper influence not shown. — Where there is no showing whatever that the voters in an

election were improperly influenced in any way, the election will not be set aside. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

Nor where minor irregularities do not affect result. — Minor irregularities in the conduct of an election, unaccompanied by fraud or unfair dealing, and not affecting the result will not void an election otherwise valid. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

For example, where voters in an election were given 2 ballots instead of 1 as specified by statute, but there is no suggestion of any fraud or unfairness in the voting or any suggestion that the departure from the statutory mandate could possibly have affected the result, the election will not be set aside. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

Where the use of 2 ballots in an election did not destroy secrecy in voting, but on the contrary if affirmatively appears that the procedure adopted was such as to insure a secret ballot, such defect is not a ground for setting aside the election. Brennan v. Black, Del. Supr., 104 A.2d 777 (1954).

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

Section 2. Every citizen of this State of the age of twenty-one years who shall have been a resident thereof one year next preceding an election, and for the last three months a resident of the county, and for the last thirty days a resident of the hundred or election district in which he may offer to vote, and in which he shall have been duly registered as hereinafter provided for, shall be entitled to vote at such election in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered, for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people; provided, however, that no person who shall attain the age of twenty-one years after the

first day of January in the year of our Lord, nineteen hundred, or after that date shall become a citizen of the United States, shall have the right to vote unless he shall be able to read this Constitution in the English language and write his name; but these requirements shall not apply to any person who by reason of physical disability shall be unable to comply therewith; and provided also, that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot or insane person, pauper, or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector; and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime. (55 Del. Laws, c. 44.)

Cross references. — As to voter registration procedure generally, see Chapter 17 of Title 15. As to registration for members of the military forces and related organizations, see Chapter 19 of Title 15.

State courts, not federal courts, have the responsibility of vindicating voting rights conferred by State Constitution, for these rights affect the State directly. *Wright v. Richter*, 301 F. Supp. 1345 (D. Del. 1969).

Right to vote subject to reasonable regulations by State. — While the right of suffrage is unquestionably a fundamental right in a free and democratic society, since the right to exercise the franchise in an open and unimpaired manner is preservative of other basic civil and political rights, nevertheless, the right to vote is subject to reasonable regulations by the State. *Wright v. Richter*, 301 F. Supp. 1345 (D. Del. 1969).

But General Assembly cannot add to qualifications. — Qualifications of voters are explicitly set out in the Constitution, and no power exists in the General Assembly to add to these qualifications. *Buckingham v. State ex rel. Killoran*, Del. Supr., 35 A.2d 903 (1944).

Registration as a voter is not a qualification to vote, under 10 Del. C. § 4504, but is only an evidence of the existence of the necessary qualifications as established by Del. Const., art. 5, § 2. *State v. Lyons*, Del. Gen. Sess., 5 A.2d 495 (1939).

Knowledge of residency requirement imputed. — Knowledge of the constitutional requirement with respect to residence as a qualification for voting is imputed. *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

"Resident" synonymous with "domiciled". — In this section, as well as in the statute defining who is taxable (30 Del. C. § 1101), the word "resident" is synonymous with the legal term "domiciled." *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

Residence at a place and the intent to live there permanently or indefinitely constitute domicile, and when in point of time residence and intent concur, domicile follows as a legal consequence. *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

The mere desire to keep a "legal residence" for voting purposes avails nothing, and the intention of returning to the old place of domicile for the purpose of voting and the desire to retain the right to vote do not prevent a change of domicile to a new home. *Mitchell v. Delaware State Tax Comm'r*, Del. Super., 42 A.2d 19 (1945).

No extension by implication. — Statutes suspending the civil rights of imprisoned felons are penal and may not be extended by implication. *Chesapeake Util. Corp. v. Hopkins*, Del. Supr., 340 A.2d 154 (1975).

§ 2A. Residence requirements in case of intrastate removal; election of President and Vice-President of United States; qualifications.

Section 2A. The General Assembly shall extend to any elector in the state who shall have changed his residence from one county, hundred, or election district to another, but who has not resided therein for a sufficient time so as to be eligible to vote in the county, hundred or election district to which he has removed, the right to vote for the choice of electors for President and Vice-President of the United States, but for no other offices, provided such citizen would have been eligible to vote within this State had he not moved, and provided that he is not entitled to vote for the choice of electors for President or Vice-President of the United States in any other place and provided further that such citizen would be an otherwise qualified voter under this Constitution except that he has not resided in his county, hundred or election district for a sufficient length of time. (56 Del. Laws, c. 20, § 1.)

§ 2B. Residence requirements of persons from other states; election of President and Vice-President of United States; qualifications.

Section 2B. The General Assembly shall extend to a citizen of the United States who has resided in this State for at least 3 months next preceding an election but who does not meet the residence requirements established in Article V, Section 2 of this Constitution, the right to vote for the choice of electors for President and Vice-President of the United States, but for no other offices, provided such citizen was either a qualified voter in another state immediately prior to his removal to this State, or would have been eligible to vote in such other state had he remained there until such election, and provided that he is not entitled to vote for the choice of electors for President or Vice-President of the United States in any other state and provided further that such citizen would be an otherwise qualified voter under this Constitution except that he had not resided in this State for one year. (56 Del. Laws, c. 20, § 2.)

§ 3. Influencing voter; loss of vote; challenge; oath and affirmation; perjury.

Section 3. No person who shall receive or accept, or offer to receive or accept, or shall pay, transfer, or deliver, or offer or promise to pay, transfer or deliver, or shall contribute, or offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation, induce-

ment or reward for the registering or abstaining from registering of any one qualified to register, or for the giving or withholding, or in any manner influencing the giving or withholding, a vote at any general or special or municipal election in this State, shall vote at such election; and upon challenge for any of said causes the person so challenged before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or accepted, or offered to receive or accept, or paid, transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed, or offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register, or for the giving or withholding, or in any manner influencing the giving or withholding, a vote at such election.

Such oath or affirmation shall be conclusive evidence to the election officers of the truth of such oath or affirmation; but if any such oath or affirmation shall be false, the person making the same shall be guilty of perjury, and no conviction thereof shall bar any prosecution under Section 8 of this Article.

Cross references. — As to perjury and related offenses, see §§ 1221 to 1235 of Title 11. As to perjury during taking of oath or affirmation relating to elections, see § 5135 of Title 15.

The phrase "general election" does not include school or municipal elections. *Abrahams v. Superior Court, Del. Supr.*, 131 A.2d 662 (1957).

§ 4. Registration of voters; days for registration; application to strike name from list; appeals; registration as prerequisite for voting.

Section 4. The General Assembly shall enact uniform laws for the registration of voters in this State entitled to vote under this Article, which registration shall be conclusive evidence to the election officers of the right of every person so registered to vote at any General Election while his or her name shall remain on the list of registered voters, and who is not at the time disqualified under the provisions of Section 3 of this Article; and no person shall vote at such General Election whose name does not at that time appear in said list of registered voters.

There shall be at least two registration days in a period commencing not more than one hundred and twenty days, nor less than sixty days before, and ending not more than twenty days, nor less than ten days before, each General Election, on which registration days persons whose names are not on the list of registered voters established by law for such election, may apply for registration, and on which registration days applications may be made to strike from the said registration list names of persons on said list who are not eligible to vote at such election; provided, however, that such registration may

be corrected as hereinafter provided at any time prior to the day of holding the election.

From the decision of the registration officers granting or refusing registration, or striking or refusing to strike a name or names from the registration list, any person interested, or any registration officer, may appeal to the resident Associate Judge of the County, or in case of his disability or absence from the County, to any Judge entitled to sit in the Supreme Court, whose determination shall be final; and he shall have power to order any name improperly omitted from the said registry to be placed thereon, and any name improperly appearing on the said registry to be stricken therefrom, and any name appearing on the said registry, in any manner incorrect, to be corrected, and to make and enforce all necessary orders in the premises for the correction of the said registry. Registration shall be a prerequisite for voting only at general elections, at which Representatives to the General Assembly shall be chosen, unless the General Assembly shall otherwise provide by law.

The existing laws in reference to the registration of voters, so far as consistent with the provisions of this Article, shall continue in force until the General Assembly shall otherwise provide. (34 Del. Laws, c. 1.)

Cross references. — As to registration dates and hours in election districts, see § 1104 of Title 15. As to removal of records of deceased person from registration roll, see § 1705 of Title 15. As to motion to remove name from registration roll, see § 1706 of Title 15.

Voter qualifications must be evidenced by registration. — Qualifications are recognized as existing as distinct from a right to vote, and a voter must possess certain qualifications, the possession of which entitles him to be a voter; but the existence of these qualifications must be evidenced by registration before he is permitted to exercise his right as a voter. *McComb v. Robelen*, Del. Ch., 116 A. 745 (1922).

"Registration" defined. — Registration, within the meaning of election laws, is a method of proof prescribed for ascertaining the electors who are qualified to cast votes and is the act of making a list, catalogue, schedule or register, and, when applied to voters, it is any list, register or schedule containing names, the being on which lists, registers or schedules constitutes a prerequisite to voting. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

To be uniform within the meaning of this section, a law for registration of electors

must of necessity be general; "general" and "uniform" as applied to laws have a well defined and generally accepted meaning as antithetical to "special" or "discriminatory." *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

Meaning that all are treated alike. — A law is general and uniform as required by this section if all persons in the same circumstances are treated alike. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

Notwithstanding, matters which cannot be so treated may still be legislated. — It was not the intention of the framers of the provision amending this section of the Constitution or of those adopting it to deprive the General Assembly of its power to legislate with respect to those matters which could not be included within the structure of a general and uniform law. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

And section only applies to general elections. — This section indicates that the Constitution does not intend to make registration a qualification of the voter at other elections than general elections, and it leaves it for the General Assembly to determine when and at what other elections voters shall be required to register before being allowed to vote. *McComb v. Robelen*, Del. Ch., 116 A. 745 (1922).

§ 4A. General laws for absentee voting.

Section 4A. The General Assembly shall enact general laws providing that any qualified elector of this State, duly registered, who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, either because of being in the public service of the United States or of this State, because of the nature of his or her business or occupation, because of his or her sickness or physical disability, because of his or her absence from the district while on vacation, or because of the tenets or teachings of his or her religion, may cast a ballot at such general election to be counted in such election district. (44 Del. Laws, c. 1; 61 Del. Laws, c. 39; 64 Del. Laws, c. 177.)

Cross references. — As to absentee voting generally, see Chapter 55 of Title 15.

Revisor's note. — The amendment to the Constitution set out above was initially approved as Chapter 37 of 63 Del. Laws on June 18, 1981, and finally approved as Chapter 177 of 64 Del. Laws on June 27, 1983. A previous amendment of the section was initially approved as Chapter 520 of 60 Del. Laws on June 30, 1976, and finally approved as Chapter 39 of 61 Del. Laws on Apr. 28, 1977.

Provisions of this section are limited to general elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

It specifically enumerates classifications of persons eligible to vote by absentee ballot at general elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

School district regulations never had registration as qualification. — Since Delaware has a constitutional provision providing

for the registration of voters, the provisions of a school district regulating school elections never had specified registration as 1 of the qualifications of a voter at such elections. *Brennan v. Black*, Del. Supr., 104 A.2d 777 (1954).

By expressly including certain classifications, the drafters of this section impliedly excluded all other classifications. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

It is beyond the power of the General Assembly to either limit or enlarge upon the absentee voter classifications specified in the Constitution for general elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

But it must take precautions against fraudulent abuse. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible precaution against fraudulent abuse of the privilege. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 4B. Uniform laws for absentee registration.

Section 4B. The General Assembly shall enact uniform laws for the registration of voters of this State entitled to vote under this Article who are temporarily absent therefrom and in the Armed Forces or Merchant Marine of the United States, or retainers or persons accompanying or serving therewith, or who are absent from the State because of illness or injury received while serving in any such capacity, upon application in person or in writing. (46 Del. Laws, c. 325.)

Cross references. — As to registration for members of military forces and related organizations, see Chapter 19 of Title 15. As to absentee voting generally, see Chapter 55 of Title 15.

Precautions must be taken against

fraudulent abuse. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible precaution against fraudulent abuse of the privilege. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 5. Electors privileged from arrest; exceptions.

Section 5. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to and returning from them.

Cross references. — As to arrest and commitment generally, see Chapter 19 of Title 11.

§ 6. Certificate of election and ballots; delivery to Prothonotary; duties and composition of court; quorum.

Section 6. The presiding election officer of each hundred or election district, on the day next after the general election, shall deliver one of the certificates of the election, made and certified as required by law, together with the ballot box or ballot boxes, containing the ballots, and other papers required by law to be placed therein, to the Prothonotary of the Superior Court of the county, who shall at twelve o'clock noon on the second day after the election present the same to the said Court, and the election officer or officers having charge of any other certificate or certificates of the election shall at the same time present the same to the said Court, and the said Court shall at the same time convene for the performance of the duties hereby imposed upon it; and thereupon the said Court, with the aid of such of its officers and such sworn assistants as it shall appoint, shall publicly ascertain the state of the election throughout the county, by calculating the aggregate amount of all the votes for each office that shall be given in all the hundreds and election districts of the county for every person voted for for such office.

In case the certificates of election of any hundred or election district shall not be produced, or in case the certificates produced do not agree, or in case of complaint under oath of fraud or mistake in any such certificate, or in case fraud or mistake is apparent on the face of any such certificate, the Court shall have power to issue summary process against the election officers or any other persons to bring them forthwith into Court with the election papers in their possession or control, and to open the ballot boxes and take therefrom any paper contained therein, and to make a recount of the ballots contained therein, and to correct any fraud or mistake in any certificate or paper relating to such election.

The said Court shall have all the other jurisdiction and powers now vested by law in the boards of canvass, and such other powers as shall be provided by law.

After the state of the election shall have been ascertained as aforesaid, the said Court shall make certificates thereof, under the seal of said Court in the form required by law, and transmit, deliver and lodge the same as required by this Constitution or by law, and deliver the ballot boxes to the sheriff of the county, to be by him kept and delivered as required by law.

No act or determination of the Court in the discharge of the duties imposed upon it by this section shall be conclusive in the trial of any contested election.

For the purposes of this section the Superior Court shall consist in New Castle County of the President Judge and resident Associate Judge; in Kent County of the resident Associate Judge and an Associate Judge designated by the President Judge; and in Sussex County of the resident Associate Judge and an Associate Judge designated by the President Judge.

Two shall constitute a quorum. The Governor shall have power to commission a Judge for the purpose of constituting a quorum when by reason of legal exception to any Judge, or for any other cause, a quorum could not otherwise be had. (53 Del. Laws, c. 303; 68 Del. Laws, c. 136.)

Cross references. — As to canvass of votes and proclamation of results of election, see Chapter 57 of Title 15.

Revisor's note. — The amendment to the Constitution set out above was initially approved as Chapter 305 of 67 Del. Laws on June 27, 1990, and finally approved as Chapter 136 of 68 Del. Laws on June 28, 1991.

Boards of canvass are difficult to catalogue as either judicial or administrative bodies. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

However, boards of canvass do not have power to try contested election proceedings. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

And duties are largely ministerial. — The duties of the boards of canvass under this section are largely ministerial in nature. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

Granting that the board of canvass is the Superior Court for the purpose of review of its action by writ of mandamus from the Supreme Court, it yet remains true that it is a body specially created and constituted for a limited purpose to perform specified duties largely ministerial in nature. The framers of the Constitution, in transferring to the Superior Court the

powers and duties of the former boards of canvass, added certain specified powers and none other. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

To count vote. — The Superior Court is, under the Constitution, still primarily a board of canvass whose function is to count the vote. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Not to exercise general power over conduct of elections. — Had it been the intent to confer upon the new boards of canvass general power over the conduct of elections as affecting the returns, language to that effect would certainly have been included in the Constitution. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Hence, boards of canvass have no power to enter upon inquiry into misconduct of election officers, and are under no legal duty to act upon a petition alleging such misconduct. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Nevertheless, to a limited extent boards of canvass exercise quasi-judicial powers (e.g., in rejecting ballots illegal on their face), but it by no means follows that those powers extend to the hearing and determination of every act of fraud or wrongdoing in the conduct

of the election. The powers of a board are primarily directed to the existence of "fraud or mistake in any such certificate," e.g., questions of its genuineness or of a defect apparent on its face or the like; and what may be called the newly-added powers are largely, if not wholly, limited to an examination of the election papers and of the contents of the ballot box. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

But, the power of board of canvass "to correct any fraud or mistake in any certificate" is clearly confined to errors resulting from the examination authorized by the language of the sentence concerning the examination of the election papers and the contents of the ballot box. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Phrase "election papers" refers to certificates of election. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

And "any other persons" means persons in whose custody they may be found. State ex rel. Tarburton v. Seitz, Del. Supr., 168 A.2d 110 (1961).

Certificates only "prima facie" title to office. — Certificates of election issued by the boards of canvass upon the completion of the count are only prima facie title to office. State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

But it justifies paying him salary of office. — The certificate of election issued to the defendant following the canvass of the vote conferred upon him a prima facie title to the office, justifying the disbursing officers of the county in paying to him the stated salary of the office. Walker v. Hughes, Del. Supr., 36 A.2d 47 (1944).

Recount includes recording tapes as well as paper ballots. — The second paragraph of this section was written at a time when all voting was done by paper ballot. Under the modern use of voting machines the procedure for a recount includes the examination of the recording tapes in the machines, as well as the recounting of the paper ballots, which, under the present election law, necessarily are only absentee ballots. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

When Board must officially record vote. — Where a petitioner desired votes recounted and the certificates applicable to the particular election districts agree on their faces and are uniform in not showing a separate tally of absentee votes, then, lacking the filing of a com-

plaint under oath of fraud or mistake in such certificates, the board of canvass is without authority to do other than accept the certificates at their face value and officially record the vote for those districts as reflected in the totals shown on the certificates. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Time limitation to demand recount analogous to rules, not statute of limitations. — Fixing of a limitation of time for the exercise of the right to demand a recount is more nearly analogous to court rules of procedure and practice than to a statute of limitation. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Fixing of a limitation of time for the right to demand a recount is not a denial of right to petition for such recount, but is a regulation adopted to further the orderly procedure of the canvass of the vote. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Its being within board's power. — The fixing of a deadline for the filing of petitions for recount is clearly and necessarily within the powers of the several boards of canvass. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

As to their power to fix a limitation of time for the exercise of the right to demand a recount, the precise character of the boards of canvass is considered to be immaterial, for administrative tribunals, as well as judicial, have inherently the power to make rules and regulations to govern the proceedings before them. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Notice of early deadline for filing complaints settled. — Since the fixation of a very early deadline for filing complaints has existed at least twenty-five years without challenge and has become settled practice, notice of it must be charged to the political party officials of the State and the candidates of these parties. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

Boards of canvass are required to convene at 12:00 noon on the second day following a general election, and everyone is chargeable with notice of this hour of meeting. State ex rel. Massey v. Terry, Del. Supr., 148 A.2d 102 (1959).

The phrase "general election" does not include a municipal election. Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).

The fact that municipal officers are elected

on the day of a general election by the same voting mechanics does not convert a municipal election into a general election or make the municipal election a part of the general election as the phrase is used in this section. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

Thus, no duty is cast upon Superior Court to canvass such vote. — The duty of the Superior Court to "ascertain the state of the election" casts no duty upon the Court to canvass the vote at a municipal election. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

Moreover, the jurisdiction of the Superior Court as a board of canvass is limited, and, although the General Assembly is given power to add to the powers of the Court, it expressly not given power to add to the jurisdiction of the Court. *Abrahams v. Superior Court, Del. Supr., 131 A.2d 662 (1957).*

Authority of Superior Court to order recount. — Under the mandatory terms of this Article and 15 Del. C. § 5702(b), the Superior Court has authority to order recount of votes where the evidence presented clearly showed that there were material discrepancies which could affect the results of the election. *Woo v. Robinson, Del. Supr., 484 A.2d 950 (1984).*

Chancellor as member in Kent County does not create more than 1 Superior Court. — The fact that this section provides that the Chancellor shall be a member of the Court in Kent County does not evidence the creation of more than 1 Superior Court. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

"Ascertained as aforesaid" construed. — The phrase "ascertained as aforesaid," means in the manner theretofore prescribed in this section, and this meaning cannot be enlarged by legislative action. *State ex rel. Walker v. Harrington, Del. Supr., 30 A.2d 688 (1943).*

Where the certificate of election has not been issued and a writ is requested compelling the election officers so to do, an inquiry should be made in order to determine the relator's legal right to the remedy sought; however, such an inquiry is by no means a conclusive determination of title and will not extend beyond that which is absolutely necessary to determine the relator's legal right. *State ex rel. Buckingham v. Hopkins, Del. Super., 32 A.2d 659 (1943).*

Acts of the Superior Court sitting as a board of canvass are not subject to review by the Supreme Court on appeal or by writ of

error. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Rather, mandamus may be used. — It is within the jurisdiction of the Supreme Court in all proper cases to direct its writ of mandamus to the Superior Court as a court or as a board of canvass or to any of the Judges of the Court in their official capacity. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Mandamus is a discretionary remedy, and its use to review the rulings of the board might conceivably be inappropriate in certain cases. *State ex rel. Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).*

If the board of canvass has not calculated the aggregate amount of all the votes exclusively in the prescribed manner and has signed and sealed the prescribed certificates showing the result of the canvass, then it has not performed its function and would be subject to writ of mandamus from the Supreme Court. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

And constitutionality of statute setting forth duties may be determined. — Where the Superior Court, acting as a board of canvass, performs its duties on the basis of a statute, the Supreme Court may determine the constitutionality of the statute in a mandamus proceeding brought, claiming the Board had not followed its legal duties in the proper and lawful manner. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

The question of constitutionality is frequently interposed by a petitioner or relator in mandamus when he claims that a statute or ordinance which, if valid, would excuse the respondent from performing the duty or the act in question is invalid and there seems to be no reason why the constitutionality of the act thus relied on may not be raised in such manner. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Whereupon correct performance enforced where statute is unconstitutional. — Where the board of canvass has followed its statutory duty by canvassing votes, it would be proper for the Supreme Court to issue a writ of mandamus to enforce the correct performance of the board's duties and to correct alleged errors in the canvassing if the statute authorizing the canvassing of such votes was unconstitutional, since the board would not have performed its duties in the manner required by law. *State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).*

Also, Supreme Court has power to issue mandamus to board of canvass to recanvass votes contested in General Assembly election, and this provision is not in conflict with the constitutional powers given the General Assembly to determine the election and qualifications of its own members. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

However, in mandamus proceedings the title to an office cannot be inquired into and determined, but an application for a writ of mandamus to compel the board of canvass to perform its functions is not such a question. State ex rel. Walker v. Harrington, Del. Supr., 27 A.2d 67 (1942).

Title to the office of Representative in the General Assembly cannot be tried in mandamus proceeding and the writ, if issued, will only be directed to the Judges of the Superior Court, sitting as a board of canvass. State ex

rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

Except where law has provided no other means. — Mandamus will not lie to try and finally determine the title to an office, except, perhaps, in a case in which the law has provided no other means of doing so. State ex rel. Buckingham v. Hopkins, Del. Super., 32 A.2d 659 (1943).

Such as an action quo warranto. — A certificate of election is prima facie evidence of title, and the holder thereof, if he has duly qualified subsequent to the election, is prima facie the officer de jure, and, as such, entitled to the temporary fruits of his victory until such time as his title shall be inquired into and decreed otherwise in an appropriate action in the nature of a quo warranto. State ex rel. Buckingham v. Hopkins, Del. Super., 32 A.2d 659 (1943).

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

Section 7. Every person who either in or out of the State shall receive or accept, or offer to receive or accept, or shall pay, transfer or deliver, or offer or promise to pay, transfer or deliver, or shall contribute, or offer or promise to contribute, to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the giving or withholding, or in any manner influencing the giving or withholding, a vote at any general, special, or municipal election in this State, or at any primary election, convention or meeting held for the purpose of nominating any candidate or candidates to be voted for at such general, special or municipal election; or who either in or out of the State shall make or become directly or indirectly a party to any bet or wager depending upon the result of any such general, special, municipal or primary election or convention or meeting, or upon a vote thereat by any person; or who either in or out of the State shall, by the use or promise of money or other valuable thing, or otherwise, cause or attempt to cause any 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 use or promise of money or other valuable thing influence or attempt to influence any person to be registered or abstain from being registered; or who, being an officer of election or registration officer, shall knowingly and wilfully violate said person's official duty; or who shall by force, threat, menace or intimidation, prevent or hinder, or attempt to prevent or hinder, any person qualified for registration from being registered or any person qualified to vote from voting according to said person's choice at any such general, special or municipal election, shall be

deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five thousand dollars, or shall be imprisoned for a term not less than one month nor more than three years, or shall suffer both fine and imprisonment within said limits, at the discretion of the court; and shall further for a term of ten years next following said person's sentence, be incapable of voting at any such general, special, municipal or primary election or convention or meeting; but the penalty of disfranchisement shall not apply to any person making or being a party to any bet or wager, depending upon the result of any such general, special, municipal or primary election or convention or meeting. Every person charged with the commission while out of the State of any of the offenses enumerated in this section, and by this section made punishable, whether committed in or out of the State, may be prosecuted under Section 8 of this Article in any county in which said person shall be arrested on such charge. No person, other than the accused, shall, in the prosecution for any offense mentioned in this section, be permitted to withhold said person's testimony on the ground that it may criminate said person or subject said person to public infamy; but such testimony shall not afterwards be used against said person in any judicial proceeding, except for perjury in giving such testimony. (67 Del. Laws, c. 129.)

Cross references. — As to authority of General Assembly to define and punish other election offenses, see Del. Const., art. V, § 9. As to jury trial not being required in prosecutions under this section, see Del. Const., art. XV, § 7. As to criminal offenses relating to elections generally, see Chapter 51 of Title 15. As to testimony in election bribery cases under this section, see Rule 26(1) of the Supreme Court.

Revisor's note. — The amendment to the Constitution set out above was initially approved as Chapter 340 of 66 Del. Laws on June 29, 1988, and finally approved as Chapter 129 of 67 Del. Laws on June 30, 1989.

Indicia for constituting a crime present. — The framers of the Delaware Constitution intended the violation of the election provision to constitute a crime. They designated the offense as a misdemeanor and they provided penalties consisting of fine or imprisonment or both. Hence, the indicia for constituting a crime are present. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Offense is substantive, not an attempt. — The offense defined in this section is not one of an attempt to commit a particular crime; rather, it is a distinct, substantive offense.

State v. Burris, Del. Gen. Sess., 97 A. 427 (1916).

Six-month imprisonment test is to be applicable in determining defendant's right to jury trial regardless of whether defendant is charged with a crime or criminal contempt. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

A defendant faced with a charge under provision of this section that provides a possible maximum imprisonment of three years is entitled to a jury trial. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Each defendant is entitled to jury trial with respect to charges alleging violation of this section. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Furnishing registration money violates section. — One may be convicted in violation of this section though he may have had no corrupt motive and may have intended merely to furnish the money needed for registration. *State v. Collins*, Del. Gen. Sess., 42 A. 619 (1898).

The only reference to primary elections in the Constitution appears in this section, and it is not a limitation upon the legislative power. The framers of the Constitution intentionally and successfully avoided any limita-

tion upon the legislative powers of the General Assembly as to primary elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

§ 8. Prosecution for election offenses; procedure; appeal; bond.

Section 8. Every prosecution for any of the offenses mentioned in Section 7 of this Article shall be on information filed by the Attorney-General, after examination and commitment or holding to bail by a judge or Justice of the Peace, and the cause shall be heard, tried and determined by the court without the intervention of either a grand jury or petit jury. The accused if adjudged guilty of the offense charged against him, shall have the right at any time within the space of three calendar months next after sentence is pronounced to an appeal to the Supreme Court. The court below, or any judge thereof, in term time or vacation, shall upon application by the accused allow such appeal; but such appeal shall not operate as a supersedeas unless the appellant shall at the time of the allowance thereof give an appeal bond to the State of Delaware in such amount and with such surety as shall be approved by such court or judge. On such appeal the Supreme Court shall, with all convenient speed, review the evidence adduced in the cause in the court below, as well as the other proceedings therein, and the law applicable thereto, and give final judgment accordingly, either affirming or reversing the judgment below. If the appellant shall fail to prosecute his appeal pursuant to the rules and practice hereinafter provided for, the Supreme Court shall affirm the judgment of the court below. Where the sentence in the court below includes a term of imprisonment and an appeal bond is given and approved in manner aforesaid, the Supreme Court, if it affirm the judgment below, shall sentence the appellant to a term of imprisonment equal to that imposed by the court below, after deducting therefrom a period equal to the time of imprisonment, if any, already suffered by him under the sentence of the court below. The surety or sureties in any appeal bond given under the provisions of this section shall have the right at any time after its approval and until final judgment shall be rendered by the Supreme Court, and, in case the judgment of the court below shall be affirmed, until the expiration of the space of thirty days next following such affirmance, to take, wherever found, and render the appellant to the sheriff of the county in which he was sentenced; and a certified copy of the appeal bond shall be the sufficient warrant for such surety or sureties for such taking and rendering. If the Supreme Court shall reverse any judgment of the court below imposing a fine, and if the accused shall have fully paid such fine and the costs of prosecution, the amount thereof shall be refunded to the appellant through a warrant drawn by the court below on the treasurer of the county in which the accused was sentenced. All the judges

entitled to sit in the Supreme Court shall, as soon as conveniently may be, meet at the usual place of sitting of said court, and they, or a majority of them, shall adopt rules prescribing the forms and conditions of appeal bonds to be used under the provisions of this section, and the manner of certifying copies thereof, providing for the printing or reduction to writing of all oral evidence in the cause in the court below and of the opinion of said court, for the certification of the same when so printed or reduced to writing, and of copies thereof; for the copying and certification of all documentary or other written or printed evidence in the cause in the court below and of the record therein; for the transmission to the Supreme Court of such certified copies of such record, and of all the evidence adduced in the court below and of the opinion of said court for the transmission to the court below of a certified copy of the final judgment of the Supreme Court and of any additional sentence pronounced by said court, for the discharge of securities in appeal bonds, and for the framing, issuance, service and enforcement of all process and rules necessary to give full effect to the provisions of this section; and regulating generally the practice and procedure of the Supreme Court and the court below in cases of appeal under this section. The said judges, or a majority of them, met as aforesaid, may also provide that when complaint shall be made in due form, prescribed by them, to any judge entitled to sit in the Supreme Court, that any offense mentioned in Section 7 of this Article has been committed in the county in which such judge shall reside, or out of the State, such judge shall have power to cause the person charged with such offense to be arrested within any county of this State and brought before him, and to bind him with sufficient surety, or, for want of bail, commit him for his appearance and answer at the next term of the Court of General Sessions in such manner and under and pursuant to such rules and regulations as the said judges, or a majority of them, shall prescribe. From time to time hereafter, whenever a majority of all the judges entitled to sit in the Supreme Court shall so request, all of the judges so entitled shall, as soon as conveniently may be, meet at the usual place of sitting of said court; and they, or a majority of them, shall have power to revise, amend, add to or annul, any rule or rules theretofore adopted touching forms, practice or procedure in cases of appeal under this section, or arrest and binding or commitment for appearance and answer, in such manner and to such extent as in their judgment shall best serve to effectuate the purposes hereof. No person shall be adjudged guilty of an offense mentioned in Section 7 of this Article without the concurrence of all the judges trying the case; and upon appeal no judgment of the court below shall be affirmed without the concurrence of all of the judges of the Supreme Court sitting in the case, and their failure to concur as aforesaid shall operate as a reversal of the judgment of the court below; provided, however, that such concurrence of the judges sitting in the Supreme Court shall not be necessary for the affirmance

of the judgment of the court below where the appellant shall fail to prosecute his appeal pursuant to the rules and practices herein provided for.

Cross references. — As to two judges constituting a quorum, see Del. Const., art. IV, § 5. As to jurisdiction of Supreme Court over appeals from the Superior Court in prosecutions under this section, see Del. Const., art. IV, § 11. As to conviction of perjury under Del. Const., art. V, § 3 for false oath or affirmation not barring prosecution under this section, see Del. Const., art. V, § 3. As to matters within this section being excepted from Del. Const., art. I, § 8, see Del. Const., art. XV, § 7. As to limitation of actions on appeal being subject to the provisions of this section, see Rule 23 of the Supreme Court. As to procedure in election bribery cases, see Rule 26 of the Supreme Court.

Objective of this section was to assure more convictions for election bribery. It was felt that the jury system was ineffective in dealing with political matters and that a different system was needed to deal with election violators. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Section is attempt to protect sanctity of elections. — This section did not represent an experiment designed to provide protection for the accused. It represented an attempt to protect the sanctity of elections by providing a means for convicting more of those who were accused of violation. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Procedure for prosecution of vote-buying prescribed by section. — The procedure for the prosecution and punishment of persons guilty of vote-buying in primary or general elections is that prescribed by this section, and it is exclusive of any other procedure. In re Opinions of the Justices, Del. Supr., 88 A.2d 128 (1952).

And the Constitution clearly indicates the Superior Court as the trial court in all such cases, whether the first steps were had before a judge or a justice of the peace. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

The effect of this section is to withdraw from the Grand Jury all of its powers of investigation, presentment and indictment in respect of the offenses enumerated in Del. Const., art. 5, § 7. In re Opinion of the Justices, Del. Supr., 88 A.2d 128 (1952).

It does not violate the due process clause of the federal Constitution. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

Serious crime entitles one to jury trial. — According to the framers of the Delaware Constitution, the evil of election bribery is especially serious, and, hence, there should be no jury trial. But, according to the United States Supreme Court cases, a crime which is serious entitles a defendant to jury trial. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Deprivation of jury trial violative of federal constitution. — Insofar as this section undertakes to deprive a defendant charged with violating Del. Const., art. V, § 7, of a jury trial, that provision violates the rights of a defendant under the United States Constitution to jury trial as those rights have been interpreted by the United States Supreme Court. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Each defendant is entitled to jury trial with respect to charges alleging violation of Del. Const., art. V, § 7. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Six-month imprisonment test is to be applicable in determining defendant's right to jury trial regardless of whether defendant is charged with a crime or criminal contempt. *State v. Hollinger*, Del. Super., 337 A.2d 326 (1975).

Distinct offenses should not be joined in 1 information. — When separate and distinct offenses are charged in 1 indictment, the State may be called upon to elect which of the offenses shall be prosecuted; hence, distinct offenses should not be joined in 1 information. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

It is not necessary to aver in the information the commitment and holding to bail, which is no part of the offense charged. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

However, 1 of the defined offenses must appear on face of bail bond. — Before the Attorney General is authorized to file an information for any of the offenses enumerated in section 7, article 5 of the Constitution, it must, at least in the case of a "holding to bail," substantially appear on the face of the bail bond that 1 of the offenses defined by the Constitu-

tion, for which an information may be filed, is charged or set forth in the bond. Such is for the reason that, in order to constitute a holding to bail, within the meaning, contemplation and purpose of the Constitution, the bail bond sent up to this Court must charge an offense within the terms and provisions of the Constitution in language sufficiently certain to inform the accused of the offense with which he is charged. The defendant, then, in the preliminary pro-

ceedings required by the Constitution, may have notice of the nature and character of the offense charged against him. *State v. Moore*, Del. Gen. Sess., 46 A. 669 (1899).

Section 2504 of Title 29 may be treated as coextensive with the constitutional powers of the office of Attorney General. In *re Blue Hen Country Network, Inc.*, Del. Super., 314 A.2d 197 (1973).

§ 9. Enumeration of election offenses as limitation on power of General Assembly.

Section 9. The enumeration of the offenses mentioned in Section 7 of this Article shall not preclude the General Assembly from defining and providing for the punishment of other offenses against the freedom and purity of the ballot, or touching the conduct, returns or ascertainment of the result of general, special or municipal elections, or of primary elections, conventions or meetings held for the nomination of candidates to be voted for at general, special or municipal elections. No prosecution under any act of the General Assembly passed pursuant to this section shall be subject to the provisions of Section 8 of this Article.

Cross references. — As to criminal offenses relating to elections generally, see Chapter 51 of Title 15.



TITLE 15

Elections

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PART VI

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- 80. Campaign Contributions and Expenditures, §§ 8001 to 8046.

Cross references. — As to constitutional requirements that all elections be free and equal, see Del. Const., art. I, § 3. As to elections generally, see Del. Const., art. V.

PART I
Administrative Agencies
CHAPTER 1. PURPOSE AND MEANING OF
ELECTION LAWS

Sec.
101. Definitions.
101A. Purpose.

Sec.
102-120. [Transferred.]

§ 101. Definitions.

As used in this title:

(1) "Ballot" means those portions of cardboard, paper or other material to be placed within the ballot frames of a voting machine or to be used for absentee voting in order to list the names of the offices to be voted for, the name of each candidate and the designation of the party by which he is nominated, a space for the voter to write in the name of any candidate of his choice for any office, and the statement of any question submitted with provision for a "yes" or "no" vote.

(2) "Board of elections" or "board" in each of the 3 counties of the State means that body of individuals appointed by the Governor and confirmed by the Senate to serve as a board of elections for their respective counties, and are, as such, vested with the responsibility and power to see to the administration of the election laws of this State in their respective counties as more particularly defined in this title.

(3) "Clerk" means clerk of election.

(4) "Commissioner" means the State Election Commissioner.

(5) "County committee" means the regularly organized and constituted county committee or governing authority of a political party.

(6) "Department" means the department of elections in each county of this State, consisting of the board of elections and such staff as the board shall appoint under this title. The department in each county, under the direction of the board of elections, shall administer the election laws of this State as defined in this title.

(7) "Election officers" means the inspector of election, the 2 judges of election and the clerks of election who are appointed for each election district under § 4701 of this title.

(8) "Independent", "decline" or words equivalent thereto means any person who at the time of registration does not choose to be affiliated with a political party as defined in this section.

(9) "Inspector" means inspector of elections.

(10) "Judge" means judge of elections.

(11) "Local office" means any political district smaller than the State, including municipal, county, state representative or state senatorial.

(12) "Mobile registration" means any registration held outside the central registration in the office of the department of elections for each respective county and excluding registrations held within the district on registration days designated by the department of elections.

(13) "Party" or "political party" means any political organization which elects a state committee and officers of a state committee, by a state convention composed of delegates elected from each representative district in which the party has registered members, and which nominates candidates for electors of President and Vice-President, or nominate's candidates for offices to be decided at the general election. All political parties shall be divided into 2 classes:

a. "Major political party" means any political party which, as of December 31 of the year immediately preceding any general election year, has registered in the name of that party voters equal to at least 5 percent of the total number of voters registered in the State.

b. "Minor political party" means any political party which does not qualify as a major political party.

(14) "Primary ballots" means paper ballots used with ballot boxes or ballots used in voting machines.

(15) "Primary election" means an election at which voters registered as members of a major political party may vote to determine the nominees of that political party for the general election.

(16) "Principal political parties" or words equivalent thereto will be the two political parties which have the highest total voter registration in this State.

(17) "Protective counter" means a separate counter built into the voting machine, which cannot be reset, which records the total number of movements of the operating lever.

(18) "Question" means any proposition or other question to be submitted to the voters.

(19) "Registration officers" means the registrar, assistant registrar and alternate registrars appointed by the departments as defined in this section.

(20) "State chairman" means the highest executive officer of a political party of this State.

(21) "State committee" means the regularly organized and constituted statewide governing authority of a political party in this State.

(22) "Unaffiliated candidate" means any individual who files a declaration as a candidate for any office to be decided at the general election and who is not affiliated with any political party and has not been thus affli-

ated for at least 3 months prior to the filing of his declaration. (15 Del. C. 1953, § 101; 49 Del. Laws, c. 4, § 5; 57 Del. Laws, c. 181, § 1; 57 Del. Laws, c. 567, §§ 1, 1A, 2; 57 Del. Laws, c. 695, § 1; 58 Del. Laws, c. 148, §§ 1, 2; 60 Del. Laws, c. 414, § 1; 60 Del. Laws, c. 446, §§ 1, 2; 61 Del. Laws, c. 418, §§ 3-5; 61 Del. Laws, c. 480, § 1.)

Political party is not state agency. — If the candidates nominated by a political party as defined in this section are certified to the proper officer, placed upon the official ballot and elected at the next general or special election, they become part of the state or county government and may be classed as state or county officers, but that does not make the political party by which they were nominated a state agency or a part of the state government to which the General Assembly may delegate the power of appointing the members of a state agency. *State ex rel. James v. Schorr*, Del. Supr., 65 A.2d 810 (1948).

Regulation of access of candidates to ballot. — The State has the authority to regulate access of candidates to the ballot, but that authority must be exercised so as not to burden unfairly or unnecessarily an individual candidate's equally important interest in the availability of political opportunity. *McCarthy v. Tribbitt*, 421 F. Supp. 1193 (D. Del. 1976).

Regulations imposed by Delaware laws upon candidates of political parties seeking to obtain a ballot position are not invali-

dated. *Maddox v. Wrightson*, 421 F. Supp. 1249 (D. Del. 1976).

Requirement of nominations to be party is permissive. — The requirement of this section that a party nominate candidates for the named offices and "other officers" is permissive rather than mandatory. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

And nominations for all statewide offices are not required. — This section does not require a party to nominate candidates for all statewide offices. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

But to qualify as party, nomination for 1 office is needed. — In order to qualify as a political party, the state organization must nominate candidates for at least 1 of the named offices. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

As is election of state committee at convention. — This section requires an organization, in order to qualify as a political party, to elect a state committee at its convention. *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971).

§ 101A. Purpose.

The purpose of this title is to assure the people's right to free and equal elections, as guaranteed by our state Constitution. To that end, the full exercise of that right demands that the people be afforded the means to form political parties, nominate candidates and cast ballots for whomever they choose. At the same time, however, lengthy ballots which list a profusion of political parties and unaffiliated candidates, many of which are not serious contenders and lack even a modicum of community support, tend to create voter confusion and to clog the election machinery.

To secure the right to free and equal elections and to preserve the integrity of the democratic political process, it is essential that an orderly system be established:

- (1) For the registration of voters and the preservation of voter registration records;
- (2) To encourage public participation in political parties and to demonstrate sufficient community support of these parties by permitting voters

to affiliate with the party of their choice, if they so desire, on their voter registration records;

(3) To provide a means by which political parties and unaffiliated candidates, which have demonstrated a meaningful level of community support, may qualify for listing on the general election ballot;

(4) For the orderly and fair selection of party nominees by primary election or political party convention, and for the filling of vacancies among such nominees;

(5) To provide for the free exercise of the write-in vote for both politically affiliated and unaffiliated candidates who may not qualify for listing on the general election ballot;

(6) For the conduct of primary and general elections;

(7) For the certification of election results and the resolution of election contests;

(8) To provide criminal penalties and civil liability for violation of the laws set forth in this title;

(9) To provide for all such other matters, related to the electoral process, as may be set forth herein. (61 Del. Laws, c. 418, § 2.)

§§ 102-120.

[Transferred.]

Revisor's note. — The material formerly codified under these sections was transferred and now appears as §§ 201-219 of this title.

CHAPTER 2. DEPARTMENT OF ELECTIONS

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| <p>Sec.
201. Department of Elections.
202. Board of Elections for New Castle County; composition; appointment; term.
203. Boards of Elections for Kent and Sussex Counties; composition; appointment; term.
204. Qualifications of members of all boards.
205. Confirmation or rejection of appointments.
206. Oath.
207. Compensation of members.
208. Organization meeting; officers.
209. Necessary votes for transaction of business.</p> | <p>Sec.
210. Rules.
211. Administrative director; deputy administrative director; powers, duties, qualifications, compensation.
212. Office; equipment and supplies.
213. Employees; duties and compensation.
214. Maps.
215. Expenses and compensation.
216. Notaries public.
217. Administrative director and deputy administrative director of departments of elections; limitations.
218. Timing and dating.
219. Political activity limited; penalty.</p> |
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§ 201. Department of Elections.

There shall be a Department of Elections for New Castle County, Kent County and Sussex County. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 1; 22 Del. Laws, c. 70, § 5; Code 1915, § 1658; Code 1935, §§ 1745, 1745A; 42 Del. Laws, c. 115, §§ 1, 2; 45 Del. Laws, c. 148, § 1; 45 Del. Laws, c. 149, § 1; 15 Del. C. 1953, § 102; 50 Del. Laws, c. 357, § 1; 50 Del. Laws, c. 429, § 1; 50 Del. Laws, c. 546, § 2; 50 Del. Laws, c. 549, § 2; 61 Del. Laws, c. 418, § 1.)

§ 202. Board of Elections for New Castle County; composition; appointment; term.

(a) The Board of Elections for New Castle County shall consist of 10 members and each of the 2 principal political parties shall be represented at all times by not less than 5 members and at all times both principal political parties shall have equal representation.

(b) In carrying out this section, the Governor shall appoint 10 members. The Governor shall appoint 5 members, with at least 2 from each of the 2 principal political parties, for a term of 2 years each, and 5 members, with at least 2 from each of the 2 principal political parties, for a term of 4 years each.

(c) Upon the expiration of the term of any member of the Board, his successor shall be appointed by the Governor for a period of 4 years; provided, however, that such member shall hold office until his successor shall be duly qualified and provided, further, that the term of such successor shall commence on the date he is duly qualified. In the event a vacancy occurs in the Board from any cause, other than expiration of the term of a member, the Governor shall fill the vacancy for the residue of the term.

(d) The 10 members required to be appointed by the Governor from the 2 principal political parties under subsections (b) and (c) of this section shall be appointed from a list of not less than 3 nominees for each member to be appointed, which list shall be submitted by the state chairman of the political party from which the appointment must be made. Seven of the members to be appointed must reside in a different senatorial district in rural New Castle County and 3 of the members to be appointed must reside in a separate senatorial district of the City of Wilmington. Such lists shall be submitted to the Governor within 30 days of the expiration or vacancy of any term herein when such expiration or vacancy leaves fewer than 5 members of the principal political party. The Governor shall submit his appointments from the names on the lists within 30 days of the date the Governor receives the lists. If a state chairman does not submit a list to the Governor as provided in this subsection, then the Governor shall submit his appointments for any vacancy.

(e) All members shall be appointed by and with the consent of the majority of the members elected to the Senate. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, §§ 1, 2; 22 Del. Laws, c. 70, §§ 1, 3; Code 1915, §§ 1658, 1659; 40 Del. Laws, c. 141, § 1; Code 1935, §§ 1745, 1745A, 1746; 42 Del. Laws, c. 115, §§ 1-3; 45 Del. Laws, c. 147, § 1; 15 Del. C. 1953, § 103; 54 Del. Laws, c. 163, § 1; 55 Del. Laws, c. 334, § 1; 57 Del. Laws, c. 181, § 2; 58 Del. Laws, c. 148, §§ 3, 4; 61 Del. Laws, c. 418, § 1.)

§ 203. Boards of Elections for Kent and Sussex Counties; composition; appointment; term.

(a) The Board of Elections for Kent County and the Board of Elections for Sussex County shall each consist of 6 members appointed as provided in this section. Each of the 2 principal political parties shall at all times be represented by not less than 3 members of each board.

(b) In carrying out this section, the Governor shall initially appoint for the Board of Elections of Kent County 2 members for a term of 2 years each and 2 members for a term of 4 years each, and for the Board of Elections of Sussex County, 3 members for a term of 2 years each and 3 members for a term of 4 years each.

(c) Upon the expiration of the term of any member from either board his successor shall be appointed by the Governor for a term of 4 years; provided, however, that such member shall hold office until his successor shall be duly qualified and provided, further, that the term of such successor shall commence on the date he is duly qualified. In the event that a vacancy occurs in either board from any cause, other than expiration of the term of a member, the Governor shall fill the vacancy for the residue of the term.

(d) The members to be appointed by the Governor under subsections (c) and (d) of this section shall be appointed from a list of not less than 3 nominees for

each member to be appointed, which list shall be submitted by the state chairman of the political party from which the appointment must be made. Each senatorial district in Kent and Sussex Counties must be represented by 1 member and no senatorial district may be represented by more than 2 members. Such lists shall be submitted to the Governor within 30 days of June 25, 1969, and within 30 days of the expiration or vacancy of any term herein when such expiration or vacancy leaves fewer than 3 members of the principal political party. The Governor shall submit his appointments from the names on the lists within 30 days of the date the Governor receives the lists.

(e) All members shall be appointed by and with the consent of the majority of the members elected to the Senate. (45 Del. Laws, c. 148, §§ 1, 2, 4, 5; 45 Del. Laws, c. 149, §§ 1, 2, 4, 5; 15 Del. C. 1953, § 104; 54 Del. Laws, c. 163, § 1; 55 Del. Laws, c. 334, § 2; 57 Del. Laws, c. 181, § 3; 58 Del. Laws, c. 148, § 5; 61 Del. Laws, c. 418, § 1.)

§ 204. Qualifications of members of all boards.

No person shall be appointed as a member of any board of elections who is not a citizen of the United States and a resident of the county for which he is appointed and who has not resided therein for 1 year next preceding his appointment. No member of any board shall hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office;

(2) Elective office or appointed position of a political party, nor shall a member be an appointed official to any federal, state, county, city or incorporated municipality commission or administrative body. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 105; 50 Del. Laws, c. 82, § 1; 55 Del. Laws, c. 280; 57 Del. Laws, c. 181, § 4; 58 Del. Laws, c. 148, § 6; 61 Del. Laws, c. 418, § 1.)

§ 205. Confirmation or rejection of appointments.

The Senate shall either confirm or reject any appointment under § 202 or 203 of this title within 10 legislative days of its receipt or said appointment is deemed confirmed. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 2; 45 Del. Laws, c. 149, § 2; 15 Del. C. 1953, § 106; 50 Del. Laws, c. 357, § 1; 50 Del. Laws, c. 429, § 1; 50 Del. Laws, c. 546, § 2; 50 Del. Laws, c. 549, § 2; 52 Del. Laws, c.

130, § 3; 54 Del. Laws, c. 163, § 1; 57 Del. Laws, c. 181, § 5; 61 Del. Laws, c. 418, § 1.)

§ 206. Oath.

Each member of each board, before entering upon his duties and within 10 days from the time of his appointment, shall take and subscribe to the oath or affirmation prescribed by the Constitution and shall record the same in the office of the recorder of the county of the member's residence. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; 22 Del. Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 140, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 107; 58 Del. Laws, c. 148, § 7; 61 Del. Laws, c. 418, § 1.)

§ 207. Compensation of members.

The president of each board shall receive as compensation for his services a salary of \$1,500 per year and each member of each board shall receive as compensation for his services a salary of \$1,000 per year. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 108; 50 Del. Laws, c. 357, § 4; 50 Del. Laws, c. 429, § 6; 50 Del. Laws, c. 546, § 1; 50 Del. Laws, c. 549, § 1; 54 Del. Laws, c. 364, § 1; 58 Del. Laws, c. 148, § 8; 61 Del. Laws, c. 418, § 1.)

§ 208. Organization meeting; officers.

(a) Within 30 days after confirmation of all the members of each of the boards by the Senate, the members of each board shall meet and organize by electing 1 of their members to be president and shall at the same time elect a secretary whose function other than that of a member shall be to record the minutes of the meeting of the board and they shall serve until date prescribed in subsection (b) hereto.

(b) In New Castle County on the second Tuesday in February in each year, in Kent County on the third Tuesday in February in each year, and in Sussex County on the fourth Tuesday in February in each year, the members of each board shall meet and organize by electing 1 of their members to be president. They shall at the same time elect a secretary whose function other than that of a member shall be to record the minutes of the meeting of the board. The terms of office of the president and secretary shall be until the date prescribed by this section for holding the next regular organizational meeting or a successor is elected. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; 22 Del.

Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 109; 50 Del. Laws, c. 545, § 4; 50 Del. Laws, c. 557, § 1; 57 Del. Laws, c. 181, § 6; 58 Del. Laws, c. 148, § 9; 61 Del. Laws, c. 418, § 1.)

Members of the department of elections are public officers; their sovereign powers and duties, involving the exercise of discretion and judgment for the public welfare, may not be properly delegated. *Martin v. Trivitts*, Del. Super., 103 A.2d 779 (1954).

§ 209. Necessary votes for transaction of business.

(a) The affirmative vote of 6 members shall be required for the transaction of any business for the Board of Elections for New Castle County.

(b) The affirmative vote of 4 members shall be required for the transaction of any business for the Board of Elections for Kent and Sussex Counties respectively. (22 Del. Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 110; 57 Del. Laws, c. 181, § 7; 58 Del. Laws, c. 148, § 10; 61 Del. Laws, c. 418, § 1.)

§ 210. Rules.

Each board may make rules for its government not inconsistent with the Constitution or any law of this State and subject to the approval of the State Election Commissioner. (22 Del. Laws, c. 70, § 6; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 111; 57 Del. Laws, c. 181, § 8; 58 Del. Laws, c. 148, § 11; 61 Del. Laws, c. 418, § 1.)

§ 211. Administrative director; deputy administrative director; powers, duties, qualifications, compensation.

(a) The board of elections of each county shall appoint:

(1) An administrative director who shall be a member of the same political party as the State Election Commissioner and who shall serve at the pleasure of the board;

(2) A deputy administrative director who shall be nominated and elected by the members of the board of elections of the opposite political party of the State Election Commissioner and who shall serve at the pleasure of same. In the nomination and election of a deputy administrative director, § 209 of this title shall not be applicable.

(b) The administrative director shall assist the department of elections of his county in carrying out its duties and responsibilities and, subject to the policies and directives of the board, shall have general supervision over the employees of the department and shall see to it that the work of the department is performed in a proper and nonpartisan manner.

(c) The deputy administrative director shall assist the administrative director.

(d) The administrative director and the deputy administrative director of each department of elections shall be a citizen of the United States and a qualified elector of the county employing him.

(e) Each board shall fix the salary of its administrative director and deputy administrative director. (19 Del. Laws, c. 39, § 2; 21 Del. Laws, c. 40, § 2; Code 1915, § 1659; 40 Del. Laws, c. 141, § 1; Code 1935, § 1746; 42 Del. Laws, c. 115, § 3; 45 Del. Laws, c. 147, § 1; 45 Del. Laws, c. 148, § 5; 45 Del. Laws, c. 149, § 5; 15 Del. C. 1953, § 112; 50 Del. Laws, c. 630, § 1; 57 Del. Laws, c. 181, § 9; 58 Del. Laws, c. 148, §§ 12-14; 58 Del. Laws, c. 571; 61 Del. Laws, c. 418, § 1.)

§ 212. Office; equipment and supplies.

Each department shall occupy a suitable and convenient office in the courthouse or public building of the county, or elsewhere in the county seat, and shall obtain whatever furniture, equipment and supplies that may be necessary to properly carry out its duties. (21 Del. Laws, c. 40, § 5; Code 1915, § 1660; Code 1935, § 1747; 42 Del. Laws, c. 115, § 4; 45 Del. Laws, c. 147, § 2; 45 Del. Laws, c. 148, § 7; 45 Del. Laws, c. 149, § 7; 15 Del. C. 1953, § 113; 61 Del. Laws, c. 418, § 1; 61 Del. Laws, c. 480, § 2.)

§ 213. Employees; duties and compensation.

(a) Each department may hire such employees as it may deem necessary for the performance by the department of its duties, subject to the limitations of subsection (b) of this section.

(b) Persons presently employed by said departments shall be retained.

(c) The duties of such employees shall be prescribed and the compensation fixed by the Director of State Personnel.

(d) The employees of each department shall be placed under the state merit system but subject to all provisions of this title. (21 Del. Laws, c. 40, § 3; Code 1915, § 1664; 40 Del. Laws, c. 141, § 3; Code 1935, § 1751; 45 Del. Laws, c. 147, § 4; 45 Del. Laws, c. 148, § 7; 45 Del. Laws, c. 149, § 7; 15 Del. C. 1953, § 114; 57 Del. Laws, c. 181, § 10; 61 Del. Laws, c. 418, § 1.)

§ 214. Maps.

(a) The Department of Public Works of the City of Wilmington, the planning departments of each county and the Planning Division of the Department of Transportation shall provide such maps as may be requested by any department of elections. All such maps shall be the most current available, shall be at such scale as requested and shall be provided at cost.

(b) Such planning maps shall be used by each department of elections to compile the maps required by § 4911 of this title and § 861 of Title 29.

(c) In addition to the maps required by § 4911 of this title and § 861 of Title 29, each department of elections shall prepare individual, large-size wall maps for each senatorial district within the State. These individual maps shall also designate the boundaries of all election districts within each senatorial district. (19 Del. Laws, c. 39, § 29; Code 1915, § 1676; Code 1935, § 1763; 42 Del. Laws, c. 115, § 12; 45 Del. Laws, c. 148, § 22; 45 Del. Laws, c. 149, § 22; 15 Del. C. 1953, § 115; 57 Del. Laws, c. 567, § 3; 58 Del. Laws, c. 148, § 15; 61 Del. Laws, c. 418, § 1; 64 Del. Laws, c. 133, § 1.)

§ 215. Expenses and compensation.

All expenses of each department, including the compensation of the members, secretaries and assistants, shall be paid by the State. (21 Del. Laws, c. 40, §§ 3, 5, 6; Code 1915, §§ 1659, 1660, 1664; 40 Del. Laws, c. 141, §§ 1, 3; Code 1935, §§ 1746, 1747, 1751; 42 Del. Laws, c. 115, §§ 3, 4; 45 Del. Laws, c. 147, §§ 1, 2, 4; 45 Del. Laws, c. 148, §§ 5, 7, 10; 45 Del. Laws, c. 149, §§ 5, 7, 10; 15 Del. C. 1953, § 116; 51 Del. Laws, c. 149, § 8; 61 Del. Laws, c. 418, § 1.)

§ 216. Notaries public.

(a) In addition to the notaries public for the respective counties authorized to be appointed by any other law, the Governor shall appoint as notaries public:

(1) Three employees of the Department of Elections for New Castle County; and

(2) One employee and the Administrative Director of the Departments of Elections for Kent and Sussex Counties.

(b) Whenever any person so appointed ceases to be employed by or as administrative director of the department, his term as notary public shall terminate and the Governor shall appoint either another employee or his successor as a notary public. (Code 1935, § 1755; 45 Del. Laws, c. 147, § 8; 45 Del. Laws, c. 148, § 33; 45 Del. Laws, c. 149, § 33; 15 Del. C. 1953, § 117; 57 Del. Laws, c. 181, § 11; 61 Del. Laws, c. 418, § 1.)

§ 217. Administrative director and deputy administrative director of departments of elections; limitations.

No administrative director or deputy administrative director of any department of elections shall hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office; or

(2) Elective office or position of a political party nor shall he be an appointed official to any federal, state, county, city or incorporated municipality commission or administrative body. (15 Del. C. 1953, § 118; 50 Del. Laws, c. 82, § 2; 57 Del. Laws, c. 181, § 12; 61 Del. Laws, c. 418, § 1.)

§ 218. Timing and dating.

It shall be the duty of each department to time and date each application for a ballot or other communication received by the department and the person timing and dating the application for a ballot, letter or other communication shall place his initials thereon. Each department shall note the time and date of all ballots received. (15 Del. C. 1953, § 119; 52 Del. Laws, c. 221, § 2; 61 Del. Laws, c. 418, § 1.)

§ 219. Political activity limited; penalty.

(a) No person, member, administrative director or deputy administrative director or employee of the department shall directly or indirectly use or seek to use his authority or official influence to control or modify the political action of another person or at any time actively participate in any political activities or campaigns.

(b) Any person who shall violate this section shall be fined not more than \$500 and shall forfeit his position or employment. (15 Del. C. 1953, § 120; 57 Del. Laws, c. 181, § 13; 58 Del. Laws, c. 215, § 1; 61 Del. Laws, c. 418, § 1.)

CHAPTER 3. STATE ELECTION COMMISSIONER

Sec.

301. Appointment; term and compensation.
 302. General powers and duties of Commissioner.
 303. Duties upon receipt of applications for registration.
 304. Preparation of lists of registered voters.

Sec.

305. Audit for duplication of names.
 306. Audit for names of persons who have not voted in the last 2 general elections.
 307. Supplying lists to political party chairmen and other persons.

§ 301. Appointment; term and compensation.

(a) The State Election Commissioner shall be appointed by the Governor for a term of 4 years and confirmed by a majority of the members elected to the Senate. Until such appointment and confirmation the State Auditor shall serve as the State Election Commissioner without additional compensation. In the event of a vacancy in the office, the Governor shall appoint a successor to fulfill the unexpired term and said successor shall be confirmed by a majority of the members elected to the Senate.

(b) The salary of the State Election Commissioner shall be determined by the Governor and shall be no less than \$12,000 and no more than \$16,000 per year.

(c) The State Election Commissioner shall serve in this capacity on a full-time basis and his powers and duties prescribed by this title shall remain with the Election Commissioner and shall not be delegated to any other individual or group.

(d) The State Election Commissioner shall not hold or be a candidate for any:

(1) Federal, state, county, city or incorporated municipality elective office; or

(2) Elective office or position of a political party nor shall he be an appointed official to any federal, state, county, city or incorporated municipality, commission or administrative body.

(e) The State Election Commissioner shall not directly or indirectly use or seek to use his authority or official influence to control or modify the political action of another person or at any time participate in any political activities or campaigns. (15 Del. C. 1953, § 302; 50 Del. Laws, c. 168, § 1; 57 Del. Laws, c. 181, § 15; 58 Del. Laws, c. 215, § 2.)

§ 302. General powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

(1) To furnish, by purchase, lease, or otherwise, such equipment, supplies and services that may be required in order to conduct his powers and duties prescribed in this title;

(2) To order any department, board, commission or agency of this State to transfer to the Commissioner any equipment or supplies to his custody that are owned by the State and not in use by the department, board, commission or agency concerned, which may be used by the Commissioner in conducting the functions of his office;

(3) To select and maintain in the City of Dover, preferably in a building owned by the State, suitable office space;

(4) To make reasonable rules and regulations with respect to the functions of his office and with respect to the manner of making entries in registration and election records to be followed by each department and all registration and election officers;

(5) To have the sole responsibility for the security of the records in his office which shall not be delegated to anyone;

(6) To prescribe the form of the registration and election records which under this title are to be uniform throughout this State so long as they are not in conflict with this title;

(7) To supply necessary instruction and assistance to each department and all registration and election officers in order to insure uniform operation of this title throughout the State;

(8) Such other powers and duties as may be necessary in order for the Commissioner to carry out his functions under this title;

(9) To be an ex officio member of each county department of elections;

(10) To attend each county department of elections meeting at which time he may do the following:

a. Participate in any and all discussions; and

b. Cast a vote only in the event of a tie;

(11) To collect unofficial results of the general election at each election district in the State and to tabulate, report and disseminate the results of the election as soon as possible to the public. (15 Del. C. 1953, § 303; 50 Del. Laws, c. 168, § 1; 57 Del. Laws, c. 181, § 16; 57 Del. Laws, c. 384; 57 Del. Laws, c. 567, § 4; 58 Del. Laws, c. 215, § 3.)

§ 303. Duties upon receipt of applications for registration.

Upon receipt of applications for registration the Commissioner shall first determine whether each application has been properly approved and verified by the department concerned. In the event of any discrepancy he shall return the application to the department concerned for such corrections or additions as may be necessary. If the application has been properly approved and verified, the Commissioner shall then cause the information contained thereon to be punched upon tabulating cards. The cards shall be properly indexed by county election districts and shall be maintained in tamperproof, fire protected cabinet.

The Commissioner shall check the permanent significant registration number placed upon each application for registration to determine whether the proper number has been assigned by the department. In the event the Commissioner determines that the permanent significant registration number assigned by a department is erroneous, he shall assign the proper number, and shall notify the department concerned which shall make the proper corrective entry upon the Election District Record and County Master Record.

After the applications for registration have been used by the Commissioner to comply with this section, he shall cause every application to be microfilmed and indexed and shall destroy each original application. (15 Del. C. 1953, § 304; 50 Del. Laws, c. 168, § 1.)

§ 304. Preparation of lists of registered voters.

(a) The Commissioner of Elections shall cause to be prepared lists of all voters duly registered in the State as of 21 days prior to the date of the delegate primary and another complete list of all registered voters as of 21 days prior to the date of the statewide primary. Such lists are to be in alphabetical order and shall contain the full name, address and political party designation of each voter as it appears on the registration records. A separate list shall be prepared for each election district in the State.

(b) The Commissioner of Elections shall also cause to be prepared for each election district in the State a supplemental list of all voters who register, transfer their registration or make changes in their names, addresses or party designations between that period of 21 days prior to the date of the statewide primary and the last general registration day of the year of any general election, inclusive. Such separate supplemental lists, in alphabetical order, shall be prepared for each election district in the State, and each such list shall contain the full names, address and political party designation of those voters who are newly registered, who have changed their names or who have changed their party designation, together with information showing the election district to which and from which such voters have transferred their regis-

tration, where applicable. (15 Del. C. 1953, § 305; 50 Del. Laws, c. 168, § 1; 52 Del. Laws, c. 221, § 1; 57 Del. Laws, c. 181, § 17; 57 Del. Laws, c. 567, §§ 5, 6; 58 Del. Laws, c. 215, § 4; 58 Del. Laws, c. 397, § 1.)

§ 305. Audit for duplication of names.

Within 10 days following the last registration day in each general election year, the Commissioner shall process all of the punch cards of each voter in the State to determine whether or not there is any duplication of names. In the event that duplications are found, the Commissioner shall immediately notify each department concerned, which shall undertake an investigation to determine the right of the voters concerned to be registered as prescribed in § 1704 of this title. (15 Del. C. 1953, § 306; 50 Del. Laws, c. 168, § 1.)

§ 306. Audit for names of persons who have not voted in the last 2 general elections.

Before the 15th day of April in each year in which a general election is not held, the Commissioner shall process the records of each voter in the State to determine whether or not any voters have failed to vote in the last 2 preceding general elections. The Commissioner shall, before the 1st day of May in each such year, cause to be prepared a separate list for each election district, with full names in alphabetical code order and with addresses of all voters so found, and immediately deliver such information to the department concerned, which shall undertake an investigation as prescribed in § 1704 of this title. (15 Del. C. 1953, § 307; 50 Del. Laws, c. 168, § 1; 52 Del. Laws, c. 32, § 1; 57 Del. Laws, c. 181, § 18; 57 Del. Laws, c. 567, § 7; 58 Del. Laws, c. 140, § 1; 67 Del. Laws, c. 354, § 1.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "April" for "June" in the first sentence and "May" for "July" in the second sentence.

§ 307. Supplying lists to political party chairmen and other persons.

(a) It shall be the duty of the Commissioner to make available copies of all lists referred to in §§ 304-306 of this title upon request therefor, subject to this section. Eight copies of each list shall be supplied without charge to each political party whose registered members equal at least 1% of the total number of registered voters of this State. In addition, the Commissioner shall sell copies of such lists to any duly certified candidate for a primary election or a general election in the State upon receipt of payment therefor, the charge for each list to be established by the Commissioner, but not to exceed \$5 for a

total listing of a representative district pursuant to subsection (a) of § 304 of this title or 50 cents for any other list.

(b) Provided that written request therefor is submitted at least 15 days before the date fixed by statute for preparation of the list, the lists shall be made available by the Commissioner as follows: The lists referred to in subsection (a) of § 304 of this title, no later than 7 working days after the last day for registration in the period to which the list relates, and the lists referred to in §§ 305 and 306 of this title, no later than the date for giving notice to the several departments of information contained on such lists. In all other cases, the lists requested shall be made available as soon as practicable.

(c) Requests for lists for political parties shall be submitted in writing by the state chairman of each party or by the county chairman if there is no state chairman. A request may designate other persons, not exceeding 2 in each county, to whom all, or specified portions, of the lists are to be available from the Commissioner. (15 Del. C. 1953, § 308; 57 Del. Laws, c. 181, § 19; 60 Del. Laws, c. 446, § 3; 67 Del. Laws, c. 354, § 2.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "available from" for "delivered by" in the second sentence of (c).

PART II

Registration of Voters

Cross references. — As to registration of voters, see Del. Const., art. V, § 4.

CHAPTER 11. GENERAL PROVISIONS

Sec.
1101. Permanent registration system.
1102. Supplementary registrations.

Sec.
1103. New general registration.
1104, 1105. [Repealed.]

§ 1101. Permanent registration system.

(a) During 1956 there shall be a general registration of all persons resident in this State who shall be qualified to vote in the general election held in the year 1956. The general registration shall be conducted as hereinafter prescribed and thereafter the records resulting therefrom shall be deemed to constitute a permanent registration record of all voters resident in this State entitled to vote and such permanent registration record shall be compiled, purged, supplemented and preserved in the manner prescribed in this title. Except as herein otherwise provided, a voter who registers in the general registration shall not be required to register again so long as he continues to reside in the same election district in which he is originally registered and if he is not disenfranchised for any cause prescribed in the laws of this State and if his registration is not cancelled as provided in this title.

(b) During the year 1956 there shall also be held a general registration of all persons qualified to vote at the general election to be held in such year who are temporarily absent from this State and are in the armed forces or merchant marine of the United States of America, or retainers or persons accompanying or serving therewith, or who are absent from this State because of illness or injury received while serving in any such capacity. The registration of all such persons shall be part of the permanent registration record.

(c) With respect to any elections held in this State prior to the completion of the general registration in the year 1956, the registration heretofore applicable in this State and the laws relating thereto shall apply. Commencing with the general election in the year 1956, the provisions of this chapter as to elections shall apply. (21 Del. Laws, c. 36, § 1; Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1102; 49 Del. Laws, c. 17, § 1; 50 Del. Laws, c. 169, § 1.)

Registration is method of proof to ascertain qualified electors. — Registration, within the meaning of election laws, is a method of proof prescribed for ascertaining the electors who are qualified to cast votes and is the act of making a list or catalogue or sched-

ule or register, and, when applied to voters, it is any list, or register or schedule containing names, the being on which lists, registers or schedules constitutes a prerequisite to voting. State ex rel. Morford v. Tatnall, Del. Supr., 21 A.2d 185 (1941).

§ 1102. Supplementary registrations.

(a) During the year 1958 and every 2 years thereafter and prior to the general election to be held in those years there shall be a supplementary registration of all persons resident in this State who shall be qualified to vote and whose names do not appear as qualified voters from the general registration held in 1956.

(b) During each year in which a supplementary registration is held and prior to the general election to be held in each such year there shall also be a registration of all persons qualified to vote at the general election to be held in such year who are temporarily absent from this State and are in the armed forces or merchant marine of the United States of America, or retainers or persons accompanying or serving therewith, or who are absent from this State because of illness or injury received while serving in any such capacity and whose names do not appear as qualified voters from the general registration held in 1956.

(c) The records of persons registering at supplementary registrations shall become a part of the permanent registration record the same as if they had registered at the general registration held in 1956. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1103; 49 Del. Laws, c. 17, § 2; 50 Del. Laws, c. 169, § 1.)

§ 1103. New general registration.

If the original permanent registration records of any election district are lost, destroyed, mutilated or defaced and they cannot be duplicated by photostating or photographing the duplicate permanent registration records so that the proper registration records will be available for use at an ensuing election, a new general registration, to be known as a special registration, shall be held in such election district in accordance with this title. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1104; 49 Del. Laws, c. 17, § 3; 50 Del. Laws, c. 169, § 1.)

§§ 1104, 1105. Registration dates and hours in election districts; notice of registration.

Repealed by 64 Del. Laws, c. 424, § 2, eff. Jan. 1, 1985.

CHAPTER 13. REGISTRATION BOOKS, SUPPLIES AND PLACES

Sec.	Sec.
1301. [Repealed.]	1305. Registration supplies.
1302. Same — Types; contents; filing.	1306. Registration places; designation and preparation.
1303. Transfer of names when election district divided; procedure.	1307. Expenses.
1304. Custody of registration records; public inspection.	

§ 1301. Registration records — Furnished by the Commissioner.

Repealed by 60 Del. Laws, c. 414, § 2, eff. May 22, 1976.

§ 1302. Same — Types; contents; filing.

(a) There shall be an original and duplicate permanent registration record and an application for registration or transfer for each voter, which shall be one and the same form. The application for registration or transfer and the original and duplicate permanent registration record shall contain a registration serial number, which shall be different for each voter, but the same for the 2 records of each voter. The 2 records shall be prepared in different and distinctive colors and shall be uniform throughout the State.

The original permanent registration records of all voters shall consist of loose-leaf forms which shall be properly indexed alphabetically by election district and housed in visible type loose-leaf binders with locking devices. The binder or binders for each election district shall be known as the Election District Record. The Election District Record for each election district shall at all times, between elections, remain in the office of the department.

The duplicate permanent registration records of all voters in each county shall be filed by name and properly indexed and housed in visible type files with protected edges in locked, fire-protected cabinets and shall be known as the County Master Record. The County Master Record shall at all times remain in the office of the department and shall not be removed for any reason whatsoever, except as provided by law.

The application for registration or transfer and the original and duplicate permanent registration records shall be identical in substance, printing and arrangement, except that the space for the applicant's signature or mark shall be preceded by the words "The foregoing statements are true" on the application for registration or transfer and by the words "Signature for Identification Only", on the original and duplicate permanent registration record. On all applications and registration records, the space for the applicant's signature

or mark shall be followed by space for the signature of 2 registration officers, each of a different party affiliation. In addition, space will be provided for recording the following data:

- (1) The registration serial number and the permanent registration significant number;
- (2) The applicant's surname, given names and initials of other names;
- (3) The date of application for registration or transfer;
- (4) The place of his residence, including street and number and development, if any, and also including post-office designation of the address at which the applicant claims to reside;
- (5) The election district, representative district and county in which such residence address is located;
- (6) The length of the applicant's residence (i) in this State; (ii) in the county; and (iii) in the election district, calculated to the time of the next election for which the registration will be effective;
- (7) Whether the applicant previously registered anywhere, and, if so, the name under which and address at which he then resided;
- (8) The state or county where the applicant was born and, if naturalized, the date of naturalization and before what court;
- (9) Identification of the applicant including birthdate, social security number, sex, height, color of hair and color of eyes;
- (10) The voting record of each voter for a period of not less than 20 years;
- (11) The party affiliation of the applicant or if the applicant does not choose to be affiliated with a political party, for entering the words "independent", "decline" or words equivalent thereto;
- (12) Transfers from 1 election district to another and changes of address;
- (13) Remarks.

(b) There shall be 1 or more visible, prong, loose-leaf binders with locking devices for the purpose of housing each Election District Record. Each binder shall be conspicuously labeled to indicate the election district, representative district, ward (if applicable), and county, and shall have adequate index leaves for reference purposes. The key for each binder shall be in the custody of the department and in no event shall any key be removed from the office of the department.

(c) There shall be 1 or more carrying cases for each binder, a lock and key for each carrying case and a sufficient supply of seals for each carrying case. Each carrying case shall be appropriately labeled to indicate the same contents as the binder which it houses.

(d) There shall be a voters' registration list for each election district to be completed by registration officers as prescribed in this title. (19 Del. Laws, c. 38, § 5; 19 Del. Laws, c. 39, §§ 3, 4; 21 Del. Laws, c. 35, § 3; 22 Del. Laws, c.

64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1621; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 2; Code 1935, § 1708; 43 Del. Laws, c. 121, § 2; 15 Del. C. 1953, § 1302; 50 Del. Laws, c. 169, § 2; 51 Del. Laws, c. 106; 55 Del. Laws, c. 152; 57 Del. Laws, c. 567, § 9; 60 Del. Laws, c. 414, §§ 3-5.)

§ 1303. Transfer of names when election district divided; procedure.

When the boundaries of an election district are changed, the department having jurisdiction, not later than the 1st day of March in the year in which such change is made, shall transfer the original permanent registration records of registered voters whose voting districts have been changed into the appropriate Election District Record and make the necessary notation of the transfer on each duplicate permanent registration record in the County Master Record. The Commissioner of Elections shall be notified of all changes. The registration of any voter shall not be invalidated nor shall the right of any registered voter to vote be prejudiced by any error in making transfers of the registration records. (19 Del. Laws, c. 38, § 5; 21 Del. Laws, c. 35, § 3; 22 Del. Laws, c. 64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1621; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 2; 40 Del. Laws, c. 140, § 2; Code 1935, § 1708; 43 Del. Laws, c. 121, § 2; 15 Del. C. 1953, § 1303; 50 Del. Laws, c. 169, § 2; 55 Del. Laws, c. 267; 56 Del. Laws, c. 366, § 1.)

§ 1304. Custody of registration records; public inspection.

All registration records when not in the custody of the registrars shall be and remain in the custody of the department except as otherwise provided. The registration records shall, during normal business hours of each department, be open to the inspection of anyone desiring to examine the same, without fee or reward. Anyone desiring to do so may be permitted to make copies or partial copies thereof. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1304; 49 Del. Laws, c. 17, § 6; 50 Del. Laws, c. 169, § 2; 55 Del. Laws, c. 452; 58 Del. Laws, c. 401, § 1.)

§ 1305. Registration supplies.

Each department shall prepare and furnish all necessary maps, forms, oaths, certificates, blanks and instructions for the use of registration officers, and provide for the furnishing of such officers therewith and with all necessary supplies and also a copy of the registration and election laws. They shall have and retain the custody of all records, maps, forms, oaths of office and of

removal, blanks, instructions and all other records and supplies of every kind or description pertaining to the departments. (45 Del. Laws, c. 144, § 33; 45 Del. Laws, c. 148, § 37; 45 Del. Laws, c. 149, § 37; 15 Del. C. 1953, § 1305; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 2.)

§ 1306. Registration places; designation and preparation.

(a) Each department shall designate and procure for each election district in its county a registration place, which shall also be used as the district's polling place, wherever possible. The suitability, convenience and accessibility of the registration place to the voters of the election district must be given prime consideration in its selection. This selection shall be determined according to this order of preference:

(1) Within the geographical boundaries of the election district to be served;

(2) Within the boundaries of an election district which immediately adjoins the district to be served and is in the same representative district;

(3) Within the boundaries of an election district which immediately adjoins the district to be served, but is in a different representative district, provided such designation is made by a unanimous vote of the members present at a meeting of the board of elections for the county.

(b) Each department of elections shall designate only conveniently located and readily accessible registration places for each election district. Such registration places, whenever possible, shall be located in public buildings including suitable government buildings, schools, firehouses, community buildings, churches, financial institutions, lobbies or other gathering places at least 350 square feet in size or apartment buildings or complexes consisting of 50 or more units or other similar structures. In the event that no such public building is available in a conveniently located and readily accessible place, then the board of elections, by unanimous consent, may, with the concurrence of the Election Commissioner, designate a suitable, conveniently located and readily accessible private business establishment or union hall, but in no event shall the department of elections designate a private residence as a registration place.

(c) The same public building may be designated as housing the registration place for 1, 2 or 3 election districts, in the discretion of the departments, if suitable precautions are taken to separate and identify the specific registration place within the building to be used for each election district.

(d) The registration officers of each election district shall fit out the room in the registration place.

(e) Whenever the department has designated for voter registration facilities owned or leased by agencies or subdivisions of this State, it shall be the duty of the officials of such agencies or subdivisions to make these facilities

available and to provide a suitable location, heat, lighting and other services necessary for the conduct of registration, so long as such use is not incompatible with the primary function of the agency or subdivision. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 45 Del. Laws, c. 144, §§ 10, 33; 45 Del. Laws, c. 145, § 6; 45 Del. Laws, c. 148, §§ 10, 37; 45 Del. Laws, c. 149, §§ 10, 37; 15 Del. C. 1953, § 1306; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 2; 57 Del. Laws, c. 181, § 22; 57 Del. Laws, c. 567, § 10; 58 Del. Laws, c. 148, §§ 16-18; 58 Del. Laws, c. 215, § 6; 58 Del. Laws, c. 398, § 1; 61 Del. Laws, c. 480, § 3.)

§ 1307. Expenses:

(a) The compensation of registration officers, as fixed in § 1510 of this title, shall be paid by the State in the manner prescribed in § 1511 of this title.

(b) All other costs and expenses of registration shall be paid by the State. (Code 1915, § 1630; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 7; Code 1935, § 1717; 43 Del. Laws, c. 121, § 6; 44 Del. Laws, c. 106, § 1; 45 Del. Laws, c. 145, § 6; 15 Del. C. 1953, § 1307; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 7; 50 Del. Laws, c. 169, § 2; 51 Del. Laws, c. 149, § 1; 57 Del. Laws, c. 567, § 11; 58 Del. Laws, c. 148, § 19.)

CHAPTER 15. REGISTRATION OFFICERS

Sec.

1501-1518. [Repealed.]

§§ 1501-1518. Appointment; qualifications; recommendations of political parties; terms of office; certificate of appointment; alternate registrars — appointment; powers and duties; oath of office for registration and election officers; appearance of registration and election officers for taking of oath and instruction; removal; vacancies; compensation; payment procedure; source of pay; quorum; majority action; equal representation; duties; exemptions from military duty and service as registration officer; refusal to qualify or act; penalty; vacation of office; registration officers not to be candidates; special powers of registrars during registration; duties of assistant registrars; registrar to file affidavits.

Repealed by 67 Del. Laws, c. 354, § 3, eff. July 17, 1990.

CHAPTER 17. REMOVAL PROCEDURES FOR REGISTRATION RECORDS

Subchapter I. General Provisions

Sec.

1701. Qualifications for registration as qualified voter.
1702. Removal of names by board of elections.
1703. Duty of officers to notify departments of facts suggesting voter disqualification.
1704. Determination of validity of registration; removal of names of persons disqualified to vote; cancellation of registration; and provision for reregistration.
1705. Removal of records of deceased persons from registration records.
1706. Motion to remove a name from registration records; procedure; entries in records as to such motion.
1707. Cancellation of registration between states.

Sec.

1708. Correction of clerical errors.
1709. Reregistration unnecessary upon change in election district boundary.
1710. Notice of change of election district boundary.
1711. Notice by registered or certified mail.
1712. Registration before a special election.

Subchapter II. Procedure at Registration Place

1721. [Repealed.]
1722. [Transferred.]
- 1723, 1724. [Repealed.]
1725. [Transferred.]
- 1726, 1727. [Repealed.]
1728. [Transferred.]

Subchapter III. Transfer of Registration Between Districts; Change of Address or Name

- 1741-1749. [Transferred.]

Cross references. — As to uniform laws for absentee registration, see Del. Const., art. V, § 4B.

Revisor's note. — Section 4 of 67 Del. Laws, c. 354, effective July 16, 1990, rewrote the chapter heading.

Subchapter I. General Provisions

§ 1701. Qualifications for registration as qualified voter.

Every applicant for registration shall be a qualified voter if he is a 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 election next succeeding his registration, and is a bona fide resident of this State. No person in the military, naval or marine service of the United States shall become a resident of this State by being stationed in any garrison, barrack or military or naval place or station within this State; and no idiot or insane person, person convicted of a crime deemed by law a felony, or person who shall have been rendered incapable of voting by reason of violating § 7 of Article V of the Constitution of this State for 10 years next following his conviction and sentence thereunder, shall be a qualified voter. (19 Del. Laws, c. 38, § 8; 21 Del. Laws, c. 36, § 4; 22 Del. Laws, c. 64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1627; 37 Del. Laws, c. 117, § 6;

40 Del. Laws, c. 140, § 5; Code 1935, § 1714; 44 Del. Laws, c. 105, § 1; 15 Del. C. 1953, § 1701; 52 Del. Laws, c. 197, § 1; 58 Del. Laws, c. 502, § 1.)

Cross references. — As to constitutional qualifications for voting, see Del. Const., art. V, § 2. As to residency requirements in case of intrastate removal, see Del. Const., art. V, § 2A. As to residency requirements of persons from other states, see Del. Const., art. V, § 2B.

Registration is method of proof to ascertain qualified voters. — Registration, within the meaning of election laws, is a method of proof prescribed for ascertaining the electors who are qualified to cast votes and is the act of making a list or catalogue or schedule or register, and, when applied to voters, it is any list,

or register or schedule containing names, the being on which lists, registers or schedules constitutes a prerequisite to voting. State ex rel. Morford v. Tatnall, Del. Supr., 21 A.2d 185 (1941).

Transfer of property for purpose of qualifying transferee to vote. — Votes cast by one to whom a transfer of property is made solely for the purpose of affecting the results of an election or of qualifying the transferee to vote are invalid. Kelley v. Mayor of Dover, Del. Ch., 300 A.2d 31 (1972).

§ 1702. Removal of names by board of elections.

(a) At any duly called meeting of the board of elections for each county, the board may sit to consider the removal of names from the County Master Record in cases where there is a valid reason to believe a person is no longer a duly qualified elector in the election district in which he is registered.

(b) The board shall afford the affected voter the full right to be heard at such meeting with the right of appeal in all cases, first giving notice as required by § 1711 of this title. (Code 1935, § 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 1702; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 10; 50 Del. Laws, c. 169, § 7; 58 Del. Laws, c. 148, § 25.)

Mandamus would not issue to compel a registrar to place plaintiff's name on the voting list since this section provided another

adequate remedy. Hastings v. Henry, Del. Super., 40 A. 1125 (1894).

§ 1703. Duty of officers to notify departments of facts suggesting voter disqualification.

(a) The clerk or Prothonotary of any court in this State having jurisdiction of felonies shall, when a person is convicted of a crime deemed by law a felony, notify immediately the department of the county in which the person is a resident and the State Election Commissioner. Such notification shall include a full, complete and accurate copy of the record of the name, present residence and last previous residence, date of birth, and Social Security number if available of each individual of voting age who has been convicted of a felony.

(b) All state, county and municipal agencies shall have the duty, when it comes to their attention that a person is an idiot or insane or a pauper, to notify immediately the department of the county in which the person is a resident and the State Election Commissioner. (Code 1935, § 1744; 45 Del.

Laws, c. 145, § 15; 15 Del. C. 1953, § 1703; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 11; 50 Del. Laws, c. 169, § 8; 57 Del. Laws, c. 181, § 25; 67 Del. Laws, c. 354, § 5.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "date of birth, and Social Security number if available" for "and date of birth" near the end of (a).

§ 1704. Determination of validity of registration; removal of names of persons disqualified to vote; cancellation of registration; and provision for re-registration.

Upon receiving the list specified in § 306 of this title and during the period of 10 months following each general election, the department shall send a notice, by regular mail (nothing in this title to the contrary notwithstanding), to each person appearing on the Election District Record who did not vote at the last 2 preceding general elections. Such written notice shall advise the voter of the state of the record and the fact that he is liable to have his name removed from the registration records if he does not advise the department, within 60 days of the notice being mailed, that he is still eligible to be registered as a voter at the address appearing on the Election District Record and to which the notice was mailed. Such replies by the voter shall be sent to the department on a form prepared by the department and sent to the voter with such notice. If, however, no such reply, signed by the voter, is received by the department, within 60 days after such notice is mailed by the department, then the department shall proceed to determine the eligibility of such voter to remain registered, as hereinafter provided, and, in the absence of proof of such eligibility, shall remove the name of such voter from the Election District Record. If, however, the voter returns the written notice as an application for the transfer of his registration in accordance with § 1741 of this title within 60 days after such notice is sent by the department, the department shall not proceed to determine the eligibility of such voter to remain registered as hereinafter provided.

In proceeding to determine the eligibility of such voters to remain registered, the department shall give a second notice of its intention to remove the name of each such voter from its Election District Record to all voters from which it received no reply or evidence of not residing at the address appearing on the department's records. Said second notice shall state the reason therefor, date, time and place the board will meet to hear and act upon such matter, which such notice shall be given by first-class mail directed to the voter concerned at his post-office address as same appears on the Election District Record. The notice shall be postmarked not later than 7 days next preceding the date when the board is scheduled to meet to hear and act upon such

questions. If at such meeting of the board it shall be established to the satisfaction of the board that the person in question is a duly qualified voter in the election district, then his name shall not be removed from the Election District Record; but if it shall not be so established, then the department shall remove the disqualified voter's original permanent registration record from the Election District Record and place it in a special file or binder to be known as "list of disqualified voters", and in addition thereto the department shall make an appropriate entry to indicate the voter's disqualification upon his original and duplicate permanent registration records. The department shall also notify the Commissioner who in turn shall remove from his file the tabulating punch card for the voter concerned.

A determination of disqualification to vote under this section shall not preclude the person in question from reregistering at a later date if he is otherwise qualified. (45 Del. Laws, c. 144, § 31; 45 Del. Laws, c. 148, § 34; 45 Del. Laws, c. 149, § 34; 15 Del. C. 1953, § 1704; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 12; 50 Del. Laws, c. 169, § 9; 52 Del. Laws, c. 32, § 2; 52 Del. Laws, c. 37; 55 Del. Laws, c. 257; 57 Del. Laws, c. 567, § 15; 58 Del. Laws, c. 140, § 2; 58 Del. Laws, c. 215, § 10; 60 Del. Laws, c. 136, § 1; 61 Del. Laws, c. 479, §§ 1, 2; 67 Del. Laws, c. 231, § 1.)

Effect of amendments. — 67 Del. Laws, c. 231, effective June 13, 1990 added the last sentence in the first paragraph.

§ 1705. Removal of records of deceased persons from registration records.

(a) The Registrar of Vital Statistics for this State shall furnish to the departments of election and to the Commissioner on or before the 10th day of January, April, July and October, in each year, a full, complete and accurate copy of the record of the name, residence at time of death and previous residence, and date of birth of each person 18 years of age and upward who has died in the respective counties, during the 3 calendar months then next preceding, as the facts in respect to such deaths shall be furnished to the Registrar of Vital Statistics. The departments and the Commissioner shall keep, preserve and file all copies or microfilms of such records.

(b) The department shall remove the original and duplicate permanent registration records of each deceased voter from the Election District Record and the County Master Record and place them in a special file labeled "disqualified voters." If the department so desires, it may file a microfilm copy of these records instead of the originals, which originals may then be destroyed. The Commissioner shall delete the record of the deceased voter from his files.

(c) Should the department be unable to determine from the records of the Registrar of Vital Statistics the identity of a deceased voter it shall refer the name, residence, age and such other available information to the Attorney General who shall forthwith make a full investigation and report his findings to the department. The department shall then remove the original and duplicate permanent registration records of the deceased voter as provided in subsection (b) of this section. (45 Del. Laws, c. 144, § 31; 45 Del. Laws, c. 148, § 34; 45 Del. Laws, c. 149, § 34; 15 Del. C. 1953, § 1705; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 10; 52 Del. Laws, c. 221, § 3; 57 Del. Laws, c. 181, § 26; 58 Del. Laws, c. 148, § 26; 67 Del. Laws, c. 354, § 6.)

Cross references. — As to application to strike name from voter registration list, see Del. Const., art. V, § 4.

Effect of amendments. — 67 Del. Laws, c.

354, effective July 16, 1990, substituted "18 years of age" for "21 years of age" in the first sentence of (a).

§ 1706. Motion to remove a name from registration records; procedure; entries in records as to such motion.

(a) Any person may move to remove from the registration records the records of any person who has been illegally registered as a qualified voter or who since his registration has become disqualified or for any reason has ceased to be a qualified voter in the election district in which he is registered.

(b) The person making such motion must be a qualified voter of the representative district which includes the election district wherein the person whose registration is appealed is registered.

(c) The motion may be made to the same judge who sits to hear appeals from the department in the county where the person affected by such motion is registered without such motion having previously been made to the department of the county concerned.

(d) The person making the motion shall make an affidavit that he believes he has lawful grounds for such motion and setting them forth.

(e) If the motion is made to the judge in the first instance the affidavit shall be presented to the judge at the time of making the motion, but if the motion is made first to the department, then the affidavit shall be presented at the department office no later than September 15 of each year of a general election.

(f) When the motion is made to the judge, the person making the motion shall notify the department of the county in which the person affected by such motion is registered and shall also notify the person affected by such motion, stating in the notice the time when the motion will be made to the judge.

(g) The judge before whom any such motion is made shall hear and inquire into all the grounds of the motion set forth in the affidavit.

(h) If it appears that the person against whom the motion is made was illegally registered or that since his registration he has become disqualified or that for any reason he has ceased to be a qualified voter in the election district in which he is registered, then and in any such case the judge shall order and direct the department to make the appropriate marks and entries in the registration records.

(i) The administrative director or any other agent of the department of the county in which the person is registered and against whom the motion is made shall appear at the hearing of such motion before the judge with the registration records and shall make such marks and entries therein as he shall be directed by the judge.

(j) When the motion is made first to the department, the person making such motion need not notify the person affected. Upon receipt of the motion, the department shall notify the person or persons affected, in accordance with § 1711 of this title, of the date and hour when the motion will be heard and shall also set forth the reason for the motion and the name of the person or persons making the motion. The person or persons making the motion shall also be notified, in accordance with § 1711 of this title, to appear at the date and hour when the motion is to be heard.

(k) The board of elections shall hear and examine the matter within 60 days of the filing of the motion. The board shall rule on any motion no later than 10 days prior to the last registration day. All witnesses before the board shall give sworn testimony.

(l) The board at such sitting shall examine into the matter. If upon the examination it appears that the person against whom such motion is made was illegally registered or that since his registration he has become disqualified or that for any reason he has ceased to be a qualified voter of the election district in which he is registered, then the department shall remove the voter's original permanent registration record from the Election District Record and place it in a special file or binder to be known as "list of disqualified voters", and in addition the department shall make an appropriate entry to indicate the voter's disqualification upon his duplicate permanent registration record contained in the County Master Record. The department shall also notify the Commissioner who shall remove from his files the tabulating punch card for the voter concerned. (Code 1915, § 1631; 34 Del. Laws, c. 106, § 1; Code 1935, § 1718; 43 Del. Laws, c. 121, § 7; 44 Del. Laws, c. 107, § 1; 45 Del. Laws, c. 145, § 7; 15 Del. C. 1953, § 1706; 50 Del. Laws, c. 169, § 11; 57 Del. Laws, c. 181, § 27; 58 Del. Laws, c. 148, §§ 27, 28; 58 Del. Laws, c. 215, §§ 11, 12.)

§ 1707. Cancellation of registration between states.

(a) If an elector applying for registration is already registered in another state, he shall so state this fact to the registration officer and shall sign an authorization to cancel the previous registration on a form substantially as follows:

CANCELLATION AUTHORIZED

I, hereby authorize the cancellation of my previous registration in the state of, in the county of, city, township or village of, Ward, Precinct My last registration address therein being

.....
Signature

.....
Date of Birth

.....
Present Address

(b) If such a cancellation authorization or form substantially similar is received from another state by the department of elections for a county or by the State Election Commissioner, the voter may be removed from the records of the State Election Commissioner and the proper county department of elections at a meeting of the board of elections of the county. (15 Del. C. 1953, § 1707; 57 Del. Laws, c. 181, § 29.)

§ 1708. Correction of clerical errors.

The several departments of election may by unanimous consent of those members present at any regular or special meeting correct clerical errors in the name, address, birth date or physical description on any registration record; provided, however, that there shall be representatives of the department from both major political parties at the meeting at which such correction is made. (15 Del. C. 1953, § 1708; 51 Del. Laws, c. 139, § 1; 57 Del. Laws, c. 181, § 28.)

§ 1709. Reregistration unnecessary upon change in election district boundary.

Any elector whose name appears as a registered voter in an election district affected by a change of boundary shall not be required to reregister because of the change in election districts arising from the change of boundaries. (45 Del. Laws, c. 144, § 10; 45 Del. Laws, c. 148, § 10; 45 Del. Laws, c. 149, § 10; 15 Del. C. 1953, § 1709; 57 Del. Laws, c. 181, § 30.)

§ 1710. Notice of change of election district boundary.

When the boundaries of any election district have been changed, the department of the county in which the district is located shall notify each of the affected voters by mail. (15 Del. C. 1953, § 1710; 57 Del. Laws, c. 181, § 31; 58 Del. Laws, c. 215, § 13.)

§ 1711. Notice by registered or certified mail.

In all cases where written notice is required by this chapter to be given to any person, such notice shall be deemed sufficient if sent by registered or certified mail addressed to the person to be notified at his address appearing in the County Master Record, and deposited in the mail not later than 7 days preceding the sitting of the department at which he may be notified to appear, except notice sent by first-class mail shall be sufficient for any such notice sent pursuant to § 1704 of this title. (19 Del. Laws, c. 38, § 13; 21 Del. Laws, c. 36, § 9; Code 1915, § 1633; 34 Del. Laws, c. 106, § 1; Code 1935, § 1720; 15 Del. C. 1953, § 1711; 50 Del. Laws, c. 169, § 12; 57 Del. Laws, c. 181, § 32; 58 Del. Laws, c. 215, § 14; 61 Del. Laws, c. 479, § 3.)

§ 1712. Registration before a special election.

In any special election held in this State, other than a special election to fill a vacancy occurring or existing in either House of the General Assembly while it is in session or within 20 days prior to the convening of the General Assembly in regular or special session, the registration officers of the respective election districts of this State shall sit on the third and fourth Saturdays immediately preceding the day of such special election, from 7:00 a.m. until 8:00 p.m., with an intermission from 12:00 to 1:00 at the place where the special election will be held, or at some convenient and suitable place in the town in which such election will be held, and at such sittings shall add to the registration records of their respective election districts the names of all qualified voters of the district whose names do not already appear as registered voters and who shall apply in person for registration.

Such registration officers shall follow the same procedures as in supplementary registrations.

The provisions of this chapter relative to the custody, safe keeping and delivery of the registration records shall be deemed to apply to the case of special elections as well as to general elections. (19 Del. Laws, c. 38, § 24; 21 Del. Laws, c. 36, § 27; Code 1915, § 1646; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 12; Code 1935, § 1733; 15 Del. C. 1953, § 1712; 50 Del. Laws, c. 169, § 13; 57 Del. Laws, c. 181, § 33.)

Subchapter II. Procedure at Registration Place

§ 1721. Delivery of registration records to registrars.

Repealed by 67 Del. Laws, c. 354, § 12, eff. July 16, 1990.

§ 1722. Entries by registration officers.

Transferred.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1722 to be present § 2011.

§§ 1723, 1724. Entries in election districts; admission of representative from each party and of witnesses to registration room; prohibited area.

Repealed by 67 Del. Laws, c. 354, § 12, eff. July 16, 1990.

§ 1725. Challenge for bribery; oath; effect of oath; refusal to take oath.

Transferred.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1725 to be present § 2012.

§§ 1726, 1727. Display of registration flag; certifications by registration officers as to registration entries.

Repealed by 67 Del. Laws, c. 354, § 12, eff. July 16, 1990.

§ 1728. Duties of department following registration.

Transferred.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1728 to be present § 2013.

*Subchapter III. Transfer of Registration Between Districts;
Change of Address or Name*

§§ 1741-1749.

Transferred.

Revisor's note. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of this chapter, containing §§ 1741 to 1749, as present subchapter VI of chapter 20 of this title, containing §§ 2041 to 2049.

**CHAPTER 19. REGISTRATION FOR MEMBERS OF
THE MILITARY FORCES, RELATED
ORGANIZATIONS AND THOSE
CITIZENS LIVING OUTSIDE
THE TERRITORIAL LIMITS
OF THE UNITED STATES**

Subchapter I. Registration Procedures

Sec.

1901. Additional registration at administrative offices; persons entitled to register.
1902. Auxiliary registrars; appointment; qualifications; term; compensation.
1903. Vacancies.
1904. Oath.
1905. Law applicable.
1906. Absentee registration; procedure.
1907. Absentee registration affidavit; form.
1908. Absentee registration; application for by applying for absentee ballot; mailing affidavit and records with absentee ballot.
1909. Retention of absentee registration affidavits.

**Subchapter II. Registration of Citizens
at Military Establishments**

Sec.

1921. Domicile of those in military service or government service not lost.
1922. Citizens in military service over 18 years old entitled to be registered.
1923. Auxiliary registrars; appointment; qualifications; term.
1924. Oath.
1925. Duties.
1926. Compensation.
1927. Time of visit to encampments; notice.
1928. Procedure.
1929. Return by auxiliary registrars.
1930. Action by registrars; challenge.
1931. Appeals.
1932. Disposition of records.

Cross references. — As to voting qualifications of members of the armed services of the United States stationed within the State, see

Del. Const., art. V, § 2. As to uniform laws for absentee registration, see Del. Const., art. V, § 4B.

Subchapter I. Registration Procedures

**§ 1901. Additional registration at administrative offices;
persons entitled to register.**

(a) In addition to the registration days as elsewhere provided by law, the departments of elections for New Castle, Kent and Sussex Counties shall sit each day, Saturdays, Sundays and legal holidays excepted, during the regular office hours of the department, and such other hours as the department deems necessary in the office of the department until 10 days prior to the date of any general election, for the purpose of registering every qualified elector who is a member of the armed forces of the United States of America, of the merchant marine of the United States of America, or who is serving with the American Red Cross, the Society of Friends, or the United Service Organizations, at-

tached to and serving with the armed forces of the United States of America, or who is in the government service of the United States in a foreign country, or who has received official notice of induction or acceptance into any such services or who is the spouse of any of the persons above enumerated, and whose name does not already appear as a registered voter on the registration records for his or her election district and who appears in person at the office of the department.

(b) Every person otherwise qualified who is absent from this State and is a member of the armed forces in the active service, or his spouse or dependents, or a member of the merchant marine of the United States, or his spouse or dependents, or a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or his spouse or dependents when residing with or accompanying him, or is absent from this State because of illness or injury received while serving in the armed forces of the United States may register in the election district of his permanent residence under § 1906 of this title.

(c) Registration made under this section shall become a part of the permanent registration system.

(d) Every person otherwise qualified who has either been a member of said armed forces or said merchant marine or said foreign service of the United States, or has been serving as aforesaid for at least 6 months prior to the date of the general election next succeeding his registration or else was a bona fide resident of the county in which said election district is located 6 months or more prior to such day may register. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1901; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 14; 50 Del. Laws, c. 169, §§ 30, 31; 50 Del. Laws, c. 629, §§ 1-5; 56 Del. Laws, c. 398, §§ 1-4; 58 Del. Laws, c. 215, § 42; 58 Del. Laws, c. 397, §§ 4, 5.)

§ 1902. Auxiliary registrars; appointment; qualifications; term; compensation.

(a) For the purposes of this subchapter the departments may appoint auxiliary registrars who shall be residents and voters in the county. The members of the departments and the auxiliary registrars, so appointed, shall possess all the powers and shall perform all the duties imposed upon registration officers, except they shall not be nor shall they be authorized to perform any of the duties of an election officer.

(b) Auxiliary registrars shall be equally divided between the 2 principal political parties, and shall serve at the pleasure of the department by which they were appointed.

(c) The compensation of auxiliary registrars, so appointed, shall be fixed by the appointing department and shall be paid by the State. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1902; 51 Del. Laws, c. 149, § 2.)

§ 1903. Vacancies.

If any vacancy occurs among the auxiliary registrars, such vacancy shall be filled by the appointment of some capable person who shall have the same qualifications, possess the same powers and be qualified in the same manner as the original appointee. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1903.)

§ 1904. Oath.

Before entering upon their duties as registration officers, the members of the department and the auxiliary registrars shall take and subscribe to the oath or affirmation as prescribed for other registration officers. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1904; 49 Del. Laws, c. 4, § 5.)

§ 1905. Law applicable.

All the provisions relating to registration of voters in general, as provided by law, shall apply as far as pertinent to this subchapter. (45 Del. Laws, c. 144, § 32; 45 Del. Laws, c. 148, § 36; 45 Del. Laws, c. 149, § 36; 15 Del. C. 1953, § 1905.)

§ 1906. Absentee registration; procedure.

(a) Any person meeting the tests laid down in § 1901(b) of this title may register as an absentee by applying in writing to the department for an absentee registration affidavit at any time up to, but not after, 30 days before the general election is to be held and by returning such affidavit to the said department no later than 10 days prior to election day. The application for such affidavit must be received by the department no later than 30 days prior to election day.

(b) The absentee registration affidavit shall be in the form set forth in § 1907 of this title and shall be made before any commissioned officer in the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the Secretary of Commerce, the head of any department or agency of the United States, any civilian official empowered by the state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the

United States, or, in the absence of one of the above, may be self-administered and sworn to, under penalty of perjury. It shall be returned, duly authenticated as above, in an envelope addressed to the department of the county in which the affiant claims to be a resident.

(c) The department, on request made in writing therefor, shall forthwith mail to the person applying for absentee registration the necessary blank forms of the absentee registration affidavit in duplicate, an application for registration and an original and duplicate permanent registration record with instructions as to the manner of completing the records. The affiant may retain the duplicate copy of the affidavit. Upon receipt of the affidavit and records by the department within the time permitted herein, the department shall treat them in the same manner as in the case of other registrations except that 2 members of the department, of opposite political parties, shall perform the same duties with respect thereto as would registration officers for registrations held in election districts. (15 Del. C. 1953, § 1906; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 17, § 15; 50 Del. Laws, c. 169, § 32; 58 Del. Laws, c. 215, § 43; 58 Del. Laws, c. 397, § 6; 65 Del. Laws, c. 455, § 9.)

§ 1907. Absentee registration affidavit; form.

(a) The absentee registration affidavit shall be in substantially the following form and contain the information requested in such form:

STATE OF DELAWARE }
COUNTY OF } ss.

I,, do solemnly swear (or affirm) that I am a resident of theelection district of the representative district in the county of, State of Delaware, and am entitled to register as a qualified voter in the general election to be held in said district during the year in which this affidavit is dated, that I am absent from the State of Delaware and do not expect to be present in the State of Delaware at any time from the date of this affidavit until 10 days before the date of such general election, that I am absent because:

- I am a member of the armed forces of the United States of America;
- I am a member of the merchant marine of the United States of America;
- I am the spouse or dependent of a person in one of the above categories;
- I am suffering from an illness or injury received while serving in any of the foregoing capacities;
- I am a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia;
- I am a spouse or dependent of the immediately preceding category who is residing with or accompanying said citizen, that I was a resident of the said election district at the commencement of my aforesaid membership (or ser-

vice), and that the information concerning me that I have noted upon the application for registration is true and correct.

Signed

Subscribed and sworn to (or affirmed) before me this day of, A. D. 19.....

.....
Commissioned officer, notary public or
other specified person (state title).

(b) Any person who meets the tests laid down in § 1901(b) of this title may subscribe to a self-administered oath, under penalty of perjury, in the absence of any of those authorized to execute the affidavit under the provisions of § 1906(b) of this title. (15 Del. C. 1953, § 1907; 49 Del. Laws, c. 17, § 15; 50 Del. Laws, c. 169, § 33; 50 Del. Laws, c. 629, § 6; 56 Del. Laws, c. 398, § 5; 58 Del. Laws, c. 397, § 7; 65 Del. Laws, c. 455, § 10.)

§ 1908. Absentee registration; application for by applying for absentee ballot; mailing affidavit and records with absentee ballot.

Whenever any person who is not a registered elector for the year in which a general election is to be held but who meets the tests laid down in § 1901(b) of this title shall apply in writing to the department of the county of which he claims to be a resident for an absentee ballot, within the time provided therefor by the laws of this State, the department shall mail to the applicant, along with the absentee ballot, envelopes and instructions, the necessary blank forms for absentee registration, as set forth in § 1906 of this title, to be executed and returned by the applicant as provided in this chapter.

If the absentee registration affidavit and records are properly executed, authenticated and returned as provided in this chapter and if the information contained therein shows that the applicant is otherwise qualified to vote under the laws of this State, the applicant shall be deemed a qualified voter duly registered to vote to the same extent and with the same effect as if he had followed 1 of the other authorized methods of registration, and the department shall record proper entries in the registration records showing that the applicant is duly registered to vote.

If the applicant is registered under this section, his absentee ballot, if it and the necessary affidavits and envelopes in connection therewith are properly executed and returned in accordance with the laws of this State, shall be counted as every other valid and proper absentee ballot under the laws of this State.

If the department determines from the absentee registration affidavit or records that the applicant is not an otherwise qualified voter under the laws of this State or that the affidavit is not sufficiently executed, it shall mark

"rejected" on the affidavit and application for registration and write thereon the reasons therefor and shall not record or enter the applicant as a duly registered elector and shall not count his or her absentee ballot. (15 Del. C. 1953, § 1908; 49 Del. Laws, c. 17, § 15; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 34.)

§ 1909. Retention of absentee registration affidavits.

All absentee registration affidavits and records received by the department shall be retained by it as part of its records. (15 Del. C. 1953, § 1909; 49 Del. Laws, c. 17, § 15; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 35.)

Subchapter II. Registration of Citizens at Military Establishments

§ 1921. Domicile of those in military service or government service not lost.

(a) Every person enlisted in any military organization of this State or the United States who prior to enlistment was a resident of any election district of this State shall not lose his domicile in such election district by reason of such enlistment.

(b) Every person employed in any government service of the United States in a foreign country who prior to such employment was a resident of any election district in this State shall not lose his domicile in such election district by reason of such employment.

(c) As used in this chapter the term "government service" shall include, but shall not be limited to, the Peace Corps. (21 Del. Laws, c. 37, § 1; Code 1915, § 1647; 34 Del. Laws, c. 106, § 1; Code 1935, § 1734; 15 Del. C. 1953, § 1921; 56 Del. Laws, c. 398, § 6.)

§ 1922. Citizens in military service over 18 years old entitled to be registered.

Every citizen of this State of the age of 18 years and upwards who is enlisted or engaged in any government service of the United States or any military organization of this State or the United States shall be entitled to have his name registered as a voter in the election district in which he resided prior to his enlistment, to the same extent as if he had remained continuously present in such election district during the period of his enlistment. (21 Del. Laws, c. 37, § 2; Code 1915, § 1648; 34 Del. Laws, c. 106, § 1; Code 1935, § 1735; 15 Del. C. 1953, § 1922; 56 Del. Laws, c. 398, § 7; 60 Del. Laws, c. 414, § 6.)

§ 1923. Auxiliary registrars; appointment; qualifications; term.

The Governor of this State may appoint as many qualified citizens of this State as auxiliary registrars of voters as he may deem necessary for the purpose prescribed in § 1925 of this title.

The terms of office of the auxiliary registrars shall be 1 year from the date of appointment.

The Governor shall issue a commission to each person appointed by him as auxiliary registrar.

In appointing auxiliary registrars, the Governor shall appoint the same number from each of the 2 principal political parties of this State. (21 Del. Laws, c. 37, § 3; Code 1915, § 1649; 34 Del. Laws, c. 106, § 1; Code 1935, § 1736; 45 Del. Laws, c. 145, § 12; 15 Del. C. 1953, § 1923.)

§ 1924. Oath.

Each person appointed auxiliary registrar under § 1923 of this title shall before entering upon his duties and within 10 days after receiving notice of his appointment take and subscribe before the clerk of the peace of the county in which he resides the oath prescribed by the Constitution for other state officers.

The clerk of the peace of the county may administer the oath but no fee shall be charged therefor. (Code 1935, § 1736; 45 Del. Laws, c. 145, § 12; 15 Del. C. 1953, § 1924.)

§ 1925. Duties.

(a) The auxiliary registrars, by direction of the Governor, shall visit, sometime before the last Saturday in September in any year in which a general election is held in this State, the military encampments in this State or elsewhere in the United States wherein citizens of this State shall be engaged in military duty, for the purpose of registering, as provided in this chapter, such citizens as voters of the election in which they are entitled to be registered, as designated in this chapter.

(b) The auxiliary registrars shall work and travel in boards of 2, 1 from each political party. (21 Del. Laws, c. 37, § 3; Code 1915, § 1649; 34 Del. Laws, c. 106, § 1; Code 1935, § 1736; 45 Del. Laws, c. 145, § 12; 15 Del. C. 1953, § 1925.)

§ 1926. Compensation.

The auxiliary registration officers provided for by this subchapter shall receive such compensation per day as is allowed to registrars sitting in the various districts of this State, and they shall be allowed and paid by the State Treasurer such an amount for traveling expenses as shall be approved by the State Auditor upon vouchers presented to him. (21 Del. Laws, c. 37, § 11; Code 1915, § 1655; 34 Del. Laws, c. 106, § 1; Code 1935, § 1742; 15 Del. C. 1953, § 1926.)

§ 1927. Time of visit to encampments; notice.

The auxiliary registrars shall notify the encampments of the time they will visit them for the purpose of registering voters and they shall sit for registering during such hours of the day as shall be arranged to suit the convenience of the military organization. (21 Del. Laws, c. 37, § 5; Code 1915, § 1650; 34 Del. Laws, c. 106, § 1; Code 1935, § 1737; 15 Del. C. 1953, § 1927.)

§ 1928. Procedure.

The auxiliary registrars shall register all persons in the same manner as registrations in election districts. (21 Del. Laws, c. 37, §§ 6, 7; Code 1915, §§ 1651, 1652; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1738, 1739; 15 Del. C. 1953, § 1928; 50 Del. Laws, c. 169, § 36.)

§ 1929. Return by auxiliary registrars.

Upon completion of the registrations, the auxiliary registrars shall forward by registered mail, or personally deliver, to the registrar of each election district affected the registration records of all persons who applied to be registered as voters in such election district so that the records will be received by the registrar prior to the second Saturday of September in the year of a general election. (21 Del. Laws, c. 37, § 8; Code 1915, § 1653; 34 Del. Laws, c. 106, § 1; Code 1935, § 1740; 15 Del. C. 1953, § 1929; 50 Del. Laws, c. 169, § 37.)

§ 1930. Action by registrars; challenge.

The registrars of the respective election districts of this State who shall receive any such records from any auxiliary registrars shall open such records during the first hour of the next succeeding meeting of the officers of registration. Then the registrar shall, in a clear and distinct voice audible to those in the room, read the name of each person so returned by the auxiliary registrars for registration. Any registration officer or any qualified voter of the election

district may challenge the right to be registered of any person whose name appears on the records and the question shall be determined by the registration officers. If their determination is against the right of any person to be registered whose name appears on the records they shall make the same marks and entries on the application for registration of the person concerned as they would make for other persons disqualified to register. (21 Del. Laws, c. 37, § 9; Code 1915, § 1654; 34 Del. Laws, c. 106, § 1; Code 1935, § 1741; 15 Del. C. 1953, § 1930; 50 Del. Laws, c. 169, § 38.)

§ 1931. Appeals.

From the action of the registration officers in registering or refusing to register any name from the records, any registration officer or any qualified voter in the election district may appeal for or against the person affected. The provisions of this part relative to appeals shall apply to those taken under this section except notice to the person affected may not be required by the judge hearing the appeal and the appeal for or against any citizen absent in the military service may be prosecuted as effectually as if such absentee were present in person. (21 Del. Laws, c. 37, § 9; Code 1915, § 1654; 34 Del. Laws, c. 106, § 1; Code 1935, § 1741; 15 Del. C. 1953, § 1931; 50 Del. Laws, c. 169, § 39.)

§ 1932. Disposition of records.

In all cases, the registrars shall forward the records to the department and follow the same procedure as in the case of other registrations. (Code 1915, § 1654; 34 Del. Laws, c. 106, § 1; Code 1935, § 1741; 15 Del. C. 1953, § 1932; 50 Del. Laws, c. 169, § 40.)

ELECTION LAWS

CHAPTER 20. OFFICE AND MOBILE REGISTRATION; REGISTRATION BY MAIL

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- 2048. Change of name; new registration required.
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Revisor's note. — Section 16 of 67 Del. Laws, c. 354, effective July 16, 1990, substi-

tuted "Office" for "Central" in the chapter heading.

Subchapter I. Registration Officers; Office Registration

Revision of subchapter. — Section 19 of 67 Del. Laws, c. 354, effective July 16, 1990, repealed and reenacted this subchapter, substi-

tuting present §§ 2001 to 2006 for former § 2001.

§ 2001. Appointment.

The department shall appoint as registration officers a sufficient number of registered voters to conduct registration in the department's central office. (67 Del. Laws, c. 354, § 19.)

§ 2002. Appearance of registration officers for taking of oath and instruction.

Each person appointed under § 2001 of this title shall appear before the department to qualify by taking and subscribing to the prescribed oath (or affirmation) and to receive suitable instruction after due notice from the department, which shall be given at least 7 days before the times appointed for the appearance of the registration officers. No person shall be excused from the obligation unless he shall have become disqualified by sickness, disability or otherwise. (67 Del. Laws, c. 354, § 19.)

§ 2003. Oath of office for registration officers.

(a) Each person appointed under § 2001 of this title shall take and subscribe before the department before beginning his duties the following oath (or affirmation):

I, _____, residing in _____ election district of the representative district in _____ county, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of registration officer in _____ county, according to the best of my ability.

(b) Any board of elections member, administrative director, deputy administrative director or other authorized agent of the department may administer this oath (or affirmation). (67 Del. Laws, c. 354, § 19.)

§ 2004. Certificate of appointment.

Each department shall deliver a certificate of appointment to whomsoever it shall appoint and who shall be sworn into office as registration officers. Such certificate shall be in such form as shall be prescribed by the department and shall include the date of the expiration of his term of office. (67 Del. Laws, c. 354, § 19.)

§ 2005. Vacancies.

If any vacancy occurs in the office of the registration officer before the expiration of the full term, from any cause whatsoever, the department shall appoint some suitable person to fill such vacancy who shall serve for the residue of such unexpired term who shall possess the same qualifications and be qualified in the same manner and who shall possess the same powers and perform the same duties as the original appointee. (67 Del. Laws, c. 354, § 19.)

§ 2006. Special powers of registration officers during registration.

Each of the registration officers shall, in addition to the other powers conferred upon him by law, have, during the respective times of the appointed sittings for registration, the power to:

- (1) Preserve order and enforce obedience to his lawful commands at or around the place of registration;
- (2) Keep access to such place open and unobstructed;
- (3) Protect and keep safe the registration records while in his and the assistant registration officer's custody and possession;
- (4) Administer oaths or affirmations. (67 Del. Laws, c. 354, § 19.)

Subchapter II. Procedure at Registration Place

Revisor's note. — Section 17 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter II of this chapter, con-

taining former §§ 2002 to 2006, as present subchapter III of this chapter, containing §§ 2021 to 2025.

§ 2011. Entries by registration officers.

(a) When a person appears at a registration place for the purpose of applying to register as a voter, a registration officer shall obtain from him the necessary information to complete an application for registration. All recording shall be done by typewriting, or by printing in longhand in black or blue-black ink.

(b) After the application for registration has been fully completed, 2 registration officers, 1 from each political party, shall both inspect the application for completeness, eligibility and legibility and such additions or corrections as may be necessary shall be made in the presence of the applicant. The applicant shall then submit for inspection by such registration officers proof as to identity and residence as shown on the application. If the 2 registration officers are both satisfied that the applicant is eligible and has established his identity and that the application is complete and legible, the applicant shall

sign the application and the 2 registration officers, 1 from each principal political party, shall then sign their names in the blanks provided for that purpose on the application.

(c) If unable to sign, the applicant shall make his mark on the application for registration and the original and duplicate permit registration records initialed by the registration officers. If the applicant is unable to sign or make his mark because of physical disability, the registration officers shall indicate the fact in the space provided for the signature of the applicant upon the registration records, and they shall sign the application for registration and initial the original and duplicate permanent registration records the same as in other cases.

(d) The registration officers shall attach the application for registration, signed or marked by the applicant, to the original and duplicate permanent registration forms signed or marked by the applicant.

(e) The registration officers shall record the name and address of each applicant upon a separate list of registered voters in the order in which they appear at the registration place to be registered.

(f) At the end of the registration day, the registration officer shall deliver to the department all of the sets of registration records supplied by the department along with the list of all transactions. (19 Del. Laws, c. 38, § 8; 21 Del. Laws, c. 36, § 4; 22 Del. Laws, c. 64, §§ 1, 2; 24 Del. Laws, c. 66; Code 1915, § 1627; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 6; 40 Del. Laws, c. 140, § 5; Code 1935, § 1714; 44 Del. Laws, c. 105, § 1; 15 Del. C. 1953, § 1722; 50 Del. Laws, c. 169, § 15; 57 Del. Laws, c. 181, § 35; 67 Del. Laws, c. 354, §§ 7, 12.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1722 as present § 2011, deleted the former introductory language of (a), former (a)(3),

(a)(5) and (b) and redesignated former (a)(1), (a)(2), and (a)(4) as present (a), (b) and (d); inserted present (c) and added present (e) and (f).

§ 2012. Challenge for bribery; oath; effect of oath; refusal to take oath.

If upon the personal application of anyone to be registered, he shall be challenged for having received or accepted, or for having offered to receive or accept, or for having paid, transferred or delivered, or for having offered or promised to pay, transfer or deliver, or for having contributed or offered or promised to contribute to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of anyone qualified to register, the registration officer shall administer to the person so challenged an oath or affirmation, as follows:

"You do solemnly swear upon the Holy Evangelists of Almighty God (or "You do solemnly, sincerely and truly declare and affirm") that you have not received or accepted or offered to receive or accept, or paid, transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed or offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of anyone qualified to register at the registration for this present year, so help you God" (or "so you do solemnly, sincerely and truly declare and affirm").

Such oaths or affirmations shall be conclusive evidence to the registration officers of the truth of such oath or affirmation, but if any such oath or affirmation is false, the person making the same shall be guilty of perjury, and no conviction thereof shall bar any prosecution under § 8 of Article V of the Constitution. If any person so challenged refuses to make the oath or affirmation prescribed in this section, the registration officers shall enter the words "refused to make oath concerning bribery" in the appropriate space in the applicant's application for registration and the department shall place the original permanent registration record of the applicant in the special file or binder known as the "list of disqualified voters." (21 Del. Laws, c. 36, § 5; Code 1915, § 1628; 34 Del. Laws, c. 106, § 1; 35 Del. Laws, c. 82, § 1; Code 1935, § 1715; 15 Del. C. 1953, § 1725; 50 Del. Laws, c. 169, § 17; 67 Del. Laws, c. 354, §§ 11, 12.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1725 as present § 2012, substituted

"registration officer" for "registrar" near the end of the introductory language of the first paragraph.

§ 2013. Duties of department following registration.

(a) After the registration officer delivers the registration records to the department following each registration day, the department shall first check the record by the registration number of the registration records furnished to the election district to ascertain whether all the records supplied have been returned to the department. If the department is satisfied that all records have been returned, it shall file and retain the records for not less than 1 year. If all the records have not been returned, the department shall notify the Attorney General, who may take appropriate action.

(b) The department shall then take the applications for registration which have been completed, and signed or marked by the applicant and the registration officers, and examine them for completeness, legibility and eligibility. If the department does not complete the registration of an applicant, it shall enter the reason upon the appropriate spaces in the original and duplicate permanent registration records and notify the applicant by first class mail,

immediately of its action. If the department is satisfied that the application is complete and legible and that the applicant's name does not appear on the list of disqualified voters and that the applicant is qualified to be registered, the department shall cause the information contained on the application for registration to be typed or written upon the original permanent registration record and the duplicate permanent registration record, making the latter the carbon copy.

(c) The department shall then assign and mark upon the original and duplicate permanent registration record and the application for registration a permanent significant registration number according to the system established by the Commissioner.

(d) The department shall then ascertain whether the original and duplicate permanent registration records conform to the application for registration and, if satisfied that the data on all 3 records is identical, a person authorized by the department shall stamp his name on the application for registration to indicate that it has been approved and verified by the department, and the department shall then forward it to the Commissioner. The department shall then file the original permanent registration record in the appropriate Election District Record, and file the duplicate permanent registration record in the County Master Record. (15 Del. C. 1953, § 1729; 50 Del. Laws, c. 169, § 19; 57 Del. Laws, c. 181, § 36; 67 Del. Laws, c. 354, §§ 8-12.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 1728 as present § 2013; in (a), substituted "registration officer" for "registrar" and deleted "inventory" preceding "record by the registration number" in the first sentence, and

substituted "retain the records" for "retain the inventory" in the second sentence; in (b), substituted "first class mail" for "registered mail" in the second sentence and substituted "typed or written" for "typewritten" in the last sentence.

Subchapter III. Mobile Registration

Revisor's note. — Section 17 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter II of this chapter, containing former §§ 2002 to 2006, as present subchapter III of this chapter, containing §§ 2021 to 2025.

Section 18 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of this chapter, containing former §§ 2012 to 2015, to be present subchapter IV of this chapter, containing §§ 2031 to 2034.

§ 2021. Conduct of mobile registration.

(a) The department for each county shall conduct mobile registration throughout its county on a regularly scheduled year-round basis; provided, however, that during an election year, mobile registration shall not take place after the second Saturday in October and shall recommence on the Saturday after election day.

During the days and hours set for mobile registration, each department shall cause its traveling registration officers to sit either in mobile units or in other convenient public locations including, but not limited to, public gathering places, shopping centers, public and community buildings and other places easily accessible to the public. Each department shall distribute the services of its traveling registration officers as equitably as possible throughout its county, so as to make mobile registration readily available to residents of all portions of its county. It shall regularly give due public notice of the visits of these traveling registration officers and shall so schedule their visits that the officers shall sit in each senatorial district of the county during the 30 days immediately preceding the last day for voter registration.

In scheduling the locations of mobile registration, each department shall consider those locations requested by any well-established community organization which has demonstrated a concern with increasing the number of registered voters.

(b) Whoever knowingly causes or attempts to cause the registration of any person who is disqualified as a voter, the registration of any person under a fictitious name or any other fraudulent conduct concerning the registration of voters under this section, shall be guilty of a misdemeanor. Upon conviction a person may be sentenced to a period of incarceration for 2 years, a \$5,000 fine or both. The Board is empowered to enforce this section. Jurisdiction for offenses of this section shall be in Superior Court. (15 Del. C. 1953, § 2002; 58 Del. Laws, c. 215, § 16; 60 Del. Laws, c. 396, § 2; 64 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 354, § 17.)

§ 2022. Traveling registration officers; duties; qualifications; compensation; term of office.

The traveling registration officers shall have all the powers and duties vested in registration officers by this title, consistent with this subchapter. Traveling registration officers shall subscribe to the oath required of other registration officers, and they shall be suitably instructed. Their compensation shall be fixed by the department appointing them, and they shall serve at its pleasure. (15 Del. C. 1953, § 2003; 58 Del. Laws, c. 215, § 16; 67 Del. Laws, c. 354, § 17.)

§ 2023. Performance of duties by traveling registration officers.

Traveling registration officers shall conduct their duties in units of 2 or more officers, there being 1 officer appointed from each of the 2 principal political parties present at all times. Registration of qualified electors who

appear before these officers shall be conducted in the same manner and under the same provisions of this title as in the several election districts, with right of appeal and challenge in all cases. (15 Del. C. 1953, § 2004; 58 Del. Laws, c. 215, § 16; 67 Del. Laws, c. 354, § 17.)

§ 2024. Appointment of traveling registration officers.

The department for each county shall appoint traveling registration officers for its county no later than February of each general election year, or 1 week prior to the first day designated for mobile registration, whichever is sooner. Such officers shall be qualified electors of the county from which appointed and shall be equally divided between the 2 principal political parties. The county executive committee of each of these 2 parties, within 30 days after written request by the department of elections, shall furnish the department a list of 5 names of properly qualified persons for each position to be filled. The department shall make its appointments from among those named on these lists. If the lists are not furnished or if the number of qualified persons named on the lists is insufficient, the department shall appoint some suitable elector or electors of the required political affiliation to fill the vacancies. (15 Del. C. 1953, § 2005; 58 Del. Laws, c. 215, § 16; 67 Del. Laws, c. 354, § 17.)

§ 2025. Intercounty registration.

Persons qualified to register to vote may do so at the department of elections in any county, or at any mobile registration site, regardless of the county of their actual residence. If a person applies for registration outside the county of his or her residence, the department for the county in which the application is made shall forward the application to the department for the county in which the applicant resides for approval. Registration under this section shall not be deemed valid until approved by the department of elections in the county in which the applicant resides. (64 Del. Laws, c. 332, § 2; 67 Del. Laws, c. 354, § 17.)

Subchapter IV. Registration by Mail

Revisor's note. — Section 18 of 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of this chapter,

containing former §§ 2012 to 2015, to be present subchapter IV of this chapter, containing §§ 2031 to 2034.

§ 2031. Procedure for registration by mail.

(a) Every qualified elector who is a resident of this State and who is not registered may, as an alternative to other methods of registration, apply to the department of elections for the county in which he resides by mail, telephone or in person, for registration forms. Within 3 days, the department shall mail the required forms and a set of instructions to the applicant. The completed application shall be returned to the department of elections no later than October 1 of an election year and no returned registration forms shall be accepted by mail if postmarked later than that date.

(b) If a person applies for registration by mail for someone other than himself, he shall give the name and address of such person and shall sign an appropriate form declaring he is requesting such registration forms be mailed to the applicant.

(c) The department shall perform the same duties in regard to these registration forms as it is required to do with other applications for voter registration. Two department employees, of opposite political parties, shall examine, approve and sign each form. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

§ 2032. Duties of department following receipt of mail registration forms.

(a) Upon receipt, all mail registration forms shall be date-stamped by the department.

(b) A verification inquiry shall be conducted where:

- (1) The applicant has neglected to sign the form;
- (2) Information given on the form is incomplete;
- (3) Information appears unclear or inconsistent; or
- (4) The application appears to be a duplicate.

(c) If the information on the mail registration form appears to be a transfer of address, change of name by marriage or otherwise, or party affiliation change, the change shall be made by the department and the applicant shall be notified such change was made. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

§ 2033. Notification of registration.

(a) Upon receipt by the department of a registration by mail form and upon the completion of any necessary inquiry and verification process, each applicant determined to be qualified to vote shall be mailed a voter notification form by nonforwardable first-class mail.

(b) If the notification form is returned as undelivered, a second mailing shall be attempted.

(c) Registration shall not be considered valid until the voter notification form is deemed to have been received by the applicant by mail. If the notification form is not returned as undelivered within 5 days of the day of mailing by the department, it shall be deemed to have been received by the applicant and the department shall proceed to process the application in the method provided elsewhere in this title.

(d) The form may include the name, address of the voter, date of registration, party affiliation and the election and representative district in which his (or her) residence is located.

(e) The registration records of persons registering by mail, after completion, shall become a part of the permanent registration system. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

§ 2034. Rejection of mail registration.

Each applicant for registration by mail whose application is rejected shall be promptly notified in writing of such rejection and of the specific reason or reasons for such rejection. (60 Del. Laws, c. 392, § 2; 67 Del. Laws, c. 354, § 18.)

Subchapter VI. Transfer of Registration Between Districts; Change of Address or Name

Revisor's note. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former subchapter III of Chapter 17 of this title, containing §§ 1741 to 1749, to be present subchapter VI of this chapter, containing §§ 2041 to 2049.

§ 2041. Transfer of registration upon moving from 1 election district to another within a county; procedure; application.

(a) Any duly registered voter in this State who has moved to a new residence in the same county may apply for the transfer of his registration records to his new election district in the manner following:

(1) Such registered voter may apply in writing or in person or by telephone on any regular business day, except during the period from the third Saturday in October of a general election year through election day, to the department for the county in which he resides, for an application form to be provided by the department.

(2) Such registered voter may apply to the designated registration place in his new election district whenever registrations are therein being taken.

(3) Such registered voter may apply by placing his new address on, signing and returning the written notice received pursuant to § 1704 of this title to the department.

(b) Upon receipt of a duly signed application, the department shall cause the signature thereon to be compared with the original registration records of the applicant and if such signature appears to be the same as the original, the change shall be noted on the original and duplicate registration records of the voter and the voter's records transferred to the proper book for the registered voter's new election district. If the department is not satisfied that such signature appears to be the same as the original signature, the voter shall be noticed to appear in the office of the department to answer under oath such questions as may be deemed necessary. If the voter fails to appear as noticed, no such transfer shall be made. If it shall be determined that the applicant had not previously registered, his application shall be treated as an application for registration.

(c) If a person makes application for someone other than himself, he shall give the name and address of such registered voter for whom application is made and shall sign an appropriate form declaring that he is requesting that a transfer form be forwarded to the registered voter. It shall be the duty of the department of the county in which the registrant resides to mail to him a form to be completed and returned to the department. Upon receipt of the executed form, the signature thereon shall be compared with the original signature. If the department is satisfied that the signature appears to be the same as the original signature, the department shall make the change of address on all records, shall transfer the voter's records to the new district, and shall notify the registrant within 10 days of the change. If the department is not satisfied that such signature appears to be the same as the original signature, the voter shall be noticed to appear in the office of the department to answer under oath such questions as may be deemed necessary. If the voter fails to appear as noticed, no such transfer shall be made. (19 Del. Laws, c. 38, § 11; 21 Del. Laws, c. 36, § 8; Code 1915, § 1632; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1741; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 21; 51 Del. Laws, c. 139, § 2; 52 Del. Laws, c. 10, § 3; 55 Del. Laws, c. 78, § 1; 57 Del. Laws, c. 567, § 18A; 58 Del. Laws, c. 148, § 31; 67 Del. Laws, c. 231, §§ 2, 15.)

Effect of amendments. — 67 Del. Laws, c. 231, effective June 13, 1990 added (a)(3).

§ 2042. Transfer of registration upon moving from 1 county to another.

(a) If any person, having been previously registered in any election district in this State, shall by his or her removal therefrom have attained a legal residence, as required by the Constitution of this State, in any other county of this State, such person must register anew as a qualified voter in such other county and authorize the transfer of the previous registration information, including their voting record, to the new address. Such application for registration may be filed with the registration officers for the election district in which the person applying for registration shall then reside or with the department for the county in which the applicant shall then reside. Applications shall be made at such time or times as the registration officers or department shall set for the purpose of registration.

(b) Upon the receipt of such application for registration, the department shall within 3 days thereafter mail a copy of the application to the department for the county wherein the applicant formerly resided, and such department, upon receipt of such application, shall cause the registration record of such applicant to be removed from the registration records for the election district in which he formerly resided and sent to the department for the county in which he is presently residing within 3 business days.

(c) [Repealed]. (Code 1915, § 1632; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1742; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 2; 55 Del. Laws, c. 78, § 2; 58 Del. Laws, c. 215, § 15; 60 Del. Laws, c. 200, § 1; 65 Del. Laws, c. 471, §§ 2, 3; 67 Del. Laws, c. 354, §§ 13, 15.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, inserted "anew" following "such person must register" in the first sentence of (a).

§ 2043. No transfer to be made without an application.

No person shall knowingly enter the name of any elector in the registration records who is registered in any other election district in this State unless such person has first made, signed and filed an application for transfer of registration, as in this chapter provided. (19 Del. Laws, c. 38, § 11; 21 Del. Laws, c. 36, § 8; Code 1915, § 1632; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1744; 50 Del. Laws, c. 169, § 25; 67 Del. Laws, c. 354, § 15.)

§ 2044. Examination under oath and registration.

All persons who shall apply at the office of the department of elections for transfer of registration may be examined under oath or affirmation as to their name, age, address and qualifications as a voter and right as such to register and vote in the election district in which they claim residence. If satisfied upon such examination that the person applying for transfer is in fact qualified to register and vote in such election district, such person shall be registered by the registration officers or such other person qualified to make registrations in accordance with § 1722 of this title. (Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1745; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 26; 67 Del. Laws, c. 354, § 15.)

§ 2045. Removal of voter's records of district where voter formerly resided; notice of action taken.

Upon acceptance of an application for transfer of registration at their office, or upon receipt of an application for transfer of registration from registration officers, the department of elections or a person authorized by the department shall examine the Election District Record for the election district where the applicant formerly resided, shall remove the applicant's original permanent registration record therefrom and, after noting the change of address thereon, shall file it in the Election District Record of the election district in which the applicant presently resides, and shall also make an appropriate notation of the transfer and change of address upon the applicant's duplicate permanent registration record in the County Master Record. The department shall notify the Commissioner of the transfer and change of address. (19 Del. Laws, c. 38, § 11; 21 Del. Laws, c. 36, § 8; Code 1915, § 1632; 34 Del. Laws, c. 106, § 1; 37 Del. Laws, c. 117, § 9; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1746; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 27; 52 Del. Laws, c. 15, § 2; 67 Del. Laws, c. 354, §§ 14, 15.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, deleted "and the Commissioner shall cause a new punch card to be made for the applicant and file it in the proper place" following "change of address" in the last sentence.

§ 2046. Notice by first-class mail sufficient.

In all cases where this subchapter requires written notice to be given to any person, such notice shall be deemed sufficient if sent by first-class mail addressed to the person to be notified at the post-office address named by him at the time of his application for registration. (Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1748; 67 Del. Laws, c. 354, § 15.)

§ 2047. Notice required upon change of address within a district.

Change of address or residence within the same election district shall not disqualify any person as a voter in such election district; however, such person shall be required, not later than the last registration day preceding the next election, to notify personally the department having custody of the registration records of such changes of address or residence in his county. If such change of address takes place during a period when such change of address cannot be made in the Election District Records, such voter shall, upon proper identification, be permitted to vote if he is otherwise qualified. (Code 1915, § 1632; 40 Del. Laws, c. 140, § 6; Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1749; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 169, § 29; 67 Del. Laws, c. 354, § 15.)

§ 2048. Change of name; new registration required.

Any registered voter who changes his or her name by marriage or otherwise, shall be required to change their registration to their new name and authorize the transfer of the previous registration information, including their voting record, to the new name. If the change of name takes place within a period during which new registrations cannot be made, the elector shall be permitted to vote at the next succeeding election, if otherwise qualified. (Code 1935, § 1719; 46 Del. Laws, c. 152, § 1; 15 Del. C. 1953, § 1750; 65 Del. Laws, c. 471, § 1; 67 Del. Laws, c. 354, § 15.)

§ 2049. Change of party designation; procedure.

(a) A duly registered voter may apply in person or by written notice or by telephone to the department for the county in which he resides, at any time except during the periods from March 1 through the day of the final primary election of a general election year and from the third Saturday in October of that year through election day, or to the registration officers in his election district (when the officers are sitting for the purpose of registration) for application to change his party designation upon his registration record. The application shall be upon a form provided by the Commissioner and shall be signed by the registrant and returned by mail or delivered to the office of the department. An appropriately addressed envelope shall be supplied by the department for return of the executed application. Upon receipt of the executed application, the department shall cause the signature to be compared with the original registration record of such applicant, and if such signature appears to be the same, such change of affiliation shall be made on the original and duplicate records and the applicant shall be immediately notified by mail of

the change so made. If the department is not satisfied as to the signature on the application, the applicant shall be notified by mail to appear at the office of the department to answer under oath such questions as may be deemed necessary. If the applicant fails to appear as notified, no such change of affiliation shall be made. If the application is made to the registration officers, they shall forward the completed application to the department at the same time as they forward other registration records at the close of registration, and the department shall cause appropriate notations thereof to be made upon the applicant's original and duplicate permanent registration records and shall notify the Commissioner who shall make appropriate changes in his records.

(b) The time limitations set forth in subsection (a) of this section shall not prevent a voter from changing his party designation for purposes of qualifying a minor political party for the 1978 General Election ballot pursuant to § 3001 of this title. (15 Del. C. 1953, § 1751; 50 Del. Laws, c. 169, § 42; 52 Del. Laws, c. 59; 55 Del. Laws, c. 78, § 4; 57 Del. Laws, c. 181, § 38; 57 Del. Laws, c. 567, § 16; 58 Del. Laws, c. 148, § 32; 58 Del. Laws, c. 215, § 41; 61 Del. Laws, c. 418, § 6; 67 Del. Laws, c. 354, § 15.)

This section does not unconstitutionally infringe Fourteenth Amendment right to equal protection under law. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

With respect to political parties, the equal protection doctrine does not require that the burden of organization correspond to the size of the party. The burdens are to be measured only against themselves and not in relation to the capacities of the parties. This section and § 3001 of this title do not impose greater burdens on small parties than major parties. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Nor does it violate First Amendment rights to freedom of speech and association. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

This section serves compelling state interests in regulating the number of candidates on the ballot. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Purpose of section. — In the present

scheme of election laws, the purpose of this section is to preserve the integrity of the electoral system principally by preventing inter-party raiding, a purpose which is recognized as legitimate. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

This section, in conjunction with § 3001 of this title, protects the electoral system by limiting the parties on the ballot to those which have demonstrated some degree of popular support, thereby insuring that the ballot is not filled with an abundance of candidates serving only to divide and confuse rather than to consolidate the support of the populace. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Party required to legitimate itself by demonstrating popular support. — One of the purposes of this section and § 3001 of this title is to require that a party legitimize itself by demonstrating some modicum of popular support. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

CHAPTER 21. REGISTRATION APPEALS

Sec.	Sec.
2101. Right to appeals; persons entitled.	2108. Duty of registration officers to attend appeals.
2102. Notice of appeal.	2109. Alternate registrars.
2103. Notice of appeal to correct name; correction by judge.	2110. Order by court.
2104. Manner of giving notice; time; proof.	2111. Finality of decisions.
2105. Affidavit of appellant.	2112. Costs.
2106. Disposition of appeals.	2113. Registration appeal dockets.
2107. Limit on appeals presenting the same issue.	

§ 2101. Right to appeals; persons entitled.

(a) From the decision of any of the departments or the registration officers granting or refusing registration or removing or refusing to remove names from the registration records, any person interested or any member of such department or any registration officer may appeal to the court.

(b) The word "court" as used in this chapter shall mean either the Resident Associate Judge of the county, or, in case of his disability or absence from the county, any judge entitled to sit in the Supreme Court. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1724, 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2101; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1.)

§ 2102. Notice of appeal.

(a) In order to prosecute an appeal, the person taking the same shall notify the department or registration officers of the decision from which the appeal is taken and also the person affected by the appeal, stating in the notice the time when the appeal will be presented.

(b) To take an appeal from a decision of the registration officers it shall not be necessary for the appellant to declare his intention so to do to the registration officers other than by the notice to the department and the registration officers as provided in subsection (a) of this section.

(c) No entry in the registration records with respect to an appeal shall affect the right to appeal. (21 Del. Laws, c. 36, § 11; Code 1915, § 1636; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1723, 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2102; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1.)

§ 2103. Notice of appeal to correct name; correction by judge.

Any person applying to the court to have any name appearing in any manner incorrectly in the Election District Record for his election district to be corrected shall give notice as provided in this chapter to the department of his intention to make application for the correction thereof, so that the department or its duly authorized representatives shall and may be present with the appropriate registration records to make such corrections therein as the court shall order and direct, and shall also give notice of his intention to the person affected, as provided in this chapter. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, § 1724; 15 Del. C. 1953, § 2103; 50 Del. Laws, c. 171, § 1.)

§ 2104. Manner of giving notice; time; proof.

(a) All notices required to be served upon any person by this chapter shall be in writing and shall be served personally or by registered mail, return receipt requested, addressed to the person's address that appears in the County Master Record.

(b) All required notices shall be served at least 5 days prior to the day on which the appeal or application is made to the court. The date of personal service or the date of mailing shall be considered as the first day in computing the 5 days' period.

(c) In all cases where service is made by registered mail, proof of such service shall be by affidavit showing the date of mailing and by the return receipt which shall be annexed to the affidavit showing that the person sought to be served received or refused the notice by registered mail or that the person sought to be served was unknown at the address appearing in the County Master Record.

(d) No appeal shall be considered by the court unless it is satisfied that notice has been given as required by this section. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, § 1724; 44 Del. Laws, c. 108, § 1; 15 Del. C. 1953, § 2104; 50 Del. Laws, c. 171, § 1.)

§ 2105. Affidavit of appellant.

No appeal shall be received and acted upon by the court unless the appellant shall at the time of presenting his appeal also make and file therewith an affidavit that notice of his intention to present his appeal on the day was given to the department or registration officers or both, and to the person affected by the appeal and that such appeal is made in good faith and based upon facts within the knowledge of the person making and filing such affida-

vit. (Code 1935, § 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2105; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1.)

§ 2106. Disposition of appeals.

In the event any appeal is taken or any appeal remains undetermined within the period of 30 days before the date of the general election, the court shall give priority to any such appeal over any other business before the court, and the court shall hear and determine the appeal and enter an order as provided in § 2110 of this title, on or before the tenth calendar day preceding the last registration day. (21 Del. Laws, c. 36, § 16; 23 Del. Laws, c. 56, § 1; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, §§ 1724, 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2106; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 171, § 1; 57 Del. Laws, c. 181, § 40.)

§ 2107. Limit on appeals presenting the same issue.

Once an appeal has been determined, no appeal shall thereafter be heard or allowed by the court which presents the same or substantially the same issue as has already been determined in a prior appeal. (45 Del. Laws, c. 148, § 35; 45 Del. Laws, c. 149, § 35; 15 Del. C. 1953, § 2107; 50 Del. Laws, c. 171, § 1.)

§ 2108. Duty of registration officers to attend appeals.

The registration officers of an election district shall attend and be present at all hearings of which they had notice, before the court sitting for that purpose, of appeals which have been taken from their decision. (21 Del. Laws, c. 36, § 17; Code 1915, § 1638; 34 Del. Laws, c. 106, § 1; Code 1935, § 1725; 15 Del. C. 1953, § 2108; 50 Del. Laws, c. 171, § 1.)

§ 2109. Alternate registrars.

All the powers and duties conferred or enjoined upon registration officers by this chapter are expressly made the powers and duties of all alternate registration officers in the absence of any registration officer from his election district or his disability to perform the duties imposed upon such registration officer by this chapter. (21 Del. Laws, c. 36, § 18; Code 1915, § 1639; 34 Del. Laws, c. 106, § 1; Code 1935, § 1726; 15 Del. C. 1953, § 2109; 49 Del. Laws, c. 4, § 4; 49 Del. Laws, c. 17, § 16; 50 Del. Laws, c. 171, § 1.)

§ 2110. Order by court.

The court hearing any appeal shall order and direct the department to make such entries in the registration records as the law and the facts shall warrant. (21 Del. Laws, c. 36, § 16; Code 1915, § 1637; 34 Del. Laws, c. 106, § 1; Code 1935, § 1724; 15 Del. C. 1953, § 2110; 50 Del. Laws, c. 171, § 1.)

§ 2111. Finality of decisions.

The decision of the court on any appeal provided for in this chapter shall be final. (Code 1935, § 1744; 45 Del. Laws, c. 145, § 15; 15 Del. C. 1953, § 2111; 50 Del. Laws, c. 171, § 1.)

§ 2112. Costs.

The person who makes the affidavit taking such appeal shall pay all the costs of the appeal if the appeal is finally dismissed. The costs shall be fixed by the court and taxed upon the appellant at the time of such dismissal. (Code 1915, § 1637; 37 Del. Laws, c. 117, § 9A; Code 1935, § 1724; 15 Del. C. 1953, § 2112; 50 Del. Laws, c. 171, § 1.)

§ 2113. Registration appeal dockets.

(a) The department for each county shall provide books of permanent record to be known as "registration appeal dockets", in which a permanent record shall be made and preserved of all registration appeals made to, and acted upon by, the court hearing registration appeals. The dockets shall contain the following information in respect to each appeal:

- (1) Date of the appeal;
- (2) Name of the appellee;
- (3) The ground or grounds of each appeal;
- (4) The name of the person or persons making the affidavit or affidavits on each appeal;
- (5) The determination of the court on each of the grounds of appeal asserted in each such appeal.

(b) The docket may contain such other information or data as may be required to make a complete record of each appeal acted upon. All entries in the dockets shall be under the supervision and direction of the court and the record of each appeal shall be approved by the court hearing the appeal. The record of each appeal shall fully disclose each and every ground upon which the appeal is filed. The registration appeal dockets shall remain in the care and custody of the department having jurisdiction and shall be produced be-

fore the court by the department whenever required by the court sitting for the purpose of hearing appeals. (45 Del. Laws, c. 148, § 35; 45 Del. Laws, c. 149, § 35; 15 Del. C. 1953, § 2113; 50 Del. Laws, c. 171, § 1.)

CHAPTER 23. PENAL AND ENFORCEMENT PROVISIONS

Sec.	Sec.
2301. Neglect of duty; corrupt or fraudulent conduct; penalty.	2305. Intimidation of registration officers; penalty.
2302. Wrongful registration; assault; riot; breach of peace; penalty.	2306. Notice to Attorney General of violations of registration laws.
2303. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; penalty.	2307. Unauthorized entering of registration area; interference with registration; penalty.
2304. Alcoholic liquor in registration places; penalty.	

Cross references. — As to exclusive, original jurisdiction of Superior Court over offenses under this title, see § 5101 of this title.

§ 2301. Neglect of duty; corrupt or fraudulent conduct; penalty.

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of the same shall be fined not more than \$200 or imprisoned not more than 2 years or both. (45 Del. Laws, c. 144, § 8; 45 Del. Laws, c. 148, § 8; 45 Del. Laws, c. 149, § 8; 15 Del. C. 1953, § 2301.)

§ 2302. Wrongful registration; assault; riot; breach of peace; penalty.

Whoever causes or attempts to cause himself to be registered in: (1) The name of any other person living or dead or under any fictitious name; or (2) any election district in this State, knowing that he has not the right to be registered; or (3) whoever, knowing himself to be registered in any election district in this State, causes or attempts to cause himself to be registered in any other election district in this State without having first caused his record to be removed from the Election District Record in which his original permanent registration record may have been previously entered; or (4) whoever, knowing himself to be disqualified as a voter at the next following general election, causes or attempts to cause himself to be entered in the Election District Record in any election district in this State as a registered voter therein or unlawfully interferes with any registrar, alternate registrar or assistant registrar in the discharge of his duties under this title; or (5)

whoever makes any assault or commits any assault and battery or incites or creates any riot or breach of the peace at or near to any place of registration in this State during the sitting of any registration officers; shall be fined not less than \$50 or more than \$200 or imprisoned not less than 30 days or more than 2 years or both. (19 Del. Laws, c. 38, § 21; 21 Del. Laws, c. 36, § 24; Code 1915, § 1645; 34 Del. Laws, c. 106, § 1; Code 1935, § 1732; 15 Del. C. 1953, § 2302; 50 Del. Laws, c. 170, § 1.)

Cross references. — As to assaults and related offenses, see §§ 601 to 627 of Title 11. As to tampering with public records, see §§ 873 and 876 of Title 11. As to riots, disorderly conduct and related offenses, see §§ 1301 to 1338 of Title 11.

Sufficiency of indictment. — Where an indictment alleged that defendant, "at a certain

general registration of all qualified voters, unlawfully and fraudulently registered in . . . City of Wilmington [without] . . . having lawful right to register therein", defendant was not given sufficient notice of the charge against him and the indictment was quashed and the defendant was discharged. *State v. Vincent*, Del. Gen. Sess., 41 A. 199 (1895).

§ 2303. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; penalty.

- (a) Whoever, being a registrar, alternate registrar or assistant registrar:
- (1) Fraudulently enters or permits to be entered in any registration record the name of any person as a registered voter who is not entitled to be entered therein as a registered voter; or
 - (2) Fraudulently refuses or omits to register or fraudulently misspells in any registration record in his charge the name of any person entitled under this title to have his name entered in such registration records; or
 - (3) Fraudulently removes from any Election District Record in his charge the original permanent registration record of any person entered therein; or
 - (4) Makes any entry in any registration record, except at the time and in the manner in this title provided; or
 - (5) Does anything which is by this title forbidden by him to do; or
 - (6) Whoever, being a registrar, alternate registrar or assistant registrar, inspector or judge of election:
 - a. Loses any registration records which may be in his charge or custody; or
 - b. Willfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes any registration record; or
 - c. Knowingly makes any false entry in or false copy of any registration record or any part thereof; or

d. Fraudulently makes any entry, erasure or alteration in any registration record;

shall be deemed to have knowingly and willfully violated his official duty and shall be fined in such amount or imprisoned for such term or both as the court in its discretion may determine.

(b) Whoever, other than the officials referred to in subsection (a) of this section, makes, alters or obliterates any entry in any registration record, or willfully destroys, mutilates, defaces, falsifies or removes or secretes any registration record, shall be fined in such amount or imprisoned for such term, or both, as the court in its discretion may determine. (19 Del. Laws, c. 38, §§ 20, 22; 21 Del. Laws, c. 36, § 25; Code 1915, § 1644; 34 Del. Laws, c. 106, § 1; Code 1935, § 1731; 15 Del. C. 1953, § 2303; 50 Del. Laws, c. 170, § 2.)

Cross references. — As to making a false written statement, see § 1233 of Title 11.

§ 2304. Alcoholic liquor in registration places; penalty.

Whoever, during the sitting of the registration officers in any election district in this State, brings, takes, orders or sends into, or attempts to bring, take or send into, any place of registration any alcoholic liquor, or, at any such time or place, drinks or partakes of any such liquor, shall be fined not more than \$100 or imprisoned not more than 90 days, or both. (19 Del. Laws, c. 39, § 32; 21 Del. Laws, c. 36, § 22; Code 1915, § 1643; 34 Del. Laws, c. 106, § 1; Code 1935, § 1730; 15 Del. C. 1953, § 2304.)

Cross references. — As to alcoholic liquors generally, see Title 4.

§ 2305. Intimidation of registration officers; penalty.

If any person, firm, corporation or employer existing or doing business in this State hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed a registration officer under the laws of this State from qualifying and performing his duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, he or they shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State.

In any trial under this section the acts of any officer of a corporation, so far as they affect an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether special or general authority as to such acts from the corporation is shown or not.

Nothing contained in this section shall be construed to relieve any officer of a corporation from individual liability under this section. (45 Del. Laws, c. 144, § 24; 45 Del. Laws, c. 148, § 24; 45 Del. Laws, c. 149, § 24; 15 Del. C. 1953, § 2305.)

§ 2306. Notice to Attorney General of violations of registration laws.

Each department shall notify the Attorney General of all violations of the registration laws. (45 Del. Laws, c. 144, § 9; 45 Del. Laws, c. 148, § 9; 45 Del. Laws, c. 149, § 9; 15 Del. C. 1953, § 2306; 49 Del. Laws, c. 4, § 5.)

§ 2307. Unauthorized entering of registration area; interference with registration; penalty.

(a) Whoever, not being a registration officer or other department of elections personnel, enters the prohibited registration area, as stipulated in § 1724 of this title, during the hours of registration other than to register to vote shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the prohibited registration area, as stipulated in § 1724 of this title, during the hours of registration for the purpose of interfering with the registration officers in the discharge of their duties or whoever attempts to molest, disturb or prevent the registration officers or any of those seeking to register from proceeding regularly with registration, shall be fined not less than \$500 nor more than \$1,000 or imprisoned not less than 90 days nor more than 3 years, or both. (15 Del. C. 1953, § 2307; 58 Del. Laws, c. 401, § 3.)

PART III

Primary Elections and Nominations of Candidates

CHAPTER 30. BALLOT QUALIFICATIONS

Sec.

3001. Political parties.

3002. Unaffiliated candidates.

§ 3001. Political parties.

No political party shall be listed on any general election ballot unless, 21 days prior to the date of the primary election, there shall be registered in the name of that party a number of voters equal to at least $\frac{5}{100}$ of 1 percent of the total number of voters registered in the State as of December 31 of the year immediately preceding the general election year. (61 Del. Laws, c. 418, § 7.)

Burden of organization not required to correspond to size of party. — With respect to political parties, the equal protection doctrine does not require that the burden of organization correspond to the size of the party. The burdens are to be measured only against themselves and not in relation to the capacities of the parties. This section and § 1749 of this title do not impose greater burdens on small parties than major parties. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Section protects electoral system by limiting parties on ballot. — This section, in conjunction with § 1749 of this title, protects the electoral system by limiting the parties on the ballot to those which have demonstrated

some degree of popular support, thereby insuring that the ballot is not filled with an abundance of candidates serving only to divide and confuse rather than to consolidate the support of the populace. A state has a legitimate interest in regulating the number of candidates on the ballot for these purposes. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

Party required to legitimate itself by demonstrating popular support. — One of the purposes of this section and § 1749 of this title is to require that a party legitimize itself by demonstrating some modicum of popular support. *Commoner v. Du Pont*, 501 F. Supp. 778 (D. Del. 1980).

§ 3002. Unaffiliated candidates.

(a) No person shall qualify to appear on the general election ballot of this State as a candidate unaffiliated with a political party unless he fulfills the requirements of this chapter and is so certified by the State Election Commissioner, if a statewide candidate, or the appropriate county department of elections, if not a statewide candidate.

(b) No individual shall be listed as an unaffiliated candidate on any general election ballot unless he shall have filed, on or before the close of the official business day on September 1 of the general election year, a sworn declaration with the State Election Commissioner, if a statewide candidate, or the appro-

appropriate county department of elections, if a nonstatewide candidate, stating that he is an unaffiliated candidate and has not been affiliated with any political party for at least 3 months prior to the filing of his declaration, as required by this title, and shall have filed nominating petitions, as prescribed in this chapter, and signed by not less than 1 percent of the total number of voters registered, as of December 31 of the year immediately preceding the general election year in the State, or if a nonstatewide candidate, of those voters eligible to vote for that office which he seeks.

(c) The nominating petition shall contain such information and be on a form as prescribed by the State Election Commission. The following information shall, however, be contained in the petition:

(1) Name of the unaffiliated candidate and the office for which he is filing;

(2) Signature, printed name, address at which registered, social security number and date on which signed by signer;

(3) A statement that the signer understands that by intentionally entering false information on the petition he may be subject to prosecution for perjury;

(4) A sworn notarized statement of the person circulating the petition that he witnessed the placing of each signature on the petition.

(d) Such petition shall be circulated and executed between January 1 and July 15 of the year in which the general election is held. Each registered voter signing shall do so upon a petition prepared for the county in which he is registered, and the petition shall be filed with the department of elections for the county in which the petitioners reside. The signatures and other information thereon shall be verified by the department receiving the petition.

(e) Signatures may be rejected for the following reasons:

(1) The signer was not a registered voter on the date he signed the petition;

(2) The signer's place of residence or his social security number do not match those appearing in the permanent registration record;

(3) The signer did not list his social security number;

(4) It appears that the signature is a forgery;

(5) The signer's identity cannot be verified because the information and/or signature submitted is illegible, incomplete or obscured.

(f) Where a petition or a part thereof is rejected, the individual submitting same shall have the right to learn the reason(s) for such rejection and an opportunity to examine the signatures rejected. (61 Del. Laws, c. 418, § 7; 67 Del. Laws, c. 354, § 20.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, substituted "July 15" for "August 15" in the first sentence of (d).

CHAPTER 31. PRIMARY ELECTIONS

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Subchapter I. General Provisions

§ 3101. Nomination, withdrawal and primary election dates.

The following schedule shall apply for all candidates:

(1) Notification of candidacy shall be on or before 12:00 noon of the last Friday in July. In the event the last Friday in July is a legal holiday, then the last day to give notification shall be the next day which is not a Saturday, Sunday or a legal holiday.

(2) Such notification of candidacy may be withdrawn on or before 12:00 noon of the first Friday in August. In the event the first Friday in August is a legal holiday, then the final day to withdraw shall be the next day which is not a Saturday, Sunday or a legal holiday.

(3) Primary elections for all political parties shall be conducted on the first Saturday next following the first Monday in September.

(4) After the deadline for notification of candidacy set forth in subdivision (1) of this section and before the deadline for withdrawal set forth in subdivision (2) of this section, a candidate may change his candidacy and become a candidate for a different office in the coming election. Such change of candidacy shall be deemed to be irrevocable withdrawal from candidacy for the first announced office. (20 Del. Laws, c. 393, § 18; 22 Del. Laws, c. 285, § 1; 27 Del. Laws, c. 66, § 1; Code 1915, § 1692; 40 Del. Laws, c. 142, § 7; Code 1935, § 1780; 45 Del. Laws, Sp. Sess., c. 3, § 1; 45 Del. Laws, c. 150, § 5; 15 Del. C. 1953, § 3102; 50 Del. Laws, c. 426, § 1; 57 Del. Laws, c. 241, § 2; 58 Del. Laws, c. 258, §§ 1, 2; 58 Del. Laws, c. 368, § 1; 60 Del. Laws, c. 712, § 2; 61 Del. Laws, c. 418, § 9.)

§ 3101A. Direct primary elections.

The nominations of candidates by all major political parties for all offices to be decided at a general election shall be conducted by direct primary. All such primaries shall be conducted by the county departments of election under the applicable provisions of this title. (60 Del. Laws, c. 712, § 1; 61 Del. Laws, c. 418, § 10.)

§ 3102. Primary elections in all districts to be held on same day.

The primary elections for all political parties shall be held in the various districts on the same day as elsewhere provided in this title. (20 Del. Laws, c. 393, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1679; Code 1935, § 1770; 15 Del. C. 1953, § 3103; 50 Del. Laws, c. 426, § 7; 57 Del. Laws, c. 241, § 3.)

§ 3103. Filing fees.

(a) Filing fees for primary election for candidates for any office of any political party shall be set in the following manner:

(1) Candidates for statewide office shall be set by the state executive committee of the respective political party;

(2) Candidates for county or countywide office and members of the General Assembly shall be set by the county executive committee of the respective political party of the county in which the contest is to be held;

(3) Candidates for municipal office for any municipality which holds its election at the time of the general election shall be set by the city executive committee of the respective political party of the city in which the contest is to be held;

(4) [Repealed].

(b) The filing fee shall not be greater than 1% of the total salary for the entire term of office for which the candidate is filing, except that no filing fee shall be required where a person is indigent and qualifies as a candidate as provided in subsection (g) of § 3106 of this title.

(c) The state chairman, county chairman and city chairmen of each political party shall notify the State Election Commissioner and the respective departments of elections of the amount of the filing fee set pursuant to this section. The notification shall be no later than July 1 of each general election year. (15 Del. C. 1953, § 3104; 57 Del. Laws, c. 241, § 4; 57 Del. Laws, c. 567, § 18B; 58 Del. Laws, c. 519; 60 Del. Laws, c. 398, § 1; 60 Del. Laws, c. 712, §§ 3-5; 61 Del. Laws, c. 418, § 11.)

Standing alone, filing fee requirement is not invalid addition to qualifications for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Fee is requirement for candidacy not for office. — A filing fee paid as part of the election process does not, per se, add to the qualification for office. It is a requirement for candidacy, not for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Implicit in this section are legitimate state purposes and interests to which fee requirements seem reasonably and rationally related. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Interests served by section. — The State may, in pursuit of the interest in regulating the number of candidates on the ballot and to perform the duty to protect the integrity of the political process from frivolous or fraudulent candidacies, require payment of a reasonable filing fee. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

State interest in objectives served by this section remains valid in attack by nonindigent candidate. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Absence of specificity does not invalidate this section. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

§ 3104. Hours at polling places.

The time for opening the polls for the purpose of conducting a primary election shall be 7:00 in the morning, and the time for closing the polls at such primary election shall be 8:00 in the evening. (20 Del. Laws, c. 393, § 18; 22 Del. Laws, c. 285, § 1; 27 Del. Laws, c. 66, § 1; Code 1915, § 1692; 40 Del. Laws, c. 142, § 7; Code 1935, § 1780; 45 Del. Laws, c. 150, § 5; 15 Del. C. 1953, § 3105; 50 Del. Laws, c. 426, § 8.)

§ 3105. Procedure when no contest.

In case there be no contest for any office in any particular election district or districts the department shall be governed accordingly and shall not hold a primary election in any such election district or districts. (Code 1935, § 1780; 45 Del. Laws, c. 150, § 5; 15 Del. C. 1953, § 3106; 50 Del. Laws, c. 426, § 9.)

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

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

(1) Candidates for statewide office:

a. Any statewide candidate shall notify the chairman of the state committee of his respective political party, or his designee in writing, on forms prescribed by the State Election Commissioner on or before the deadline set forth in § 3101(1) of this title.

b. At the time of giving notice as required above, each candidate shall tender the required filing fee, if any, by giving a check to the State Election Commissioner, payable to the state committee of the candidate's political party, together with a copy of the notice given the party's state chairman. At such time, the Commissioner shall receipt a third copy of said notice, to be provided the candidate.

c. [Repealed].

(2) Candidates for all other offices:

a. All candidates for county or countywide office, members of the General Assembly and/or municipal office for any municipality holding its election at the time of the general election shall notify the county chairman, or his designee, in writing (or the city chairman, or his 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 set forth in § 3101(1) of this title.

b. At the time of giving notice as required above, each candidate shall tender the required filing fee, if any, by giving a check to the county department of elections, 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 chairman. At such time, the department shall receipt a third copy of the notice, to be provided the candidate.

(b) If any of the filing fees mentioned in subsection (a) of this section are not required, each candidate shall still give notice to the election agency having jurisdiction, as specified in paragraphs (1) and (2) of subsection (a) of this section, and shall receive a receipted copy of the prescribed form.

(c) Any candidate who has filed for nomination as required above may withdraw said filing by notifying the respective elections agency with whom he filed on forms prescribed by the State Election Commissioner on or before the deadline set forth in § 3101(2) of this title. The elections agency having jurisdiction shall promptly notify the same political party chairman who received the original notice of filing. The filing fee of the candidate so withdrawing shall be returned to him. In the event a candidate withdraws after the deadline set forth in § 3101(2) of this title, he shall forfeit the filing fee to the political party. In cases where no filing fee was required, any candidate withdrawing after the deadline shall submit to the respective elections agency a check payable to the Treasurer of the State in the amount of \$50.

(d) Following the deadline for withdrawal of candidates, the State Election Commissioner shall promptly turn over the filing fee checks of the statewide candidates to the state chairmen of their respective political parties. At the same time, the Commissioner shall notify each county department of elections of all those statewide candidates who have qualified under this section. The county departments shall also at this time submit to the county chairman (or city chairman, if applicable) all filing fee checks from candidates of their respective political parties and shall notify the Commissioner of all persons who have qualified as candidates.

(e) Any notice of candidacy or withdrawal of candidacy required by this section shall include the signature of each candidate, together with his proper and correct name typed or printed, and the address from which he is registered to vote at the time of filing. (20 Del. Laws, c. 393, § 39; 27 Del. Laws, c. 66, § 1; Code 1915, § 1713; Code 1935, § 1801; 45 Del. Laws, c. 150, § 10; 15 Del. C. 1953, § 3107; 57 Del. Laws, c. 241, § 5; 57 Del. Laws, c. 567, § 18C; 58 Del. Laws, c. 148, § 34; 58 Del. Laws, c. 215, § 18; 58 Del. Laws, c. 258, §§ 3-5; 58 Del. Laws, c. 368, §§ 2, 3; 60 Del. Laws, c. 398, § 2; 60 Del. Laws, c. 712, § 6; 61 Del. Laws, c. 484, § 1; 67 Del. Laws, c. 354, § 21.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, added "at the time of filing" at the end of (e).

Standing alone, the filing fee requirement is not invalid addition to qualifications for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Fee is requirement for candidacy not for office. — A filing fee paid as part of the election process does not, per se, add to the qualification for office. It is a requirement for candidacy, not for office. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Implicit in this section are legitimate

state purposes and interests to which fee requirements seem reasonably and rationally related. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Interests served by section. — The State may, in pursuit of the interest in regulating the number of candidates on the ballot and to perform the duty to protect the integrity of the political process from frivolous or fraudulent candidacies, require payment of a reasonable filing fee. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

State interest in objectives served by this section remains valid in attack by nonindi-

gent candidate. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Absence of specificity does not invalidate this section. *Cassidy v. Willis*, Del. Supr., 323 A.2d 598, aff'd mem., 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

Timely payment of filing fee. — The statutory requirement of timely payment of the designated filing fee is directory in nature, in which event a technical noncompliance may be excused by a good faith effort. *Bartley v. Davis*, Del. Supr., 519 A.2d 662 (1986).

§ 3107. Determination of nominee.

Any candidate for party nomination to any office who receives a plurality of the votes cast in his party's primary election for that office shall be the nominee of his party for such office. (20 Del. Laws, c. 393, § 19; 22 Del. Laws, c. 285, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1693; 34 Del. Laws, c. 108, § 5; Code 1935, § 1781; 45 Del. Laws, c. 150, § 6; 15 Del. C. 1953, § 3108; 49 Del. Laws, c. 4, § 5; 49 Del. Laws, c. 276, § 2; 50 Del. Laws, c. 426, § 10; 57 Del. Laws, c. 241, § 6; 57 Del. Laws, c. 567, §§ 18D, 18E; 58 Del. Laws, c. 258, §§ 6, 7; 58 Del. Laws, c. 368, § 4; 60 Del. Laws, c. 712, § 7.)

§ 3108. Primary election districts; conduct of primary elections.

The county departments of elections shall, at least 2 weeks before a primary election, determine and establish primary election districts, each of which shall consist of 1 or more entire election districts in the same representative district.

The county departments of elections and the election officers shall conduct the primary elections in the same way that general elections are conducted and in accordance with the applicable provisions of this title, except that the voting machines shall be operated so that the only levers open to each voter shall be the levers for candidates of the party of the voter's party affiliation as shown by the voter's original permanent registration record.

The primary election officers and clerks shall be chosen by the department from among the election officers and clerks selected for the general election for the election district or districts contained in the primary election district, and for each such primary election district the election officers and clerks shall be divided as equally as possible between the 2 principal parties. (20 Del. Laws, c. 393, § 23; 27 Del. Laws, c. 66, § 1; Code 1915, § 1697; Code 1935, § 1785; 15 Del. C. 1953, § 3109; 50 Del. Laws, c. 426, § 11; 50 Del. Laws, c. 631, § 1; 51 Del. Laws, c. 107, § 1; 52 Del. Laws, c. 87; 57 Del. Laws, c. 567, § 17.)

§ 3109. Public notice of time and place.

Notice of all primary elections shall be given either by suitable news media or by publishing the same each day for 5 days before the time of holding same in 1 or more daily newspapers printed in the county in which the primary election shall be held or in the last issue of each of 2 weekly newspapers printed in the county before the time of holding primary elections, in case no daily newspaper is published in the county. (20 Del. Laws, c. 393, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1679; Code 1935, § 1770; 15 Del. C. 1953, § 3110; 51 Del. Laws, c. 107, § 2; 58 Del. Laws, c. 215, § 19.)

§ 3110. Qualifications of voters.

An elector may vote in the primary election of a political party only if he is a duly registered voter and if it appears upon his original permanent registration record that his party affiliation is the same as the party which is holding the primary election and that he was registered 21 days prior to the day of the primary election. (20 Del. Laws, c. 393, § 20; 22 Del. Laws, c. 285, § 3; 27 Del. Laws, c. 66, § 1; Code 1915, § 1694; 40 Del. Laws, c. 142, § 8; Code 1935, § 1782; 45 Del. Laws, c. 150, § 7; 15 Del. C. 1953, § 3111; 50 Del. Laws, c. 426, § 2; 57 Del. Laws, c. 181, § 42.)

§ 3111. Expenses paid by State.

The expenses for holding primary elections under this chapter, including stationery, and pay of officers and clerks shall be paid by the State. (20 Del. Laws, c. 393, § 35; 27 Del. Laws, c. 66, § 1; Code 1915, § 1709; 30 Del. Laws, c. 102, § 1; Code 1935, § 1797; 45 Del. Laws, c. 150, § 9; 15 Del. C. 1953, § 3113; 51 Del. Laws, c. 149, § 3.)

§ 3112. Sale of alcoholic liquor on day of primary election.

The laws prohibiting the sale of alcoholic liquors on the day of any general, special or municipal election are excepted and shall not apply to any election contemplated by this chapter. (20 Del. Laws, c. 393, § 41; 27 Del. Laws, c. 66, § 1; Code 1915, § 1715; Code 1935, § 1804; 15 Del. C. 1953, § 3115.)

Cross references. — As to prohibition against sale of alcoholic liquor on Election Day, see § 714 of Title 4.

§ 3113. Nominating conventions.

The method of nominating candidates for the national Electoral College, for offices within a particular political party and for formulation of the party platform may be by convention. (15 Del. C. 1953, § 3116; 57 Del. Laws, c. 241, § 8; 57 Del. Laws, c. 567, § 18F; 58 Del. Laws, c. 258, § 8; 60 Del. Laws, c. 712, § 8.)

Freedom of association of political parties. — The ability of any political party in Delaware to organize itself on a district rather than an at-large basis may be, or is believed to be, significantly related to its pursuit of the power to impose its policies upon government. The freedom to associate for such a pursuit is the heart of the right of association guaranteed

by the First Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Republican state convention is "state action" within meaning of Fourteenth Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Subchapter II. Books, Ballots, Supplies and Polling Places

§ 3121. Registration records used.

The registration records for each election district in this State used for registration purposes for general, supplementary and additional registrations shall be used for all primary elections held under this chapter.

The registration records for each election district in the City of Wilmington shall be used for primary election purposes in accordance with this chapter, and all persons, and only they, whose names appear on such registration books after the same have been added to, revised and corrected, as provided by law, shall be entitled to vote at a primary election to nominate candidates to be voted for at a subsequent municipal election in the City of Wilmington. (20 Del. Laws, c. 393, § 18; 22 Del. Laws, c. 285, § 1; 27 Del. Laws, c. 66, § 1; Code 1915, § 1692; 40 Del. Laws, c. 142, § 7; Code 1935, §§ 1776, 1780; 45 Del. Laws, c. 150, §§ 2, 5; 15 Del. C. 1953, § 3121; 50 Del. Laws, c. 426, § 4.)

§ 3122. Delivery of registration records to proper inspectors; penalty.

The Department of Elections for New Castle County, the Department of Elections for Kent County and the Department of Elections for Sussex County, respectively, shall before 7:00 a.m. of the day on which a primary election is held in their county by any political party deliver to the proper inspector the registration records for each general election district that may be contained within each primary election district, and the inspector shall have the registration records at the place of holding the primary election at the time for opening the polls on primary election day.

In each year in which a municipal election is held in the City of Wilmington the inspector for each primary election district within such City, before 7:00 a.m. of the day on which such primary election is held, shall be furnished by the Department of Registration for New Castle County with the registration records for each general election district that may be contained within such inspector's primary election district, and each inspector shall have the registration records at the place of holding the primary election in his district at the time for opening the polls on primary election day.

Whoever, being a member of the Department of Registration for New Castle County or of the Department of Elections for Kent or Sussex Counties, refuses, neglects or fails to deliver to each inspector of any primary election to be held within his county the registration records for each general election district that may be contained in the primary election district to which such registration records apply; or whoever, being an inspector, refuses, neglects or fails to have such registration records at the place of holding the primary election for any general or special election or any municipal election in the City of Wilmington at the time designated in this chapter; shall, for each such offense, be fined \$100, and his office shall be forfeited.

Each day of refusal, neglect or failure shall constitute a separate offense under this section. (20 Del. Laws, c. 393, § 24; 22 Del. Laws, c. 285, § 4; 27 Del. Laws, c. 66, § 1; Code 1915, § 1698; 34 Del. Laws, c. 108, § 7; Code 1935, § 1786; 43 Del. Laws, c. 127, § 3; 45 Del. Laws, c. 150, § 8; 15 Del. C. 1953, § 3122; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 426, §§ 4, 12; 57 Del. Laws, c. 567, § 18.)

§ 3123. Use of ballot.

All primary elections shall be by ballot. (20 Del. Laws, c. 393, § 2; 27 Del. Laws, c. 66, § 1; Code 1915, § 1679; Code 1935, § 1770; 15 Del. C. 1953, § 3123.)

§ 3124. Ballots for voting machines.

(a) The department of elections in any county where a primary election is to be held shall cause to be printed the ballots to be used at such election and shall cause the same to be placed in voting machines for the proper district prior to the delivery of the voting machines.

(b) The names of all candidates for nomination for the same office shall be placed under the title of such office, the surname of candidates to be placed in alphabetical order, and shall not be separated one from another by any other matter.

(c) [Repealed].

(d) The department shall also provide and cause to be posted in each primary election district 2 sheets of instructions to voters and 2 sample ballots, as prescribed in subsections (a) and (b) of § 4910 of this title. (20 Del. Laws, c. 393, § 39; 27 Del. Laws, c. 66, § 1; Code 1915, § 1713; Code 1935, § 1801; 45 Del. Laws, c. 150, § 10; 15 Del. C. 1953, § 3124; 49 Del. Laws, c. 276, § 3; 51 Del. Laws, c. 107, § 3; 57 Del. Laws, c. 567, § 19; 58 Del. Laws, c. 148, §§ 35-37; 60 Del. Laws, c. 414, § 7; 61 Del. Laws, c. 480, § 4.)

§ 3125. Departments of election to furnish voting machines, flags, supplies and instructions for polling places.

For each polling place in their respective counties where primary elections are to be held, the respective departments shall furnish the following:

(1) A white muslin flag, preferably staffed, of suitable size for the lettering thereon in 4 inch letters including the following words: Registration and polling place;

(2) A flag of the United States of America no smaller in size than the polling place flag above described in subdivision (1) of this section;

(3) Poll list, stationery and other such supplies customary and necessary for the use of the officers conducting such primary election;

(4) Written instructions and excerpts from those parts of this title as the department shall deem necessary and appropriate to assist the election officers in the proper performance of their duties;

(5) A proper number of voting machines of the type used in general elections, which machines shall be duly inspected, prepared and certified in the same manner as provided for under Chapter 50 of this title for general elections. (20 Del. Laws, c. 393, § 26; 27 Del. Laws, c. 66, § 1; Code 1915, § 1700; Code 1935, § 1788; 42 Del. Laws, c. 117, § 1; 43 Del. Laws, c. 127, § 4; 15 Del. C. 1953, § 3125; 49 Del. Laws, c. 276, § 4; 55 Del. Laws, c. 458, § 1; 57 Del. Laws, c. 567, § 20; 58 Del. Laws, c. 148, §§ 38, 39; 60 Del. Laws, c. 414, § 8; 61 Del. Laws, c. 480, § 5.)

§ 3126. Voting to be by voting machines.

In every primary election district in which a primary election is to be held under this chapter, voting machines of the type used in general elections, as provided for in Chapter 50 of this title, shall be used to record the votes, and the manner of voting shall be the same as that set forth in Chapter 49 of this title. (20 Del. Laws, c. 393, § 27; 27 Del. Laws, c. 66, § 1; Code 1915, § 1701; Code 1935, § 1789; 15 Del. C. 1953, § 3126; 57 Del. Laws, c. 567, § 21; 61 Del. Laws, c. 480, § 6.)

§ 3127. Designation of polling places.

The department of elections shall, at least 2 weeks prior to the primary election, designate the place for holding a primary election in each primary election district in the same manner as it designates polling places for a general election. (20 Del. Laws, c. 393, § 23; 27 Del. Laws, c. 66, § 1; Code 1915, § 1697; Code 1935, § 1785; 15 Del. C. 1953, § 3128; 50 Del. Laws, c. 426, § 15; 50 Del. Laws, c. 631, § 2; 58 Del. Laws, c. 148, § 40.)

*Subchapter III. Election Officers***§ 3141. Form of oath.**

Before opening the election, the presiding officers and judges shall each take and subscribe an oath according to the following form: "I do solemnly swear (or affirm) that in the primary election to be held on the day of A. D. I will not knowingly or willfully receive or consent to the receiving of the vote of any alien, and also that I will not receive or consent to the receiving of the vote of any person whom I shall believe not entitled to vote, unless my associates shall adjudge such person to be entitled to vote. That I will not receive or reject, nor concur in receiving or rejecting any vote through partiality or under bias, and that I will determine every matter that shall come before me and perform every act and duty by law required of me, touching the primary election, truly, faithfully and impartially, according to the best of my skill and judgment; that I will cause the ballots that shall be taken at such primary election to be fully read and ascertained, and a true statement thereof to be made, according to the best of my knowledge and ability; that I have not received, nor will I receive directly or indirectly from or through any candidate to be voted for at such primary election, or any representative of any candidate or other person, any money, pay or other valuable thing or reward; that I have not been promised, or in any manner been led to believe that I will at any time directly or indirectly receive any money, pay or other valuable thing or reward from such candidate or representative of such candidate or other person other than that provided by law and if I shall discover any partiality, unfairness or corruption in the conducting of the primary election, I shall disclose the same to the executive authority that shall have directed the holding of the primary election and to the Attorney General to the end that the subject may be investigated, so help me God (or so I solemnly affirm)." (20 Del. Laws, c. 393, § 5; 27 Del. Laws, c. 66, § 1; Code 1915, § 1682; Code 1935, § 1773; 15 Del. C. 1953, § 3143.)

§ 3142. Powers to preserve peace.

Each of the election officers of any primary election shall have the same powers as provided in § 4946 of this title. (20 Del. Laws, c. 393, § 34; 27 Del. Laws, c. 66, § 1; Code 1915, § 1708; Code 1935, § 1796; 15 Del. C. 1953, § 3147; 58 Del. Laws, c. 148, § 41.)

§ 3143. Compensation.

Compensation of the officers and clerks for the holding of primary elections shall be the same as the compensation for officers and clerks in general elections. (20 Del. Laws, c. 393, § 35; 27 Del. Laws, c. 66, § 1; Code 1915, § 1709; 30 Del. Laws, c. 102, § 1; Code 1935, § 1797; 45 Del. Laws, c. 150, § 9; 15 Del. C. 1953, § 3148; 50 Del. Laws, c. 555; 52 Del. Laws, c. 14.)

*Subchapter IV. Procedure at Polling Places***§ 3161. Voting procedure.**

The voting procedure at any primary election shall be the same as at any general election, except that the officers shall first determine from the voter's original permanent registration record whether the voter's party affiliation is 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 the primary election. (20 Del. Laws, c. 393, § 20; 22 Del. Laws, c. 285, § 3; 27 Del. Laws, c. 66, § 1; Code 1915, § 1694; 40 Del. Laws, c. 142, § 8; Code 1935, § 1782; 45 Del. Laws, c. 150, § 7; 15 Del. C. 1953, § 3161; 50 Del. Laws, c. 426, § 5; 51 Del. Laws, c. 107, § 5; 57 Del. Laws, c. 567, § 23.)

§ 3162. Return of registration records; failure; penalty.

The inspector, immediately after the close of the primary election, shall return the registration records used by him at any primary election to the department from whom he received the same, which shall preserve them.

Whoever, being an inspector, neglects, refuses or fails to return the registration records as directed in this section shall, for each such offense, be fined in such amount or imprisoned for such term, or both, as the court in its discretion may determine. (20 Del. Laws, c. 393, § 20; 22 Del. Laws, c. 285, § 3; 27 Del. Laws, c. 66, § 1; Code 1915, § 1694; 40 Del. Laws, c. 142, § 8; Code 1935, § 1782; 45 Del. Laws, c. 150, § 7; 15 Del. C. 1953, § 3164; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 426, §§ 4, 6.)

§ 3163. Receiving illegal or refusing legal votes; penalty.

Whoever, at any primary election, being a presiding officer or judge, knowingly and willfully receives, or advises or consents to the receiving of, the vote of any person not entitled to vote at such primary election; or whoever, at any primary election, being a presiding officer or judge, knowingly and willfully refuses to receive the vote of any person entitled to vote at such primary election, shall, for every such offense, pay \$100 to any person who sues for the same or be fined not less than \$100, and, in either case, be imprisoned until the judgments, fines and costs are paid in full or discharged by the court. (20 Del. Laws, c. 393, § 21; 27 Del. Laws, c. 66, § 1; Code 1915, § 1695; Code 1935, § 1783; 15 Del. C. 1953, § 3165.)

§ 3164. Challengers.

(a) Each candidate for nomination at any primary election may appoint and accredit some suitable person as a challenger. One challenger for each candidate whose name appears on the ballot for that election district may be present inside the polling place and shall be permitted to observe the conduct of the primary election and all the election records. The challengers may be changed and their places filled in like manner during the day.

(b) The duties, privileges and activities of these challengers shall be governed by § 4934(b) and (c) and other pertinent sections of this title, consistent with this chapter. (20 Del. Laws, c. 393, § 32; 27 Del. Laws, c. 66, § 1; Code 1915, § 1706; Code 1935, § 1794; 15 Del. C. 1953, § 3166; 50 Del. Laws, c. 426, § 16; 57 Del. Laws, c. 181, § 43; 58 Del. Laws, c. 148, § 43.)

§ 3165. Challenges; oath of voter; penalty.

(a) Any recognized member of the political party, in whose interest any primary election is held, may challenge the right of any person offering to vote at a primary election.

(b) The board of election officers holding the same shall determine whether the person so offering is entitled to vote and shall receive or reject such vote, as the evidence for or against the right of the person to vote shall warrant.

(c) The officers may, of their own motion or in case of challenge if there be doubt of the propriety of receiving the offered vote, require of the person so offering to vote his oath or affirmation, which shall be administered by the presiding officer, who may administer the same in the following form: "Do you solemnly swear (or affirm) that you are a legally qualified voter under the rules of the party authorizing this primary election, that you will be legally qualified to vote at the following election for which candidates are now being selected to be voted for, that you are at this time a bona fide resident of

this primary election district, that you have not voted or you will not vote at any other voting place this day, that you have not voted or you will not vote at the primary election of any other political party, organization or association held for the purpose of nominating or selecting candidates to be voted for at the ensuing election, so help you God (or so you solemnly affirm).”

(d) After the voter has taken the oath or affirmation, such voter shall be allowed to cast his vote; and if any person offering to vote at any primary election declines to make the oath or affirmation demanded, his vote shall be rejected.

(e) If at the time a person proposed to vote is challenged and there are several persons waiting their turn to vote, such challenged person shall stand to 1 side until unchallenged voters have had an opportunity to vote, when his case shall be taken up and disposed of.

(f) Whoever challenges a qualified voter, resident of such primary election district, well-known as a member of the political party holding such primary election, for the purpose of annoying or delaying voters shall, for each and every such offense, be fined \$100 or imprisoned not more than 6 months, or both. (20 Del. Laws, c. 393, § 33; 27 Del. Laws, c. 66, § 1; Code 1915, § 1707; Code 1935, § 1795; 15 Del. C. 1953, § 3167; 57 Del. Laws, c. 567, § 25.)

§ 3166. Illegal election conduct; general penalties.

(a) Whoever, at any primary election:

(1) Falsely personates any elector or other person and votes or attempts to vote in or upon the name of any person, whether living or dead, or in or upon any false, assumed or fictitious name, or in or upon any name not his own; or

(2) Knowingly, willfully or fraudulently votes more than once for any candidate for the same office; or

(3) Votes in any other primary election district than the one in which he is a bona fide resident; or

(4) Votes or attempts to vote more than 1 ballot at any primary election district; or

(5) Solicits from any candidate or from any other person or receives, directly or indirectly from such candidate or from any other person, any money, or promise of place or position, or any valuable consideration of any kind, for his vote or support; or

(6) Not being entitled thereto, votes or attempts or offers to vote in any primary election district; or

(7) Having once voted, attempts or offers to vote again; or

(8) Knowingly, willfully or fraudulently does any unlawful act to secure opportunity for himself or for any other person to vote; or

(9) By force, threat, menace, intimidation, bribery or reward or offer to or promise thereof, or otherwise unlawfully either directly or indirectly, influences or attempts to influence any elector in giving his vote; or

(10) Promises any place or position for the purpose of securing any voter's support; or

(11) Prevents or hinders or attempts to prevent or hinder any qualified voter from freely exercising the rights of suffrage; or

(12) By any such means induces or attempts to induce any such voter to refuse to exercise any such right; or

(13) By any such means or otherwise compels or induces or attempts to compel or induce any inspector of any primary election or other officer of any primary election to receive the vote of any person not legally qualified or entitled to vote at the primary election in such district; or

(14) Knowingly, willfully or fraudulently interferes with, delays or hinders in any manner any inspector of any primary election, clerk or other officer of such election in the discharge of his duty; or

(15) By any such means or other unlawful means, knowingly, willfully or fraudulently counsels, advises, induces or attempts to induce any inspector of any primary election, clerk or other officer of any primary election, whose duty it is to ascertain, proclaim, announce or declare the result of any such primary election or to give or make any certificate, document, report, return or other evidence in relation thereto, to refuse or neglect to comply with his duty or to violate any law regulating the same, or to receive the vote of any person in any primary election district not entitled to vote therein or to refuse to receive the vote of any person entitled to vote therein; or

(16) Aids, counsels or advises, procures or assists any voter, person or inspector of any primary election or other officer of such primary election to do any act by law forbidden, or in this chapter constituted an offense, or to omit to do any act by law directed to be done,

shall, when not in this chapter otherwise particularly specified, for each offense be fined not more than \$200 or imprisoned not more than 2 years, or both.

(b) Whoever votes at the primary election of more than 1 political party before any 1 general election shall be punished as provided in subsection (a) of this section.

(c) Any act or deed declared an offense by the general laws of this State concerning elections and not in this section particularly mentioned shall also be an offense in all primary elections, and shall be punished in the same form and manner as is provided for the punishment of similar offenses by the general laws; and all the penalties and provisions of the general laws shall apply in such case with equal force and shall be as effective as though fully set

out in this chapter. (20 Del. Laws, c. 393, § 22; 27 Del. Laws, c. 66, § 1; Code 1915, § 1696; Code 1935, § 1784; 15 Del. C. 1953, § 3168.)

§ 3167. Bribery at primary elections; penalty.

Whoever, either in or out of this State, receives or accepts, or offers to receive or accept, or pays, transfers or delivers, or offers, or promises to pay, transfer or deliver, or contributes or offers, or promises to contribute to another to be paid or used, any money, or other valuable thing as a compensation, inducement or reward for the giving or withholding or in any manner influencing the giving or withholding a vote at any primary election held for the purpose of selecting delegates or representatives to any political convention thereafter to be held for the purpose of selecting candidates for public office or for the purpose of selecting delegates to a national political convention thereafter to be held for the purpose of nominating candidates for the office of President and Vice-President of the United States, shall be fined not less than \$100 nor more than \$5,000 or imprisoned not less than 1 month nor more than 3 years, or both. (Code 1915, § 1715A; 29 Del. Laws, c. 109, § 1; Code 1935, § 1803; 15 Del. C. 1953, § 3169.)

Cross references. — As to bribery not involving public servants, see §§ 881 and 882 of Title 11.

§ 3168. Stealing, destroying or falsifying registration records; penalty.

(a) Whoever, being an inspector of any primary election, clerk or other officer or person having the custody of any registration records, oaths, return of votes, certificates, poll lists or any paper, document or evidence of any description in this chapter directed to be made, filed or preserved, steals, willfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes the whole or any part thereof, or fraudulently makes any entry, erasure or alteration therein, except as allowed and directed by this chapter, or permits any other person to do so, shall, for every such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both.

(b) Whoever, other than an officer mentioned in subsection (a) of this section, commits any of the acts specified in such subsection (a) or advises, procures or abets the commission of the same shall, for every such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both. (20 Del. Laws, c. 393, §§ 16, 17; 27 Del. Laws, c. 66, § 1; Code 1915, §§ 1690, 1691; Code 1935, §§ 1778, 1779; 45 Del. Laws, c. 150, § 4; 15 Del. C. 1953, § 3170; 50 Del. Laws, c. 426, § 4.)

Cross references. — As to tampering with public records, see §§ 873 and 876 of Title 11.

Ballots cast at an election are "papers" or "evidence" within the meaning of this section. State v. Tyre, Del. Gen. Sess., 67 A. 199 (1907).

Any unlawful and wilful changing or destruction of ballots constitutes an offense under this section, the purpose being to pre-

vent any such false and fraudulent acts. State v. Tyre, Del. Gen. Sess., 67 A. 199 (1907).

Willfully reading wrong candidate's name constitutes offense. — If, at the time of the counting of the votes at the close of the polls, an inspector willfully read the name of a candidate other than the one voted for, that would constitute a violation of the act by him. State v. Tyre, Del. Gen. Sess., 67 A. 199 (1907).

§ 3169. Alcoholic liquor in locale of primary election; penalty.

Whoever, during the time that any primary election is in progress in any primary election district or during the time the ballots cast thereat are being counted:

(1) Brings, takes, orders or sends into, or attempts to bring, take or send into any place of holding any primary election, any alcoholic liquor whatever; or

(2) At any such time and place drinks or partakes of any alcoholic liquor,

shall, for every such offense, be fined not less than \$5 nor more than \$10. (20 Del. Laws, c. 393, § 25; 27 Del. Laws, c. 66, § 1; Code 1915, § 1699; Code 1935, § 1787; 15 Del. C. 1953, § 3171.)

Cross references. — As to alcoholic liquors generally, see Title 4.

§ 3170. Tabulation of vote.

As soon as the polls are closed at a primary election, the votes shall be tabulated as set forth in Chapter 49 of this title. (20 Del. Laws, c. 393, § 28; 27 Del. Laws, c. 66, § 1; Code 1915, § 1702; Code 1935, § 1790; 15 Del. C. 1953, § 3172; 57 Del. Laws, c. 567, § 26; 58 Del. Laws, c. 148, § 44.)

§ 3171. Certification of results.

Each judge shall record on a certificate furnished for that purpose the total vote cast for each candidate in the election district. Both certificates shall then be signed by the inspector, judges and clerks and sealed in an envelope, which shall be signed across its sealed fold by each election officer. This envelope, together with other required records and supplies, shall immediately be delivered to the department of elections by the inspector. (20 Del. Laws, c. 393, § 29; 27 Del. Laws, c. 66, § 1; Code 1915, § 1703; Code 1935,

§ 1791; 15 Del. C. 1953, § 3173; 49 Del. Laws, c. 276, § 6; 50 Del. Laws, c. 426, § 17; 57 Del. Laws, c. 567, § 27; 58 Del. Laws, c. 148, § 144.)

§ 3172. Calculation of votes; ties.

(a) The department of elections shall forthwith calculate the total number of votes cast for each candidate in any contest held within its county and certify the candidate or candidates receiving the highest number of votes. In cases of statewide contests, the department shall report the results to the State Election Commissioner.

(b) In the case of any objection or dispute, the board of elections for the county involved shall convene within 48 hours of the closing of the polls to examine the matter, reviewing such records and hearing such testimony as it shall deem necessary. The board shall determine the result of the contested election and certify the name of the winning candidate or candidates. In the case of statewide contests, the State Election Commissioner shall be immediately notified of the board's determination.

(c) In all cases of a tie vote, the department shall immediately notify the chairman and secretary of the county committee of the political party holding the primary election. This committee shall convene within 5 days of such notification to determine which candidate shall be entitled to the nomination.

(d) In cases where there is a tie vote in a statewide contest, the State Election Commissioner shall immediately notify the chairman and secretary of the state committee of the political party involved, and that committee shall convene within 5 days, as provided above, to decide upon the nomination. (20 Del. Laws, c. 393, § 38; 27 Del. Laws, c. 66, § 1; Code 1915, § 1712; Code 1935, § 1800; 15 Del. C. 1953, § 3174; 58 Del. Laws, c. 148, § 145.)

§ 3173. Vote required for nomination.

In all cases the candidate receiving the highest number of votes shall be declared the nominee of the political party holding a primary election. (20 Del. Laws, c. 393, § 37; 27 Del. Laws, c. 66, § 1; Code 1915, § 1711; Code 1935, § 1799; 15 Del. C. 1953, § 3175.)

§ 3174. Death, physical, mental or other incapacity of nominee.

Whenever it shall be determined that a duly nominated candidate will be unable to serve if elected because of death, physical, mental or other incapacity, the vacancy shall be filled as provided in § 3303 of this title. If the vacancy occurs subsequent to the dates specified in § 3303 of this title, it shall be filled in accordance with § 3306 of this title. (20 Del. Laws, c. 393, § 37; 27

Del. Laws, c. 66, § 1; Code 1915, § 1711; Code 1935, § 1799; 15 Del. C. 1953, § 3176; 60 Del. Laws, c. 414, § 9.)

Designation of a successor on the ballot is governed by the provisions of this section where it has been found that the person

nominated in a primary election is ineligible to hold office. *Fonville v. McLaughlin*, Del. Supr., 270 A.2d 529 (1970).

CHAPTER 33. NOMINATIONS OF CANDIDATES BY PARTIES

Sec.

3301. Certificates of nominations.
 3302. Party title, figure or device.
 3303. Time of filing certificates.
 3304. Duties of State Election Commissioner.

Sec.

3305. Preservation of certificates for 6 months.
 3306. Supplemental certificates of nomination.
 3307. Publication of nominations.
 3308. Penalties.

§ 3301. Certificates of nominations.

(a) The nominations of the candidates for electors of President and Vice-President of the United States, together with the names of the candidates for President and Vice-President, and for United States Senator, Representative in Congress, Governor and all other state offices shall be certified to the State Election Commissioner by the presiding officer and secretary of the state convention or committee of each political party eligible to place candidates upon the ballot. The Commissioner shall forthwith send copies of each certificate of nomination to each county department of elections.

(b) The nominations of the candidates for State Senator, State Representative and the various county offices shall be certified to the department of elections for the county in which the contests are to be held, by the presiding officer and secretary of the county committee of each political party eligible to place candidates upon the ballot. Each department shall forthwith send copies of each certificate of nomination to the State Election Commissioner.

In the case of minor political parties not required to select candidates pursuant to Chapter 31 of this title, candidates shall be selected at each party's county nominating convention.

(c) The certificates shall be in writing and, in each case, shall contain the name of each person nominated, his residence and the office for which he is nominated, other than the names of the candidates for President and Vice-President for which no residence need be given. The persons making such certificates shall add to their signatures their respective places of residence and shall acknowledge such certificate before an officer duly authorized to take acknowledgments of deeds, and a certificate of such acknowledgment shall be fixed to the instrument.

(d) No candidate for the office of elector of President and Vice-President, United States Senator, Representative in Congress, Governor or other state officer to be voted for on a statewide basis shall be deemed nominated and no certificate of nomination for such candidate shall be made or filed, nor shall the name of any such candidate be placed on the ballot in any general election in this State, unless the candidate:

- (1) Shall have been so nominated by receiving more than 50% of the eligible delegate vote on the final polled vote of a state nominating con-

vention of the political party advancing his candidacy, at a convention held not later than the fourth Saturday in August in the year of such general election and who was not required to run in a primary election; or

(2) Shall have received a majority of the votes cast by registered voters of the political party advancing his candidacy at a statewide primary election held pursuant to Chapter 31 of this title.

(e) No such state nominating convention shall have completed its business relative to such nominations until such time as 1 nominee for each of the aforesaid offices shall have received a vote greater than 50% of the total number of eligible delegate votes at such convention, which polled vote shall be considered final.

(f) The State Election Commissioner shall see to it that the nominations of candidates submitted to him and the eligibility of each political party to make such nominations conform to those requirements set forth in this title. Each county department of elections shall perform the same duty concerning those certificates of nomination submitted to it. (19 Del. Laws, c. 37, § 4; 27 Del. Laws, c. 65, § 4; Code 1915, § 1722; Code 1935, § 1811; 43 Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 15 Del. C. 1953, § 3301; 57 Del. Laws, c. 241, § 9; 57 Del. Laws, c. 567, §§ 28, 29; 58 Del. Laws, c. 258, § 9; 60 Del. Laws, c. 447, §§ 1-4; 61 Del. Laws, c. 418, §§ 12, 13.)

Republican state convention is "state action" within meaning of Fourteenth Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

State action which frustrates party organization is highly suspect. — If a given party chooses to organize by districts, but to allocate delegate strength to a district in which it has fewer numbers but a greater opportunity to achieve the practical advancement of the political ideas for the pursuit of which the association was formed, state action which frustrates that choice is highly suspect. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Party's right to freedom of association. — The ability of any political party in Delaware to organize itself on a district rather than an at large basis may be, or is believed to be,

significantly related to its pursuit of the power to impose its policies upon government. The freedom to associate for such a pursuit is the heart of the right of association guaranteed by the First Amendment. *Redfearn v. Delaware Republican State Comm.*, 502 F.2d 1123 (3rd Cir. 1974).

Mandamus petition not required to state names or eligibility of candidates. — A mandamus petition to compel the county clerk of the peace to cause to be printed on a general election ballot a ticket designating a new political party was not required to state the names or eligibility of the candidates of the party; it was sufficient that the petition state that conventions were held, candidates for office selected and the names of the nominees filed in a certificate with the county clerk of the peace. *State ex rel. Shallcroff v. Slaughter*, Del. Super., 16 A.2d 116 (1940).

§ 3302. Party title, figure or device.

(a) The certificates of nomination shall designate a title for the party which the convention or committee represents, together with any simple figure or device by which its lists of candidates may be designated on the ballot. The figure or title or device selected and designated by the state conventions or committee of any party shall be used by that party throughout this State. Only 1 figure or device shall be used by a party at any election. The same title, figure or device shall not be used by more than 1 party, and the party first certifying a name, title, figure or device to the county departments of elections shall have prior right to use the same, and provided further that the Democratic Party and the Republican Party shall have exclusive use of such title and no other party shall use the word "Democratic" or "Republican" or any variation thereof in its title. Such figure or device may be the figure of a star, an eagle, a plow, or some such appropriate symbol, but the coat of arms or seal of this State or of the United States or the flag of the United States or of this State shall not be used as such figure or device.

(b) In case of a division in any party and claim by 2 or more factions to the same party name or title, figure or device, if the division occurs at a state convention or extends throughout this State, the department of election of the several counties shall, within 10 days after any one of them has received the certificates of the contending factions, assemble in Dover, with the State Election Commissioner presiding and having the right to vote in event of a tie, and determine to which faction the name, title or figure properly belongs, giving the preference to the convention held at the time and place designated in the call of the regularly constituted party authorities; if, within 5 days after, the other faction presents no other party name or title, figure or device and certifies the same to the department of election, the latter shall again immediately assemble and select some suitable title, figure or device for such faction and the name shall be placed above the list of its candidates on the ballots. If the certificate of the contending factions are not received by the department of election in time for them to assemble at Dover before publishing the device and list of candidates in the newspapers, then and in that case each department of elections shall determine for itself which faction shall be entitled to the name, title, figure or device and shall select a name, title, figure or device for the other faction. In case of division in any party extending only throughout a county, district or hundred, the department of elections of the county in which such division occurs, upon the receipt of certificates from the contending factions, shall determine which faction is entitled to the party name, figure or device, and to have their nominations printed in the proper party column, and should the other faction fail to do so, the department of elections shall select for them a name or title, figure or device. (19 Del. Laws, c. 37, § 4; 27 Del. Laws, c. 65, § 4; Code 1915, § 1722; Code 1935, § 1811; 43

Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 15 Del. C. 1953, § 3302; 55 Del. Laws, c. 15; 60 Del. Laws, c. 447, §§ 5-7.)

Party name "Independent-Democrat" the ballot in a town election. Democratic permitted. — Subsection (a) of this section, standing alone, did not prevent the inclusion of the party name "Independent-Democrat" on Comm. v. Mayor of Elsmere, Del. Super., 373 A.2d 227 (1977).

§ 3303. Time of filing certificates.

Certificates of nomination to be filed with the State Election Commissioner or the departments of election, as the case may be, shall be filed before the close of the official business day on or before the 1st day of September of the year of any general election, and if the 1st day of September is a Sunday or legal holiday, then on the next official business day. In any case, where a candidate named on these certificates shall not already have given notice on the form provided by the State Election Commissioner and stipulated in § 3107 of this title, such notice shall accompany the filing of the respective certificate of nomination. However, when there is a contest in a primary election yet to be held, the winner of any such contest shall be named on a certificate of nomination to be filed before 12:00 noon the Tuesday following said primary election. (19 Del. Laws, c. 37, § 6; 27 Del. Laws, c. 65, § 6; Code 1915, § 1723; Code 1935, § 1812; 43 Del. Laws, c. 129, § 2; 45 Del. Laws, Sp. Sess., c. 4, § 1; 15 Del. C. 1953, § 3303; 55 Del. Laws, c. 324; 56 Del. Laws, c. 433, § 1; 58 Del. Laws, c. 258, § 10; 60 Del. Laws, c. 412, § 1; 60 Del. Laws, c. 447, § 8.)

§ 3304. Duties of State Election Commissioner.

(a) The State Election Commissioner, upon receiving the certificates of the several party conventions or committees, or any supplemental certificate, of the respective nominations of the candidates for electors of President and Vice-President of the United States and the names of the candidates for President and Vice-President of the United States as provided in this chapter, not less than 50 days before the day fixed by law for the ensuing general election, under his hand and seal of office, shall certify to the department of elections in each county the names of the candidates for President and Vice-President of the United States of the political parties, together with the designated title of each party and the figure or device of each party as certified to him.

(b) The State Election Commissioner, before the day of the ensuing general election, under his hand and seal of office, shall certify to the Prothonotary of the Superior Court in each county the nominations of the candidates for electors of President and Vice-President of the United States and the names of the candidates for President and Vice-President of the United States of each polit-

ical party as shall have been duly certified to him, which certificates shall be presented by the Prothonotary to the Superior Court of the county upon its convening for the performance of the duties imposed upon it by article V of the Constitution of this State. (Code 1935, § 1811; 44 Del. Laws, c. 119, § 1; 45 Del. Laws, c. 154, § 1; 15 Del. C. 1953, § 3304; 60 Del. Laws, c. 447, § 9.)

§ 3305. Preservation of certificates for 6 months.

The State Election Commissioner and the departments of election shall cause to be preserved in their respective offices all certificates of nomination filed under this chapter for 6 months after the date of filing thereof. (19 Del. Laws, c. 37, § 5; 27 Del. Laws, c. 65, § 5; Code 1915, § 1723; Code 1935, § 1812; 43 Del. Laws, c. 129, § 2; 45 Del. Laws, Sp. Sess., c. 4, § 1; 15 Del. C. 1953, § 3305; 60 Del. Laws, c. 447, § 10.)

§ 3306. Supplemental certificates of nomination.

(a) Whenever it shall be determined, subsequent to the dates specified in § 3303 of this title, that a duly nominated candidate will be unable to serve if elected because of death, physical, mental or other incapacity, the state, county or city (if a municipality holds its election at the time of the general election) committee shall convene within 24 hours of said determination to authorize the filing of a supplemental certificate of nomination for a substitute candidate, or to decline to issue such a certificate. However, in the case of the death of a candidate, said committee may convene within a reasonable period of time sufficient to have the new candidate's name placed on the ballot, but in no case later than 5 days from the date of death.

(b) Such certificate, if issued, shall be delivered to the officer or officers to whom the original certificate was submitted no later than 12:00 noon of the day following that meeting at which the certificate was authorized. However, if said meeting shall occur within 5 days of the day of election, the certificate shall be delivered immediately. (19 Del. Laws, c. 37, § 4; 27 Del. Laws, c. 65, § 4; Code 1915, § 1722; Code 1935, § 1811; 43 Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 274, § 1; 15 Del. C. 1953, § 3306; 60 Del. Laws, c. 412, § 2.)

§ 3307. Publication of nominations.

The department of elections for each county, at least 10 days before an election to fill any public office, except special elections, shall cause to be published in at least 2 newspapers within his county the nominations to office certified to him. The departments of election in each county shall make no less than 2 publications in each newspaper before such election. Such publications

shall be made in 2 newspapers representing the 2 principal political parties. In all cities where a daily newspaper is published, such notice shall also be published in 2 daily newspapers representing such political parties, if such there be. Such publications by the respective departments of election shall be arranged, so far as practicable, in the order and form in which they will appear when printed on the ballots and shall designate the devices under which the list of candidates of each party shall be printed. The departments of election shall not include in the publications to be made according to this section the name of any candidate whose certificate of nomination shall have been filed in their office, who shall have notified the department of elections in writing duly signed and acknowledged that he will not accept the nomination. The name of such candidate shall not be included with the names of the candidates to be printed on the ballots as in this chapter provided. (19 Del. Laws, c. 37, § 7; 27 Del. Laws, c. 65, § 7; Code 1915, § 1724; Code 1935, § 1813; 43 Del. Laws, c. 129, § 3; 44 Del. Laws, c. 119, § 2; 45 Del. Laws, c. 154, § 2; 47 Del. Laws, c. 149, § 2; 15 Del. C. 1953, § 3307; 60 Del. Laws, c. 447, § 11.)

§ 3308. Penalties.

Whoever:

- (1) Falsely makes or fraudulently defaces or fraudulently destroys any certificate of nomination or any part thereof; or
- (2) Files any certificate of nomination, knowing the same or any part thereof to be falsely made; or
- (3) Suppresses any certificate of nomination which has been duly filed or any part thereof; or
- (4) Conspires with other persons, induces or attempts to induce any other person to do any of such acts, whether or not any of such acts are committed or attempted to be committed;

shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 5 years. (19 Del. Laws, c. 37, § 30; 27 Del. Laws, c. 65, § 27; Code 1915, § 1734; Code 1935, § 1823; 15 Del. C. 1953, § 3308.)

PART IV

General Elections

Cross references. — As to constitutional requirements that all elections be free and equal, see Del. Const., art. I, § 3. As to time and manner of holding general election, see Del. Const., art. V, § 1. As to election of County Executive in New Castle County, see § 1111 of Title 9. As to election of County Ex-

ecutive and officials of the county governing body in New Castle County, see § 1166 of Title 9. As to election on question of establishment of sanitary and water districts in Sussex County, see § 6506 of Title 9. As to election of Receiver of Taxes and County Treasurer for Kent County, see § 8401 of Title 9.

CHAPTER 41. GENERAL PROVISIONS

Sec.

- 4101. Residency requirements for candidates.
- 4102. Election districts; boundaries.
- 4103. Division of election districts.
- 4104. [Repealed.]

Sec.

- 4105. Composition of election districts.
- 4106. Voting places.
- 4107. [Transferred.]

§ 4101. Residency requirements for candidates.

The residency requirements for candidates for elective office shall be as set forth in the municipal charter, state statute or state Constitution governing the qualifications of candidates for elective office in the city, county, area or district in which the candidate proposes to seek elective office. In instances where a court has declared a residency requirement to be unconstitutional and until such time as a new residency requirement becomes effective, no person may be a candidate for elective office unless such person has been a resident of the city, county, area or district for a period of at least 1 year prior to seeking elective office. (15 Del. C. 1953, § 4101; 58 Del. Laws, c. 520.)

§ 4102. Election districts; boundaries.

The boundaries of the election districts in each county shall be established and designated by the department of elections for the county, subject to the limitations in this chapter. (Code 1935, § 1750; 46 Del. Laws, c. 315, § 1; 15 Del. C. 1953, § 4102.)

§ 4103. Division of election districts.

(a) Each department may divide such of the election districts, and such only, as by the election last preceding such division shall be found to contain a greater number of voters than can conveniently vote therein. Each election district so divided shall be at all times wholly within boundaries of 1 representative district.

(b) The department shall designate each election district by an appropriate title that will distinguish it from every other election district.

(c) The division of election districts shall be made at any time after a general election is held and before March 1 of the next succeeding general election year. (Code 1935, § 1750; 45 Del. Laws, c. 148, § 10; 45 Del. Laws, c. 149, § 10; 46 Del. Laws, c. 315, § 1; 15 Del. C. 1953, § 4103; 51 Del. Laws, c. 236.)

Purpose. — The main purpose of the General Assembly in providing for the establishment of several election districts in the respective representative districts was to facilitate

and make more convenient the casting of ballots by the qualified electors. *State ex rel. Morford v. Tatnall*, Del. Supr., 21 A.2d 185 (1941).

§ 4104. Notice of change of election district boundaries in New Castle County.

Repealed by 61 Del. Laws, c. 480, § 7, eff. July 11, 1978.

§ 4105. Composition of election districts.

(a) Each department shall create election districts consisting of a minimum of 500 registered voters and a maximum of 1800 registered voters, except where such composition would cause a conflict with representative, senatorial or councilmanic boundary lines.

(b) Allowance for individual exceptions may be made by the State Election Commissioner.

(c) Each department shall designate all election districts before the 1st day of March in any election year. (15 Del. C. 1953, § 4105; 55 Del. Laws, c. 259; 57 Del. Laws, c. 181, § 45; 58 Del. Laws, c. 215, § 44; 60 Del. Laws, c. 405, § 1.)

§ 4106. Voting places.

(a) Wherever possible, the department will use the same locations for both registration and voting.

(b) If it is not possible for the same location to be used for registration and voting, the board shall make a request for a different location for voting to the

State Election Commissioner who is authorized to grant such request. (15 Del. C. 1953, § 4106; 57 Del. Laws, c. 181, § 46.)

§ 4107. Maps at each polling place.

[Transferred.]

Revisor's note. — The material formerly codified under this section was transferred and now appears as § 4911(c) of this title.

CHAPTER 43. PRESIDENTIAL ELECTORS, UNITED STATES SENATORS, REPRESENTATIVES IN CONGRESS, GOVERNOR AND LIEUTENANT GOVERNOR

Sec.

4301. Presidential electors; election.
 4302. Proclamation of number to be chosen.
 4303. Meeting and voting of electors.
 4304. Substitute electors.
 4305. Clerk of electors; compensation.

Sec.

4306. Compensation of electors and clerk.
 4307. United States Senator.
 4308. Representative in Congress.
 4309. [Repealed.]
 4310. Qualifications of voters.

§ 4301. Presidential electors; election.

Electors of a President and Vice-President of the United States shall be chosen at the general election held in the year of a presidential election. The election of such electors shall be conducted in the same places, manner and form and by the same persons and officers, and under the same regulations in all respects, as the general election for the same year. (Code 1852, §§ 399, 401; 11 Del. Laws, c. 8; Code 1915, §§ 1856, 1858; Code 1935, §§ 1975, 1977; 15 Del. C. 1953, § 4301.)

Cross references. — As to procedure in case of failure to elect electors, see §§ 7331 to 7334 of this title.

§ 4302. Proclamation of number to be chosen.

The Governor in October next preceding every election of presidential electors shall by proclamation make known the number of presidential electors to be chosen and the day of the election. (Code 1852, § 400; Code 1915, § 1857; Code 1935, § 1976; 15 Del. C. 1953, § 4302.)

§ 4303. Meeting and voting of electors.

The electors chosen or appointed in this State for the election of a President and Vice-President of the United States shall meet and give their votes at Dover on the day determined by Congress for that purpose. (Code 1852, § 408; Code 1915, § 1865; Code 1935, § 1984; 15 Del. C. 1953, § 4303.)

§ 4304. Substitute electors.

In case of the death or inability to attend of either of the electors or if either of the electors be not present at the time and place of meeting by 12:00 noon, the electors present shall appoint an elector in the place of him not present. (Code 1852, § 409; Code 1915, § 1866; Code 1935, § 1985; 15 Del. C. 1953, § 4304.)

§ 4305. Clerk of electors; compensation.

The electors may employ a clerk, who shall receive for his services the sum of \$10. (Code 1852, § 410; Code 1915, § 1867; Code 1935, § 1986; 15 Del. C. 1953, § 4305.)

§ 4306. Compensation of electors and clerk.

The electors respectively shall receive for attendance and travel the same compensation as members of the General Assembly, to be paid, as also the compensation of the clerk, by the State Treasurer on a warrant signed by the electors out of any money in the treasury not otherwise appropriated. (Code 1852, § 411; Code 1915, § 1868; Code 1935, § 1987; 15 Del. C. 1953, § 4306.)

§ 4307. United States Senator.

A Senator from this State in the Senate of the United States shall be chosen by election at the general elections held in 1954 and in every sixth year thereafter and in 1958 and in every sixth year thereafter. The election of a United States Senator shall be conducted in the same places, manner and form and by the same persons and officers and under the same regulations in all respects as the general election for the same year. (Code 1915, § 1888; Code 1935, § 2007; 15 Del. C. 1953, § 4307.)

Cross references. — As to temporary or ad interim appointment whenever vacancy occurs by death, resignation or otherwise, see § 7321 of this title.

§ 4308. Representative in Congress.

A Representative for the people of this State in the Congress of the United States shall be chosen at the biennial general election. The election of a Representative in Congress shall be conducted in the same places, manner and form and by the same persons and officers and under the same regulations in all respects, as the election for members of the General Assembly, and the votes given for Representative in Congress shall be calculated and ascertained at the same time and place, in the same manner and by and under the

same means and regulations as those for members of the General Assembly. (Code 1852, §§ 412, 413; 11 Del. Laws, c. 362, § 2; Code 1915, §§ 1877, 1878; Code 1935, §§ 1996, 1997; 15 Del. C. 1953, § 4308.)

Cross references. — As to filling of vacancies in Office of Representative of the United States Congress, see §§ 7301 to 7307 of this title.

§ 4309. Governor and Lieutenant Governor; joint election.

Repealed by 61 Del. Laws, c. 480, § 9, eff. July 11, 1978.

§ 4310. Qualifications of voters.

All citizens of this State having the right to vote for representatives in the General Assembly are qualified to vote for presidential electors, United States Senator and Representative in Congress. (Code 1852, § 398; Code 1915, §§ 1855, 1889; Code 1935, §§ 1974, 2008; 15 Del. C. 1953, § 4309; 57 Del. Laws, c. 169, § 2.)

**CHAPTER 44. REGISTRATION AND VOTING FOR
PRESIDENTIAL ELECTORS ONLY BY UNITED
STATES CITIZENS WHO FAIL TO FULFILL
CERTAIN RESIDENCE REQUIREMENTS**

Sec.

4401. Registration qualifications.
4402. Time of registration.
4403. Place of registration; records.
4404. Method of registration.
4405. Place of voting; eligibility for absentee
voting.

Sec.

4406. Voting officials.
4407. Voting procedure.
4408. Tallying and recording of vote.

§ 4401. Registration qualifications.

The department in each of the 3 counties of this State shall permit registration by:

(1) Any citizen of this State who shall have changed his residence from 1 county, hundred, or election district to another located within the State, but who has not resided therein for a sufficient time so as to be otherwise eligible to register from his new place of residence; provided that such citizen would have been eligible to register within this State had he not moved; and provided that he is not entitled to vote in any other place; and provided further that such citizen would be otherwise qualified to register under the Constitution of this State.

(2) Any citizen of the United States who is a bona fide resident of this State as of the day of final registration next preceding a presidential election and provided that he is not entitled to vote in any other state. (15 Del. C. 1953, § 4401; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 2.)

§ 4402. Time of registration.

The department of each county shall be open for registration by citizens qualifying under this chapter, during regular registration hours otherwise set by law, but no sooner than 90 days before such presidential election and no later than the last general registration day. (15 Del. C. 1953, § 4402; 56 Del. Laws, c. 96.)

§ 4403. Place of registration; records.

The departments of election shall permit aforementioned registration under this chapter only in the central office and the names and addresses of persons so registered shall be kept in a separate poll book. (15 Del. C. 1953, § 4403; 56 Del. Laws, c. 96.)

§ 4404. Method of registration.

(a) Each person who shall apply at the office of any department of elections for registration under this chapter shall be examined under oath or affirmation as to his name, age, address, qualification as a voter and his right to register pursuant to this chapter as such on forms supplied by the departments of elections.

(b) Any person who so qualifies under this chapter may register absentee by applying in writing to the department in the county in which he resides for an absentee registration affidavit at any time during the year in which a presidential election is to be held, up to but not after 30 days before the date the presidential election is to be held, and by returning such affidavit to the said department not later than 30 days prior to the date of the presidential election. The absentee registration affidavit shall state, at least, the name, age, address, qualification as a voter and the right to register pursuant to this chapter, and shall be made out by the applicant before an officer authorized by law to administer oaths. (15 Del. C. 1953, § 4404; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 3.)

§ 4405. Place of voting; eligibility for absentee voting.

(a) Each department shall designate 1 centrally located polling place in its county where those persons who are qualified to vote pursuant to this chapter in their county shall be permitted to vote.

(b) Absentee voting shall be allowed for those covered in this chapter provided they meet the requirements set up in § 5502 of this title. (15 Del. C. 1953, § 4405; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 3.)

§ 4406. Voting officials.

Election officers for the polling places designated pursuant to § 4405 of this title shall be appointed by each department pursuant to Chapter 47 of this title. (15 Del. C. 1953, § 4406; 56 Del. Laws, c. 96.)

§ 4407. Voting procedure.

(a) After proper verification of registration, registrants under this chapter shall be permitted to vote by voting machine for presidential electors only. The voting hours shall be the same as general voting hours.

(b) Any person duly registered pursuant to § 4404 of this title who shall be unable to appear to cast his ballot at any presidential election at the regular polling place of the election district in which he is registered may cast an absentee ballot. Such duly qualified registrant must apply in writing to the

department of elections of the county in which he is registered not later than 7 days immediately prior to said election and must return said ballot to the appropriate department of elections not later than the time of the closing of the polls on the day of said election. (15 Del. C. 1953, § 4407; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 4.)

§ 4408. Tallying and recording of vote.

At the close of voting hours on election day, the election officers appointed under this chapter shall read the results from the voting machine and the absentee ballots, record them on forms supplied by the department of elections, attest to their accuracy by signature of all election officers present and return such form to the department of elections office. The returns so reported shall be then added to the county vote for presidential electors and be so presented to the boards of canvass. (15 Del. C. 1953, § 4408; 56 Del. Laws, c. 96; 58 Del. Laws, c. 502, § 5.)

CHAPTER 45. BALLOTS, ELECTION SUPPLIES AND POLLING PLACES

Sec.

- 4501. Single ballot for all candidates.
- 4502. Form and designation of ballots.
- 4503. Printing of ballots.
- 4504. Envelopes for ballots and other election supplies; obtaining and packaging.
- 4505. Substitution of candidate's name after printing of ballots.
- 4506. Tally sheets.
- 4507. Sheet containing oaths of election officers, certificate of qualification, laws.
- 4508. Certificates of the vote cast in each election district.

Sec.

- 4509. Election supplies to be furnished by department of elections.
- 4510. Supplies for election officers; custody of records and supplies; maps and lists of election districts.
- 4511. Reuse of election supplies.
- 4512. Polling places; designation and preparation.
- 4513. Substitute polling places.
- 4514. Expenses of general election.
- 4515. Payment procedure; source of pay.

§ 4501. Single ballot for all candidates.

There shall be a single ballot for Presidential, Vice-Presidential, state, county and district candidates. (Code 1915, § 1725; Code 1935, § 1811; 43 Del. Laws, c. 129, § 1; 44 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 149, § 1; 15 Del. C. 1953, § 4501.)

§ 4502. Form and designation of ballots.

(a) For each election, the party emblem adopted by each political party and its name shall appear on the ballot with the names of its candidates, arranged in line with the titles of the offices for which they are contesting, along with space for the voter to write in the name of any candidate of his choice, as prescribed in § 5005(b) of this title. In those years in which a President and Vice-President of the United States are to be elected the ballot shall be designated "Presidential, Vice-Presidential, State, County and District Ballot"; in other years the ballot shall be designated "State, County and District Ballot." The names of all candidates of any party shall be placed under the title and device of such party as designated in the certificate filed with the department of elections by such party's authorized agent or agents or, if none is designated, under some suitable title or device to be selected by the department of elections. When a President and Vice-President are to be elected, the names of the candidates for those offices shall be placed at the top of the list of candidates for all offices to be voted upon. The device named and chosen and the lists of candidates of the Democratic Party shall be placed in the first column on the left-hand side of the ballot, of the Republican Party in the second column, and of any other party, and the space for the voter to write in the name of any candidate of his choice for any office, in such order as the department of elections shall decide. The names of unaffiliated candidates shall appear in alphabetical order, under the heading "Unaffiliated Candidates," after the listing of various political parties. Where there are more political

parties and unaffiliated candidates than can be accommodated in parallel columns on the voting machine and/or absentee ballot, names of political party candidates or unaffiliated candidates may be placed in the same column, in such manner as may be determined by each county department of elections.

(b) All ballots for the same election shall be of uniform size, of the same quality and color of paper and sufficiently thick that the printing cannot be distinguished from the back. The arrangement of the ballots shall in general conform, as nearly as possible, to the sample ballot set forth in this section.

(c) The ballots prepared under this chapter shall have the representative district number printed in the margin at the top. In a presidential year they shall conform to the following design. In a nonpresidential year they shall conform as nearly as possible to such design.

OFFICIAL BALLOT
 Representative District Number _____
 Presidential, Vice-Presidential, State,
 County and District Ballot

WRITE-IN		PARTY EMBLEM	PARTY EMBLEM	PARTY EMBLEM
		Name of Party	Name of Party	Name of Party
	For President For Vice-President	JOHN DOE JOHN DOE	JOHN DOE JOHN DOE	JOHN DOE JOHN DOE
	For United States Senator	JOHN DOE	JOHN DOE	JOHN DOE
	For Representative in Congress	JOHN DOE	JOHN DOE	JOHN DOE
	For Governor	JOHN DOE	JOHN DOE	JOHN DOE
	For Lieutenant Governor	JOHN DOE	JOHN DOE	JOHN DOE

(d) Absentee ballots shall be prepared in accordance with this section. (19 Del. Laws, c. 37, § 8; 20 Del. Laws, c. 396, § 2; 27 Del. Laws, c. 65, § 8; Code 1915, §§ 1725, 1725A; 28 Del. Laws, c. 95; Code 1935, § 1814; 43 Del. Laws, c. 129, § 4; 44 Del. Laws, c. 119, § 3; 45 Del. Laws, Sp. Sess., c. 4, § 3; 47 Del. Laws, c. 149, § 3; 15 Del. C. 1953, § 4502; 59 Del. Laws, c. 54, § 1; 61 Del. Laws, c. 418, § 14; 61 Del. Laws, c. 480, §§ 10, 11.)

Regulations imposed by Delaware laws upon candidates of political parties seeking to obtain a ballot position are not invalidated. *Maddox v. Wrightson*, 421 F. Supp. 1249 (D. Del. 1976).

Placement of Democratic party candidates on ballot. — Subsection (a) of this sec-

tion, standing alone, did not prevent the placing of the Democratic party candidates in the third column from the left on the ballot for a town election as directed by town council. *Democratic Comm. v. Mayor of Elsmere*, Del. Super., 373 A.2d 227 (1977).

§ 4503. Printing of ballots.

(a) The department of elections in each county shall print the ballots to be used used in the voting machines in accordance with §§ 4502, 5005 and 5006 of this title.

(b) In addition to the ballots mentioned in subsection (a) of this section, the department of elections in each county shall have printed and shall deliver to the department of elections for its county, taking its receipt therefor, the ballots and the official envelopes for absentee voters authorized by the absentee voting laws of this State, as soon as possible after the final date of the filing of nominations, but in any event 45 days prior to the date of the ensuing general election. The quantity of ballots to be printed pursuant to this subsection shall not exceed 2 times the estimated number of absentee voters eligible to vote at the ensuing general election, as shall be estimated by the department of elections according to the best information it can obtain. (19 Del. Laws, c. 37, § 11; 20 Del. Laws, c. 396, § 8; 22 Del. Laws, c. 62, § 3; 27 Del. Laws, c. 65, § 10; Code 1915, § 1728; 28 Del. Laws, c. 96; Code 1935, § 1817; 42 Del. Laws, c. 118; 43 Del. Laws, c. 129, § 5; 45 Del. Laws, Sp. Sess., c. 4, § 2; 45 Del. Laws, c. 154, § 3; 47 Del. Laws, c. 149, § 4; 48 Del. Laws, c. 375, § 1; 15 Del. C. 1953, § 4503; 49 Del. Laws, c. 294, §§ 2, 3; 54 Del. Laws, c. 69, § 1; 57 Del. Laws, c. 567, §§ 32, 33; 58 Del. Laws, c. 148, §§ 45, 46.)

§ 4504. Envelopes for ballots and other election supplies; obtaining and packaging.

(a) The department in each county shall provide ungummed envelopes of a sufficient size to contain the absentee ballots to be used at any election. Each envelope shall have printed thereon:

**OFFICIAL ENVELOPE
FOR**

Representative District Number
Date of Election
.....
.....

Clerks of Election

and shall be so printed to enable the clerks of election to write their full names on the lines above the words "Clerks of Election."

(b) The number of envelopes to be provided and printed by the department shall be equal to the number of official absentee ballots printed. (19 Del. Laws, c. 37, § 11; 20 Del. Laws, c. 396, § 8; 22 Del. Laws, c. 62, § 3; 27 Del. Laws, c. 65, § 10; Code 1915, § 1728; 28 Del. Laws, c. 96; Code 1935, § 1817; 42 Del. Laws, c. 118; 48 Del. Laws, c. 375; 15 Del. C. 1953, § 4504; 49 Del. Laws, c. 294, § 4; 54 Del. Laws, c. 69, § 1; 55 Del. Laws, c. 92, § 1; 57 Del. Laws, c. 567, §§ 34-36.)

§ 4505. Substitution of candidate's name after printing of ballots.

Whenever a supplemental certificate of nomination is filed naming a substitute candidate, as elsewhere provided in this title, the department of elections shall promptly provide new ballots or, if necessary, pasters. If the new ballots or pasters are received by the department too late to put them in the voting machines prior to the preparation, sealing and inspection of the machines, then the department shall deliver the necessary number of pasters to the inspectors of the appropriate election districts, who shall see to it that the pasters are placed and maintained on the voting machines and certificates of election. (19 Del. Laws, c. 37, § 9; 27 Del. Laws, c. 65, § 9; Code 1915, § 1726; Code 1935, § 1815; 15 Del. C. 1953, § 4506; 58 Del. Laws, c. 148, § 47; 61 Del. Laws, c. 480, § 12.)

§ 4506. Tally sheets.

There shall be furnished for each election district absentee ballot tally sheets and write-in vote tally sheets each of which shall consist of a margin on the left for the names of the persons voted for and squares formed by parallel lines drawn from the bottom to the top of the sheet, each square to be sufficient to contain 5 distinct rows of 5 distinct marks in each row, and there shall be a sufficient number of squares in each row of squares from left to right to contain more marks than any person will probably receive votes in the election district. (21 Del. Laws, c. 38, § 5; Code 1915, § 1744; Code 1935, § 1833; 15 Del. C. 1953, § 4511; 49 Del. Laws, c. 294, § 9; 58 Del. Laws, c. 148, § 49.)

§ 4507. Sheet containing oaths of election officers, certificate of qualification, laws.

Each department shall have printed on a single sheet the following items in the following order:

(1) Three distinct forms of the oaths or affirmations prescribed in § 4904 of this title for the inspector and judges of election, which forms shall be numbered and distinguished as No. 1, No. 2 and No. 3.

(2) A form of the certificate of the qualification of the inspector and judges of election, which shall be as follows:

"..... County and Election District Representative District, ss.: We, subscribers, Inspector (or other officers authorized by law to hold the election) and the Judges, for said Election District of the general election, therein held on the Tuesday next after the first Monday in November in the year of our Lord one thousand nine hundred and certify that on said day, before opening the said election in said election district, the foregoing oath or affirmation was duly administered to each of us, according to law."

All blanks in such certificate shall be filled in by the department before the sheet containing it is delivered to the registrar.

(3) Subsection (a) of § 4905 of this title.

(4) Form of oath or affirmation prescribed in § 4906 of this title for clerks of election.

(5) Section 4907 of this title.

(6) Section 5123 of this title. (19 Del. Laws, c. 37, § 25; 21 Del. Laws, c. 38, § 7; 27 Del. Laws, c. 65, §§ 20, 22; Code 1915, §§ 1746, 1761; Code 1935, §§ 1835, 1850; 15 Del. C. 1953, § 4513.)

§ 4508. Certificates of the vote cast in each election district.

(a) Each department shall print 3 forms of a certificate of the votes cast in each election district in the county. The certificate shall be in the same sequence as is shown on the official ballot. In a presidential year it shall conform to the following design. In a nonpresidential year it shall conform as nearly as possible to such design.

"_____ County and _____

_____ Representative District, ss: At the general election held in the said election district, on the Tuesday next after the first Monday in November, A.D. nineteen hundred and _____ the votes stand as follows:

For President of the United States

..... Received Votes
..... Received Votes

For Vice-President of the United States

..... Received Votes
..... Received Votes

For Senator in the Senate of the United States

..... Received Votes
..... Received Votes

For Representative in Congress

..... Received Votes
..... Received Votes

For Governor

..... Received Votes
..... Received Votes

For Lt. Governor

..... Received Votes
..... Received Votes

For Attorney General

.....	Received	.....	Votes
.....	Received	.....	Votes

For Insurance Commissioner

.....	Received	.....	Votes
.....	Received	.....	Votes

For State Treasurer

.....	Received	.....	Votes
.....	Received	.....	Votes

For Auditor of Accounts

.....	Received	.....	Votes
.....	Received	.....	Votes

For Senator in the General Assembly

.....	Received	.....	Votes
.....	Received	.....	Votes

For Representative in General Assembly

.....	Received	.....	Votes
.....	Received	.....	Votes

For Prothonotary

.....	Received	.....	Votes
.....	Received	.....	Votes

For Clerk of the Peace

.....	Received	.....	Votes
.....	Received	.....	Votes

For Register of Wills

.....	Received	.....	Votes
.....	Received	.....	Votes

For Recorder

.....	Received	.....	Votes
.....	Received	.....	Votes

For Register of Chancery

.....	Received	.....	Votes
.....	Received	.....	Votes

County Executive

.....	Received	.....	Votes
.....	Received	.....	Votes

County Council or Levy Court

.....	Received	.....	Votes
.....	Received	.....	Votes

For Receiver of Taxes and County Treasurer

.....	Received	.....	Votes
.....	Received	.....	Votes

For County Comptroller

.....	Received	.....	Votes
.....	Received	.....	Votes

For Sheriff

.....	Received	.....	Votes
.....	Received	.....	Votes

And we further certify that the Clerks of Election were duly sworn or affirmed according to law, and that we were duly sworn or affirmed.

In Testimony, we the Judges of Election for said election district have hereunto set our hands the day and year aforesaid.

(Signature)"

(b) In the printed forms of certificates before the same shall be delivered by the department of elections as above directed, the name of the county and election district and of representative district and the date of the year shall be inserted in the blanks for said purposes in the foregoing form, and the offices to be filled at the election shall be inserted with blanks under each to contain the names of the persons who may be voted for, with the number of votes, and

the offices not to be filled at the election shall be omitted. The certificate shall include for each candidate the number of votes received as follows: "Voting machine no. —," "absentee ballots" and "totals." There shall be a space provided to record the number of absentee ballots counted and the number of absentee ballots rejected. (21 Del. Laws, c. 38, § 6; Code 1915, § 1745; Code 1935, § 1834; 44 Del. Laws, c. 119, § 5; 15 Del. C. 1953, § 4514; 52 Del. Laws, c. 221, § 4; 57 Del. Laws, c. 567, § 39; 58 Del. Laws, c. 148, § 50; 59 Del. Laws, c. 54, § 2.)

§ 4509. Election supplies to be furnished by department of elections.

The department for each county shall, after the 23rd day of October and prior to the opening of the polls in each year in which a general election is held, deliver to the inspector of each election district in the county:

- (1) Three printed forms of a certificate of the votes cast in the election district;
- (2) A printed form of poll list;
- (3) One sheet of instructions to election officers;
- (4) One printed form for the oath or affirmation of inspectors, judges and clerks of election authorized to hold the election and containing the certificate of administering such oath or affirmation; and
- (5) Fifteen blank forms of oaths provided for in § 4940 of this title;
- (6) A sufficient supply of voter signature cards which shall be of a sufficient size to record the voter's signature, his permanent significant registration number and the data specified in § 4937(a) of this title when applicable. The form of the voter signature cards shall be determined by the Commissioner, and shall be uniform throughout the State. (19 Del. Laws, c. 37, § 32; 21 Del. Laws, c. 38, § 3; 26 Del. Laws, c. 48, § 1; 27 Del. Laws, c. 65, § 29; Code 1915, §§ 1735, 1742; Code 1935, §§ 1824, 1831; 44 Del. Laws, c. 120, § 1; 44 Del. Laws, c. 123, § 1; 45 Del. Laws, c. 148, § 31; 45 Del. Laws, c. 149, § 31; 45 Del. Laws, c. 154, §§ 5, 7; 15 Del. C. 1953, § 4515; 49 Del. Laws, c. 294, § 11; 50 Del. Laws, c. 175, § 1; 58 Del. Laws, c. 148, §§ 51-54; 60 Del. Laws, c. 414, § 10.)

§ 4510. Supplies for election officers; custody of records and supplies; maps and lists of election districts.

The departments shall prepare and furnish all necessary maps, forms, oaths, certificates, blanks and instructions for the use of election officers and

provide for the furnishing of such officers therewith and with all necessary supplies and also a copy of the registration and election laws.

Each department shall have and retain the custody of all books, maps, forms, oaths of office and of removal, blanks, instructions and all other records and supplies of every kind or description pertaining to the department.

Each department shall furnish to each of its election districts a map of the representative district in which it is located of sufficient size to show clearly the boundaries of its election districts and the location of the polling places. Each election district shall also be provided with a list of all election districts and polling places within its respective county. (19 Del. Laws, c. 39, § 4; Code 1915, § 1673; Code 1935, § 1760; 44 Del. Laws, c. 112, § 2; 15 Del. C. 1953, § 4516; 58 Del. Laws, c. 215, § 20.)

§ 4511. Reuse of election supplies.

All supplies furnished to the election officers shall be prepared, so far as practicable, in such a manner so that such supplies as are not used at such election or thereafter by law destroyed, can be used at the next general or special election or elections and the officers and departments required by law to furnish such supplies shall use the supplies as have theretofore been returned to and as are otherwise in the possession of the respective departments and the officers and departments required by law to furnish such supplies shall only purchase or contract for the amount of supplies as are required by law in excess of such amount so returned to and otherwise in the hands and possession of the respective departments. (27 Del. Laws, c. 65, § 34; Code 1915, §§ 1815, 1815A; 34 Del. Laws, c. 110, § 3; Code 1935, § 1904; 45 Del. Laws, c. 154, § 17; 15 Del. C. 1953, § 4517.)

§ 4512. Polling places; designation and preparation.

(a) Each department shall designate and procure for each election district in its county a polling place, which shall be the same as its registration place, wherever possible. The suitability, convenience and accessibility of the polling place to the voters of the election district must be given prime consideration in its selection. This selection shall be determined according to this order of preference: (1) Within the geographical boundaries of the election district to be served; (2) within the boundaries of an election district which immediately adjoins the district to be served and is in the same representative district; (3) within the boundaries of an election district which immediately adjoins the district to be served, but is in a different representative district, provided such designation is made by a unanimous vote of the members present at a meeting of the board of elections for the county.

(b) The departments of elections shall designate only conveniently located and readily accessible polling places for each election district. Such polling places, whenever possible, shall be located in public buildings which shall include suitable government buildings, schools, firehouses, community buildings, churches, financial institutions, lobbies or other gathering places at least 350 square feet in size or apartment buildings or complexes consisting of 50 or more units or other such similar structures; however, in the event that no such public building is available in a conveniently located and readily accessible place, then and in that event, the board of elections, by unanimous consent, may with the concurrence of the Election Commissioner, designate a suitable, conveniently located and readily accessible private business establishment, but in no event shall the department of elections designate a private residence as a polling place.

(c) The same public building may be designated as housing the polling place for 1, 2, or 3 election districts, in the discretion of the departments, if suitable precautions are taken to separate and identify the specific polling place within the building to be used for each election district.

(d) The election officers of each election district shall fit out the room in the polling place in which the election will be conducted for their election district with the necessary number of voting machines and shall do everything else required to be done in order to prepare and furnish such election room. The room shall have a door or entrance of easy access and, if practical, a separate means of exit. The table shall occupy such a position in the room as to enable the election officers and the challengers to easily communicate with each other.

(e) Whenever the department has designated as polling places facilities owned or leased by agencies or subdivisions of this State, it shall be the duty of the officials of such agencies or subdivisions to make these facilities available and to provide a suitable and acceptable location, heat, lighting and other services necessary for the conduct of the election, so long as such use is not incompatible with the primary function of the agency or subdivision.

(f) The department of elections shall publish in a newspaper of general circulation, either as an advertisement or as a separate insert, a listing of all polling places by district, at least once during the week preceeding the election. (19 Del. Laws, c. 39, § 3; 19 Del. Laws, c. 37, § 1; 21 Del. Laws, c. 38, § 2; 27 Del. Laws, c. 65, § 1; Code 1915, §§ 1672, 1738; 37 Del. Laws, c. 125; Code 1935, §§ 1759, 1827; 42 Del. Laws, c. 115, § 10; 42 Del. Laws, c. 116, § 1; 43 Del. Laws, c. 124, § 1; 44 Del. Laws, c. 112, § 1; 44 Del. Laws, c. 122, § 1; 45 Del. Laws, c. 148, § 25; 45 Del. Laws, c. 149, § 25; 15 Del. C. 1953, § 4518; 57 Del. Laws, c. 181, § 47; 57 Del. Laws, c. 567, § 39A; 58 Del. Laws, c. 148, §§ 55-58; 58 Del. Laws, c. 215, § 21; 58 Del. Laws, c. 398, § 2; 61 Del. Laws, c. 480, § 13; 63 Del. Laws, c. 26, § 1.)

§ 4513. Substitute polling places.

If at any time it becomes impracticable to hold an election in the public building designated by a department for any election district or districts, such department may designate another public building as near as can be conveniently obtained to the place previously selected. In such event, sufficient public notice thereof shall be given by suitable news media. (19 Del. Laws, c. 37, § 1; 21 Del. Laws, c. 38, § 2; 27 Del. Laws, c. 65, § 1; Code 1915, § 1738; 37 Del. Laws, c. 125; Code 1935, § 1827; 44 Del. Laws, c. 122, § 1; 15 Del. C. 1953, § 4519; 57 Del. Laws, c. 181, § 48; 58 Del. Laws, c. 215, § 22.)

§ 4514. Expenses of general election.

Except where otherwise provided by statute, all necessary costs and expenses incurred in carrying into effect Part IV of this title shall be paid by the State.

The compensation of the election officers and clerks and the rent for polling places shall be paid in the month in which the general election is held. (27 Del. Laws, c. 65, § 34; Code 1915, §§ 1675, 1815; 38 Del. Laws, c. 88, § 1; Code 1935, §§ 1762, 1766, 1904; 42 Del. Laws, c. 115, § 11; 45 Del. Laws, c. 147, § 14; 45 Del. Laws, c. 148, §§ 28, 31, 32; 45 Del. Laws, c. 149, §§ 28, 31, 32; 15 Del. C. 1953, § 4520; 51 Del. Laws, c. 149, § 4.)

§ 4515. Payment procedure; source of pay.

Each department, in the month of November, in each year in which a general election is held, shall ascertain the amount of compensation due inspectors of election, the judges of election and the clerks of election, in its county, and when so ascertained the president and administrative director of the department shall certify the same to the State Treasurer, who shall thereupon pay to the persons entitled the sums severally due them. (19 Del. Laws, c. 39, § 28; Code 1915, § 1675; Code 1935, §§ 1762, 1766; 42 Del. Laws, c. 115, § 11; 45 Del. Laws, c. 147, § 14; 45 Del. Laws, c. 148, §§ 28, 32; 45 Del. Laws, c. 149, §§ 28, 32; 15 Del. C. 1953, § 4521; 51 Del. Laws, c. 149, § 5; 58 Del. Laws, c. 148, § 59.)

CHAPTER 47. ELECTION OFFICERS

Subchapter I. Appointment of Election Officers

Sec.

4701. Appointment; term.
 4702. Appearance of election officers for taking of oath and instruction.
 4703. Oath of office for election officers.
 4704. Certificate of appointment.
 4705. Removal from office.

Sec.

4706. Vacancies; alternates.
 4707. Compensation.
 4708. Exemptions from military duty and service as inspector, judge of election or clerk.

Subchapter II. Instruction of Election Officers

4741. Instruction of election officers.

Subchapter I. Appointment of Election Officers

§ 4701. Appointment; term.

(a) The county executive committee of each of the 2 principal political parties shall submit to the department no later than February 1 of each general election year a list containing the names of 8 registered voters for each election district in the county. The department shall appoint all election officers, including clerks, from these lists; provided, that if the lists are not filed with the department by February 1 or if the number of names submitted are not sufficient, the department shall select some qualified person or persons shown on its records to be registered in the appropriate political party.

(b)(1) During the month of April in each general election year, each department shall appoint for each election district in its county 1 inspector; 2 judges of election, 1 from each of the 2 principal political parties; and 2 clerks of election, 1 from each of the 2 principal political parties, provided that where the election district has fewer than 100 voters of a principal political party, the department may appoint such party's clerk or clerks of election from a different election district within the same representative district. The terms of the inspectors, judges, and clerks of election shall extend from the day of their appointment to April 1 of the next general election year. They shall appear before the department to qualify by subscribing to the prescribed oath (or affirmation) and receiving suitable instruction in the manner provided for all officers in §§ 4702 and 4703 of this title.

(2) Whenever an election district is to be provided more than 1 voting machine, 2 additional clerks, 1 from each principal political party, shall be appointed for each additional voting machine. These additional appointments shall be made in April whenever the number of additional voting machines is known to the department. Subsequent additional appointments shall be made as soon as practicable after the department determines the need for additional voting machines in an election district.

(19 Del. Laws, c. 39, § 3; 20 Del. Laws, c. 393, § 10; 21 Del. Laws, c. 40, § 3; 21 Del. Laws, c. 41, § 1; Code 1915, §§ 1665, 1666, 1717; 37 Del. Laws, c. 119; Code 1935, §§ 1752, 1753, 1806; 42 Del. Laws, c. 115, §§ 6, 7; 43 Del. Laws, c. 128, § 1; 45 Del. Laws, c. 147, §§ 5, 6; 45 Del. Laws, c. 148, § 30; 45 Del. Laws, c. 149, § 30; 45 Del. Laws, c. 151, § 2; 15 Del. C. 1953, § 4701; 49 Del. Laws, c. 4, § 5; 58 Del. Laws, c. 215, § 24; 67 Del. Laws, c. 354, § 22.)

Cross references. — As to penalty for refusal of inspector or judge of election to serve, see § 5112 of this title.

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, rewrote the section.

Election not invalidated by failure to

have full number of officers present. — The failure to have present at the election the full number of election officers required by law is not reason enough to invalidate the election, if it has otherwise been honestly and properly conducted. *Kelley v. Mayor of Dover*, Del. Ch., 300 A.2d 31 (1972).

§ 4702. Appearance of election officers for taking of oath and instruction.

Each person appointed under § 4701 of this title shall appear before the department to qualify by taking and subscribing to the prescribed oath (or affirmation) and to receive suitable instruction after due notice from the department, which shall be given at least 7 days before the times appointed for the appearance of the election officers. No person shall be excused from the obligation unless he shall have become disqualified by sickness, disability or otherwise. (67 Del. Laws, c. 354, § 25.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4702 to be present § 4705 and enacted present section 4702.

§ 4703. Oath of office for election officers.

(a) Each person appointed under § 4701 of this title shall take and subscribe before the department before beginning his duties the following oath (or affirmation):

I, _____, residing in _____ election district of the _____ representative district in _____ county, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of election officer for the _____ election district of the _____ representative district in _____ county, according to the best of my ability.

(b) Any board of elections member, administrative director, deputy administrative director or other authorized agent of the department may administer this oath (or affirmation). (67 Del. Laws, c. 354, § 26.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4703 to be present § 4706 and enacted present § 4703.

§ 4704. Certificate of appointment.

Each department shall deliver a certificate of appointment to whomever it shall appoint and who shall be sworn into office as inspector, judge or clerk of election. Such certificate shall be in such form as shall be prescribed by the department and shall specify the election district for which the persons to whom it is issued is appointed and the date of the expiration of this term of office. (67 Del. Laws, c. 354, § 27.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4704 to be present § 4707 and enacted present § 4704.

§ 4705. Removal from office.

Each department may remove from office any inspector or judge of election or clerk appointed by it for want of requisite qualifications or for cause. Such removal, unless made while such person is actually on duty on a day of election and for improper conduct as an inspector or judge of election or clerk, shall only be made after notice which shall set forth clearly and distinctly the reasons for the removal. (21 Del. Laws, c. 40, § 3; Code 1915, §§ 1665, 1666; 37 Del. Laws, c. 119; Code 1935, §§ 1752, 1753; 45 Del. Laws, c. 147, §§ 5, 6; 45 Del. Laws, c. 148, § 30; 45 Del. Laws, c. 149, § 30; 15 Del. C. 1953, § 4705; 58 Del. Laws, c. 148, § 63; 67 Del. Laws, c. 354, § 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4702 to be present § 4705 and enacted present § 4702.

§ 4706. Vacancies; alternates.

(a) If any vacancy occurs in the office of inspector, judge of election or clerk, before the expiration of the full term from any cause whatever, the department of elections having jurisdiction shall appoint a person to fill such vacancy from the unused names if any there be from the list furnished to such department of elections by the political party from which the department made the appointment for the office which has become vacant. The person to fill the vacancy shall serve for the residue of the unexpired term. Such person shall possess the same qualifications and be qualified in the same manner, possess the same powers and perform the same duties as the original appointee. Every person appointed to fill a vacancy shall qualify forthwith. The neglect or refusal of any person appointed to fill a vacancy, to appear and qualify forthwith shall create a vacancy in such office.

(b) If any election officer shall be temporarily unable to perform his duties on the day of a primary or special election because of illness, disability or any other cause deemed reasonable by the department, an alternate shall be appointed by the department. If the inspector is unable to serve, the judge of election of the same political party as the inspector shall be named to serve as his alternate, whenever possible. If a judge is unable to serve, a clerk of election of the same party as the judge shall be appointed alternate, whenever possible. In all other cases and in finding alternates or substitutes for clerks of election, the department shall give preference in making these temporary appointments to those persons named on the lists submitted by the political parties in accord with § 1501(b) of this title, if it is feasible to do so. (21 Del. Laws, c. 40, § 3; Code 1915, §§ 1666, 1669; 37 Del. Laws, c. 119; Code 1935, §§ 1753, 1756; 45 Del. Laws, c. 147, §§ 6, 9; 45 Del. Laws, c. 148, § 30; 45 Del. Laws, c. 149, § 30; 15 Del. C. 1953, § 4706; 49 Del. Laws, c. 294, § 12; 58 Del. Laws, c. 148, §§ 64, 65; 67 Del. Laws, c. 354, §§ 23, 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, in (a), deleted "registrar or assistant registrar" following "judge of election, clerk" in the first sentence; and made minor stylistic changes. 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4703 to be present § 4706.

§ 4707. Compensation.

(a) Each inspector of election shall be paid \$60 for each day's service in holding any general, primary or special election, plus \$10 for delivering the election records and supplies to the department the night of election day and \$5 for overseeing preparation of the polling place prior to election day.

(b) Each judge of election shall be paid \$60 for each day of an election.

(c) Each clerk of election shall be paid \$55 for each day of an election.

(d) Each of these officers shall also be paid \$15 for each day's service in performing any duty required on a day other than a day of an election, except as heretofore or otherwise provided. (26 Del. Laws, c. 42; Code 1915, § 1792; 30 Del. Laws, c. 104; Code 1935, § 1881; 45 Del. Laws, c. 154, § 15; 48 Del. Laws, c. 69, § 1; 15 Del. C. 1953, § 4707; 57 Del. Laws, c. 181, § 49; 58 Del. Laws, c. 215, § 26; 61 Del. Laws, c. 335, §§ 2-3; 64 Del. Laws, c. 408, § 1; 66 Del. Laws, c. 303, § 262(b), (c); 67 Del. Laws, c. 354, § 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4704 to be present § 4707.

§ 4708. Exemptions from military duty and service as inspector, judge of election or clerk.

The inspector or judge of election or clerk during the time he holds his office shall be exempt from the performance of military duty.

No person who by the laws of this State is exempt from jury duty shall be required to serve as an inspector or judge of election or clerk. (19 Del. Laws, c. 39, § 3; 24 Del. Laws, c. 244, § 1; 25 Del. Laws, c. 235, § 1; Code 1915, § 1719; Code 1935, §§ 1753, 1808; 45 Del. Laws, c. 147, § 6; 15 Del. C. 1953, § 4708; 58 Del. Laws, c. 148, § 66; 67 Del. Laws, c. 354, § 24.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, redesignated former § 4705 to be present § 4708.

Subchapter II. Instruction of Election Officers

§ 4741. Instruction of election officers.

During the 30 days prior to the day of election, the department shall cause the election officers who are to serve in an election district to be instructed in all their duties in connection therewith. The department shall give to each election officer who has received such instruction and is fully qualified to properly conduct the election with the machine, a certificate to that effect. For the purpose of giving such instructions the department shall call such meetings of the election officers as shall be necessary. The department shall within 5 days file a report which shall be a public record in the department stating that the election officers have been properly instructed. The election officers shall attend such meetings as shall be called for the purpose of receiving such instruction concerning their duties as shall be deemed necessary for the proper conduct of the election with voting machines. The department of elections may require the inspector to attend an additional instruction meeting at a place designated by the department. Attendance at such instruction session shall be compensable pursuant to § 4704 of this title. (15 Del. C. 1953, § 4741; 57 Del. Laws, c. 181, § 52; 58 Del. Laws, c. 148, § 73.)

ELECTION LAWS

CHAPTER 49. CONDUCT OF ELECTION

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- Sec.
4901. Notice of election.
4902. Absence of election officer on election day; notice to department.
4903. Reading of election law provisions to election officers.
4904. Oath at polling place before opening election.
4905. Meaning and scope of inspector's or judge's oath.
4906. Oath of clerk of elections on election day.
4907. Meaning and scope of clerk's oath.
4908. Reading of sections declaring meaning and scope of oaths.
4909. Administering and signing oath and certificate of qualification.
4910. Instruction sheets; sample ballots.
4911. Display of flags, signs and maps at polling places.
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Subchapter II. Regulations Governing Conduct of Elections During Hours of Voting

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*Subchapter I. Procedure Prior to Opening Polls***§ 4901. Notice of election.**

Notice of an election shall be given by suitable news media and/or by publishing the same at least 5 days prior to any election. (21 Del. Laws, c. 38, § 8; Code 1915, § 1747; Code 1935, § 1836; 45 Del. Laws, c. 154, § 8; 15 Del. C. 1953, § 4901; 58 Del. Laws, c. 215, § 34.)

§ 4902. Absence of election officer on election day; notice to department.

If on the day of holding an election any election officer authorized by law to serve at the election in any election district shall be absent from the place of election at 7:00 in the forenoon, the inspector, if present, or, in the absence of the inspector, then any judge who may be present, shall immediately notify the department of elections for his county of such absence. (21 Del. Laws, c. 38, § 9; Code 1915, § 1748; Code 1935, § 1837; 45 Del. Laws, c. 154, § 9; 15 Del. C. 1953, § 4902; 58 Del. Laws, c. 148, §§ 74, 75.)

§ 4903. Reading of election law provisions to election officers.

Following the selection of the inspector and before the oaths prescribed in §§ 4904 and 4906 of this title are administered, the inspector shall read distinctly to the assembled election officers §§ 5123, 5124, and 5125 of this title. (19 Del. Laws, c. 37, § 25; 27 Del. Laws, c. 65, §§ 22, 32; Code 1915, §§ 1761, 1763; Code 1935, §§ 1850, 1852; 15 Del. C. 1953, § 4903.)

§ 4904. Oath at polling place before opening election.

Before opening the election the inspector of election and the judges of election shall each take the following oath or affirmation:

"I, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Inspector (or Judge) of Election for Election District in Representative District in County, according to the best of my ability."
(21 Del. Laws, c. 38, §§ 7, 12; Code 1915, §§ 1746, 1751; Code 1935, §§ 1835, 1840; 15 Del. C. 1953, § 4904.)

§ 4905. Meaning and scope of inspector's or judge's oath.

(a) The oath of the inspector or of any judge of election that he will faithfully discharge the duties of his office means that in addition to performing all the duties of his office imposed upon him by the election laws of the State:

(1) He will not knowingly or willfully receive, or consent to the receiving of, the vote of any person whom he shall believe not entitled to vote, unless his associates shall adjudge such persons to be entitled to vote;

(2) He will not receive or reject, nor concur in receiving or rejecting, any vote through partiality or undue bias;

(3) He will determine every matter that shall come before him, and perform every act and duty by law required of him touching the election, truly, faithfully and impartially according to the best of his skill, judgment and ability;

(4) He will cause the ballots that shall be taken at the election to be fairly read and ascertained and a true statement thereof to be made according to the best of his knowledge and ability; and

(5) If he discovers any partiality, unfairness or corruption in the conducting of the election, he will disclose the same to the Attorney General to the end that the subject may be investigated.

(b) Subsection (a) of this section shall be printed upon every sheet containing the forms of oath for inspector and judges of election and shall be read to each such person at the time he takes the oath prescribed in § 4904 of this title. (21 Del. Laws, c. 38, § 7; Code 1915, § 1746; Code 1935, § 1835; 15 Del. C. 1953, § 4905.)

§ 4906. Oath of clerk of elections on election day.

Before the election is opened and at the polling place in his election district, each clerk of election shall take and subscribe an oath or affirmation which shall be administered to him by the inspector or 1 of the judges. The form of such oath or affirmation shall be as follows:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Clerk of the Election for Election District in Representative District in County, according to the best of my ability."

(21 Del. Laws, c. 38, § 13; Code 1915, § 1752; Code 1935, § 1841; 45 Del. Laws, c. 154, § 11; 15 Del. C. 1953, § 4906.)

§ 4907. Meaning and scope of clerk's oath.

The oath of the clerk of election that he will faithfully discharge the duties of his office means that in addition to performing all the duties of his office imposed upon him by the election laws of the State he will not use or assent to any falsehood, fraud or deceit, and that he will keep the polls and perform his duties truly, faithfully and impartially. (21 Del. Laws, c. 38, § 13; Code 1915, § 1752; Code 1935, § 1841; 15 Del. C. 1953, § 4907.)

§ 4908. Reading of sections declaring meaning and scope of oaths.

When the oaths prescribed in §§ 4904 and 4906 of this title are administered to the respective election officers, the person administering the oath shall read § 4905 of this title to each inspector and judge of election taking the oath and § 4907 of this title to each clerk taking the oath. (21 Del. Laws, c. 38, §§ 7, 13; Code 1915, §§ 1746, 1752; Code 1935, §§ 1835, 1841; 15 Del. C. 1953, § 4908.)

§ 4909. Administering and signing oath and certificate of qualification.

(a) The oath required by § 4904 of this title shall be administered to the judges by the inspector and by 1 of them to him.

(b) They shall each, after taking such oath or affirmation, sign 1 of the printed forms thereof furnished by the department of elections. The form distinguished as No. 1 shall be signed by the inspector, his name being first inserted in the blank, form No. 2 shall be signed by 1 of the judges, his name being first inserted in the blank, and form No. 3 shall be signed by the other judge, his name being first inserted in the blank. Before signing the forms, it shall be ascertained whether the inspector or either of the judges conscientiously refuses to take an oath and, in case of such conscientious refusal, the form for the person so refusing shall be made correct by effacing the words "swear or" in the beginning of the form; as to the person who shall not conscientiously refuse to take an oath the form shall be made correct by effacing the words "or affirm" in the beginning of the form.

(c) The inspector and the judges shall also sign the certificate of their qualification printed upon the sheet containing the oath forms. (21 Del. Laws, c. 38, § 12; Code 1915, § 1751; Code 1935, § 1840; 15 Del. C. 1953, § 4909.)

§ 4910. Instruction sheets; sample ballots.

(a) Two sheets of instructions to voters shall be posted in the polling place prior to the opening of the polls. One of the sheets shall be placed near the door to the voting room.

(b) The department shall also provide for each election district 2 sample ballots applicable to such election district, which ballots shall measure approximately 10 inches by 12 inches and shall be arranged in the form of a diagram showing such portion of the front of the voting machine as will appear after the official ballots are arranged therein for voting. Such sample ballots shall be posted in a conspicuous place in each polling place on each election day. Such sample ballots shall be delivered to the department which shall in turn deliver them with the other election supplies to the proper election officers throughout the county.

(c) The department shall deliver to the county chairman of each political party, free of charge, 15 sample ballots for each election district in the county.

(d) In addition to the sample ballots mentioned in subsections (b) and (c) of this section, the department in each county shall cause to be printed such further number of sample ballots as shall be directed by the chairman of any committee of any political party in any county. However, the department of elections shall not have printed any sample ballots upon the order or request of any chairman of any committee of any political party unless the request shall have been made to him in writing at least 65 days prior to the holding of the election at which the sample ballots are to be used, nor unless a deposit sufficient to cover the cost of the sample ballots be paid at the time they are ordered.

(e) The sample ballots to which the political parties shall be entitled hereunder shall be delivered to the county chairman of a political party or to his agent upon his request not more than 10 days and not less than 5 days before the election for which said sample ballots have been prepared. (19 Del. Laws, c. 37, § 16; 27 Del. Laws, c. 65, § 14; Code 1915, § 1736; Code 1935, § 1825; 45 Del. Laws, c. 154, § 6; 15 Del. C. 1953, § 4910; 49 Del. Laws, c. 294, § 13; 54 Del. Laws, c. 69, § 1; 58 Del. Laws, c. 148, § 76.)

§ 4911. Display of flags, signs and maps at polling places.

(a) During the hours that a primary, general or special election is open, there shall be displayed at or near the entrance of each polling place so as to be readily visible, a United States flag and a black and white flag or paper-board sign at least 20 inches by 30 inches in size. The flags or signs shall be provided by the department. The black and white flags and signs shall be white with black letters bearing the words "POLLING PLACE."

(b) The department of elections shall print individual, large-size wall maps for each representative district within the State. The individual maps shall also designate the boundaries of all election districts within each representative district, with every polling place therein plainly marked on the map.

The representative district maps printed in compliance with this section shall be displayed in a prominent location in each polling place of such representative district during regular voting hours. Any voter shall be allowed access to said map to determine correct voting places, election districts and representative districts so long as there is no unreasonable interference with voting procedures. (Code 1935, § 1759; 42 Del. Laws, c. 116, § 1; 43 Del. Laws, c. 124, § 1; 44 Del. Laws, c. 112, § 1; 45 Del. Laws, c. 148, § 27; 45 Del. Laws, c. 149, § 27; 15 Del. C. 1953, §§ 4107, 4912; 55 Del. Laws, c. 458, § 2; 58 Del. Laws, c. 92; 58 Del. Laws, c. 148, § 78; 61 Del. Laws, c. 480, § 8; 67 Del. Laws, c. 354, § 28.)

Effect of amendments. — 67 Del. Laws, c. 354, effective July 16, 1990, rewrote (a); deleted former (b); and redesignated former (c) as present (b).

§ 4912. Procedure prior to opening of polls.

(a) The election officers of each election district shall attend at the polling place three quarters of an hour before the time set for opening of the polls and shall proceed to arrange the furniture, stationery and voting machine for the conduct of the election. The department of elections shall have the voting machines, ballots and stationery required to be delivered to the polling place for such election. If not previously done, the election officers shall insert in their proper places on the voting machine the ballot containing the names of offices to be filled at such election and the names of candidates nominated therefor. The election officers shall cause to be posted conspicuously within the polling place the 2 instruction cards and 2 sample ballots. They shall see that the light for the voting machine is in good order and that it is lighted, if that is necessary, in order that the names upon the ballot shall be clearly visible. They shall inspect the screen, hood or curtain of the machine to make certain that it has not been damaged or tampered with so as in any manner to lessen or endanger the secrecy of voting. They shall see to it that no mirror is placed or allowed to remain in such a position so as to permit a view of any part of the front, sides or top of the voting machine.

(b) The keys to the voting machine shall be delivered to the election officers at least three quarters of an hour before the time set for opening the polls, in a sealed envelope, on which shall appear the number and location of the voting machine, the number of the seal, the number registered on the protective counter or device and on the write-in paper roll. The envelope containing the keys shall not be opened until at least 1 election official from each of the 2

political parties shall be present at the polling place and shall have examined the envelope to see that it has not been opened. Before opening the envelope, all election officers present shall examine the number on the seal of the machine, the number registered on the protective counter and also at the top of the write-in paper roll and shall see if they are the same as the number written on the envelope, and if they are not the same, the machine must not be opened until a representative of the department shall have presented himself at the polling place for the purpose of reexamining such machine and shall certify that it is properly arranged.

(c) If the numbers on the seal and protective counter are found to agree with the numbers on the envelope, the election officers shall proceed to open the doors concealing the counters and each officer shall carefully examine every counter and see that it registers zero (000) and the same shall be subject to the inspection of official challengers. The machine shall remain locked against voting until the polls are formally opened and shall not be operated except by voters in voting. The doors concealing the counters shall be locked before any vote is cast on the voting machine and shall remain locked until after the polls have closed. If any counter is found not to register zero (000), the election officers shall immediately notify the department of elections which shall cause each counter to be tested for accuracy by casting votes upon it and when it is ascertained that all of the counters are correctly registering each vote, the counters shall be adjusted to zero (000). The reading of the protective counter shall then be read and recorded. If it is impracticable for a member or representative of the department of elections to arrive in time to so adjust such counters before the time set for opening the polls, the election officers shall immediately make a written statement of the number on each counter and shall sign and post the same upon the wall of the polling room where it shall remain throughout the election day, and in filling out the statement of canvass, they shall subtract such number from the number then registered thereon. (19 Del. Laws, c. 37, § 15; 27 Del. Laws, c. 65, § 13; Code 1915, § 1764; Code 1935, § 1853; 15 Del. C. 1953, § 4913; 49 Del. Laws, c. 294, § 15; 58 Del. Laws, c. 148, § 79.)

§ 4913. Presence of party representative to aid in qualification of election officers; presence of other persons.

(a) A single representative of each political party which has nominated a ticket and which is represented on the ballot then printed for any general or special election may at the opening of the election be present to aid in the proper qualification of the election officers, but as soon as the election officers shall be qualified or ready to open the election, or the proper hour therefor

having arrived, such representatives of such political party shall immediately retire from the voting room or the place where the election is held.

(b) No person, other than the election officers, and the party representatives mentioned in subsection (a) of this section shall enter the room in which the voting is to take place before the opening of the polls. (21 Del. Laws, c. 38, § 16; Code 1915, § 1755; Code 1935, § 1844; 15 Del. C. 1953, § 4915.)

Subchapter II. Regulations Governing Conduct of Elections During Hours of Voting

§ 4931. Time and manner of opening election.

The general election shall be opened in every election district at 7:00 in the morning, by the inspector making proclamation that the election is open. (21 Del. Laws, c. 38, § 17; 23 Del. Laws, c. 57; Code 1915, § 1756; 32 Del. Laws, c. 100, § 1; Code 1935, § 1845; 44 Del. Laws, c. 124; 15 Del. C. 1953, § 4931; 50 Del. Laws, c. 22, § 1; 50 Del. Laws, c. 172, § 1.)

§ 4932. Location of election officers within voting room; location and care of voting machine.

(a) The inspector, judges and clerks shall remain in the polling place at all times while the polls are open. They shall locate themselves in a place separate from all other electors.

(b) The election officers shall so place the voting machine and shall seat or locate themselves in such a manner that they can plainly see the ballots on the face of the machine at all times when the machine is not in use by a voter. During the hours for voting, no voting machine shall be hidden, concealed or obscured in any way from the full view of the election officers, the challengers and all electors entering the voting room to cast their ballots. The election officers shall not themselves be, nor permit any other person to be, in any position which might permit one to observe how an elector has voted.

The election officer attending the machine shall inspect its face after each voter has cast his vote to make certain the ballots on the face of the machine are in proper condition and that the machine has not been harmed in any way. The door of the counter compartment shall not be unlocked or open or the vote counters exposed at any time. If it shall become necessary for a representative of the department to open the rear counter compartment door or to expose the counters because of a failure on the voting machine which cannot be repaired otherwise, a statement of this fact shall be written down, signed by the election officers and the department representative and submitted to the department with the election records. (21 Del. Laws, c. 38, § 15; 22 Del. Laws, c. 63;

27 Del. Laws, c. 65, § 20; Code 1915, § 1754; Code 1935, § 1843; 15 Del. C. 1953, § 4932; 58 Del. Laws, c. 148, § 81.)

§ 4933. Persons permitted in the voting room.

No person, other than members of the departments, employees of the department who shall be identified by a badge from the department, election officers, State Election Commissioner, employees of the State Election Commissioner's office, who shall be identified by a badge from the Commissioner, persons actually voting and 1 challenger from any political party which is represented by a candidate in that district as provided in § 4934 of this title, shall be admitted within the voting room nor within 50 feet of the entrance thereof, except for the purpose of offering his vote or except as provided in this title. Other persons necessary to the conduct of the election may be admitted within the voting room or within 50 feet of the entrance thereof upon first obtaining unanimous consent of the inspector and judges. (21 Del. Laws, c. 38, §§ 15, 16; 22 Del. Laws, c. 63; Code 1915, §§ 1754, 1755; Code 1935, §§ 1843, 1844; 15 Del. C. 1953, § 4933; 57 Del. Laws, c. 181, § 53; 58 Del. Laws, c. 148, § 82.)

§ 4934. Challengers; appointment and powers.

(a) Each of the political parties, acting through their respective county committees, may appoint and accredit some suitable person as a challenger. One challenger from any political party which is represented by a candidate in that district may be present inside the polling place and shall be permitted to observe the conduct of the election and all the election records. The challengers may be changed and their places filled in like manner during the day.

(b) The challengers shall be peace officers with the same powers preserving the peace as election officers and the challengers shall be protected in the discharge of their duty by the election officers; provided, however, the challengers shall not create any disturbance or obstruction and shall not unreasonably prolong any challenge or inquiry. The inspector and judges shall each have the duty to caution the challengers concerning the foregoing and, if the challenger persists, he may be ejected by a majority vote of the judges and the inspector. Provided, further, that nothing in this subsection shall be construed to prevent a substitution of another challenger for one who has been ejected.

(c) If a challenger is ejected as provided in subsection (b) of this section and the inspector or judges who voted for such ejection willfully voted for ejection without cause, each such inspector or judge so voting shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 37, § 2; 19 Del. Laws, c. 39, § 14; 20 Del. Laws, c. 396, § 3; 27 Del. Laws, c. 65, § 2; Code

1915, § 1740; Code 1935, § 1829; 15 Del. C. 1953, § 4934; 57 Del. Laws, c. 181, § 54.)

Challenger entitled to inspect all records on absentee voters. — The candidates have the same opportunity to discover prior recorded irregularities in absentee ballots as they have with respect to other voters, since the chal-

lenger appointed by each political party is entitled to inspect all records on absentee voters at the polling place. *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

§ 4935. Special officers at entrance of polling place.

The Democratic and Republican county committees may each select and designate 1 suitable, reputable and sober person as a special officer to stand at the entrance of the polling place, to be not less than 50 feet away from the entrance to the voting room, to regulate the admission of persons to the polling place. While so stationed and performing their duties, such special officers shall be peace officers of this State and shall have the same powers for preserving the peace as election officers have. (20 Del. Laws, c. 396, § 6; Code 1915, § 1741; Code 1935, § 1830; 15 Del. C. 1953, § 4935; 57 Del. Laws, c. 181, § 55.)

§ 4936. Order of voting; determination of challenge.

Voters shall approach and enter the passage in the order in which they appear for the purpose of voting. If any person offering to vote is challenged by 1 of the challengers or by any 1 of the election officers, his right to vote shall be at once determined by the proper officer, and, if his vote is refused, he shall immediately stand aside, give place to the person next in line and retire without delay from within the 50 feet space around the entrance to the room. (19 Del. Laws, c. 37, § 17; 27 Del. Laws, c. 65, § 15; Code 1915, § 1757; Code 1935, § 1846; 15 Del. C. 1953, § 4937; 57 Del. Laws, c. 181, § 57.)

§ 4937. Voting procedure.

(a) A voter, upon entering the room where an election is being held, shall announce his name and address, whereupon the clerks shall place a mark or make a notation of his name upon the poll list.

(b) The election officers shall first determine whether the Election District Record contains an original, permanent registration record for the voter. If it appears that the voter is properly registered, an election officer shall hand to the voter a voter signature card which the voter shall sign. An election officer shall then place the voter's permanent, significant registration number upon the voter signature card unless it is already recorded thereon. Two election officers, 1 from each political party, shall then compare the signature of the

voter as it appears upon the voter signature card with the signature of the voter as it appears upon the voter's original permanent registration record in the Election District Record. If the 2 election officers are not satisfied that the voter who signed the voter signature card is the same voter who signed the voter's original permanent registration record, the voter shall not be permitted to vote.

(c) In the event that the voter is unable to sign a voter signature card for any reason or in the event that the voter's original permanent registration record is unsigned, or both, the 2 election officers shall determine the identity of the voter by means other than by comparison of signatures. The election officers shall then make note of the pertinent facts upon a voter signature card which shall bear the name and permanent significant registration number of the voter.

(d) In the event of a disagreement as to the identity of the voter, his right to vote shall be determined by a majority vote of the inspector and the 2 judges of the election. In the event that the voter is not permitted to vote, his voter signature card shall be marked "not permitted to vote" and signed by 2 election officers and shall be forwarded to the department at the same time and in the same manner as other voter signature cards are sent to the department.

(e) If the voter is not challenged or if a challenge is decided in his 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 him to pass through the entrance to the booth of the voting machine for the purpose of casting his vote. The judges shall then cause the original permanent registration record of the voter to be appropriately marked to indicate the voter has voted in the election. No voter shall remain in the voting machine booth longer than 3 minutes, unless for good and sufficient reason he be granted a longer period of time by the election officers in charge. When the voter has cast his vote, the voter shall at once leave the room. If he refuses to leave after a reasonable period, he shall be removed by the election officers. No voter, after having entered and emerged from the voting machine booth shall be permitted to reenter the same on any pretext whatever. Only 1 voter at a time 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. (19 Del. Laws, c. 37, § 19; 19 Del. Laws, c. 576; 21 Del. Laws, c. 38, § 18; 22 Del. Laws, c. 62; 27 Del. Laws, c. 65, § 16; Code 1915, §§ 1767, 1772; 34 Del. Laws, c. 111, § 1; Code 1935, §§ 1856, 1861; 45 Del. Laws, c. 154, § 12; 15 Del. C. 1953, § 4939; 57 Del. Laws, c. 181, § 58; 58 Del. Laws, c. 148, § 84.)

§ 4938. Grounds for refusing to admit to voting machine.

The inspector shall not at any election admit to a voting machine any person offering to vote until his original permanent registration record shall have been found in the Election District Record and the judges or a majority of them shall be satisfied that the person so offering to vote is the person named in the record; but no objection to the vote of any person whose original permanent registration record shall have been found in the Election District Record shall be entered or considered by the judges except for the following reasons:

- (1) The person offering to vote is not the person whose original permanent registration record appears in the Election District Record;
- (2) The person offering to vote is disqualified from voting under § 4940 of this title;
- (3) The person offering to vote is not a bona fide resident of the election district in whose record his name appears. (21 Del. Laws, c. 38, § 19; Code 1915, § 1773; 34 Del. Laws, c. 111, § 2; Code 1935, § 1862; 15 Del. C. 1953, § 4944; 50 Del. Laws, c. 172, § 3; 57 Del. Laws, c. 567, § 40; 58 Del. Laws, c. 148, § 85; 60 Del. Laws, c. 414, § 11.)

§ 4939. Determination of challenge based on identity of voter.

If a vote is objected to for the reason that the person offering to vote is not the person whose original permanent registration record appears in the Election District Record, its admission or rejection shall be determined according to the opinion of a majority of the inspector and judges. (21 Del. Laws, c. 38, § 19; Code 1915, § 1773; 34 Del. Laws, c. 111, § 2; Code 1935, § 1862; 15 Del. C. 1953, § 4945; 50 Del. Laws, c. 172, § 4; 58 Del. Laws, c. 148, § 86.)

§ 4940. Disqualification because of bribery; determination of challenge.

(a) No person who receives or accepts or offers to receive or accept, or pays, transfers or delivers, or offers or promises to pay, transfer or deliver, or contributes or offers or promises to contribute to another to be paid or used, any money or other valuable thing as a compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register or for giving or withholding or in any manner influencing the giving or withholding a vote at any general election in this State, shall vote at such election unless such person being challenged for any of said causes takes and subscribes to the following oath or affirmation, which shall be administered by the inspector:

"I, do solemnly swear (or affirm) that I have not received or accepted, or offered to receive or accept, paid or transferred or delivered, or offered or promised to pay, transfer or deliver, or contributed or offered or promised to contribute to another to be paid or used any money or other valuable thing as compensation, inducement or reward for the registering or abstaining from registering of any one qualified to register, or for the giving or withholding a vote at this election.

Signed

Sworn and subscribed to before me this day of November, A. D. 19....
 Inspector."

(b) Such oath or affirmation shall be conclusive evidence to the election officers of the truth of such oath or affirmation, but if any such oath or affirmation shall be false, the person making the same shall be guilty of perjury, and no conviction thereof shall bar any prosecution under § 8 of Article V of the Constitution of this State. Such oath or affirmation, when signed and attested as provided in this section, shall be competent evidence in any proceeding against the party making the same.

(c) In order to enable the election officers to carry into effect this section, the department of each county shall cause to be prepared not less than 15 blank forms of the oath or affirmation provided for in this section and shall cause said oaths to be delivered to each inspector in each of the election districts of his county at the time provided in § 4509 of this title. (21 Del. Laws, c. 38, § 19; Code 1915, § 1773; 34 Del. Laws, c. 111, § 2; Code 1935, § 1862; 15 Del. C. 1953, § 4946; 55 Del. Laws, c. 67.)

§ 4941. Residency of voter.

If a vote is objected to for the reason that the person is not a bona fide resident of the election district in whose record his name appears, the following rules shall apply:

(1) If any person who has resided within this State actually moves outside this State with the intention of remaining there for an indefinite time as a place of present domicile, he shall lose his qualification of residence within the State, notwithstanding any floating intention he may entertain to return at some future time.

(2) The above principle shall also apply in determining the domicile of persons moving from one place to another within this State. However, if any such person shall have changed his residence to another election district within this State within the 30 days immediately preceding the day of election, he shall be considered a resident of the election district from which he has moved for the purpose of voting. (15 Del. C. 1953, § 4947; 58 Del. Laws, c. 215, § 35; 60 Del. Laws, c. 414, § 12; 61 Del. Laws, c. 480, § 14.)

§ 4942. Electioneering in polling place; penalties; definitions.

(a) No election officer, challenger or any other person within the polling place or within 50 feet of the entrance to the building in which the voting room is located shall electioneer during the conduct of the election. No political headquarters or gathering shall be permitted within that building during the conduct of the election.

(b) Whoever violates subsection (a) of this section shall be fined not more than \$200 or imprisoned not more than 90 days, or both.

(c) Whoever, being an election officer, violates subsection (a) of this section shall be deemed to have knowingly and willfully violated his official duty.

(d) For the purposes of this section the following definition shall apply:

“Electioneering” includes political discussion of issues, candidates or partisan topics, the wearing of any button, banner or other object referring to issues, candidates or partisan topics, the display, distribution or other handling of literature or any writing or drawing referring to issues, candidates or partisan topics, the deliberate projection of sound referring to issues, candidates or partisan topics from loudspeakers or otherwise into the polling place or the area within 50 feet of the entrance to the building in which the voting room is located. (19 Del. Laws, c. 39, § 31; Code 1915, § 1793; Code 1935, § 1882; 45 Del. Laws, c. 154, § 16; 15 Del. C. 1953, § 4949; 57 Del. Laws, c. 181, § 63; 58 Del. Laws, c. 148, § 88; 58 Del. Laws, c. 215, § 36.)

§ 4943. Assistance for blind and physically disabled voters; instructions for voters.

(a) Any qualified elector who is blind or otherwise physically unable to operate the voting machine or to reach the voting room alone with safety shall be permitted to bring with him into the voting room and the voting machine booth 1 elector or 2 electors, if necessary, of his own choosing in order to receive whatever assistance he may need in order to vote. No voter shall receive any other assistance in voting than that authorized by this subsection.

(b) Any election officer may provide instruction or information for a voter through use of 1 of the sample ballots posted in the voting room.

(c) Whenever a voter requests further instructions in the manner of voting or the operation of the voting machine after having entered the voting machine booth, 2 election officers of opposite political parties shall jointly give such instructions. In doing so, the officers shall take care not to assist the voter in any manner that might influence his vote. After giving instructions, both officers shall retire before the voter begins to register his vote, which he shall do in secret at all times. (20 Del. Laws, c. 396, §§ 1, 10; 27 Del. Laws, c.

65, § 20; Code 1915, § 1739; Code 1935, § 1828; 15 Del. C. 1953, § 4950; 58 Del. Laws, c. 148, § 89.)

Cross references. — As to feigning a physical disability to obtain assistance in voting, see § 5119 of this title.

§ 4944. Vote for candidates for President and Vice-President as vote for their electors.

A vote for the candidates of a political party for President and Vice-President of the United States shall be a vote for all the electors of President and Vice-President of such party, the names of whom are on file with the Secretary of State, and shall be as effective as if the vote was given directly for the electors. (Code 1935, § 1814A; 44 Del. Laws, c. 119, § 4; 15 Del. C. 1953, § 4951.)

§ 4945. Majority vote of inspector and judges of election.

The concurrence or assent of a majority of the inspector of election and 2 judges of election in any election district is required for the valid exercise by such persons of any power, authority or duty conferred upon or required of them by this title, unless specifically provided otherwise. (19 Del. Laws, c. 39, § 23; Code 1915, § 1790; Code 1935, § 1879; 15 Del. C. 1953, § 4952.)

§ 4946. Powers of election officers to preserve order during election; penalty.

(a) The inspectors of election, from the opening of the election until all the duties and proceedings connected therewith are fully completed, may:

- (1) Command the peace; and
- (2) Require sureties of the peace from any person disturbing the election, or the officers thereof in the performance of their duties; and
- (3) Commit to prison for refusal or neglect to find such surety.

Whoever, being an officer or other person, disobeys the lawful commands of any inspector of election, shall be fined \$50.

(b) The election officers in each election district, while discharging any of the duties imposed upon them by this title, may:

- (1) Preserve order and enforce obedience to their lawful commands at and around the place of election during the time of any election and counting of votes;
- (2) Keep the access to such places open and unobstructed;

(3) Prevent and suppress riots, tumult, violence, disorder and all improper practices tending to the intimidation or obstruction of voters, the disturbance or interruption of the voting or counting of votes; and

(4) Protect the voters and challengers from intimidation and violence, and the registers, poll books, boxes, envelopes and ballots from violence and fraud; and

(5) Deputize, if necessary, 1 or more electors to communicate their orders and directions and to assist in the enforcement thereof. (Code 1852, § 304; 19 Del. Laws, c. 39, § 27; 21 Del. Laws, c. 36, § 20; Code 1915, § 1791; Code 1935, § 1880; 15 Del. C. 1953, § 4953.)

Cross references. — As to election officers of any primary election having same powers as under this section, see § 3142 of this title.

§ 4947. Time and manner of closing election.

The election shall be continued open until 8:00 p.m. when it shall be closed. In closing the election the inspector and the judges shall, nevertheless, permit those electors to vote who have presented themselves and have offered to vote prior to 8:00 p.m., provided that at 8:00 p.m. they shall be in a line awaiting their turn to vote within the voting room itself or if the line extends outside of the voting room itself within that line; any person who has not voted or who has not presented himself and offered to vote and is not waiting in line by 8:00 p.m. shall not be permitted to vote after the hour of 8:00 p.m. The inspector shall one-half hour before closing the election make proclamation that the election will be closed in that time. (21 Del. Laws, c. 38, § 20; Code 1915, § 1774; 32 Del. Laws, c. 100, § 1; Code 1935, §§ 1768, 1863; 15 Del. C. 1953, § 4954; 50 Del. Laws, c. 22, § 1; 50 Del. Laws, c. 172, § 5; 57 Del. Laws, c. 181, § 64.)

Subchapter III. Counting Votes and Post-Election Regulations

§ 4971. Counting absentee votes; penalty for disclosure.

(a) Any time after all absentee ballots have been voted in accordance with § 5515 of this title and securely deposited in a locked ballot box, the inspector may announce that tabulation of these ballots is to begin. The inspector shall then openly unlock the ballot box containing the absentee ballots. In the presence of the other election officers and the challengers authorized to be in the voting room, he shall then take the envelopes containing the ballots from the box one by one, and remove the ballot from the envelope. Each of the

judges shall then examine each ballot. They shall then pass the ballot to the inspector, who shall also examine the ballot. If the ballot is not disputed or disqualified, the inspector shall then read the office for which voted, starting at the top of the ballot, and then the name of the candidate for whom the vote was cast.

(b) The 2 clerks shall keep count of the votes announced by the inspector by individually marking these votes on separate tally sheets. They shall do so by making a distinct mark with a pen in the squares provided on the tally sheet. Each clerk, upon making a mark, shall repeat the name of the person voted for. Each square, when full, shall contain 5 marks. When the clerk shall make the fifth mark in a square, he shall also call out "tally" and when he makes the first mark in the next square, he shall call out "1 on the new."

(c) When all the absentee ballots have been counted, the clerks shall first compare their tallies and shall then add up the total number of votes cast for each candidate, with the inspector and judges observing these procedures.

(d) The total number of votes cast for each candidate for each office shall not be announced whenever the count is made prior to the closing of the polls, but shall be read aloud later after the count shown on the voting machine is announced. Until that time, the count of absentee ballots shall be kept secret by the inspector, judges and clerks and any challenger present.

(e) Whoever, being an election officer or any other person having access to the voting room, discloses any or all portions of the count of absentee votes to any persons, other than a fellow election officer of that district, prior to the closing of the polls shall be fined not less than \$100 and may be imprisoned not more than 1 year. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; Code 1915, § 1775; Code 1935, § 1864; 46 Del. Laws, c. 154, § 1; 15 Del. C. 1953, § 4972; 57 Del. Laws, c. 567, §§ 42, 42A; 58 Del. Laws, c. 148, § 90.)

§ 4972. Rules for determining voter's intention.

All ballots cast at any election shall be counted for the persons for whom they were intended, so far as such intention can be ascertained therefrom, and in determining the intention the following rules shall be observed:

(1) When the voter places a mark against 2 or more names for the same office, he shall be deemed to have voted for none of them and the ballot shall not be counted for either candidate, but shall be counted for such other candidates as it is the evident intention of the voter to vote for.

(2) When the elector makes a mark in the square at the right of the name of a person in the proper place, he shall be deemed to have voted for that person, although he omits to erase or scratch out the name printed in any other column for the same office.

(3) A ballot put in without any marks shall not be counted.

(4) Any ballot, or part of a ballot, from which it is impossible to determine the elector's choice of candidates shall not be counted as to the candidate or candidates affected thereby. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; 27 Del. Laws, c. 65, § 23; Code 1915, §§ 1769, 1770; 40 Del. Laws, c. 143, § 1; Code 1935, §§ 1858, 1859; 44 Del. Laws, c. 122, § 2; 15 Del. C. 1953, § 4974; 58 Del. Laws, c. 148, §§ 92, 93; 61 Del. Laws, c. 480, § 15.)

Proportionate deduction rule improperly applied. — Where 101 of 296 ballots were illegally counted without being signed by both clerks but no fraud or misdealing was shown and there was no way to separate or identify

the illegal ballots, the board of canvass should not have applied the proportionate deduction rule by subtracting votes pro rata from each candidate. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

§ 4973. Disqualified ballots.

In the counting of the votes any ballot contained in an envelope which is not endorsed with the names of the clerks, as required by § 5515 of this title, or any ballot which bears such a mark, impression or device that it is apparent that such was placed thereon with the intent of distinguishing such ballot, or any ballot which is contained in any envelope which bears any such distinguishing mark, impression or device, shall be void and shall not be counted. If any envelope contains more than 1 official ballot, none of the ballots contained therein shall be counted. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; Code 1915, § 1770; 34 Del. Laws, c. 110, § 1; Code 1935, § 1859; 44 Del. Laws, c. 122, § 2; 15 Del. C. 1953, § 4975; 57 Del. Laws, c. 567, § 42B.)

The provisions of this section are mandatory. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

The declaration in this section that a ballot in an unendorsed envelope is void and shall not be counted is a plain legislative command and the court cannot ignore it. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

And they are intended to prevent fraud.

— The statutory provisions requiring the use of envelopes signed by both clerks in voting are among many provisions intended to identify the official ballots and to prevent fraud. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

The provisions in this section relating to the effect of distinguishing marks on the ballots are of great importance in safeguarding against fraud in elections. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

This section applies to absentee ballots. State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

Absentee ballots in envelopes not signed by both clerks, when voted, were illegal and should have been rejected by the election officers in making the count. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949); State ex rel. Annett v. Stiftel, Del. Supr., 148 A.2d 106 (1959).

Rejection of entire vote. — When illegal ballots have been voted in an election district in such numbers as to affect the result, or at least to make it uncertain and cannot be identified and separated from the valid ballots, there are cases where justice requires that the entire vote of that election district be rejected in making the count. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

The allegation of a losing candidate that 101 of the 296 ballots cast were enclosed in enve-

lopes not signed by both clerks does not constitute an allegation of fraud; without such allegation and without the ability to separate bal-

lots alleged illegal, a court will avoid rejecting the vote of an entire district. State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

§ 4974. Notation and preservation of disqualified or disputed ballots and envelopes.

(a) All disqualified ballots and envelopes and all disputed ballots and envelopes shall be preserved by the inspector and, at the close of the count, shall be placed with the seals of the envelope packages in the box into which the ballots shall have been put when read.

(b) The election officers shall record the number of all disqualified or disputed ballots on the certificate of elections in the space provided. They shall record on each absentee ballot tally sheet the name and permanent significant registration number of each person whose ballot was disqualified or disputed, with the reason therefor. In any contest of election, any such ballots and envelopes may be submitted in evidence. (21 Del. Laws, c. 38, § 21; 27 Del. Laws, c. 65, § 24; Code 1915, § 1770; Code 1935, § 1859; 44 Del. Laws, c. 122, § 2; 15 Del. C. 1953, § 4976; 58 Del. Laws, c. 215, § 37.)

§ 4975. Tabulation of votes shown on voting machine.

(a) As soon as the last voter has left the voting machine booth, the inspector shall see to it that the machine is locked against further voting by leaving the officers' control lever on the side of the machine in the inactive or "in" position. The inspector shall sign the certificate stating that the machine is locked against voting, the number of voters shown on the public counter, the number on the seal and the number on the protective counter. The other election officers shall witness the filling out of this information.

(b) With the assistance of the inspector and utilizing the voting machine keys held by them, the judges shall then open the counting compartments on the front of the machine in the presence of all persons who may lawfully be in the voting room at that time.

(c) The inspector shall then read in distinct tones the votes recorded on the counters for each office and each candidate. He shall read first each office, starting at the top of the ballot, and shall read across left to right the number of votes cast for each candidate for that office. He shall also read aloud the votes cast on each question on the ballot, in like manner. The judge of the opposite political party from the inspector shall stand by him at the front of the machine to verify the counts being called off.

(d) While the inspector is reading the votes cast, these votes shall be recorded on the individual certificates of election by 2 clerks and the judge of the same political party as the inspector. The count from each voting machine shall be recorded separately on each certificate.

(e) If not already counted, the absentee ballots shall then be tabulated as provided in § 4971 of this title. (21 Del. Laws, c. 38, § 22; Code 1915, § 1776; Code 1935, § 1865; 15 Del. C. 1953, § 4977; 49 Del. Laws, c. 294, § 19; 58 Del. Laws, c. 148, § 94.)

§ 4976. Counting of write-in votes.

(a) After all other votes cast in the election have been tabulated, the inspector shall unlock the door leading to the paper roll, in the presence of the other election officers and any others authorized by law to be in the voting room.

(b) He shall read the number now appearing at the top of the paper roll, in view either immediately or by turning the roll, and cause it to be recorded on the certificates of election. The judge of the opposite political party shall verify this number. If the number is the same as that recorded at the opening of the polls, then this shall be sufficient evidence that no write-in votes have been cast.

(c) However, if the number is different, then the inspector shall proceed to remove all that portion of the paper roll which has been voted upon. He shall then spread out the removed section of the paper roll on a table or other flat surface. The lines on the paper roll shall be matched up with a duplicate of the ballot strip placed in the voting machine listing the offices voted for. (If this method is not satisfactory to the election officers, the paper roll may be spread across the face of the machine and its horizontal lines matched with the rows for the offices to be voted for shown on the ballot.)

(d) The inspector shall then proceed to read distinctly each office voted for, starting from the top of the ballot, and the names of the persons for whom votes were cast. If the name of the person voted for is not clear, the inspector and 2 judges shall examine the paper roll and determine, by majority vote, if necessary, the name to be entered on the certificate of elections. The judge of the opposite political party shall stand or sit with the inspector while he reads off the write-in votes to verify the votes cast.

(e) Each clerk shall enter the name of the person voted for on the separate tally sheet provided for that purpose and shall mark the number of votes cast for each person in the same manner as provided for absentee ballots in § 4971 of this title.

(f) After the counting is completed, the clerks shall compare their tallies and add up the number of votes cast for each person in the presence of the inspector and judges. They shall then announce the names of the persons voted for and the total number of votes cast for each person. The paper roll shall be placed in the envelope which shall contain the certificate of elections to be delivered to the Prothonotary. (21 Del. Laws, c. 38, §§ 23, 24; Code 1915, §§ 1777, 1778; Code 1935, §§ 1866, 1867; 15 Del. C. 1953, § 4978; 49 Del. Laws, c. 294, § 20; 50 Del. Laws, c. 172, § 6; 57 Del. Laws, c. 567, § 43; 58 Del. Laws, c. 148, § 95.)

§ 4977. Persons authorized to be present during the count and tabulation.

Any candidate and any duly accredited challenger may be admitted to the voting room after the closing of the polls to observe the counting and tabulation of votes. Such persons shall be afforded full opportunity to examine the face and counters of the voting machine, the tally sheets for absentee and write-in votes and the certificates of election after the tabulation is completed. (21 Del. Laws, c. 38, § 29; Code 1915, § 1783; 34 Del. Laws, c. 111, § 3; Code 1935, § 1872; 45 Del. Laws, c. 154, § 13; 46 Del. Laws, c. 153, § 2; 15 Del. C. 1953, § 4979; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 172, § 7; 55 Del. Laws, c. 92, § 3; 57 Del. Laws, c. 567, §§ 44, 45; 58 Del. Laws, c. 148, § 96.)

§ 4978. Certificates of election; tally lists.

(a) When the reading and counting of the votes is completed, the inspector, judges and clerks shall forthwith make and sign 3 certificates of the election in their election district, according to the form prescribed in § 4508 of this title, stating every office for which votes shall have been given at the election, the name of every person to whom any vote shall have been given for such office and the number of votes given to such person for the office.

(b) Each copy of such certificate shall be put in separate envelopes, which shall be furnished by the departments of election, and the envelopes shall be endorsed on the face thereof with the words "Certificate of the votes cast in, Election District of, Representative District at the general election in County, A.D.," and on the back of each envelope, after the same shall have been sealed, the inspector and judges shall respectively write their name crosswise the sealing.

(c) The tally lists shall be signed by the inspector, judges and clerks. They shall be enclosed and sealed in the envelopes containing the certificates of election to be delivered the night of election day to the Prothonotary and the department of elections. The other certificate shall be placed by itself in an envelope and turned over to the judge of the opposite political party from the inspector, who shall file this certificate with the department of elections any-time prior to 12:00 noon the second day following the election, at which time the department shall present said certificate to the Superior Court serving as the board of canvass. (15 Del. C. 1953, § 4980; 50 Del. Laws, c. 172, § 8; 58 Del. Laws, c. 148, § 97; 61 Del. Laws, c. 480, § 16.)

Cross references. — As to general powers and duties of State Election Commissioner, see § 302 of this title.

§ 4979. Delivery of certificates, election records and supplies, voting machines and absentee ballot boxes.

(a) After the close of election, the inspector shall deliver 1 of the certificates of election, together with the absentee ballot box and the write-in paper roll, if any, to the Prothonotary of the Superior Court for his county. The Prothonotary shall, at 12:00 noon on the second day after the election, present such certificates, paper rolls, ballot boxes and other pertinent papers to the Court. If the inspector of any election district dies or is prevented by sickness or accident from delivering the above-mentioned items to the Prothonotary the night of election day, the certificate of election, absentee ballot boxes and write-in paper roll, if any, shall be sent by safe and secure conveyance to the Prothonotary on the day following the election, and the inspector, his executors, administrators or heirs shall be responsible for such delivery. The same shall apply to the certificate of election, poll lists, election records and supplies which the inspector is obligated to return to the department of elections the night of election day.

(b) At the end of the day of election, each inspector shall deliver to the office of the department of elections of his county these items:

- (1) One certificate of elections;
- (2) Poll list;
- (3) Oaths (or affirmations) signed by the election officers;
- (4) The key to the doors of the voting machines or machines used in his election district;
- (5) The book, or books, of original permanent registration records provided him as the Election District Record;
- (6) All voter signature cards provided by the department;
- (7) All tally sheets;
- (8) All other supplies provided him by the department, including the flag of the United States of America and the polling place flag.

(c) All certificates, poll lists, oaths (or affirmations), voter signature cards, tally sheets and other records of the election shall be filed in the department of elections for not less than 1 year following the election and shall be public records and, as such, admissible in evidence. (15 Del. C. 1953, § 4981; 58 Del. Laws, c. 148, § 98.)

§ 4980. Return and custody of voting machines and keys.

(a) After the final and complete tabulation of the vote has been ended by the election officers, and no sooner, the inspector shall lock the front door and the paper roll door of each voting machine. These doors shall remain locked unless and until authorized otherwise by this title. He shall then place the appropriate key in an envelope supplied by the department of elections on which shall be written the number of the machine, the number of the seal and the number registered on the protective counter and on the write-in paper roll and the election and representative district where used. This envelope containing the key shall be returned to the department of elections immediately following the close of the election, as provided in § 4979(b) of this title. No unauthorized person shall have in his possession any key of any voting machine and any persons entrusted with such keys for election purposes shall not retain them any longer than necessary to comply with this title.

(b) Immediately after the election, and within the 2 days immediately following the day of election, the voting machines and absentee ballot boxes shall be stored in some safe and secure place provided by the department of elections. While the board of canvass is conducting its canvass of the vote, the machines and ballot boxes shall be in the custody of the Prothonotary. While in his custody the voting machines and the absentee ballot boxes may be opened and examined by order of the board of canvass or any other court of competent jurisdiction.

(c) After the board of canvass has completed its canvass of the vote, the Prothonotary shall turn custody of the voting machine and absentee ballot boxes over to the department of elections. The department shall leave the machines and ballot boxes undisturbed and locked until the following February 1. During this period, the machines and ballot boxes may be opened for inspection by any duly authorized member or agent of the General Assembly or the Attorney General. After February 1 the department shall be free to unlock, clean out, inspect and repair any voting machine or absentee ballot box. (15 Del. C. 1953, § 4982; 58 Del. Laws, c. 148, § 99; 60 Del. Laws, c. 403, § 1.)

§ 4981. Duties of department of elections and Election Commissioner following an election.

(a) Immediately following an election the department shall take each voter signature card and compare it with the voter's original permanent registration record in the Election District Record to determine whether the election officers have properly noted that the voter voted at the election and have properly compared the signature on the voter signature card with that on the original permanent registration record in the Election District Record. The

department shall cause a proper notation to be made upon the duplicate permanent registration record in the County Master Record of the fact that the voter has voted in the election. The department shall notify the Commissioner of the names of each voter who voted in the election and the Commissioner shall indicate on the elector's record in the Commissioner's files that the elector has voted in the election.

(b) Voter signature cards and all other forms and records not of a permanent nature, which are used in the conduct of an election, shall be retained by the department for not less than 1 year following the election. The Commissioner may require that the department send the voter signature cards used in the election to the Commissioner to carry out his duties under this section. In such event, the Commissioner shall return the voter signature cards to the department not more than 6 months following their delivery to the Commissioner. (15 Del. C. 1953, § 4983; 58 Del. Laws, c. 148, § 100.)

CHAPTER 50. VOTING MACHINES

Sec.
 5001. Requirements.
 5002. Compliance guarantee.
 5003. Use of voting machines; costs in municipal elections.
 5004. Number of voting machines per election district.
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 5009. Instruction of voters before election.
 5010. Voting machine out of order; procedure.
 5011. Voting machine curtains.

§ 5001. Requirements.

(a) Any voting machine may be adopted, purchased or used which shall be so constructed as to fulfill the following requirements:

(1) Each voting machine shall have a serial number permanently attached to or stamped on the machine;

(2) It shall secure to the voter secrecy in the act of voting for or against as many questions as may be submitted;

(3) It shall permit the voter to vote for the candidates of 1 or more parties, or to write in the name of any candidate of his choice for any office;

(4) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more;

(5) It shall prevent the voter from voting for the same person more than once for the same office;

(6) It shall permit the voter to vote for or against any question he may have the right to vote upon, but no other;

(7) If used in primary elections, it shall be so equipped that the election officials can lock out all rows except those of the voter's party by a single adjustment on the outside of the machine;

(8) It shall correctly register or record and accurately count all votes cast for any and all candidates of a political party, and for or against any and all questions, and correctly register or record the names of all candidates written in by voters;

(9) It shall be provided with a protective counter or protective device whereby any operation of the machine before or after the election will be detected;

(10) It shall be provided with a counter which will show at all times during any election the total number of persons who have voted;

(11) It shall be so equipped that it shall prevent the voter from voting for all the candidates of 1 party by the use of a single lever; however, it shall be provided with 1 device for each party, for voting for all presidential electors of that party by 1 operation.

(b) Every voting machine shall be furnished with a means of providing sufficient light to enable voters while in the voting booth to read the ballots and suitable for use by the election officers in examining the counters. All voting machines used in any election shall be provided with a screen, hood or curtain which shall be so made and adjusted as to conceal the voter and his action while voting.

(c) Voting machines of different kinds may be adopted for use in different districts of the same county. (15 Del. C. 1953, § 5002; 49 Del. Laws, c. 18, § 1; 57 Del. Laws, c. 181, § 65; 57 Del. Laws, c. 695, §§ 5, 6.)

Machines must permit the writing-in of names which do not appear on the ballot.

— If voting machines are used in the annual municipal election in Frederica, the machines must be operated in such a way as to permit the writing-in of the names of persons whose names do not appear on the ballot. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

Subsection (a)(3) requirements do not apply where no contest exists in municipal election. — The requirements of paragraph (3)

of subsection (a) of this section that a voting machine shall permit the voter to write in the name of any candidate of his choice for any office does not apply where no contest exists in a municipal election. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

There is no general state statute which requires that write-in ballots be provided in municipal elections where no one has filed for office. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

§ 5002. Compliance guarantee.

Before any voting machine is purchased, rented or otherwise acquired, or used, the person owning or manufacturing such machine must give an adequate guarantee in writing and post a bond accompanied by satisfactory surety with the department of elections guaranteeing and securing that such machines comply fully with the requirements contained in § 5001 of this title and will correctly, accurately and continuously register and record every vote cast and further guaranteeing such machine against defects in workmanship and materials for a period of 5 years from the date of acquisition thereof, or, in the case of rented machines, for the period of rental. (15 Del. C. 1953, § 5003; 49 Del. Laws, c. 18, § 1.)

§ 5003. Use of voting machines; costs in municipal elections.

Voting machines shall be used throughout this State in all primary, general and special elections and in all municipal elections in all incorporated cities and towns of this State. In the event no contest exists in municipal elections voting machines shall not be required. Voting machines shall be used in elections held under Title 14. Incorporated cities or towns may use voting machines in the custody of the department of elections of the same county upon payment of all costs and expenses incident to their use. (15 Del. C. 1953,

§ 5004; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 182; 57 Del. Laws, c. 181, § 66; 57 Del. Laws, c. 353; 58 Del. Laws, c. 48; 58 Del. Laws, c. 148, § 102; 66 Del. Laws, c. 359, § 1.)

Revisor's note. — Section 5 of 66 Del. Laws, c. 359, provides that "Notwithstanding any other provision within Title 14 to the contrary, the provisions of this act shall prevail; namely, that voting machines shall be utilized in all school-related elections."

Effect of amendments. — 66 Del. Laws, c. 359, effective July 12, 1988, substituted "shall" for "may" in the third sentence.

Use of paper ballots in annexation election is not improper. — Neither the annexation provisions of the Dover City Charter nor 22 Del. C. § 101, requiring weighted voting, based on assessed property value, in annexation proceedings, was repealed by the enactment of this section. The General Assembly simply intended that 22 Del. C. § 101 and the charter provisions should continue in force as exceptions to the otherwise broad sweep of this section. Thus, the use of paper ballots in an annexation election was not improper. *Kelley v. Mayor of Dover*, Del. Ch., 300 A.2d 31 (1972).

Minor procedural defects will not void election. — Minor procedural defects in the conduct of an election unaccompanied by fraud or unfair dealing, and not affecting the result, will not void an election otherwise valid. *State ex rel. Stabler v. Whittington*, Del. Super., 290 A.2d 659 (1972).

Such as failure to use voting machines. — In an election where all but 1 candidate ran without opposition and where the candidate who defeated the only losing candidate received 50% more votes than the loser, the failure to use voting machines is a procedural irregularity which does not void the election.

State ex rel. Stabler v. Whittington, Del. Super., 290 A.2d 659 (1972).

But voting machines serve an important function by insuring that elections are carried out honestly and expeditiously. *State ex rel. Stabler v. Whittington*, Del. Super., 290 A.2d 659 (1972).

And failure to use voting machines may cause future elections to be set aside. — If in the future any municipality persists in ignoring the now much publicized and clear provisions of this section, the Superior Court will be mindful of the notice given to all municipalities by this case and will be free to impose appropriate remedies including the setting aside of the election. *State ex rel. Stabler v. Whittington*, Del. Super., 290 A.2d 659 (1972).

Requirement that machine allow write-in not applicable where no contest exists. — The requirements of § 5001(a)(3) of this title that a voting machine shall permit the voter to write in the name of any candidate of his choice for any office does not apply where no contest exists in a municipal election. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

Question of whether write-in ballots must be permitted in uncontested municipal elections in Delaware is not controlled by any general statute. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

There is no general state statute which requires that write-in ballots be provided in municipal elections where no one has filed for office. *Gebelein ex rel. State v. Nashold*, Del. Ch., 406 A.2d 279 (1979).

§ 5004. Number of voting machines per election district.

(a) In all general or primary elections every election district or polling place shall be supplied with at least 1 voting machine for every 600 registered voters or a majority fraction thereof.

(b) In all special elections every election district or polling place shall be supplied with as many voting machines as the department of elections shall deem necessary to conduct an election properly and efficiently, provided, however, that there shall be not less than 1 voting machine for each polling place nor more than 1 voting machine for every 600 registered voters or a majority

fraction thereof. (15 Del. C. 1953, § 5005; 58 Del. Laws, c. 148, § 103; 59 Del. Laws, c. 120, § 1.)

§ 5005. Printing of official ballots for voting machines; adjustment of machines for ballots; distribution of ballots.

(a) All ballots provided for voting machines shall be printed in black ink on clear, white material of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The face of the ballot shall be completely covered with a protective covering of smooth, hard, transparent material so that it shall be impossible to alter the face of the ballot without removing or breaking such covering.

(b) The party emblem which has been duly adopted by such party in accordance with law and the party name or other designation for each political party represented on the machine shall appear on the ballot. The titles of offices may be arranged horizontally, with the names of candidates for an office arranged vertically under the title of the office or the titles of offices may be arranged vertically, with the names of candidates for an office arranged horizontally opposite the title of the office, each office to occupy as many columns or rows on the machine as the number of candidates to be elected to that office. The names of all candidates nominated by any party for an office shall always appear in the row or column containing generally the names of candidates nominated by such party for other offices, except as provided in this chapter.

(c) The machine shall be so adjusted that when 1 or more knobs or the slide mechanism for write-in voting equalling the total number of persons to be elected to the offices shall have been operated, other knobs or the slide mechanism for write-in voting used in connection with those offices shall be thereby locked. After the last candidate's name at the right in any horizontal row, or below the last candidate's name in any vertical column, the knob or knobs, if there be any, under or opposite the title or titles of office or offices shall be locked; all knobs with the exception of the slide mechanism for write-in voting shall be locked in any row or column which contains no names of candidates; and all knobs with the exception of the slide mechanism for write-in voting shall be locked in spaces, if any, which do not contain names of candidates even though the names of candidates appear in other spaces in the same row or column.

(d) Official ballots provided for voting machines shall be prepared and furnished by the department of each county in the same manner as now provided by law, and shall be delivered to the department not later than 15 days prior to the next succeeding election. (15 Del. C. 1953, § 5008; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 69, § 2; 57 Del. Laws, c. 695, § 7.)

§ 5006. Number of official ballots to be furnished.

The department shall provide and furnish 2 sets of official ballots for each voting machine. One set thereof shall be placed in the voting machine and the other shall be retained in the custody of the department unless it becomes necessary during the course of the election to make use of the same in a voting machine. (15 Del. C. 1953, § 5009; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 69, § 3.)

§ 5007. Substitute ballots.

If the official ballots for an election district are not delivered in time for use on election day or after delivery shall be lost, destroyed or stolen, the department shall cause other ballots to be prepared, printed or written as nearly as may be of the form and description of the official ballots, and the department shall cause the ballots so substituted to be used at the election in the same manner, as nearly as may be, as the official ballots would have been. (15 Del. C. 1953, § 5010; 49 Del. Laws, c. 18, § 1; 54 Del. Laws, c. 69, § 4.)

§ 5008. Preparation of voting machines.

(a) The department of elections shall cause sufficient voting machines to be delivered to the proper polling places prior to the time appointed for the election officers to report for duty. The department shall make sure that each machine to be used in an election has been properly prepared and inspected.

(b) The department shall mail written notices to the chairman of the county committee of each of the 2 principal political parties, stating the time and place at which the voting machines will be inspected. Each principal political party may have 1 representative present during this inspection.

(c) The board of elections shall designate at least 2 representatives of opposite political affiliation, other than the person or persons preparing the machine:

(1) To inspect each machine to make certain it is in good order and that the proper ballots have been placed in it;

(2) To test the lever beside the name of each candidate and the write-in roll slot to make certain they are operating properly; and

(3) To certify such inspections and testing upon a record provided by the department.

(d) The department shall cause all registering counters to be set at zero (000) and the paper in the write-in roll slots to be blank. The ballot frames of each machine shall be sealed with a numbered metal seal. Two representatives of the board of elections, of opposite political affiliation, shall examine each machine to make certain this has been done. They shall:

- (1) Certify the numbers on the machines and the election districts for which they are designated;
- (2) Certify that all registering counters and write-in slots are set at zero (000) or are blank;
- (3) Certify that the ballot frames are sealed; and
- (4) Record and certify the number on the protective counter, the numbered seal and the write-in paper roll.

(e) The department shall make sure each machine is properly prepared in all respects for the election, that its doors are locked and the necessary keys prepared for delivery to the election officers. Two representatives of the board of elections, of opposite political affiliation, shall certify that this has been done.

(f) The certification required by this section shall be a public record in the office of the department of elections.

(g) The department shall require that all persons entrusted with custody of the machines, either for delivery or storage before and after the election, shall insure the machines' safety and protection. (15 Del. C. 1953, § 5012; 49 Del. Laws, c. 18, § 1; 58 Del. Laws, c. 148, §§ 105, 106; 60 Del. Laws, c. 404, § 1.)

§ 5009. Instruction of voters before election.

Each department shall designate suitable and adequate times and places where voting machines containing sample ballots showing titles of offices to be filled, and so far as practicable, the names of candidates to be voted for at the next election shall be exhibited for the purpose of giving instructions as to the use of voting machines to all voters who apply for the same. No voting machine which is to be assigned for use in an election shall be used for such instruction after having been prepared and sealed for the election. During public exhibition of any voting machine for the instruction of voters previous to an election, the counting mechanism thereof shall be concealed from view. (15 Del. C. 1953, § 5014; 49 Del. Laws, c. 18, § 1.)

§ 5010. Voting machine out of order; procedure.

In case any voting machine used in any election district shall during the time the polls are open become injured so as to render it inoperative in whole or in part, the department shall substitute a perfect machine for the injured machine, and at the close of the polls, the record of both machines shall be taken, and the votes shown on their counters shall be added together in ascertaining and determining the results of the election. The department shall maintain and hold in readiness a reasonable number of extra voting machines to be supplied to election districts where a voting machine has become inoperative, and the department shall take reasonable steps to insure rapid delivery

in such event. (15 Del. C. 1953, § 5015; 49 Del. Laws, c. 18, § 1; 50 Del. Laws, c. 172, § 13.)

§ 5011. Voting machine curtains.

Curtains on all voting machines shall be securely sealed or fastened before being used in any election so that the clearance lever cannot be operated without opening or closing curtains. (15 Del. C. 1953, § 5019; 49 Del. Laws, c. 18, § 1.)

CHAPTER 50A. ELECTRONIC VOTING SYSTEMS

Sec.

5000A. Use in lieu of voting machines.

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5009A. Instruction model.

5010A. Inoperative voting devices.

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§ 5000A. Use in lieu of voting machines.

In any general, special or primary elections, an electronic voting system may alternatively be used in lieu of a voting machine as required by Chapter 50 of this title so long as the voting system complies with the requirements of this chapter. (63 Del. Laws, c. 409, § 1.)

§ 5001A. Requirements.

(a) Any electronic voting system may be adopted, purchased or used which shall be so constructed as to fulfill the following requirements:

(1) Each voting device shall have a serial number permanently attached to or stamped to the device;

(2) It shall secure to the voter secrecy in the act of voting for or against as many questions as may be submitted;

(3) It shall permit the voter to vote for the candidates of 1 or more parties, or to write in the name or candidate of his choice for any office;

(4) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, and the automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot card if the number of such choices exceeds the number to which a voter is entitled;

(5) It shall prevent the voter from voting for the same person more than once for the same office;

(6) It shall permit the voter to vote for or against any question he may have the right to vote upon, but no other;

(7) It shall permit each voter in primary elections to vote only for the candidates of the party with which he has declared his affiliation, and preclude him from voting for any candidate seeking nomination by any other political party;

(8) It shall correctly record and accurately count all votes cast for any and all candidates of a political party, and for or against any and all

questions, and correctly record the names of all candidates written in by votes;

(9) It shall be provided with means for sealing the vote recording devices to prevent its use and to prevent tampering with ballot labels, both before and after the polls are open or before the operation of the vote recording device for any election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(10) It shall provide a serialized stub number for each ballot issued to a voter to be retained by the poll worker which will show at all times during any election the total number of persons who have voted;

(11) It shall be so equipped that it shall prevent the voter from voting for all the candidates of 1 party by the use of a single mark or punch; however, it shall be provided with a device or method for each party, for voting for all presidential electors of that party by 1 mark or punch.

(b) Every voting device or booth shall be provided with a means of providing sufficient light to enable voters while in the voting booth to read the ballots or ballot labels. All voting devices used in any election shall be provided with side curtains and front shield to insure that no person can see or know for whom any voter has voted or is voting.

(c) Electronic voting systems of different kinds may be adopted for use in different districts in the same county. (63 Del. Laws, c. 409, § 1.)

§ 5002A. Compliance guarantee.

Before any electronic voting system is purchased, rented or otherwise acquired, or used, the person owning or manufacturing such voting device must give an adequate guarantee in writing and post a bond accompanied by satisfactory surety with the Department of Elections guaranteeing and securing that such voting devices comply fully with the requirements contained in § 5001A of this title and will correctly and accurately record every vote cast and further guaranteeing such voting device against defects in workmanship and materials for a period of 5 years from the date of acquisition thereof, or, in the case of rented voting devices, for the period of rental. (63 Del. Laws, c. 409, § 1.)

§ 5003A. Use of voting devices; costs in municipal elections.

Electronic voting devices may be used throughout this State in all primary, general and special elections and in all municipal elections in all incorporated cities and towns of this State. In the event no contest exists, in municipal

elections voting devices shall not be required. Voting devices may be used in elections held under Title 14. Incorporated cities or towns may use voting devices in the custody of the department of elections of the same county upon payment of all costs and expenses incident to their use. (63 Del. Laws, c. 409, § 1.)

§ 5004A. Number of voting devices per election district.

(a) In all general or primary elections every election district or polling place shall be supplied with at least 1 voting device for every 600 registered voters or a majority fraction thereof.

(b) In all special elections every election district or polling place shall be supplied with as many voting devices as the department of elections shall deem necessary to conduct an election properly and efficiently; provided, however, that there shall be not less than 1 voting device for every 180 registered voters or a majority fraction thereof. (63 Del. Laws, c. 409, § 1.)

§ 5005A. Printing of ballots; distribution of ballots.

(a) All ballot labels and ballot cards shall be printed in black ink on clear, white material of such size as will fit the ballot frame for the general or special elections. Ballot labels and ballot cards for the primary elections shall be printed in black ink on material colored to distinguish 1 party from another; providing, however, that the colors used shall provide easy readability by the voter. All ballot labels shall be secured in the ballot frame to make tampering or removal difficult.

(b) The party emblem which has been duly adopted by such party in accordance with law and the party name or other designation for each political party represented on the voting device shall appear on the ballot label. The titles of offices may be arranged to the left of the candidate names and placed in booklet form.

(c) Separate voting devices for each party shall be provided for the primary election and write-in voting may be accomplished on the ballot card or a separate secrecy envelope.

(d) Official ballot labels and cards for voting devices shall be prepared and furnished by the department of each county in the same manner as now provided by law, and shall be delivered to the department not later than 15 days prior to the next succeeding election. (63 Del. Laws, c. 409, § 1.)

§ 5006A. Number of official ballots to be furnished.

The department shall provide and furnish 110 official ballots per 100 registered voters and retain ballot labels at the department in a quantity sufficient to repair voting devices if it becomes necessary during the course of the election, but in no case, less than 25% of the ballot labels in actual use during the election. (63 Del. Laws, c. 409, § 1.)

§ 5007A. Substitute ballots.

If the official ballots for an election district are not delivered in time for use on election day or after delivery shall be lost, destroyed or stolen, the department shall cause other ballots to be prepared, printed or written as nearly as may be of the form and description of the official ballots, and the department shall cause the ballots so substituted to be used at the election in the same manner, as nearly as may be, as the official ballots would have been. (63 Del. Laws, c. 409, § 1.)

§ 5008A. Preparation of voting devices.

(a) The department of elections shall cause sufficient voting devices to be delivered to the proper polling places prior to the time appointed for the election officers to report for duty. The department shall make sure that each device to be used in an election has been properly prepared and inspected.

(b) The department shall mail written notices to the chairman of the county committee of each of the 2 principal parties, stating the time and place at which the voting device will be inspected. Each principal political party may have 1 representative present during this inspection.

(c) The board of elections shall designate at least 2 representatives of opposite political affiliation, other than the person preparing the devices:

- (1) To inspect each device to make certain it is in good working order and that the proper ballot labels have been placed in it;
- (2) To test each voting position for proper registration;
- (3) To certify such inspections and testing upon a record provided by the department.

(d) The department shall cause all ballot cards to be sealed in a metal transfer carrier and the seal number recorded. Two representatives of the board of elections, of opposite political affiliation, shall examine each voting device and insure that each voting device is sealed with a numbered seal. They shall:

- (1) Certify the numbers on the voting devices and the election districts for which they are designated;
- (2) Certify that all voting devices are in proper working condition;
- (3) Certify that the voting devices are properly sealed.

(e) The department shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be published and the test conducted within 5 days of the election. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved. Two representatives of the board of elections, of opposite political affiliation, shall certify that this has been done.

(f) The certification required by this section shall be a public record in the office of the department of elections.

(g) The department shall require that all persons with custody of the voting devices, either for delivery or storage before and after the election, shall insure the voting devices' safety and protection. (63 Del. Laws, c. 409, § 1.)

§ 5009A. Instruction model.

For the instructions of the voters on any election day there shall be provided for each polling place an instruction model constructed so as to provide a replica of a vote recording device, and shall contain the arrangement of the ballot labels, party columns or rows and questions. Fictitious names shall be inserted in the ballot labels of the models. Each voter upon request, before voting, shall be offered instruction by the election officials in the operation of the vote recording device by use of the instruction model, and each voter shall be given ample opportunity to operate the model himself. (63 Del. Laws, c. 409, § 1.)

§ 5010A. Inoperative voting devices.

If during the conduct of an election a vote recording device becomes inoperative, the election officers shall seal it in such manner as to prevent further voting thereon. The department shall maintain and hold in readiness a reasonable number of extra voting devices to be supplied to election districts where a voting device has become inoperative, and the department shall take reasonable steps to insure rapid delivery in such event. (63 Del. Laws, c. 409, § 1.)

§ 5011A. Voting device curtains; absentee voting.

Side curtains on all voting devices shall be securely fastened before being used in any election. An electronic voting system providing a method of voting absentee utilizing a ballot card may be used for all absentee voting providing it meets all requirements of the law. (63 Del. Laws, c. 409, § 1.)

ELECTION LAWS

CHAPTER 51. CRIMINAL OFFENSES

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*Subchapter I. General Provisions***§ 5101. Jurisdiction of Court.**

The Superior Court shall have exclusive, original jurisdiction of offenses under this title and no prosecution for the violation of any section of this title shall be brought in any other court. (15 Del. C. 1953, § 5101.)

Cross references. — As to penal and enforcement provisions generally, see Chapter 23 of this title.

§ 5102. Prosecution by Attorney General; duty to report violations.

(a) The Attorney General shall immediately prosecute to final judgment all complaints which may be made of a violation of this title.

(b) Each department of election and all election officers shall notify the Attorney General of all violations of this title. (19 Del. Laws, c. 39, § 53; Code 1915, § 1810; Code 1935, § 1899; 45 Del. Laws, c. 144, § 9; 45 Del. Laws, c. 148, § 9; 45 Del. Laws, c. 149, § 9; 15 Del. C. 1953, § 5102; 49 Del. Laws, c. 4, § 5.)

§ 5103. Irregularities or defects in election as a defense.

Irregularities or defects in the mode of noticing, canvassing, polling or conducting any election shall not be a defense to a prosecution for any violation of this title. (19 Del. Laws, c. 39, § 51; Code 1915, § 1809; Code 1935, § 1898; 15 Del. C. 1953, § 5103.)

§ 5104. Honest belief as a defense.

Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any fact tending to show that he honestly believed upon good reason that the vote complained of was a lawful one. (19 Del. Laws, c. 39, § 52; Code 1915, § 1809; Code 1935, § 1898; 15 Del. C. 1953, § 5104.)

§ 5105. Application to school elections.

The provisions of this chapter shall additionally be applicable to any local school elections held under Title 14. (67 Del. Laws, c. 243, § 10.)

Revisor's note. — This section became effective upon the signature of the Governor on June 25, 1990.

*Subchapter II. Particular Offenses***§ 5111. Neglect of duty by department member; corrupt or fraudulent conduct; penalty.**

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of the same, shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (45 Del. Laws, c. 144, § 8; 45 Del. Laws, c. 148, § 8; 45 Del. Laws, c. 149, § 8; 15 Del. C. 1953, § 5111.)

§ 5112. Refusal of inspector or judge of election to serve; penalty.

Whoever, having been appointed an inspector or judge of election in any election district, refuses to serve shall be fined \$50. (21 Del. Laws, c. 38, § 11; Code 1915, § 1750; Code 1935, § 1839; 15 Del. C. 1953, § 5112.)

§ 5113. Refusal of clerk of election to qualify or serve; penalty.

Whoever, having been appointed a clerk of election, refuses to qualify or having qualified fails or refuses to perform any of the duties of his office shall be fined not less than \$50 nor more than \$100. (Code 1915, § 1677A; 28 Del. Laws, c. 92; 37 Del. Laws, c. 120; Code 1935, § 1765; 42 Del. Laws, c. 115, § 13; 45 Del. Laws, c. 148, § 29; 45 Del. Laws, c. 149, § 29; 15 Del. C. 1953, § 5113.)

§ 5114. Improper conduct of printer of ballots and ballot envelopes; penalty.

If the printer of the ballot or envelope or any person employed in printing the same:

(1) Knowingly gives or delivers or knowingly permits to be taken any ballots or envelopes by any person other than the department of elections for whom such ballots and envelopes are being printed; or

(2) Prints or causes or permits to be printed any ballot or envelope in any other form than the one prescribed by this title or with any other names thereon than those authorized by the department of elections or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the department of elections he shall be fined not less than \$100 nor more than \$500 or imprisoned not less than 1 nor more than 5 years, or both. (19 Del. Laws, c. 37, § 10; 27 Del. Laws, c. 65; Code 1915, § 1727; Code 1935, § 1816; 15 Del. C. 1953, § 5115; 58 Del. Laws, c. 148, § 119.)

§ 5115. Improper use of ballot or envelope; penalty.

Whoever:

(1) Forges or falsely makes the official endorsement of any ballot or envelope; or

(2) Prints or causes to be printed any imitation ballot or envelope or circulates the same; or

(3) Conspires with other persons or induces or attempts to induce any other person to do any of such acts, whether or not any of such acts are committed or attempted to be committed,

shall be fined not less than \$100 nor more than \$500 or may be imprisoned not more than 5 years. (19 Del. Laws, c. 37, § 30; 27 Del. Laws, c. 65, § 27; Code 1915, § 1734; Code 1935, § 1823; 15 Del. C. 1953, § 5116.)

§ 5116. Tampering with voting machines; penalties.

Whoever before the opening of the election registers any vote on a voting machine or at any time tampers with, disarranges, defaces, impairs in any manner or destroys a voting machine or any part thereof, including the ballots on its face, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not less than 1 nor more than 2 years. (19 Del. Laws, c. 37, § 13; 27 Del. Laws, c. 65, § 11; Code 1915, § 1730; Code 1935, § 1819; 15 Del. C. 1953, § 5117; 49 Del. Laws, c. 18, § 2; 58 Del. Laws, c. 148, § 120.)

§ 5117. Unauthorized entering of voting room; penalties.

(a) Whoever does not meet the qualifications of § 4933 of this title, and enters the voting room on the day of election other than to vote, shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the voting room on the day of election for the purpose of disrupting the election shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 1 year nor more than 5 years. (21 Del. Laws, c. 38, § 15; Code 1915, § 1754; Code 1935, § 1843; 15 Del. C. 1953, § 5118; 57 Del. Laws, c. 181, § 71.)

§ 5118. Interference with election; penalties.

(a) Whoever enters or attempts to enter the voting room before the hour of opening the polls on the day of election or at the time of opening the election, or at any time during the day of the election and before the hour of closing the election for the purpose of interfering with the election officers in the discharge of their duties as such or for any purpose; or

Whoever attempts to molest, disturb or prevent the election officers from proceeding regularly with any general or special election; or

Whoever takes charge or attempts to take charge of any voting room or place where the election is held within the time mentioned in this subsection for the purpose of preventing or delaying an election or for any other purpose on election day,

shall be fined not less than \$500 nor more than \$1,000, and imprisoned not more than 3 years.

(b) Whoever, not in this title authorized so to do, enters or attempts to enter the election room or within the railing leading to the entrance of the election room, or remains within 30 feet of the polling place, contrary to this title, shall be fined not more than \$200.

(c) Whoever resists a challenger appointed pursuant to §§ 3164 and 4934 of this title or a special officer appointed pursuant to § 4935 of this title shall be fined not more than \$100 or imprisoned not more than one year. (19 Del. Laws, c. 37, §§ 2, 17, 33; 19 Del. Laws, c. 39, § 14; 20 Del. Laws, c. 396, §§ 3, 6; 21 Del. Laws, c. 38, § 16; 26 Del. Laws, c. 49; 27 Del. Laws, c. 65, §§ 2, 15, 30; Code 1915, §§ 1740, 1741, 1755, 1757; Code 1935, §§ 1829, 1830, 1844, 1846; 15 Del. C. 1953, § 5119; 58 Del. Laws, c. 148, § 121.)

§ 5119. Feigning a physical disability to obtain assistance in voting; penalty.

(a) Whoever, being an elector, feigns a physical defect or disability in order to be permitted to bring with him into the election room or voting booth another person, shall be fined \$100 and shall be imprisoned not more than 2 years.

(b) Whoever, being an elector selected to assist any person by reason of such person's physical defects, reveals how such elector has voted or what persons were voted for by him on any ballot or gives any information concerning the appearance of any ballot voted, shall be fined \$100 and imprisoned not less than 1 nor more than 3 years. (20 Del. Laws, c. 396, § 1; 27 Del. Laws, c. 65, § 20; Code 1915, § 1739; Code 1935, § 1828; 15 Del. C. 1953, § 5121.)

Cross references. — As to assistance for blind and physically disabled voters, see § 4943 of this title.

§ 5120. Secreting person in election room; penalty.

Whoever, other than the election officers, secretes or attempts to secrete himself in any part of the polling room during the hours of the election for any purpose whatsoever, shall be fined not less than \$100 and may be imprisoned not more than 1 year. (20 Del. Laws, c. 396, § 12; Code 1915, § 1758; Code 1935, § 1847; 15 Del. C. 1953, § 5122.)

§ 5121. Removal or destruction of election supplies or equipment or voting machines; penalty.

(a) Whoever, during the general election:

(1) Removes or destroys any of the supplies or other conveniences placed in the booths or delivered to the voter for the purpose of enabling him to prepare his ballot; or

(2) Removes, tears down or defaces the cards printed for the instruction of the voters; or

(3) Destroys or removes any booth, railing or other conveniences provided for such election; or

(4) Tampers with, disarranges, defaces or impairs in any manner the use of or destroys any voting machine or the ballots on the face of a voting machine,

shall be imprisoned not less than 6 months nor more than 1 year.

(b) Whoever induces or attempts to induce any person to commit any of the acts described in subsection (a) of this section, whether or not any such acts are committed or attempted to be committed shall be imprisoned not less than

6 months nor more than 1 year. (19 Del. Laws, c. 37, § 36; 27 Del. Laws, c. 65, § 33; Code 1915, § 1759; Code 1935, § 1848; 15 Del. C. 1953, § 5123; 49 Del. Laws, c. 18, § 4.)

§ 5122. Disclosures by election officers; penalty.

Whoever, being an election officer:

(1) Reveals to any person how any elector has voted or what persons were voted for by him on any ballot; or

(2) Gives any information concerning the appearance of any ballot voted or envelope used,

shall be fined not more than \$500 and imprisoned not less than 2 nor more than 5 years. (20 Del. Laws, c. 396, § 11; 27 Del. Laws, c. 396, § 11; Code 1915, § 1760; Code 1935, § 1849; 15 Del. C. 1953, § 5124.)

§ 5123. Intimidation, persuasion or bribery by election officer; penalty.

Whoever, being an election officer:

(1) In any manner attempts to influence, persuade, intimidate, bribe or coerce any voter in the marking of his ballot, or in the making of the choice of the persons for whom he votes; or

(2) Discloses the manner in which any person has voted;

shall be deemed to have knowingly and wilfully violated his official duty, shall be guilty of wilful and deliberate perjury, and, in addition to the penalties and disabilities annexed to such crime, be fined not more than \$500 and may be imprisoned not more than 2 years. (19 Del. Laws, c. 37, § 25; 27 Del. Laws, c. 65, § 22; Code 1915, § 1761; Code 1935, § 1850; 15 Del. C. 1953, § 5125.)

Cross references. — As to duty of Inspector of Elections to read this section to election officers before administering oath, see § 4903 of this title.

§ 5124. Inducing the making of distinguishing mark on ballot; penalty.

Whoever induces or attempts to induce any elector to write, paste or otherwise place on his ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such elector has voted; or whoever enters into or attempts to form any agreement or conspiracy with any other person to induce or attempt to induce any elector to so place any distinguishing mark or name on his ballot, whether or not such act be committed or attempted to be committed; shall be imprisoned

not more than 2 years. (19 Del. Laws, c. 37, § 34; 27 Del. Laws, c. 65, § 31; Code 1915, § 1762; Code 1935, § 1851; 15 Del. C. 1953, § 5126.)

Cross references. — As to duty of Inspector of Elections to read this section to election officers before administering oath, see § 4903 of this title.

§ 5125. Inducing election officers to violate election laws; penalty.

Whoever induces or attempts to induce any election officers to violate any of the provisions of this title whether or not such election officers violate or attempt to violate any of such provisions shall be imprisoned not more than 5 years. (27 Del. Laws, c. 65, § 32; Code 1915, § 1763; Code 1935, § 1852; 15 Del. C. 1953, § 5127.)

Cross references. — As to duty of Inspector of Elections to read this section to election officers before administering oath, see § 4903 of this title.

§ 5126. Violations by officials; penalties.

Whoever, being a clerk of the peace, an official, or other individual as designated in this title, willfully violates this title in the performance of any duty imposed upon him for the violation of which no other punishment is provided by law, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not more than 3 years. (20 Del. Laws, c. 396, § 13; 27 Del. Laws, c. 65, § 28; Code 1915, § 1787; Code 1935, § 1876; 15 Del. C. 1953, § 5128; 57 Del. Laws, c. 181, § 73.)

§ 5127. Bribery of person expecting to be election or registration officer; penalty.

Whoever bribes or attempts to bribe anyone expecting to hold any official position under the election or registration laws of this State, either as registrar, inspector, judge or otherwise, by giving money or the promise of money, office or the promise of office or position either under the state or federal government, to perform any service for any political party in this State or to favor any candidate for political office shall be fined not more than \$1,000 and may be imprisoned not more than 6 months. (19 Del. Laws, c. 575; Code 1915, § 1788; Code 1935, § 1877; 15 Del. C. 1953, § 5129.)

Cross references. — As to bribery and improper influence, see §§ 1201 to 1209 of Title 11.

§ 5128. Fraudulent voting; penalty.

Whoever, at any general or special election:

(1) Falsely personates any elector or other person and votes or attempts or offers to vote in or upon the name of such elector or other person; or

(2) Votes or attempts to vote in or upon the name of any other person whether living or dead or in or upon any false, assumed or fictitious name; or

(3) Knowingly, willfully or fraudulently votes more than once for any candidate at any election for the same office; or

(4) Votes or attempts or offers to vote in any election district without having a lawful right to vote therein, or to vote more than once or to vote in more than 1 election district; or

(5) Having once voted, votes or attempts or offers to vote again; or

(6) Fraudulently delivers or offers to an election officer more than a single ballot; or

(7) Knowingly, willfully or fraudulently does any unlawful act to secure an opportunity for himself or for any other person to vote,

shall be fined not less than \$50 or more than \$200, or imprisoned not less than 30 days or more than 2 years, or both. (Code 1852, § 312; 19 Del. Laws, c. 39, § 34; Code 1915, § 1794; Code 1935, § 1883; 15 Del. C. 1953, § 5130; 50 Del. Laws, c. 174, § 1.)

§ 5129. False entries by clerk of election.

Whoever, being a clerk of election or other election officer performing the duty of such clerk:

(1) Willfully keeps a false poll list; or

(2) Knowingly inserts in his poll list any false statement, or any name, statement, check, letter or mark, except as provided by law;

shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 35; Code 1915, § 1795; Code 1935, § 1884; 15 Del. C. 1953, § 5131.)

Cross references. — As to official misconduct, see § 1211 of Title 11.

§ 5130. Failure of election officer to perform duties.

Whoever, being an election officer, willfully:

(1) Excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election; or

(2) Receives a vote from any person who has been duly challenged in relation to his right to vote at such election without exacting from such person such oath or other proof of qualification as may be required by law; or

(3) Omits to challenge any person offering to vote whom he knows or suspects not to be entitled to vote and who has not been challenged by any other person

shall be deemed to have violated his official duty. (19 Del. Laws, c. 39, § 36; Code 1915, § 1796; Code 1935, § 1885; 15 Del. C. 1953, § 5132.)

Cross references. — As to official misconduct, see § 1211 of Title 11.

§ 5131. False count or certification by election officer.

Whoever, being an election officer, willfully:

(1) Makes any false count of votes cast at any election, or makes, signs, publishes or delivers any false return of such election or any false certificate or statement of the result of such election, knowing the same to be false; or

(2) Defaces, destroys or conceals any statement or certificate entrusted to his care or custody

shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 37; Code 1915, § 1797; Code 1935, § 1886; 15 Del. C. 1953, § 5133.)

§ 5132. Fraudulent deposit or alteration of ballots or entering voting machine booth or casting vote; penalty.

(a) Whoever, being an election officer, at any election:

(1) Knowingly and willfully puts or causes to be put any ballot or ballots or other paper having the semblance thereof into any box used at such election for the reception of votes; or

(2) Knowingly and willfully causes or permits any ballot to be in the ballot box at the opening of the polls and before voting shall have commenced; or

(3) Knowingly or willfully or fraudulently puts any ballot or other paper having the semblance thereof into any ballot box unless the same is offered by an elector and his name has been found and checked upon the Election District Record; or

(4) Fraudulently before, during or after the reading and count of the ballot, in any manner changes, substitutes or alters any ballot; or

(5) Removes any ballot or semblance thereof from, or adds any ballot or semblance thereof to, the ballots found in any such ballot box upon the closing of the polls; or

(6) Knowingly and willfully causes or permits any vote to be registered on a voting machine, unless the vote is cast by an elector whose name has been found and checked upon the books of registered voters and who has not previously voted, or knowingly or willfully enters or permits anyone to enter a voting machine booth, unless the person is an elector whose name has been found or checked upon the books of registered voters and who has not previously voted or is an election officer or member or employee of the department of elections whose entrance into the voting machine booth is required by the provisions of this title

shall be deemed to have knowingly and willfully violated his official duty.

(b) Whoever, not being an election officer, does or causes to be done any of the acts, matters or things mentioned in subsection (a) of this section, shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 38; Code 1915, § 1798; Code 1935, § 1887; 15 Del. C. 1953, § 5134; 49 Del. Laws, c. 18, § 3; 50 Del. Laws, c. 174, § 2.)

§ 5133. Wilful neglect of duty by election officers.

Whoever, being an election officer of whom any duty is required in this title, is guilty of any wilful neglect of such duty or of any corrupt or fraudulent conduct or practice in the execution of the same shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 39; Code 1915, § 1799; Code 1935, § 1888; 15 Del. C. 1953, § 5135.)

§ 5134. Stealing, destroying or secreting records; penalty.

(a) Whoever, being an election officer having the custody of any registration records, or copy thereof, oath, return of votes, certificate, poll list or any paper, document, or evidence of any description, in this title directed to be made, filed or preserved:

(1) Steals, willfully destroys, mutilates, defaces, falsifies, or fraudulently removes or secretes the whole or any part thereof; or

(2) Fraudulently makes any entry, erasure, or alteration therein, except as allowed and directed by this title; or

(3) Permits any other person to do so,

shall be deemed to have knowingly and willfully violated his official duty.

(b) Whoever, not being an election officer and having such custody, does or commits any of the acts, matters or things mentioned in subsection (a) of this section, or whoever, not being an election officer, advises, procures or abets the commission of any of the acts mentioned in this section shall, for each such

offense, be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, §§ 40, 41; Code 1915, §§ 1800, 1801; Code 1935, §§ 1889, 1890; 15 Del. C. 1953, § 5136; 50 Del. Laws, c. 174, § 3.)

§ 5135. Perjury; subornation of perjury.

(a) Whoever is convicted of wilful false swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this title is guilty of perjury.

(b) Whoever willfully or corruptly instigates, advises, induces or procures any person to swear or affirm falsely, or attempts or offers so to do, is guilty of subornation of perjury, and shall suffer the punishment directed by law in cases of perjury. (19 Del. Laws, c. 39, §§ 42, 43; Code 1915, § 1802; Code 1935, § 1891; 15 Del. C. 1953, § 5137.)

Cross references. — As to false oath or affirmation relating to elections, see Del. Const., art. V, § 3. As to perjury and related offenses, see §§ 1221 to 1235 of Title 11.

§ 5136. Tampering with ballots or deceiving voters; penalty.

Whoever:

(1) Fraudulently changes or alters the ballot of any elector, or substitutes 1 ballot for another, or fraudulently furnishes any elector with a ballot containing more than the proper number of names; or

(2) Intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote and to have the same thrown out and not counted, or to have the same counted for a person or candidate other than the person or candidate for whom such elector intended to vote; or

(3) Otherwise defrauds the elector of his vote

shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 44; Code 1915, § 1803; Code 1935, § 1892; 15 Del. C. 1953, § 5138.)

§ 5137. Disobeying election officers; penalty.

Whoever willfully disobeys any lawful command of any election officer, given in the execution of his duty as such at any election, shall be fined not more than \$200 or imprisoned not more than 1 year, or both. (19 Del. Laws, c. 39, § 45; Code 1915, § 1804; Code 1935, § 1893; 15 Del. C. 1953, § 5139.)

§ 5138. Breach of peace or violence on election day; penalty.

Whoever on any day of election or during the reading and counting of the votes cast thereat causes any breach of the peace or uses any violence or threats of violence whereby any such election or reading and counting of ballots is impeded or hindered or whereby the lawful proceedings of election officers or challengers at such election are interfered with shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 46; Code 1915, § 1805; Code 1935, § 1894; 15 Del. C. 1953, § 5140.)

Cross references. — As to disorderly conduct, see § 1301 of Title 11.

§ 5139. Interference with election officer or challenger; penalty.

Whoever knowingly or willfully obstructs, hinders, assaults or by bribery, solicitation or otherwise interferes with any election officer or challenger in the performance of any duty required of him or which he may by law be authorized or permitted to perform; or whoever by any means before mentioned or otherwise unlawfully on the day of election hinders or prevents any election officer or challenger in his free attendance and presence at the place of election in the election district in which he is appointed to serve, or in his full and free access and egress to and from any such place of election, or molests, interferes with, removes or ejects from any such place of election any such election officer or challenger, or unlawfully threatens or attempts or offers so to do shall be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 47; Code 1915, § 1806; Code 1935, § 1895; 15 Del. C. 1953, § 5141.)

§ 5140. Failure of inspector to preserve order.

Whoever, being an inspector of election, willfully neglects or when called on willfully declines to exercise the powers conferred on him to preserve order shall be deemed to have knowingly and willfully violated his official duty. (19 Del. Laws, c. 39, § 48; Code 1915, § 1807; Code 1935, § 1896; 15 Del. C. 1953, § 5142.)

§ 5141. Stealing or destroying ballot box, ballot, poll list; penalty.

Whoever, not being an election officer:

(1) Steals or willfully breaks or destroys any ballot box used or intended to be used at any election; or

(2) Willfully or fraudulently conceals, secretes or removes any ballot box from the custody of the election officers; or

(3) Alters, defaces, injures, destroys or conceals any ballot or envelope which has been deposited in any ballot box at such election or any poll list used or intended to be used at such election or any report, return, certificate or other evidence in this title required or provided for;

shall, for each such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both. (19 Del. Laws, c. 39, § 49; 27 Del. Laws, c. 65; Code 1915, § 1808; Code 1935, § 1897; 15 Del. C. 1953, § 5143.)

Circumstantial evidence. — In order to justify a conviction on inferential or circumstantial evidence, the jury must be satisfied from the proof in this case that ballots could

have disappeared in no other reasonable way than by burning or other destruction. *State v. Mundy*, Del. Gen. Sess., 43 A. 260 (1895).

§ 5142. Requiring unauthorized oath; penalty.

Whoever, being an election officer or other person, administers or causes to be administered to any legal voter any oath or affirmation not authorized by the Constitution or laws of this State for that purpose as a prerequisite or condition of voting at any election, except when such oath or affirmation is administered in order to satisfy such election officer or other person that such vote is a legal vote according to the Constitution and laws of this State, shall for each such offense be fined not less than \$500 nor more than \$1,000 and imprisoned 10 days. (12 Del. Laws, c. 326, § 3; Code 1915, § 1827; Code 1935, § 1916; 15 Del. C. 1953, § 5144.)

§ 5143. Candidate for General Assembly not to make written pledge; penalty.

(a) No candidate for State Senator or Representative in the General Assembly shall make any written pledge to give or withhold his vote on any proposed law or legislation, nor shall any other person seek to influence any such candidate in his attitude upon any proposed law or legislation by offer or promise of a vote or votes or of any support at any primary or election.

(b) Whoever violates subsection (a) of this section shall be fined not less than \$50 nor more than \$1,000, or imprisoned not less than 1 month nor more

than 2 years, or both. (Code 1915, § 1876D; 29 Del. Laws, c. 112; 30 Del. Laws, c. 105; Code 1935, § 1944; 15 Del. C. 1953, § 5145.)

Subchapter III. Offenses Carrying Civil Liability

§ 5161. Intimidation of election officers; penalty.

If any person, firm, corporation or employer existing or doing business in this State, hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed an election officer under the laws of this State from qualifying and performing his duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, he or they shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State. (45 Del. Laws, c. 144, § 24; 45 Del. Laws, c. 148, § 24; 45 Del. Laws, c. 149, § 24; 15 Del. C. 1953, § 5161.)

§ 5162. Intimidation of electors; penalty.

If any person, or corporation existing or doing business in this State, hinders, controls, coerces or intimidates or attempts to hinder, control, coerce or intimidate any qualified elector of this State from or in the exercise of his right to vote at any general, special or municipal election held under the laws of this State, by means of bribery or by threats of depriving such elector of employment or occupation, absolutely or contingently, directly or indirectly, every elector so aggrieved may, in a civil action brought for that purpose, sue for and recover from the person or corporation so offending the sum of \$500. (16 Del. Laws, c. 329, §§ 1, 2; Code 1915, § 1789; Code 1935, § 1878; 15 Del. C. 1953, § 5162.)

§ 5163. Liability of corporation or officers.

In any trial under § 5161 or 5162 of this title, the acts of any officer of a corporation, insofar as they affect or concern an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether general or special authority as to such acts from the corporation is shown or not.

Nothing contained in § 5161 or 5162 of this title or in this section shall be construed to relieve any officer of a corporation from individual liability under such sections. (16 Del. Laws, c. 329, §§ 1, 2; Code 1915, § 1789; Code 1935, § 1878; 45 Del. Laws, c. 147, § 24; 45 Del. Laws, c. 148, § 24; 45 Del. Laws, c. 149, § 24; 15 Del. C. 1953, § 5163.)

§ 5164. Liability of stakeholder for paying election bet.

If any stakeholder, or person with whom any money or thing, laid as a wager or bet on the result of any election, or on the election or defeat of any candidate or person voted for thereat, shall be deposited, shall at any time either before or after such bet shall have been decided, pay over or deliver to either or both of the persons betting the same, or to any other person by the order or for the use of them, or either of them, the money or thing so illegally betted, every such stakeholder or depository shall forfeit and pay to any person who will sue for the same, double the amount of such wager or bet or double the value of the thing betted.

Either of the persons betting shall be competent witnesses against the stakeholder. (Code 1852, §§ 314, 315; Code 1915, § 1813; Code 1935, § 1902; 15 Del. C. 1953, § 5164.)

CHAPTER 53. MILITARY OR OTHER INTERFERENCE WITH ELECTIONS

- Sec.
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5302. Abetting or counseling military interference with elections; penalty.
5303. Civil remedy for interference with voting.
5304. Duty to disclose information as to interference with elections.
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- Sec.
5307. Duties of inspector at special polling place.
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5310. Number of special polling places not limited.
5311. Special clerk; appointment; oath.
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§ 5301. Bringing armed soldiers into State to interfere with elections; penalty.

Whoever, being a citizen or inhabitant of this State:

(1) Sends or causes to be sent, brings or causes to be brought into this State, or aids, abets, procures, advises, counsels or in any manner assists in sending or bringing into this State any armed soldier to be present at any voting place in this State or within 5 miles thereof, on the day of any general, special or other election held in this State; or

(2) Aids, abets, procures, advises, counsels or in any manner assists the presence or attendance of any armed soldier at any such voting place, or within 5 miles thereof, on any such election day

shall be guilty of a felony, and shall be fined not less than \$1,000 nor more than \$10,000, and imprisoned not less than 1 nor more than 5 years, and shall forever thereafter be incapable of exercising the right of suffrage in this State. (12 Del. Laws, c. 326, § 1; Code 1915, § 1825; Code 1935, § 1914; 15 Del. C. 1953, § 5302.)

§ 5302. Abetting or counseling military interference with elections; penalty.

Whoever, being a citizen or inhabitant of this State, aids, abets, procures, advises, counsels or in any manner assists or is guilty of military interference in any manner with the freedom of any election in this State shall be guilty of felony, and shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned not less than 1 nor more than 5 years, and shall forever thereafter be incapable of exercising the right of suffrage in this State. (12 Del. Laws, c. 326, § 2; Code 1915, § 1826; Code 1935, § 1915; 15 Del. C. 1953, § 5303.)

§ 5303. Civil remedy for interference with voting.

Whoever, being a duly qualified elector of this State according to the Constitution and laws thereof, is prevented from voting, or obstructed in his effort to vote at any election, by reason of any interference by any person or persons, or military power, or other power, exercising or attempting to exercise force, intimidation or threats, or requiring any qualifications or conditions unknown to such Constitution and laws, shall be deemed and taken to have suffered private damage and injury, and shall have civil remedy therefor, in the courts of this State, by civil action against every person who promoted such interference, whether by active participation, or by advising, counseling, or in anywise encouraging the same; and in any trial under this section or § 5304 of this title, the court or jury, if, in their opinion the circumstances will warrant it, may give exemplary damages. (12 Del. Laws, c. 487, § 1; Code 1915, § 1828; Code 1935, § 1917; 15 Del. C. 1953, § 5304.)

§ 5304. Duty to disclose information as to interference with elections.

Every citizen of this State who has knowledge of any design on the part of any other citizen or citizens of this State to promote interference with elections, either by soliciting or advising the presence of a military force at or near the place or places of holding such elections or by the employment of any other organized or unorganized body of men, or by intimidation or threats shall forthwith make public disclosure of such knowledge, stating names, by an affidavit to be made before any one of the Superior Court Judges of this State, and shall file the same in the office of the Prothonotary of the county where the Judge resides, and if any such citizen, having such knowledge, fails to make such affidavit and cause the same to be filed, he shall be treated as a promoter of the interference mentioned in § 5303 of this title and be liable as is provided in such § 5303. (12 Del. Laws, c. 487, § 2; Code 1915, § 1829; Code 1935, § 1918; 15 Del. C. 1953, § 5305.)

§ 5305. Ten year limitation on civil actions for voting interference.

The limitation of actions commenced under §§ 5303 and 5304 of this title shall be 10 years from the time of the accruing of the cause of action. (12 Del. Laws, c. 487, § 3; Code 1915, § 1830; Code 1935, § 1919; 15 Del. C. 1953, § 5306.)

§ 5306. Special polling place and voting procedure in case of military interference.

If it happens that by reason of the presence of any military force at or near the place of holding an election in this State, electors duly qualified by the Constitution and laws of this State to vote at such place at the election shall be prevented from or interfered with by military force or by the requirement of oaths unknown to the Constitution and laws in casting their votes, any number of electors not less than 5 may withdraw from the place to any other place within the voting district where such prevention or interference shall take place, and having there, by a majority of the electors present, selected a duly qualified elector of the district, who shall be a freeholder, to act as inspector, deliver to him there their respective ballots. The inspector shall receive the ballots and record the name of the voter upon a list to be kept by him for that purpose and immediately write upon each ballot the name of the person who delivered the same to him, the inspector having first administered to each person offering to vote an oath or affirmation in the following words: "You do solemnly swear (or affirm) that you are now a duly registered voter of this election district, that you have not voted and will not vote on this day at any other place in this or any other election district, and that you have been hindered or prevented from casting your vote at the regular place of holding the election in this district, by military interference, or by the requirement of oaths unauthorized by the Constitution and laws of this State." (12 Del. Laws, c. 491, § 1; Code 1915, § 1831; Code 1935, § 1920; 15 Del. C. 1953, § 5307.)

§ 5307. Duties of inspector at special polling place.

The polls authorized to be held by § 5306 of this title shall be held at the place where they are opened unless it be impracticable to hold them there in which event they shall be adjourned to some other place, or places, if necessary, in the election district where they are opened, and there held, and they shall be kept open until 6:00 in the afternoon, when the inspector shall close them. As soon as such polls are closed, the inspector holding them, having first ascertained the number of ballots cast, and for whom and for what office the votes were given, and made a certificate thereof, shall seal up the ballots received by him in a box or envelope, and keep them safely, together with the list of the names of the electors who have deposited their ballots with him, until the time of the meeting of the Superior Court of his county, constituted as provided by § 6, article V, of the Constitution of this State, provided by the election laws, when he shall appear before the Court with the ballots and list of voters and his certificate, and deliver his certificate to the Court, with an affidavit made by him upon the same, that it contains a true and faithful statement of the number of ballots received by him, the names of the electors

who cast them, the number of votes for the different persons voted for and that at the poll held by him, he did not knowingly receive the ballot of any person not a duly qualified voter within his election district according to the Constitution and laws of this State and did not refuse to receive the ballot of any person so qualified, who had been prevented from voting at the regular place of voting by military force or the requirement of an oath unauthorized by the Constitution and laws of this State, and that he determined every matter that came before him and performed every act and duty required of him by law touching the election held by him, truly, faithfully and impartially, according to the best of his skill and judgment. (12 Del. Laws, c. 491, § 2; Code 1915, § 1832; Code 1935, § 1921; 15 Del. C. 1953, § 5308.)

§ 5308. Canvass of ballots from special polling place.

The Superior Court, sitting as a board of canvass, shall receive the certificate, and in ascertaining and certifying the state of the election shall take into consideration the number of ballots certified by the inspector to have been received by him and for whom and what office the votes were given, and give the certificate the same force and effect as a certificate of the election officers at any of the regular places of holding the election. The votes so given shall be reckoned among the number of votes given in the election district where they were received by the inspector, in the same manner as if they had been given at the regular place of voting in the district; provided always, however, that the Court shall be required to hear and determine challenges as to the right of any person, who delivered his ballot to the inspector, and reject any ballot if the person who cast the same had not a right to vote under the Constitution and laws of this State, either from want of qualification, or by reason of his having voted at any other place in the State where he was entitled to vote on the same day. Such of the ballots so received by the inspector, as are not rejected by the Court and also the list of voters, and the certificate shall be deposited by the Court in the regular ballot box of the election district where they were cast, and the box shall then be immediately resealed by the Court. The Court may also open the ballot box for the purpose. The Court may also examine on oath the inspector touching any matter connected with the holding of the election by him, and may if it appear to it that the election was not fairly held by such inspector, reject his certificate and throw out the vote returned by him. (12 Del. Laws, c. 491, § 3; Code 1915, § 1833; Code 1935, § 1922; 15 Del. C. 1953, § 5309.)

§ 5309. Procedure in case of military interference with board of canvass.

If it is apparent to the Court sitting as board of canvass that any interference with the performance of its duties will be attempted by military force, or if, after it has met, any such interference is attempted, it may meet at any other place within its county to perform its duties. And further, if any member of the Court, or any such inspector created by virtue of this title, or any inspector of election, is prevented, by reason of such interference from attending the meeting of the Court, or if the Court, being met, shall be prevented by such interference from performing the duties incumbent on it, the Court shall adjourn to meet at some other time and other place, if necessary, to perform its duties under the laws of this State, and so adjourn from time to time until such duties can be performed. The duty of attendance upon the Court on the part of such an inspector created by authority of this chapter, and the penalties upon him for not appearing shall be the same as in the case of the inspectors regularly elected or appointed according to law. (12 Del. Laws, c. 491, § 4; Code 1915, § 1834; Code 1935, § 1923; 15 Del. C. 1953, § 5310.)

§ 5310. Number of special polling places not limited.

Nothing contained in §§ 5306-5312 of this title shall limit the voting places to 2 in an election district, but, the emergency contemplated in §§ 5306-5309 of this title arising, as many different polls may be held as there are numbers of voters of 5 or more, who under the circumstances withdraw from the regular place of holding the election for the purpose of casting their ballots without intimidation or interference. (12 Del. Laws, c. 491, § 5; Code 1915, § 1835; Code 1935, § 1924; 15 Del. C. 1953, § 5311.)

§ 5311. Special clerk; appointment; oath.

Each inspector chosen under § 5306 of this title may appoint a clerk to aid him in the discharge of such duties as are clerical and shall administer to him before he enters upon the discharge of the duties to be assigned to him an oath or affirmation in these words: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Clerk of the Election for this election in Election District in Representative District in County, according to the best of my ability." (12 Del. Laws, c. 491, § 6; Code 1915, § 1836; Code 1935, § 1925; 15 Del. C. 1953, § 5312.)

§ 5312. Compensation of special election officers.

The special inspectors and clerks elected and appointed under this chapter shall receive the same compensation as inspectors and clerks elected and appointed under the provisions of law for a general election. (12 Del. Laws, c. 491, § 6; Code 1915, § 1836; Code 1935, § 1925; 15 Del. C. 1953, § 5313.)

CHAPTER 55. ABSENTEE VOTING

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Cross references. — As to general laws for absentee voting, see Del. Const., art. V, § 4A.

As to uniform laws for absentee registration, see Del. Const., art. V, § 4B.

§ 5501. Purpose of chapter.

This chapter shall provide that those qualified electors of this State who shall be unable to appear to cast their ballots at the polling place of their election district at any general or special election may be able to cast such a ballot to be counted in the election district if such a privilege has been granted them by article V, § 4A, Delaware Constitution. (44 Del. Laws, c. 118, § 20; 47 Del. Laws, c. 316, § 4; 15 Del. C. 1953, § 5501; 49 Del. Laws, c. 278, § 1; 58 Del. Laws, c. 148, § 122; 63 Del. Laws, c. 455, § 1.)

Precaution against fraudulent abuse. — It is the duty of the General Assembly in enacting an absentee voters' law to take all possible

precaution against fraudulent abuse of the privilege. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 5502. Persons eligible to vote by absentee ballot.

Any qualified elector, duly registered, of this State may cast his vote by absentee ballot in any general or special election, primary election choosing candidates for statewide or local offices or special election held under the provisions of Chapter 73 of this title, such votes to be counted in the total for the election district in which he is registered if he is unable to appear at the polling place of his election district due to the following reasons:

(1) Because such person is in the public service of the United States or of this State, or is a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or his spouse or dependents when residing with or accompanying him, or is absent from this State because of illness or injury received while serving in the armed forces of the United States; or

(2) Because such person is in the armed forces of the United States or the merchant marine of the United States, or attached to and serving with the armed forces of the United States in the American Red Cross, Society of Friends or United Service Organizations; or

(3) Because such person is unavoidably absent from the county in which he resides on the day of the general or special election; or

(4) Because such person is sick or physically disabled; or

(5) Because such person is absent from the district while on vacation; or

(6) Because such person is unable to vote at a certain time or on a certain day due to the tenets or teachings of his religion. (44 Del. Laws, c. 118, § 1; 47 Del. Laws, c. 316, § 1; 15 Del. C. 1953, § 5503; 49 Del. Laws, c. 278, § 3; 57 Del. Laws, c. 181, § 75; 58 Del. Laws, c. 148, § 123; 58 Del. Laws, c. 397, § 8; 61 Del. Laws, c. 252, § 1; 63 Del. Laws, c. 67, §§ 1-3; 63 Del. Laws, c. 455, § 2; 65 Del. Laws, c. 455, § 1.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

Classifications in subdivision (2) are unconstitutional limitations, insofar as general elections are concerned. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

And the classification in subdivision (3) is also an unconstitutional enlargement, upon the "business or occupation" classification of absentee voters contained in Del. Const., art. V, § 4A. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

The mandate of Del. Const., art. V, § 4A, that the "General Assembly shall enact gen-

eral laws" for absentee voting at general elections is not met by this section insofar as the "business or occupation" classification in § 4A is concerned. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

Primaries were formerly special province of parties. — Until the enactment of 15 Del. C. § 3113 and this section, primary elections, like nominating conventions, were considered the special province of the political parties, to be conducted by them under party rules and regulations. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

General Assembly may provide for absentee voting in primaries. — The General Assembly may constitutionally provide by stat-

ute for absentee voting by any person in an election other than a general election. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

The framers of the Constitution intentionally and successfully avoided any limitation upon the legislative powers of the General Assembly as to primary elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

Subdivision (3) of this section shall be deemed to read: "(3) Unavoidably absent from the county in which he resides on the day of the election, or . . ." As thus read, there is no constitutional problem as to primary elections caused by subdivision (3). Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

Instructions governing absentee voting in primaries. — The State Election Commissioner and the several departments of elections have ample authority to promulgate and issue instructions governing absentee voting in primary elections. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

There is no constitutional requirement for statutory instructions for absentee voters at primary elections. Therefore, the absence of a statutory provision for such instructions creates no constitutional difficulty. Opinion of the Justices, Del. Supr., 295 A.2d 718 (1972).

§ 5503. Affidavits required of persons applying for absentee ballots.

(a) Any elector desiring to receive an absentee ballot because he qualifies under any of the reasons set forth in § 5502(3), (4), (5) or (6) of this title shall file an affidavit with the department of elections for that county, subscribed and sworn to by him before an officer authorized by law to administer oaths. The affidavit shall be dated not more than 90 days prior to the day of the election. It shall state the reason why he cannot appear at the regular polling place for his election district on the day of the election, his birth date, social security number, his expected location, including his address and a telephone number (if available) to be used for the purpose of challenge on election day and, if sick or disabled, the name and address of a physician or Christian Science practitioner who can attest to the elector's inability to go to his polling place on the day of election. The department shall mail or deliver the official ballot, envelopes and instructions to the elector as soon as possible after receiving the affidavit.

(b) Any elector desiring to receive an absentee ballot because he qualifies under any of the reasons set forth in § 5502(1) or § 5502(2) of this title may execute an affidavit sworn to by the elector, under penalty of perjury, with the department of elections for that county. The affidavit shall be dated during the calendar year in which the election is to be held. It shall state the reason why he cannot appear at the regular polling place for his election district on the day of the election, his birth date, his social security number, his expected location, including his address and a telephone number (if available) to be used for the purpose of challenge on election day. The department may hold an affidavit dated more than 90 days prior to an election until 90 days prior to the election, and shall mail the official ballot, envelopes, and instructions to the elector as soon as possible thereafter. (44 Del. Laws, c. 118, § 1; 47 Del. Laws, c. 316, § 1; 15 Del. C. 1953, § 5504; 49 Del. Laws, c. 278, § 4; 50 Del.

Laws, c. 173, § 1; 58 Del. Laws, c. 148, §§ 124-126; 60 Del. Laws, c. 414, § 13; 65 Del. Laws, c. 455, §§ 2, 3.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5504. Request for ballot.

Any elector who is qualified under § 5502 of this title to vote by absentee ballot and who desires to do so shall, not later than 12:00 noon of the day prior to any such election, request the department of the county in which the election district of such elector is located for an official ballot to be voted at such election. (44 Del. Laws, c. 118, § 2; 45 Del. Laws, Sp. Sess., c. 5, § 1; 45 Del. Laws, c. 155, § 2; 15 Del. C. 1953, § 5505; 49 Del. Laws, c. 278, § 5; 52 Del. Laws, c. 92, § 3; 52 Del. Laws, c. 223; 58 Del. Laws, c. 148, § 127; 61 Del. Laws, c. 480, § 17.)

§ 5505. Distribution of ballots, envelopes and instructions.

Upon receipt of a request from an elector, together with an affidavit if required by § 5503 of this title, the department, not more than 60 nor less than 3 days prior to a general or special election and within 3 days after the ballots, envelopes and instructions for absentee voters become available, as provided by the general or special election law, shall mail to the elector, postage prepaid, an official ballot for the representative district in which the elector resides enclosed in an official envelope along with a voucher envelope marked "voucher envelope," a copy of the instructions to absentee voters and a mailing envelope marked "mailing envelope." Nothing contained in this section shall prevent the issuance of an absentee ballot to those lawfully entitled thereto prior to 12:00 noon of the day prior to any general or special election when the request is made less than 3 days prior to the general election. (44 Del. Laws, c. 118, §§ 4, 7; 45 Del. Laws, Sp. Sess., c. 5, § 2; 45 Del. Laws, c. 155, §§ 3, 6; 46 Del. Laws, c. 181, § 1; 15 Del. C. 1953, § 5506; 60 Del. Laws, c. 414, § 14; 63 Del. Laws, c. 455, § 3.)

§ 5506. Affidavit of eligibility on voucher envelope; form.

(a) There shall be printed on the face of each voucher envelope an affidavit in substantially the following form:

"I do solemnly swear (affirm) that I am a resident of the State of Delaware and will have resided therein at least years preceding the day of the election at which this ballot is to be voted; that my voting address is

Street address, — Road

in or near, Election District
 City; Town; Village.
, Representative District, in
 County.

"That I will be absent from my election district on the day of election because of being () In the public service of the United States or this State, () In the armed forces of the United States or the merchant marine of the United States, or attached to and serving with the armed forces of the United States in the American Red Cross, Society of Friends or the United Service Organization, () Unavoidably absent from the county, () Sick or physically disabled. For the reason indicated, I cannot appear at the polling place in the election district in which I am a qualified elector. I further swear (affirm) that I marked my ballot in secret.

"I, do solemnly swear (or affirm) that I have not received or accepted, or offered to receive or accept, paid or transferred or delivered, or offered or promised to pay, transfer or deliver or contributed or offered or promised to contribute to another to be paid or used any money or other valuable thing as compensation, inducement or reward for the registering or abstaining from registering of anyone qualified to register or for the giving or withholding a vote at this election.

(Signed)
 Write name here.

 Print name here.

"Subscribed and sworn (affirmed) before me this day of, A.D. 19.....; and I hereby certify that the affiant did in such manner that I could not see his ballot mark such ballot and that the affiant was not solicited or advised by me to vote for or against any candidate.

(Signed)"
 Notary Public;
 or other qualified
 person; state
 title.

(b) Any elector who receives an absentee ballot because he qualifies under any of the reasons set forth in § 5502(1) or § 5502(2) of this title may subscribe to and swear a self-administered oath, under penalty of perjury, affirming that he was not solicited or advised to vote for or against any candidate. (44 Del. Laws, c. 118, § 5; 45 Del. Laws, c. 155, § 4; 47 Del. Laws, c. 316, § 2; 15 Del. C. 1953, § 5507; 49 Del. Laws, c. 278, § 7; 50 Del. Laws, c. 173, § 10; 58 Del. Laws, c. 148, § 128; 60 Del. Laws, c. 414, § 15; 65 Del. Laws, c. 455, § 4.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5507. Envelope specifications; approval by Attorney General.

(a) The voucher envelope shall be of the type known as a security mailing envelope and shall be such as to securely protect the contents thereof from tampering, removal or substitution without detection. Such envelopes shall be successively numbered beginning with Number 1 printed in red ink in the upper right-hand corner thereof.

(b) The mailing envelope shall be large enough to carry the voucher envelope.

(c) All envelopes used under this chapter, including all envelopes in which the department shall forward to an absentee voter an official ballot accompanied by the official envelope, the voucher envelope, a mailing envelope and instructions to absentee voters, and the carrier envelope used by the department for forwarding the returned marked ballot to the polls of the various election districts shall be uniform throughout the State. The Attorney General shall personally approve each kind or type of envelope and no department shall purchase, use, have printed upon, mail or deliver any envelope for use under this chapter unless such type or kind of such envelope has first been approved personally by the Attorney General. (44 Del. Laws, c. 118, §§ 5, 7, 8; 45 Del. Laws, c. 155, §§ 4, 6, 7; 15 Del. C. 1953, § 5508; 60 Del. Laws, c. 414, §§ 16, 17.)

§ 5508. Instructions to absentee voter.

The Attorney General shall prepare a list of instructions to assist an absentee voter in properly marking and returning his ballot under this chapter which shall be known as "instructions to absentee voter." Before each general election the Attorney General shall deliver a copy thereof to each department in sufficient time for such departments to have such instructions printed and forwarded to absentee electors requesting an official ballot for the ensuing general election. (44 Del. Laws, c. 118, § 9; 45 Del. Laws, c. 155, § 8; 15 Del. C. 1953, § 5509.)

§ 5509. Voting procedure; execution of affidavit; return of ballot.

(a) The absentee voter who qualified for his ballot under any of the reasons set forth in § 5502(3), (4), (5) or (6) of this title shall make and subscribe to the affidavit printed on the voucher envelope, before an officer authorized by law

to administer oaths, and such voter shall thereupon in the presence of such officer, and of no other person, mark such ballot but in such manner that the officer cannot know how the ballot is marked, and the ballot shall then in the presence of the officer be deposited by the voter in the official envelope. The official envelope containing the ballot shall then be deposited in the voucher envelope, and the voucher envelope shall be securely sealed by the voter. Thereupon the voucher envelope containing the marked ballot shall be enclosed in the mailing envelope received by the voter from the department and after the voter has enclosed the voucher envelope containing the marked ballot in the mailing envelope, he shall securely seal the mailing envelope and mail it, postage prepaid, to the department of the county issuing the ballot, or if more convenient, it may be delivered to the department in person, to be received in either case, by the department before 12:00 noon of the day before the election and not thereafter.

(b) An absentee voter who qualified for his ballot under any of the reasons set forth in § 5502(1) or § 5502(2) of this title may make and subscribe to the affidavit printed on the voucher envelope under a self-administered oath, under penalty of perjury. Such voter shall comply with all other procedures outlined in this section. (44 Del. Laws, c. 118, § 6; 45 Del. Laws, c. 155, § 5; 15 Del. C. 1953, § 5510; 55 Del. Laws, c. 150; 60 Del. Laws, c. 414, § 18; 65 Del. Laws, c. 455, §§ 5, 6.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5510. Time limit for return of ballot; late ballots.

The absentee voter shall return his marked ballot enclosed in the voucher envelope to the department of elections of his county before 12:00 noon of the day before election; and any absentee ballot received by any department of elections after 12:00 noon of the day before election shall not be forwarded to the polls, but the department shall endorse on the voucher envelope containing such ballot the time such was received and shall retain all such envelopes unopened and so endorsed until the last day of February next after the election, and longer if directed to do so by proper authority. (44 Del. Laws, c. 118, § 11; 45 Del. Laws, c. 155, § 10; 15 Del. C. 1953, § 5511; 49 Del. Laws, c. 278, § 8; 50 Del. Laws, c. 173, § 3; 52 Del. Laws, c. 92, §§ 1, 2; 58 Del. Laws, c. 148, § 129.)

§ 5511. Procedure on receipt of absentee ballot by department.

(a) Upon receipt of the mailing envelope from the absentee voter, the department or person authorized by it to do so shall open only the mailing envelope and take therefrom the voucher envelope containing the ballot of the absentee voter and shall ascertain from the address the proper election district to which the ballot shall be forwarded as indicated by the elector in his affidavit thereon.

(b) No member of the department (the administrative director or any other person) shall open or attempt to open the enclosed voucher envelope containing the ballot of the absentee voter, or change or alter, or attempt to do so, the envelope or any writing, printing or anything whatsoever thereon.

(c) [Repealed]. (44 Del. Laws, c. 118, § 10; 45 Del. Laws, c. 155, § 9; 15 Del. C. 1953, § 5512; 57 Del. Laws, c. 567, § 48; 58 Del. Laws, c. 148, §§ 130, 131; 60 Del. Laws, c. 414, §§ 19, 20.)

§ 5512. Special carrier envelope used to convey absentee ballots to polling place; form.

Before the absentee ballots are conveyed to each polling place, the department shall securely seal all absentee ballots for each election district in 1 or more carrier envelopes which shall have printed thereon the following:

ABSENTEE BALLOTS

for the

..... Election District, of the Representative District, of County.

This carrier envelope contains absentee voter ballots and shall be opened only at the polls of said election district on election day while said polls are open. This carrier envelope and the enclosed voucher envelope(s) shall be preserved by the inspector and at the close of the count, shall be placed in the ballot box, into which the ballots have been put when read, and returned therewith.

(44 Del. Laws, c. 118, § 10; 45 Del. Laws, c. 155, § 9; 15 Del. C. 1953, § 5513; 49 Del. Laws, c. 278, § 9; 50 Del. Laws, c. 173, § 4; 58 Del. Laws, c. 148, § 132; 60 Del. Laws, c. 414, § 21.)

§ 5513. Delivery of absentee ballots to polling places.

When an absentee voter's ballot is received by any department, the voucher envelope containing the marked ballot shall be safely and securely kept in its office until the day of the election when it shall be delivered to the election district in which, according to the voucher envelope, the absentee voter is a resident.

A duly authorized representative of the department shall deliver all such voucher envelopes, sealed in 1 or more carrier envelopes as set forth in § 5512 of this title, to the inspector of elections at the polling places of the absentee voters' respective election districts after the opening of the polls and at least 4 hours before the closing of the polls. The representative, who shall carry suitable identification provided by the department, shall obtain a receipt from each inspector for delivery of the absentee ballots. (44 Del. Laws, c. 118, § 11; 45 Del. Laws, c. 155, § 10; 15 Del. C. 1953, § 5514; 49 Del. Laws, c. 278, § 10; 50 Del. Laws, c. 173, § 5; 57 Del. Laws, c. 567, § 49; 60 Del. Laws, c. 414, § 22.)

§ 5514. Requirements for absentee ballots received by election officers.

The election officers shall refuse to receive any absentee voter's ballot from any person other than a member of the department of their county, or a duly deputized agent. (15 Del. C. 1953, § 5515; 50 Del. Laws, c. 173, § 6; 57 Del. Laws, c. 567, § 50; 58 Del. Laws, c. 148, § 133.)

§ 5515. Procedure at polling place.

At any time between the opening and the closing the polls on election day the inspector or a judge of election of the election district shall open the outer or carrier envelope only and ascertain the name of the absentee voter as appears by the executed affidavit of the absentee voter on the voucher envelope enclosing the marked ballot, whereupon he shall announce the absentee voter's name for the purpose of challenges and upon the determination that such person is a duly registered voter of said election district by comparing the voter's signature upon the voucher envelope with the signature of the voter appearing in the Election District Record, and that such elector has not voted in person at the election he shall open the voucher envelope containing such absentee voter's ballot in such a manner as not to deface or destroy the number thereof, or the affidavit thereon, and take therefrom the official envelope containing the marked ballot, and without opening or permitting the official envelope to be opened or the contents examined, shall cause the 2 clerks to write their names on the official envelope, and the clerks shall enter

the name and address of the absentee voter on the poll lists. The ballot shall then be voted by depositing same (still in its official envelope) in the ballot box provided for receipt of absentee ballots, and the proper notations of such vote shall then be recorded in the election records in the same fashion as if the voter had appeared to cast his vote in person.

All voucher envelopes from which ballots have been taken and voted and all voucher envelopes containing ballots which have been rejected and endorsed as provided in § 5517 of this title, shall be preserved by the inspector, and at the close of the count shall be placed in the ballot box as provided by the general election laws. The judges shall see to it that a voter signature card marked with the absentee voter's name and permanent significant registration number and bearing a notation that the person has voted absentee shall be placed with the voter signature cards of all those persons who have cast their ballot on the voting machine. (15 Del. C. 1953, § 5516; 50 Del. Laws, c. 173, § 7; 57 Del. Laws, c. 567, § 51; 58 Del. Laws, c. 148, § 134.)

Ballots in envelopes not signed by both clerks, when voted, are illegal and should be rejected by the election officers in making the count. State ex rel. Annett v. Stiffler, Del. Supr., 148 A.2d 106 (1959).

§ 5516. Challenges.

The vote of any absentee voter may be challenged for the same causes and in the same manner as provided in this title for other voters. In addition, the vote of an absentee voter may be challenged on the ground that the affidavit filed by the voter in compliance with § 5503 of this title is false. Upon challenge, proceedings thereon shall be as provided elsewhere in this title. (44 Del. Laws, c. 118, § 14; 15 Del. C. 1953, § 5517; 50 Del. Laws, c. 173, § 2; 58 Del. Laws, c. 148, § 135.)

Absentee ballots not excepted from contests. — The adoption of laws providing for absentee ballot voting was not accompanied by an intent that such ballots be excepted from the conditions set out in § 5945 of this title for a contest based on the ground of "illegal votes." Chandler v. Workman, Del. Super., 348 A.2d 185 (1975).

§ 5517. Rejected ballots.

(a) In case the affidavit of the absentee voter is found to be insufficient, or the absentee voter is not a duly registered elector in such election district, or the voucher envelope is open, or has been opened and resealed, or it is evident that the voucher envelope has been tampered with or altered, or such ballot has been forwarded to the polls by someone other than the department of the county, such vote shall not be accepted or counted. If the voucher envelope has not been opened at the time the election officers decide that the offered ballot

contained therein should be rejected for any of the foregoing reasons, it shall not be opened by the election officers, but they shall endorse thereon, "REJECTED," giving reason therefor, and if the voucher envelope has been opened and the ballot is rejected, the official envelope containing the ballot shall be replaced in the same voucher envelope from which it was taken and the election officers shall endorse on the voucher envelope, "REJECTED," giving reason therefor.

(b) Whenever it is made to appear by due proof to the inspector and judges of election that any absentee voter, who has marked and forwarded his ballot, has died, the voucher envelope containing the ballot shall not be opened but shall be marked "REJECTED, dead," and shall be preserved and disposed of as other rejected ballots.

(c) Whenever a ballot has not been counted but has been rejected for any reason, the election officers shall make the required notation on the absentee ballot tally sheet and shall note the number of ballots so rejected on the certificates of election. (15 Del. C. 1953, § 5518; 50 Del. Laws, c. 173, § 8; 58 Del. Laws, c. 215, § 38.)

Ballots in envelopes not signed by both clerks, when voted, are illegal and should be rejected by the election officers in making the

count. State ex rel. Annett v. Stiffler, Del. Supr., 148 A.2d 106 (1959).

§ 5518. Validity of absentee voter's ballot for wrong district.

If an absentee voter marks and returns an official ballot for an election district other than the one of which he or she is a resident and a duly registered elector, such ballot, because thereof, shall not be adjudged invalid, but, as indicated by the marking of the ballot by the voter, shall be counted as a vote for every candidate appearing thereon who is a candidate for an office to be duly voted for in the election district. (44 Del. Laws, c. 118, § 17; 15 Del. C. 1953, § 5519.)

§ 5519. Procedure if requests or ballots sent to wrong official.

If any request for an absentee ballot and accompanying envelopes or any marked ballot of any such elector are addressed to and returned to the Secretary of State of this State, or to any official other than the department of the county of residence of the absentee elector, then the Secretary of State, or other official, shall immediately transmit such request or returned marked ballot to the department of the county of residence of such elector, to be acted upon by the department as provided by this chapter. (44 Del. Laws, c. 118,

§ 24; 45 Del. Laws, Sp. Sess., c. 5, § 4; 45 Del. Laws, c. 155, § 16; 15 Del. C. 1953, § 5520.)

§ 5520. Persons before whom affidavits may be taken.

Any affidavit required under this chapter may be taken before any person with authority to administer oaths and affirmations in the place where such affidavit may be taken, and whenever taken outside this State, the authority of such person shall be conclusively presumed.

Any affidavit required under this chapter, when made by an elector in the armed forces or merchant marine of the United States, or by persons serving with the American Red Cross, the Society of Friends and the United Service Organizations who are attached to and serving with the armed forces of the United States, may be taken before any commissioned or noncommissioned officer not below the rank of sergeant, or petty officer in the armed forces of the United States, or any member of the merchant marine of the United States properly designated for such purpose, or any other person authorized to administer and attest oaths or affirmations, and whenever taken outside the State, the authority of such person shall be conclusively presumed. (44 Del. Laws, c. 118, §§ 19, 19A; 45 Del. Laws, Sp. Sess., c. 5, § 3; 15 Del. C. 1953, § 5521.)

§ 5521. File of absentee voters.

(a) The department of elections of each county shall maintain records providing for the prevention of fraud and to make possible the tracing and detection of any attempt to do so. Such records shall include the following entries: Name of elector; address at which he is registered; address where ballot is to be mailed; date affidavit received in department; the election and representative district; voucher number; date ballot mailed or delivered to the elector; date ballot is returned; the names of any physicians executing affidavits for sick or disabled persons; and the names of all officers administering oaths for all affidavits received.

(b) The departments shall compile from their files a list of names and addresses of all applicants for absentee ballots, and shall send current and complete copies thereof without cost to all political parties with candidates on the ballot in the forthcoming election. Such lists shall be provided no later than 2 weeks prior to the date of the election and copies of the lists must be mailed on the same date to the respective chairmen of each political party involved in the election. Comparable information from the file shall also be made available to representatives of all political parties at the office of each department during the remaining 2 weeks before the election, such information to be recorded by such representatives from the daily records of the departments

with the cooperation and assistance of the employees of the departments. (44 Del. Laws, c. 118, § 16; 45 Del. Laws, c. 155, § 13; 47 Del. Laws, c. 316, § 3; 15 Del. C. 1953, § 5522; 57 Del. Laws, c. 181, § 76; 58 Del. Laws, c. 148, § 136.)

Challenger entitled to inspect all records on absentee voters. — The candidates have the same opportunity to discover prior recorded irregularities in absentee ballots as they have with respect to other voters, since the chal-

lenger appointed by each political party is entitled to inspect all records on absentee voters at the polling place. *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

§ 5522. Authority to alter forms in certain cases; procedure.

(a) If, on or before the 1st day of September in the year of a general election, in the joint judgment of the Governor, Secretary of State and the Attorney General of this State, it is deemed expedient to make certain changes in the size, weight or material of the ballots, envelopes, instructions to absentee voters, form of request for ballot, form of affidavit of elector, the address or any other direction or printing or endorsement upon the voucher or carrier envelopes, postage or manner of transmission, then such officers jointly shall cause to be made effective any or all such changes to the end that there shall be extended to the absentee voters listed in subsection (b) of this section full opportunity to receive and return a marked ballot to the department for delivery to the poll of his residence on election day to be acted upon and counted as other votes personally cast at such poll, provided, however, that the plan and arrangement of any official ballot and the list of candidates thereon, as provided for by the general election law, shall not be changed or altered under any circumstances.

(b) Such changes shall be uniform for absentee voting throughout this State, but shall apply only to absentee voting by such electors as are qualified and registered voters temporarily outside the territorial limits of the several states of the United States and the District of Columbia, who are members of the armed forces or of the merchant marine of the United States, or persons serving with the American Red Cross, the Society of Friends and the United Service Organizations serving with the armed forces of the United States.

(c) Upon the making of any such changes, the Governor, Secretary of State and Attorney General shall jointly in writing forthwith notify the department of each county of such changes, and each such department shall cause such changes to be carried into effect, and the ballots, envelopes and instructions, as so changed, to be so printed, transmitted and distributed. (44 Del. Laws, c. 118, § 23; 45 Del. Laws, Sp. Sess., c. 5, § 4; 45 Del. Laws, c. 155, § 15; 15 Del. C. 1953, § 5523; 50 Del. Laws, c. 173, § 9.)

§ 5523. One absentee ballot request to cover all elections for members of the armed forces and certain other electors.

Any qualified elector who has applied for an absentee ballot because he qualifies under any of the reasons set forth in § 5502(1) or § 5502(2) of this title shall qualify for an absentee ballot in any primary, general or special election occurring during the calendar year in which he has qualified for an absentee ballot in any election. (65 Del. Laws, c. 455, § 7.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, redesignated former § 5523 of this title to be present § 5525 of this title.

Section 7 of 65 Del. Laws, c. 455, provides:

"The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5524. Procedures for voting with special write-in absentee ballot by qualified absentee electors.

(a) Notwithstanding any other provisions of this title, an elector who qualifies under any of the reasons set forth in § 5502(1) or § 5502(2) of this title may apply during the calendar year in which an election is to be held for President, United States Senator, or Representative in Congress for a special write-in absentee ballot. This ballot shall be for President, United States Senator, or Representative in Congress.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form or on a form prescribed by the Commissioner of Elections.

(c) In order to qualify for a special write-in absentee ballot, the voter must state under oath and under penalty of perjury that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the Commissioner of Elections and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of such application, the appropriate department of elections may hold said application until 90 days prior to an election and mail the ballot as soon thereafter as possible. The special write-in absentee ballot shall be in a form prescribed and provided by the Commissioner of Elections and shall permit the elector to vote by writing in a party preference for each office, or the name of the person whom the voter prefers for each office. (65 Del. Laws, c. 455, § 7.)

Revisor's note. — Section 8 of 65 Del. Laws, c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

§ 5525. Penalties.

(a) Whoever willfully makes a false affidavit shall be guilty of perjury and shall be punished as in such case by law provided.

(b) Whoever, other than election officials on the day of a general election and at the polls, or the board of canvass, opens or attempts to open any sealed voucher or carrier envelope; or whoever prints or causes to be printed any envelope identical or purportedly similar to the voucher envelope or either carrier envelope, other than the printing of such envelopes by the official printer selected by the department for the printing of such envelopes pursuant to this chapter; or whoever aids or abets, or attempts to aid or abet, any fraud in connection with any vote cast, or to be cast, under this chapter; shall be imprisoned not less than 1 year nor more than 5 years.

(c) Whoever fraudulently signs the name of a voter to the affidavit on any voucher envelope shall be guilty of forgery and shall be punished for such crime as by law provided.

(d) Whoever, being an election officer or public official: (1) Knowingly violates this chapter and thereby aids in any way the illegal casting of a vote, or attempting to cast a vote; or (2) connives to nullify any provision of this chapter, in order that fraud may be perpetrated; shall be guilty of a felony and shall be fined not less than \$500 nor more than \$5,000 and imprisoned not less than 1 year nor more than 10 years.

(e) Whoever, in any way in voting or attempting to vote himself, or any other person pursuant to this chapter who violates any of the laws of this State enacted to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation, shall be punished as provided thereby. (44 Del. Laws, c. 118, § 18; 45 Del. Laws, c. 155, § 14; 15 Del. C. 1953, § 5524; 58 Del. Laws, c. 148, § 137; 65 Del. Laws, c. 455, § 7.)

Cross references. — As to forgery, see § 861 of Title 11.

Revisor's note. — Section 8 of 65 Del. Laws,

c. 455, provides: "The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. § 1973dd et seq.) are hereby incorporated as a part of this title."

CHAPTER 57. CANVASS OF VOTE AND PROCLAMATION OF RESULTS OF ELECTION

Sec.	Sec.
5701. Superior Court as board of canvass; convening and composition of Court.	error of results of election of state officers.
5702. Duties of Court.	5711. Electors for President and Vice-President; announcements and certifications of election.
5703. Vote required for election.	5712. Representative in the Congress of the United States; announcement and certification of election.
5704. Votes for President and Vice-President as votes for their electors.	5713. United States Senator; announcement and certification of election; form.
5705. Certificates of the results of the election; number required.	5714. Costs.
5706. Form of certificates.	5715. State senatorial districts.
5707. Enclosing certificates in envelopes.	
5708. Tie vote; certificate.	
5709. Disposition of certificates by the Court.	
5710. Certification and proclamation by Gov-	

Cross references. — As to certificate of election, see Del. Const., art. V, § 6.

§ 5701. Superior Court as board of canvass; convening and composition of Court.

(a) The Superior Court shall convene in each county on the second day after the general election, at 12:00 noon, for the performance of the duties imposed upon it by § 6 of article V of the Constitution of this State and by this chapter. Thereupon the Court, with the aid of such of its officers and such sworn assistants as it shall appoint, shall publicly ascertain the state of the election throughout the county and in the respective hundreds and election districts by calculating the aggregate amount of all the votes for each office that shall have been given in all the hundreds and election districts of the county for every person voted for for such office. For this purpose, the court shall utilize certificates of election for each election district provided by the Prothonotary, the minority judge of each election district and the department of elections for its county, whose representatives shall sit as observers and assistants to the Court during said calculation of the vote.

(b) For the purposes of this chapter, the Superior Court shall consist in New Castle County of the President Judge and the Resident Associate Judge; in Kent County of the Chancellor and the Resident Associate Judge; and in Sussex County of the Resident Associate Judge and the remaining Associate Judge. For the purpose of this chapter, the Superior Court in each county, as so constituted, shall be a board of canvass for the respective counties of this

State. (Code 1852, § 402; 21 Del. Laws, c. 38, § 23; Code 1915, §§ 1777, 1859; Code 1935, §§ 1866, 1978; 15 Del. C. 1953, § 5701; 61 Del. Laws, c. 480, § 18.)

Cross references. — As to duties and composition of court, see Del. Const., art. V, § 6.

The phrase "general election" does not include school or municipal elections. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

Judges as parties to class action challenging apportionment of General Assembly. — The Superior Court, is specially constituted by this section, to perform the duties imposed by art. V, § 6, Del. Const., and the judges of the Superior Court are proper, if not necessary, parties to a class action challenging the

constitutionality of the apportionment of the General Assembly. *Sincock v. Terry*, 210 F. Supp. 395 (D. Del. 1962), aff'd, 377 U.S. 695, 84 S. Ct. 1449, 12 L. Ed. 2d 620 (1964).

The fact that municipal officers are elected on the day of the general election by the same voting mechanics does not convert the municipal election into a general election or make the municipal election a part of "the general election" as the phrase is used in this section. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

§ 5702. Duties of Court.

(a) Whenever the certificate of election for any election district is not produced when the Court convenes or whenever any absentee ballot box, voting machine or write-in paper roll is not available at that time, the Court may issue summary process against the election officers of such election district or any other persons to bring such documents or objects forthwith into the Court or to make them available for inspection by the Court.

(b) Whenever the certificates produced do not agree or there is a complaint under oath of fraud or mistake in any such certificate, or if fraud, mistake or omission is apparent on the face of such certificate, the Court shall:

- (1) Open and examine the necessary voting machines and/or absentee ballot boxes, and, if applicable, examine the necessary write-in paper rolls;
- (2) Make a recount of the votes contained therein;
- (3) Correct any fraud, mistake or omission in any certificate or paper relating to the election.

(c) Any candidate for statewide office in a general election may apply to the Court for a recount of all the ballots cast and recorded for such office if the number of votes separating such candidate and the closest opposing candidate is less than 1,000 votes or less than $\frac{1}{2}$ of 1 percent of all votes cast for the two candidates, whichever amount is less. Such recount shall thereupon be conducted by the Court at state expense. The request for a recount under this subsection must be presented before the adjournment of the board of canvass for the election in question and any recount that takes place shall not extend beyond the petitioner's contest.

(d) The Court shall also receive from the department of election for its county a report of the number of absentee ballots delivered to each election district, from which it shall determine and make certain that all these ballots

are recorded on the certificates of election for each election district receiving absentee ballots, either in the total number of ballots counted or in the number of ballots rejected. (21 Del. Laws, c. 38, § 23; Code 1915, § 1777; Code 1935, § 1866; 15 Del. C. 1953, § 5702; 58 Del. Laws, c. 215, § 39; 61 Del. Laws, c. 480, § 19; 65 Del. Laws, c. 519, § 1.)

Cross references. — As to powers of court, see Del. Const., art. V, § 6.

The jurisdiction of the Superior Court as a board of canvass is limited, and, although the General Assembly is given power to add to the powers of the court, it is expressly not given power to add to the jurisdiction of the court. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

The Superior Court, as a board of canvass, is a body specially created and constituted for a limited purpose, to perform specified duties, largely ministerial in nature. The framers of the Constitution, in transferring to the Superior Court the powers and duties of the former boards of canvass, added certain specified powers and no others. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

Board of canvass exercises quasi-judicial powers, e.g., in rejecting ballots illegal on their face. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

But such powers do not extend to hearing and determining every act of fraud or wrongdoing in the conduct of the election. The powers of the board are primarily directed to the existence of fraud or mistake in any such certificate, e.g., questions of its genuineness, or of a defect apparent on its face, or the like; and what may be called the newly added powers are largely, if not wholly, limited to an examination of the election papers and of the contents of the ballot box. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

The power of the board of canvass to correct any fraud or mistake in any certificate, is clearly confined to errors resulting from the examination of the election papers and the contents of the ballot box. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

Board of canvass has no power to inquire into misconduct of the election officers and is under no legal duty to act upon a petition alleging such misconduct. *State ex rel.*

Mitchell v. Wolcott, Del. Supr., 83 A.2d 762 (1951).

Mandamus. — The power of the Supreme Court to issue mandamus to the board of canvass to compel the counting of the vote in accordance with law is well settled. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Mandamus is a discretionary remedy, and its use to review the rulings of the board might conceivably be inappropriate in certain cases. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951); *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

The convening of the House of Representatives does not necessarily strip the Supreme Court of its jurisdiction theretofore acquired to issue mandamus to the board of canvass, but mandamus is a discretionary remedy, and its use to review the ruling of the board might conceivably be inappropriate in certain cases. Where the House has assumed jurisdiction of a contest, the Supreme Court should decline to exercise its jurisdiction over the board of canvass. The matter is one for the decision of the House. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Jurisdiction of House of Representatives extends to questions of law and fact. — Where the House of Representatives has assumed jurisdiction of an election contest, its jurisdiction extends to questions of law as well as of fact. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Certificates are only prima facie evidence of title to office. — The certificates of election issued by the board of canvass upon the completion of the count are only prima facie title to office. *State ex rel. Mitchell v. Wolcott*, Del. Supr., 83 A.2d 762 (1951).

Mistakes in certificates may be shown by extrinsic evidence. — Mistakes in the election certificates may be shown not only by reference to the documents themselves, but by recourse to credible extrinsic evidence. *Woo v. Robinson*, Del. Supr., 484 A.2d 950 (1984).

§ 5703. Vote required for election.

In all elections, unless it be otherwise expressly provided, a plurality or the highest number of votes shall make a choice, except where this principle is defeated by 2 or more persons having the same and the highest number of votes for the same office. (Code 1852, § 300; Code 1915, § 1811; Code 1935, § 1900; 15 Del. C. 1953, § 5703.)

§ 5704. Votes for President and Vice-President as votes for their electors.

The Court shall calculate the votes given for the candidates for President and Vice-President of a political party as votes given for each and all the electors of President and Vice-President of such party, the names of whom are on file with the State Election Commissioner and as certified to the Court by the State Election Commissioner, and the Court shall make its certificates accordingly in the form and manner provided by §§ 5705-5707 of this title. (Code 1935, § 1814A; 44 Del. Laws, c. 119, § 4; 15 Del. C. 1953, § 5704; 61 Del. Laws, c. 480, § 20.)

§ 5705. Certificates of the results of the election; number required.

(a) After the state of the election has been ascertained by calculating the votes, the Court shall make, under the seal of the Court, the certificates of the results of the election as provided in this section and §§ 5706 and 5707 of this title.

(b) The number of such certificates to be prepared by the Court for each office shall be as follows:

- Electors for President and Vice-President of the United States, 3;
- Governor, 4;
- Lieutenant Governor, 4;
- Senator in the Senate of the United States, 2;
- Representative in the House of Representatives of the United States, 2;
- Attorney General, 4;
- Insurance Commissioner, 4;
- State Treasurer, 4;
- Auditor of Accounts, 4;
- Senator to the General Assembly, 2 for each Senator;
- Representative to the General Assembly, 2 for each Representative;
- Prothonotary, 2;
- Clerk of the Peace, 2;
- Register of Wills, 2;

Recorder, 2;
 Register in Chancery, 2;
 Levy Court Commissioner, 1 for each Commissioner;
 Receiver of Taxes and County Treasurer, 1;
 County Comptroller, 1;
 Sheriff, 2;
 Coroner, 2;
 County Executive of New Castle County, 1;
 County Councilmen of New Castle County, 1 for each Councilman;
 County Councilman of Sussex County, 1 for each Councilman. (21 Del. Laws, c. 38, § 25; Code 1915, § 1779; Code 1935, § 1868; 15 Del. C. 1953, § 5705; 55 Del. Laws, c. 85, § 34B; 57 Del. Laws, c. 762, § 33B.)

Cross references. — As to certificates of election, see Del. Const., art. V, § 6. As to compelling delivery of election certificates to the

Senate or House of Representatives, see § 703 of Title 29.

§ 5706. Form of certificates.

(a) The certificates of the Court of the results of the election in its county may be according to the following form:

"The State of Delaware, County, ss.

Be it Remembered, that at the general election held on the Tuesday next after the first Monday in November, in the year of our Lord One Thousand Nine Hundred and for County, according to the Constitution and laws of the State of Delaware (here insert, to wit: If the certificate be of an election of electors of President and Vice-President, of Governor and Lieutenant Governor, of Senator in the Senate of the United States, of Representative in Congress, of Attorney General, of Insurance Commissioner, of State Treasurer, of Auditor of Accounts, the number in words at length of votes given for each person voted for, for such respective offices; if the certificate be of an election of Senator or Representative in the General Assembly, or, of Prothonotary, of clerk of the peace, of register of wills, of recorder, of Register in Chancery, of Levy Court Commissioner or Commissioners, of receiver of taxes and county treasurer, of county comptroller, of sheriff, of county executive, of county councilman, the names of the persons elected), which is manifest by calculating and ascertaining the aggregate amount of all votes given for each person voted for in all the hundreds and election districts of the county, according to the provisions made by law in this behalf.

In testimony, whereof, we and constituting the Superior Court for County, who have met and ascertained the state of the election throughout the said County, as the law requires, have hereunto set our hands and caused the seal of the said Superior Court to

be hereunto affixed at the Court House in said County, on this
day of November, A. D.”

(b) The manner of making the insertion may be as follows:

In case of Electors of President and Vice-President

..... votes were given for for Elector
..... votes were given for for Elector and so on, naming each person
voted for.

In case of Governor

..... votes were given for for Governor
..... votes were given for for Governor and so on, naming each person
voted for.

In case of Lieutenant Governor

..... votes were given for for Lieutenant Governor
..... votes were given for for Lieutenant Governor and so on, naming
each person voted for.

In case of Senator in the Senate of the United States

..... votes were given for for United States Senator
..... votes were given for for United States Senator and so on, naming
each person voted for.

In case of Representative to Congress

..... votes were given for for Representative to Congress
..... votes were given for for Representative to Congress and so on,
naming each person voted for.

In case of Attorney General

..... votes were given for for Attorney General
..... votes were given for for Attorney General and so on, naming each
person voted for.

In case of Insurance Commissioner

..... votes were given for for Insurance Commissioner
..... votes were given for for Insurance Commissioner and so on, naming
each person voted for.

In case of State Treasurer

..... votes were given for for State Treasurer
..... votes were given for for State Treasurer and so on, naming each person voted for.

In case of Auditor of Accounts

..... votes were given for for Auditor of Accounts
..... votes were given for for Auditor of Accounts and so on, naming each person voted for.

In case of Senators to General Assembly

..... was duly elected Senator for the Senatorial District for said County in the General Assembly, (and so on, giving certificates for each Senator elected in the respective senatorial districts of the county) and was duly elected Senator for the Senatorial District for said County in lieu of late Senator for said Senatorial District of said County in the General Assembly (and so on, giving certificates for each Senator elected in lieu of any other Senator for any senatorial district for said county in the General Assembly).

In case of Representatives to General Assembly

..... was duly elected Representative for the Representative District for said County in the General Assembly (and so on, giving certificates for each Representative elected in the respective representative districts of the County).

In case of Prothonotary

..... was duly elected Prothonotary for County.

In case of Clerk of the Peace

..... was duly elected Clerk of the Peace for County.

In case of Register of Wills

..... was duly elected Register of Wills for County.

In case of Recorder

..... was duly elected Recorder for County.

In case of Register in Chancery

..... was duly elected Register in Chancery for County.

In case of the County Executive for New Castle County

..... was duly elected County Executive for New Castle County.

In case of County Councilman for New Castle County

..... was duly elected County Councilman for the Councilmanic District in New Castle County; and so on, giving a certificate for each Councilman elected in each Councilmanic District in New Castle County.

In case of County Councilmen for Sussex County

..... was duly elected Councilman for the Councilmanic District in Sussex County; and so on, giving a certificate for each Councilman elected in each Councilmanic District in Sussex County.

In case of Levy Court Commissioners for Kent County

..... was duly elected Levy Court Commissioner for District in said County (and so on, giving a certificate for each Levy Court Commissioner elected in each District in said County).

In case of Receiver of Taxes and County Treasurer

..... was duly elected Receiver of Taxes and County Treasurer for County.

In case of County Comptroller

..... was duly elected County Comptroller for County.

In case of Sheriff

..... was duly elected Sheriff for County.

(21 Del. Laws, c. 38, § 26; Code 1915, § 1780; Code 1935, § 1869; 15 Del. C. 1953, § 5706; 55 Del. Laws, c. 85, §§ 34C, 34D; 57 Del. Laws, c. 169, § 5; 57 Del. Laws, c. 762, § 33D.)

§ 5707. Enclosing certificates in envelopes.

The Court shall enclose and seal up each certificate separately in an envelope, with an endorsement thereon describing the certificate enclosed. Upon the paper enclosing the certificates of the election of Senator or Representative in the General Assembly the name of the person chosen shall be endorsed. (21 Del. Laws, c. 38, § 25; Code 1915, § 1779; Code 1935, § 1868; 15 Del. C. 1953, § 5707.)

§ 5708. Tie vote; certificate.

If, by reason of an equal number of votes having been cast for 2 or more persons for the office of Senator or Representative in the General Assembly, Prothonotary, clerk of the peace, register of wills, recorder, Register in Chancery, levy court commissioner, receiver of taxes and county treasurer, county comptroller or sheriff, county executive or county councilman, it appears to the Court that a vacancy will occur in the office, a certificate of such fact shall thereupon be made under the hands of the Court, and under its seal, which certificate shall be transmitted by the Court to the Governor, and such certificate shall be delivered as provided in § 5709 of this title. (21 Del. Laws, c. 38, § 27; Code 1915, § 1781; Code 1935, § 1870; 15 Del. C. 1953, § 5708; 55 Del. Laws, c. 85, § 34E.)

§ 5709. Disposition of certificates by the Court.

The Court shall, within 3 days after making the certificates of the result of the election for electors of President and Vice-President, either personally or by a person deputed by it for that purpose, transmit, deliver and lodge the certificates of the result of the election for electors of President and Vice-President, 1 to the Governor, another to the Secretary of State, and the other to the Prothonotary of the county; and shall transmit, deliver and lodge the certificates of the result of the election for Governor, according to the directions of the Constitution in that behalf; and shall transmit, deliver and lodge 1 of the certificates of the result of the election for Lieutenant Governor to the President of the Senate, or in case of a vacancy in the office of President of the Senate, or his absence from the State, to the Secretary of State, who shall keep the same until a President of the Senate shall be chosen, to whom they shall be immediately transmitted after his election, who shall open and publish the same in the presence of the members of both Houses of the General Assembly, duplicates of which certificate shall also be immediately lodged with the Prothonotary of each county; and shall transmit, deliver and lodge 1 of each of the certificates of the result of the election for Senator, or Senators, from the State in the Senate of the United States, to the Governor, and lodge the other of such certificates in the office of the clerk of the peace of the county; and shall

transmit, deliver and lodge 1 of each certificate of the result of the election for Representative, or Representatives, in the House of Representatives of the United States, to the Governor, and lodge the other certificate in the office of the clerk of the peace of the county; and shall transmit, deliver and lodge 1 certificate of the result of the election for Attorney General, for Insurance Commissioner, for State Treasurer and for Auditor of Accounts to the Governor and the other certificate in the office of the Prothonotary of the county; and shall transmit and deliver 1 certificate of the result of the election of Senator and 1 certificate of the election of Representative in the General Assembly, in the office of the Prothonotary for Kent County, and further shall deliver, on the first day of the meeting of the General Assembly after the election, the other certificate of the election of Senator to the Senate, and the other certificate of the election of Representatives to the House of Representatives; and shall transmit and deliver 1 certificate of the election of Prothonotary, of the clerk of the peace, of register of wills, of recorder, of register in chancery, of sheriff and of coroner, to the Governor, and the other certificate to the clerk of the peace of the county, except the 1 for clerk of the peace, which shall be delivered to the Prothonotary; and shall transmit and deliver the certificate of the election of each Levy Court Commissioner or County Councilman, in New Castle, Kent and Sussex Counties, to the clerk of the peace of the respective county; and shall deliver the certificate of election of the receiver of taxes and county treasurer, and of comptroller, to the clerk of the peace of the county; and shall send 1 for each of such officers to the sheriff of the county to be by him delivered to the respective parties certified to have been elected.

The Prothonotary of Kent County shall, on any day of the meeting of the General Assembly, deliver, if required, the certificates of election of Senators or of Representatives to the order of the House to which it belongs, or to the person named in the endorsement thereon.

In addition to making the disposition of the aforesaid certificates, the Court, within 3 days after making such certificates, shall, either personally or by a person designated by it for that purpose, transmit, deliver and lodge a duly executed copy of each of the aforesaid certificates with the State Election Commissioner who shall be the master repository of all such certificates. (21 Del. Laws, c. 38, § 28; Code 1915, § 1782; 34 Del. Laws, c. 110, § 2; Code 1935, § 1871; 46 Del. Laws, c. 153, § 1; 15 Del. C. 1953, § 5709; 57 Del. Laws, c. 567, § 52.)

§ 5710. Certification and proclamation by Governor of results of election of state officers.

The Governor, after receiving the certificates of the results of the election in each county, under the seal of the Superior Court, for the office of Attorney General, Insurance Commissioner, State Treasurer and Auditor of Accounts, or any of whom shall have been voted for at the preceding general election, shall, without delay, examine the returns and declare the persons elected, and shall issue certificates of such election under his hand, and the same, together with the aforesaid certificates of the results of the election in each county, shall be filed in the office of the Secretary of State, and the Governor shall by proclamation make public the state of the vote by causing the same to be published in 1 or more of the public newspapers of the respective counties of this State, and shall issue commissions to the persons. (21 Del. Laws, c. 38, § 32; Code 1915, § 1786; Code 1935, § 1875; 15 Del. C. 1953, § 5711.)

§ 5711. Electors for President and Vice-President; announcements and certifications of election.

The Governor, after receiving the certificates under the seal of the Superior Court, of the results of the election in each county for electors of President and Vice-President of the United States, shall without delay examine the certificates and ascertain the electors chosen, and make known the same by proclamation, and cause notice of his election to be transmitted to each elector. He shall also cause 3 lists of the names of the electors, duly made and certified, to be delivered to the electors, according to the Act of Congress in that behalf on or before the day appointed for their meeting. (Code 1852, §§ 402, 403; Code 1915, §§ 1859, 1860; Code 1935, §§ 1978, 1979; 15 Del. C. 1953, § 5712.)

§ 5712. Representative in the Congress of the United States; announcement and certification of election.

The Governor, after receiving the certificates, under the seal of the Superior Court, of the results of the election in each county for Representative in the Congress of the United States, shall without delay examine such certificates and declare the person elected, and shall issue certificates of such election, 1 of which he shall transmit to the Secretary of State of the United States, and 1 to the person elected, under his hand and the Great Seal of the State. The certificates of the result of the election in each county shall be filed in the office of the Secretary of State. The Governor shall by proclamation make public the state of the vote by causing the same to be published in 1 or more of

the public newspapers of this State. (Code 1852, § 414; Code 1915, § 1879; Code 1935, § 1998; 15 Del. C. 1953, § 5713.)

§ 5713. United States Senator; announcement and certification of election; form.

(a) The Governor, after receiving the certificates under the seal of the Superior Court, of the results of the election in each county for Senator from this State in the Senate of the United States, shall issue certificates of such election and deliver and file the same and shall, by proclamation, make public the state of the vote, in the same manner and form, by the same persons and officers, and under the same regulations in all respects as is provided in § 5712 of this title for the election of Representative in Congress.

(b) The Governor shall certify the election or appointment of any Senator elected or appointed as provided by law, under the Great Seal of the State, to the President of the Senate of the United States. Such certificate shall be countersigned by the Secretary of State.

(c) The certificate, in case of an election, may be according to the following form:

"To the President of the Senate of the United States: Be it known that at an election, in due manner held according to the form of the Act of the General Assembly of the State of Delaware, and of the Act of Congress in such case made and provided, on the first Tuesday after the first Monday of the month of November, 19..., was elected to be a Senator from the said State in the Senate of the United States for the constitutional term to commence at noon on the third day of January A. D. 19..... Given under our hands in obedience to the said Act of the General Assembly and of the said Act of Congress this day of A. D. 19....."

(Code 1915, §§ 1889, 1892; Code 1935, §§ 2008, 2010; 15 Del. C. 1953, § 5714.)

§ 5714. Costs.

All necessary costs and expenses incurred in carrying out the duties of this chapter including compensation of all personnel involved shall be paid by the State Treasurer from any moneys in the State Treasury not otherwise appropriated. (15 Del. C. 1953, § 5717; 57 Del. Laws, c. 567, § 53; 66 Del. Laws, c. 53, § 1.)

Effect of amendments. — 66 Del. Laws, c. 53, effective June 24, 1987, deleted "upon proper warrants and vouchers submitted to the

Governor and approved by the Budget Director" following "not otherwise appropriated" at the end of the section.

§ 5715. State senatorial districts.

(a) The Court shall calculate the total votes given for the candidates for Senator to the General Assembly where the senatorial district is located in 2 or more counties as follows:

(1) For those senatorial districts in which a majority of the election districts are in New Castle County, the President Judge of the Superior Court shall total together the votes cast in each county for each candidate.

(2) For those senatorial districts in which a majority of the election districts are in Kent County, the Chancellor shall total together the votes cast in each county for each candidate.

(3) For those senatorial districts in which a majority of the election districts are in Sussex County, the Resident Associate Judge of Sussex County shall total together the votes cast in each county for each candidate.

(b) The total vote, as ascertained in subsection (a) above shall then be inserted on the certificates of the Court as provided in § 5706 of this title. (15 Del. C. 1953, § 5718; 58 Del. Laws, c. 445.)

CHAPTER 59. CONTESTED ELECTIONS

Subchapter I. Members of the General Assembly

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Cross references. — As to contested elections of Governor or Lieutenant-Governor, see Del. Const., art. III, § 4. As to procedure in

contested elections conforming to Rules of Superior Court, see Civil Rule 81 of the Superior Court.

Subchapter I. Members of the General Assembly

§ 5901. Notice of intention to contest; specifications.

Any person intending to contest the election or the eligibility of any one returned by the board of canvass as a member of either branch of the General Assembly from any of the counties of this State shall at least 20 days before the meeting of the General Assembly give written notice of such intention to the person whose seat he intends to contest, and within 10 days after the notice shall deliver to him a written specification of the several grounds upon which he intends to contest the election or the eligibility of such person. If 1 of such grounds shall be that illegal votes were given at such election for the person so returned, then such specification shall particularly set forth the name of each alleged illegal voter, with the several objections to the legality of

his vote. (Code 1852, § 427; Code 1915, § 1893; Code 1935, § 2011; 15 Del. C. 1953, § 5901.)

Jurisdiction of House of Representatives extends to questions of law and fact. — Where the House of Representatives has assumed jurisdiction of an election contest, its jurisdiction extends to questions of law as well as of fact. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

Mandamus. — Where a losing candidate for election to the General Assembly did not have a remedy by writ of error, certiorari or election contest, a writ of mandamus was the proper way to proceed to contest the election, in which 101 of 296 ballots cast in a certain district were in envelopes not signed by clerks as required.

State ex rel. Wahl v. Richards, Del. Supr., 64 A.2d 400 (1949).

The convening of the House of Representatives does not necessarily strip the Supreme Court of its jurisdiction theretofore acquired to issue mandamus to the board of canvass, but mandamus is a discretionary remedy, and its use to review the ruling of the board might conceivably be inappropriate in certain cases. Where the House has assumed jurisdiction of a contest, the Supreme Court should decline to exercise its jurisdiction over the board of canvass. The matter is one for the decision of the House. *State ex rel. Smith v. Carey*, Del. Supr., 112 A.2d 26 (1955).

§ 5902. Counter specifications.

The person returned by the board of canvass as having been elected shall, within 15 days after receiving the notice specified in § 5901 of this title, deliver to the person contesting his seat a like specification of objections to the right of the contestant to such seat. (Code 1852, § 428; Code 1915, § 1894; Code 1935, § 2012; 15 Del. C. 1953, § 5902.)

§ 5903. Verification of specifications.

Every specification shall be verified by affidavit of the party delivering the same, stating that he verily believes that the grounds of objection set forth are substantially true, and that the voters specified as illegal voters were not entitled by law to vote at the election in question. (Code 1852, § 429; Code 1915, § 1895; Code 1935, § 2013; 15 Del. C. 1953, § 5903.)

§ 5904. Delivery of notice and specification to presiding officer of Senate or House.

Copies of the notice and specifications verified as provided in § 5903 of this title shall be delivered to the Speaker or President, as the case may be, of the house having cognizance of the matter. The contestant shall deliver his notice and specifications with his petition on the first day of the session, and the sitting member shall deliver a copy of his specifications to the Speaker or President when he delivers them to the contestant. (Code 1852, § 430; Code 1915, § 1896; Code 1935, § 2014; 15 Del. C. 1953, § 5904.)

§ 5905. Inquiry restricted to grounds specified.

In the trial of the case of a contested election, the parties shall be restricted to the grounds of objection in the specifications set forth and shall not examine into the illegality of any votes other than those specified as illegal nor impeach such votes for any causes other than those specified. (Code 1852, § 431; Code 1915, § 1897; Code 1935, § 2015; 15 Del. C. 1953, § 5905.)

§ 5906. Costs when sitting member unseated.

If the house having cognizance of the matter determines that the sitting member is not entitled to his seat, it may order that the costs incurred by such contested election be paid by the State. (Code 1852, § 432; Code 1915, § 1898; Code 1935, § 2016; 15 Del. C. 1953, § 5906; 51 Del. Laws, c. 149, § 7.)

§ 5907. Costs when sitting member is not unseated.

The house in determining against the claim of the contestant may also decide that the proceeding on his part is frivolous and vexatious and may order that he shall pay all the costs of the contested election, but without such order the contestant shall not be liable to costs and the same shall be paid by the State. (Code 1852, § 433; Code 1915, § 1899; Code 1935, § 2017; 15 Del. C. 1953, § 5907.)

§ 5908. Execution when costs are to be paid by contestant.

Any order for the payment of costs by the contestant shall be enforced by a writ issued by the Speaker or President, as the case may be, of the house in which such election was contested to the Sheriff of Kent County, directing him to levy and make the amount thereof of the goods and chattels, lands and tenements of the petitioner, under which writ the Sheriff shall sell the same, or such part thereof as may be necessary to satisfy the writ, upon 15 days notice posted as required in cases of sale on execution process, and shall pay over the amount by him received upon the writ to the State Treasurer for the purpose of reimbursing to the Treasury the sums drawn therefrom to pay the costs of the contested election. (Code 1852, § 434; Code 1915, § 1900; Code 1935, § 2018; 15 Del. C. 1953, § 5908.)

*Subchapter II. Electors for President and Vice-President***§ 5921. Notice of contest; specification.**

Any person intending to contest the election of any one declared by the Governor to have been chosen an elector of President and Vice-President of the United States, shall, within 10 days after such declaration by proclamation of the Governor, give written notice of such intention to the person whose election he intends to contest and also to the Governor, and within 5 days after the delivery of such notice, shall deliver to the person whose election he contests and to the Governor written specification of the grounds upon which he intends to contest the election of the person so declared to have been elected. If 1 of the grounds shall be that illegal votes were given at such election for the person declared to have been elected then such specification shall particularly set forth the name of each alleged illegal voter, with the several objections to the legality of his vote, and shall also distinctly set forth and state the election district at which the alleged illegal vote was cast. (18 Del. Laws, c. 22, § 1; Code 1915, § 1869; Code 1935, § 1988; 15 Del. C. 1953, § 5921.)

§ 5922. Specification in answer.

The person declared to have been elected and who has received notice of contest shall, within 10 days after receiving specification of the grounds of contest, deliver to the person so contesting his election, and to the Governor, a like specification of objections to the right of the contestant to be declared an elector, and in such specification may also state any other ground upon which he rests the validity of his election. (18 Del. Laws, c. 22, § 2; Code 1915, § 1870; Code 1935, § 1989; 15 Del. C. 1953, § 5922.)

§ 5923. Verification of specifications.

Every specification shall be verified by the affidavit of the party delivering the same, stating that he verily believes that the grounds of objection set forth are substantially true, and that the voters specified as illegal voters were not entitled by law to vote at the election in question. (18 Del. Laws, c. 22, § 3; Code 1915, § 1871; Code 1935, § 1990; 15 Del. C. 1953, § 5923.)

§ 5924. Delivery of documents to special board of canvass.

The notice and specification which have been delivered to the Governor shall be by him delivered to the special board of canvass provided for in § 5927 of this title, together with the certificates of the votes given for each person voted for for elector as returned to him by the respective boards of canvass under Chapter 57 of this title on the first day of the assembling of the special board of canvass. (18 Del. Laws, c. 22, § 4; Code 1915, § 1872; Code 1935, § 1991; 15 Del. C. 1953, § 5924.)

§ 5925. Inquiry restricted to grounds of objection in specifications.

In the trial of the case of a contested election, the parties shall be restricted to the grounds of objection in the specifications set forth and to the statement of the other grounds upon which the person declared to have been elected rests the validity of his election and shall not examine into the illegality of any other vote than those specified as illegal nor impeach such votes for any causes other than those so specified. (18 Del. Laws, c. 22, § 5; Code 1915, § 1873; Code 1935, § 1992; 15 Del. C. 1953, § 5925.)

§ 5926. Subpoenas for witnesses.

Where any contestant or person who has been declared elected and whose election is contested is desirous of obtaining testimony respecting a contested election, he may apply to the Prothonotary of the Superior Court in Kent County, for a subpoena or subpoenas for summoning such witnesses as he may wish to appear before the special board of canvass at such time as shall be in the subpoenas designated. Such subpoena shall be directed to the sheriff of the county in which the witness or witnesses reside, and shall be served in the same manner as subpoenas for witnesses in civil cases are served. The sheriff to whom a subpoena may be directed shall make return of his service thereon to the special board of canvass on the first day of its meeting to hear the contest. (18 Del. Laws, c. 22, § 6; Code 1915, § 1874; Code 1935, § 1993; 15 Del. C. 1953, § 5926.)

§ 5927. Superior Court for Kent County declared a special board of canvass to hear contest.

The Superior Court for Kent County is continued and declared to be a special board of canvass to hear and determine all contests of elections of electors of President and Vice-President with power to regulate and determine the mode of procedure, and all other matters pertaining thereto as may be

necessary in carrying out the provision of this subchapter and the Act of Congress fixing the day of the meeting of electors. The Governor whenever a notice of contest is served upon him shall immediately make proclamation convening such Superior Court in special session at the Courthouse in Dover on a day to be by him named, which shall not be later than the 20th day of December, next succeeding the day of the election in the year in which the election was held. (18 Del. Laws, c. 22, § 7; Code 1915, § 1875; Code 1935, § 1994; 15 Del. C. 1953, § 5927.)

§ 5928. Certification by Superior Court.

The Superior Court, after hearing any contest of election of an elector or electors, shall make out and certify under the seal of the Court the ascertainment of the vote of the State for electors, and also certify the names of the persons chosen as electors, and cause such ascertainment and certificate, together with all the papers and certificates filed in the case, to be delivered to the Governor on or before the 1st day of January next succeeding the day of the election at which electors were chosen. (18 Del. Laws, c. 22, § 8; Code 1915, § 1876; Code 1935, § 1995; 15 Del. C. 1953, § 5928.)

Subchapter III. Other Offices

§ 5941. Who may contest; causes.

Any person claiming to be elected to an office to be exercised in and for any county, district or hundred may contest the right of any person declared to be duly elected to such office for any of the following causes:

- (1) For malconduct on the part of the election officers or clerks holding the election, or any one of them;
- (2) When the person whose right to the office is contested was not at the time of the election eligible to such office;
- (3) When the person whose right is contested has given to any elector or inspector, judge or clerk of election, any bribe or reward or shall have offered any bribe or reward for the purpose of procuring his election;
- (4) On account of illegal votes. (17 Del. Laws, c. 33, § 1; Code 1915, § 1901; Code 1935, § 2019; 15 Del. C. 1953, § 5941.)

§ 5942. Irregularities not invalidating election.

No inequality or improper conduct in the proceedings of the election officers or clerks or any one of them, shall be construed to amount to such malconduct as to annul or set aside any election unless the inequality or improper conduct shall have been such as to procure the person whose right to the office may be contested to be declared duly elected when he has not received the highest number of legal votes cast at the election. (17 Del. Laws, c. 33, § 2; Code 1915, § 1902; Code 1935, § 2020; 15 Del. C. 1953, § 5942.)

§ 5943. Requirements to set aside election because of illegal voting.

Nothing in this chapter shall be so construed as to authorize an election to be set aside or annulled on account of illegal votes unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person. (17 Del. Laws, c. 33, § 4; Code 1915, § 1903; Code 1935, § 2021; 15 Del. C. 1953, § 5943.)

§ 5944. Circumstances under which contestant need not claim to have been elected.

When an election is contested because of alleged malconduct of the election officers holding the election or because the person whose right to office is contested was not eligible for such office, a proceeding may be instituted under this chapter against such person by the person who received the next highest number of votes for the office at the election under which such ineligible person was declared elected, notwithstanding the person so contesting the election does not claim to have been elected. (17 Del. Laws, c. 33, § 5; Code 1915, § 1904; Code 1935, § 2022; 15 Del. C. 1953, § 5944.)

§ 5945. Statement of contestant; contents.

When any person authorized to do so under this chapter desires to contest the right of any person declared duly elected to such office, he shall, within 20 days after the result of the election shall have been officially ascertained by the board of canvass, or officers legally authorized to ascertain the same, and at least 60 days before the first day of the term of court at which the contest shall be tried or called for trial, file with the Prothonotary in the county in which the contest is made a full, particular and explicit statement setting

forth fully and specifically the names of any and all election officers upon the malconduct of whom he will rely and respecting which he intends to procure evidence, and setting forth the election districts of such election officers and the particular malconduct of each, respectively, the names and residences of the witnesses and the substance of their testimony, by whom he expects to prove such malconduct. If such contest is based upon ineligibility of a person to hold the office, the statement shall specifically, fully and explicitly state the grounds and causes of the ineligibility of the person whose right to the office is contested. When such contest is based on alleged bribe or reward or the offer of a bribe or reward, the statement shall explicitly, fully and clearly state the name of any elector, election officer or other person to whom any bribe or reward shall have been offered and the time, place and amount of such bribe or reward and the name and residence of the witnesses by whom the contestant expects to prove the offering of any bribe or reward, with a brief statement of their testimony. When the contest shall be on the ground of illegal votes, the statement shall specifically, fully and explicitly set forth the names, residences and respective causes of disqualification of each person alleged to have illegally voted, the polls at which such illegal vote has been received, the names of the election officers favoring the acceptance of such vote, whether such vote was challenged by the duly accredited challenger of the party of which the contestant was the candidate, and whether all the judges or inspectors present at such polls concurred in accepting and receiving such vote. If it appears that all of such judges or inspectors concurred in accepting or receiving such vote or that the right of the voters, respectively, to deposit such votes was not at the time challenged by the duly accredited challenger of the party of which the contestant was a candidate, the legality or illegality of such vote shall not be brought into question in any such contest. The statement shall further set forth the names and residences of the witnesses who shall be produced on behalf of the contestant to prove such illegal votes and the substance of the testimony to be given by each. (17 Del. Laws, c. 33, § 6; 19 Del. Laws, c. 572, § 1; Code 1915, § 1905; Code 1935, § 2023; 15 Del. C. 1953, § 5945.)

Election contest petitions must strictly comply with statutory requirements. — Since election contests are statutory creations and are not derived from the common law, election contest petitions normally must strictly comply with the statutory requirements to be valid. *Walker v. Wrightson*, Del. Super., 374 A.2d 570 (1977).

Necessity for alleging that contestee was benefited or that correction would change result. — The burden is upon a contestant in seeking an election contest to allege that the

wrongs complained of accrued to the benefit of the contestee, or that by a correction thereof the result of the election would be changed, or he must allege facts from which such is necessarily inferred. *Lamot v. Walz*, Del. Super., 107 A.2d 905 (1954).

Allegations as to fraud or irregularities should be set forth with particularity. — If fraud practiced by the election officers in rejecting legal votes is relied upon by a contestant as a basis for his contest petition in seeking the rejection of an entire district or dis-

tricts, then it is essential, if the grounds and specifications are to be set forth with particularity, to allege facts which clearly indicate the fraud complained of or facts from which fraud may be inferred, the district or districts in which the fraud was practiced, and that the fraud complained of accrued to the benefit of the contestee or changed the result of the election, unless the result is necessarily to be inferred from the facts alleged. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

If irregularities resulting in illegal voting are relied upon by a contestant as a basis for his contest petition in seeking a recount of the votes cast at a municipal election, then it is essential, if the grounds and specifications are to be set forth with particularity, to allege facts which clearly indicate the irregularities or illegal voting complained of, the district or districts in which either or both occurred, and that the votes involved in the wrongs complained of accrued to the benefit of the contestee or changed the result of the election, unless the result is necessarily to be inferred from the facts alleged. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

Names of those denied vote need not be

alleged. — In a contest petition, in the absence of a statutory requirement, necessity does not require the alleging of the names of the legal voters denied the right to vote. *Lammot v. Walz*, Del. Super., 107 A.2d 905 (1954).

Absentee ballots not excepted from contests. — The adoption of laws providing for absentee ballot voting was not accompanied by an intent that such ballots be excepted from the conditions set out in this section for a contest based on the ground of "illegal votes." *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

Where absentee ballots were not challenged at the polling place as required by this section, their legality or illegality may not be brought into question even though the kinds of absentee voter fraud alleged cannot form the basis of an election contest under this section. *Chandler v. Workman*, Del. Super., 348 A.2d 185 (1975).

Amendment to a defective election contest complaint filed after the 20-day period provided by this section did not relate back to the filing of the complaint, and the complaint was dismissed therefor. *Walker v. Wrightson*, Del. Super., 374 A.2d 570 (1977).

§ 5946. Verification of contestant's statement.

The statement shall be verified by the oath of the contestant that the matters therein set forth are, so far as they relate to his own act and deed, true and that what relates to the act and deed of any other person he believes to be true. (17 Del. Laws, c. 33, § 6; 19 Del. Laws, c. 572, § 1; Code 1915, § 1905; Code 1935, § 2023; 15 Del. C. 1953, § 5946.)

§ 5947. Security for costs.

Any person contesting any election under this subchapter shall be required to give security for costs in such amount and manner as the court shall order. Such security, however, shall in no case be enforced unless judgment for costs be rendered against the contestant. (17 Del. Laws, c. 33, § 17; Code 1915, § 1914; Code 1935, § 2032; 15 Del. C. 1953, § 5947.)

§ 5948. Citation; service and return.

Before the statement is filed, the Prothonotary shall docket the case in the appearance docket and immediately issue a citation for the person whose right to the office is contested to appear on the first day of the second term of the Superior Court to make such defense as he may have, which citation shall be delivered to the sheriff or, if he be a party to the contest, to the coroner of the county, and be served by him upon the party defendant in person or, if he cannot be found, by leaving a copy thereof at the house where he last resided at least 5 days before the day to which such citation is returnable. The original citation shall be returned to the Prothonotary on or before the first day of the next term of Court after it is issued, and the manner of service shall be endorsed thereon and signed by the officer serving the same. (17 Del. Laws, c. 33, § 9; 19 Del. Laws, c. 572, § 2; Code 1915, § 1906; Code 1935, § 2024; 15 Del. C. 1953, § 5948.)

§ 5949. Dismissal of proceedings.

The Court may dismiss the proceedings if the statement of the cause or causes of contest do not conform to the requirements set forth in this subchapter or for want of prosecution. (17 Del. Laws, c. 33, § 10; 19 Del. Laws, c. 572, § 3; Code 1915, § 1907; Code 1935, § 2025; 15 Del. C. 1953, § 5949.)

§ 5950. Trial.

If proceedings are not dismissed, the case shall proceed upon its merits and be tried and determined by the Court by the rules of law and evidence governing the determination of questions of law and facts in the Superior Court, so far as the same are applicable. (17 Del. Laws, c. 33, § 10; 19 Del. Laws, c. 572, § 3; Code 1915, § 1907; Code 1935, § 2025; 15 Del. C. 1953, § 5950.)

§ 5951. Trial by Court; by jury.

All cases of contest under this subchapter shall be fully heard and determined by the Court, without the aid or intervention of a jury, unless 1 or both of the parties to the contest shall claim a trial by jury, and the Court shall, in its judgment, determine that it is a case which, under the Constitution and laws of this State, the party or parties are entitled to a trial by jury. In such case a jury shall be empanelled and the cause proceed according to the rules and practice of the Court in jury trials. (17 Del. Laws, c. 33, § 12; Code 1915, § 1909; Code 1935, § 2027; 15 Del. C. 1953, § 5951.)

§ 5952. Proof and evidence limited by statement.

At the trial of any contest under this subchapter the contestant shall be limited in his proof and in the admission of evidence to the witnesses named in the statement, and the witnesses shall be limited in their testimony to the facts set forth in the statement with respect to which it shall be stated that they will be expected to testify. (17 Del. Laws, c. 33, § 6; 19 Del. Laws, c. 572, § 1; Code 1915, § 1905; Code 1935, § 2023; 15 Del. C. 1953, § 5952.)

§ 5953. Examination of ballots by Court.

In the trial of any contested election under this subchapter, the Court may make an examination of the ballots given in such election, except that wherever the ballot boxes, ballots, poll lists, tally sheets or other books or records pertaining to any election, excepting the certificate of election of the officer against whom the contest may be made, duly signed by the Court constituting the board of canvass and under the seal of court, and delivered according to law, shall have come in any way, legally or illegally, into the possession, care or custody of any person, officially or otherwise, who shall have been a candidate and voted for upon the same official ballot as a candidate of the same political party as the contestant, no such ballot boxes, poll lists, tally sheets or other books or records pertaining to the said election, excepting the certificate of election, shall be offered in evidence in any contest begun or prosecuted under the provisions hereof, and the Court may make and enforce by attachment all necessary orders to obtain possession of the same. (17 Del. Laws, c. 33, § 13; 19 Del. Laws, c. 572, § 4; Code 1915, § 1910; Code 1935, § 2028; 15 Del. C. 1953, § 5953.)

§ 5954. Judgment.

(a) After hearing the allegations and proofs in the cause the Court shall render judgment (in accordance with the verdict of the jury, if a jury shall have tried the cause) either confirming or annulling such election altogether.

(b) If it appear by the judgment of the Court or the verdict of the jury (if there be a jury) that any other person than the one whose election is contested received the highest number of legal votes, judgment shall be rendered declaring such person duly elected.

(c) When the person whose election is contested is proved to be ineligible to the office, judgment shall be rendered declaring the election void and the office vacant, and such proceedings shall then be had as in vacancies happening from any other cause. When it shall appear that 2 persons have received an equal number of legal votes for the same office, the provisions of law for the settlement of such cases shall prevail, if there be any such provision; if there

be none, then the office shall be adjudged and declared vacant, and such proceedings shall then be had as in vacancies happening from any other cause. (17 Del. Laws, c. 33, §§ 13-15; 19 Del. Laws, c. 572, § 4; Code 1915, §§ 1910-1912; Code 1935, §§ 2028-2030; 15 Del. C. 1953, § 5954.)

§ 5955. Costs.

(a) Costs in all cases under this subchapter shall be awarded against the unsuccessful party to the contest.

(b) Charges for costs shall be as near as possible to the charges for similar services in other cases tried in the Superior Court.

(c) Execution may issue to collect costs. (17 Del. Laws, c. 33, §§ 11, 16; Code 1915, §§ 1908, 1913; Code 1935, §§ 2026, 2031; 15 Del. C. 1953, § 5955.)

PART V

Special, Municipal, and Other Elections

Cross references. — As to constitutional requirements that all elections be free and equal, see Del. Const., art. I, § 3. As to elections to authorize bond issue for suburban community improvements, see §§ 507 to 512 of Title 9. As to elections to authorize bond issues for construction of fire hydrants and watermains in suburban communities, see § 556 to 560 of Title 9. As to election to approve suburban park community and authorize bond issue, see §§ 630 to 634 of Title 9. As to calling elections for park districts in New Castle County, see §§ 712 to 720 of Title 9. As to election on question of establishment of sanitary sewer district in New Castle County, see § 2306 of Title 9. As to referendum upon petition for forming sewer districts in Kent County, see § 4607 of Title 9. As to election of Receiver of Taxes and County Treasurer in Kent County, see § 8401 of Title 9. As to elec-

tion of county comptroller in Kent County, see § 9301 of Title 9. As to election of county recorders, see § 9601 of Title 9. As to elections in reorganized school districts, see §§ 1071 to 1085 of Title 14. As to elections relative to local school taxes, see Chapter 19 of Title 14. As to elections to establish free public libraries in school districts, see §§ 7124 to 7127 of Title 14. As to election for purpose of authorizing the borrowing of money for District Library Commission, see §§ 7162 to 7167 of Title 14. As to elections relative to creation of water and/or sewer authorities, see § 1402 of Title 16. As to special elections relative to extension of city or town limits, see § 101 of Title 22. As to election of commissioners for unincorporated towns, see § 102 of Title 22. As to special election for withdrawal or removal of property from city or town, see § 105 of Title 22. As to Home Rule, see Chapter 8 of Title 22.

CHAPTER 71. SPECIAL ELECTION FOR GENERAL ASSEMBLY

Sec.
7101. Vacancies in General Assembly; writs of election.
7102. Vacancy in Senate.
7103. Vacancy in House.
7104. Day for holding special election.
7105. Notice to the public.
7106. Notice to election officers and department.
7107. Election officers and challengers for special election.

Sec.
7108. Vacancies among election officers or challengers.
7109. General election laws applicable.
7110. Board of canvass.
7111. Term of office of one elected to fill vacancy.
7112. Costs of special election.

§ 7101. Vacancies in General Assembly; writs of election.

Whenever there is a vacancy in either house of the General Assembly, by reason of failure to elect, ineligibility, death, resignation or otherwise, within 30 days of the creation of the vacancy a writ of election shall be issued by the presiding officer of the house in which the vacancy exists, directed to the department of the county in which such vacancy exists or, in case of necessity, in such other manner as shall be provided by law. Whenever there is such vacancy in either house and the General Assembly is not in session, the Governor may issue a writ of election to fill such vacancy, which writ shall be

executed as a writ issued by the presiding officer of either house in case of vacancy. (Code 1852, § 379; Code 1915, § 1816; Code 1935, § 1905; 15 Del. C. 1953, § 7101; 57 Del. Laws, c. 181, § 77.)

Writ of election issued by Speaker without recall by Governor. — When Speaker recessed the House of Representatives "to the call of the Chair," a writ of election could be

issued by the Speaker to fill a vacant House seat without a recall by the Governor. State ex rel. Battaglia v. Delaware Dep't of Elections, Del. Supr., 344 A.2d 225 (1975).

§ 7102. Vacancy in Senate.

If a writ of election to fill a vacancy in the Senate is issued after an adjournment, without day, of the General Assembly and not less than 10 days before the holding of the general election, the writ shall be executed at the time of holding the next general election; the election to fill the vacancy pursuant to the writ being held by the same persons and in all respects as the general election, unless a session of the General Assembly, shall, in the meantime, be convened by the Governor. (Code 1852, § 380; Code 1915, § 1817; Code 1935, § 1906; 15 Del. C. 1953, § 7102.)

§ 7103. Vacancy in House.

If a vacancy happens in the House of Representatives after an adjournment, without day, of the General Assembly, no writ of election shall be issued under § 7101 of this title, unless the Governor shall also issue a writ for convening the General Assembly. (Code 1852, § 381; Code 1915, § 1818; Code 1935, § 1907; 15 Del. C. 1953, § 7103.)

Writ of election issued by Speaker without recall by Governor. — When Speaker recessed the House of Representatives "to the call of the Chair," a writ of election could be

issued by the Speaker to fill a vacant House seat without a recall by the Governor. State ex rel. Battaglia v. Delaware Dep't of Elections, Del. Supr., 344 A.2d 225 (1975).

§ 7104. Day for holding special election.

The department shall set the day for holding a special election for the General Assembly, but such day shall not be more than 11 or less than 10 days next after the day of receiving the writ, exclusive of that day, in case such writ be issued to fill a vacancy occurring or existing while the General Assembly is in session or within 20 days prior to the convening of the General Assembly in regular or special session. If the vacancy occurs or exists 20 days or upwards prior to a general or special session of the General Assembly, the day appointed for holding a special election pursuant to such a writ shall be not more than 40 nor less than 30 days next after the day of receiving the writ, and so as to permit the holding of the special registrations of voters

provided by law in case of a special election, subject, however, to § 7102 of this title, in cases falling within that section. (Code 1852, § 382; Code 1915, § 1819; Code 1935, § 1908; 45 Del. Laws, c. 154, § 18; 15 Del. C. 1953, § 7104; 51 Del. Laws, c. 99, §§ 1, 2.)

§ 7105. Notice to the public.

The department shall, on the next day after receiving a writ of election, unless the same shall be Sunday and then on the Monday next following, put up on the outside of the courthouse door of its county and also in at least 5 of the most public places of each election district of the senatorial or representative district or districts of the county, included in the writ of election, a proclamation reciting the writ and appointing a day for holding a special election and the officer or officers to be chosen. (Code 1852, §§ 382-384; Code 1915, §§ 1819, 1821; Code 1935, §§ 1908, 1910; 45 Del. Laws, c. 154, §§ 18, 20; 15 Del. C. 1953, § 7105.)

§ 7106. Notice to election officers and department.

(a) The department, upon receiving a writ of election, shall notify each inspector, judge of election and clerk of election of each election district within such representative or senatorial district in which such election is to be held.

If any inspector, judge or clerk of election of any election district within such senatorial or representative district shall be dead, removed, unable to serve or shall refuse to serve, the notice shall be delivered to the person or persons appointed to fill such vacancy or vacancies.

(b) [Repealed]. (Code 1852, §§ 383, 384; Code 1915, § 1821; Code 1935, § 1910; 45 Del. Laws, c. 154, § 20; 15 Del. C. 1953, § 7106; 49 Del. Laws, c. 4, § 5; 58 Del. Laws, c. 148, § 141; 61 Del. Laws, c. 480, § 21.)

§ 7107. Election officers and challengers for special election.

The inspectors who served in the election districts at the next preceding election or the persons so appointed or supplied to fill vacancies among such inspectors shall be the presiding officers for the special election. The judges of election, clerks and challengers who served in the election districts within the senatorial or representative district in which the special election is to be held, at the next preceding election, shall serve in such election districts in their several capacities for such special election. (Code 1852, §§ 385, 386; Code 1915, § 1822; Code 1935, § 1911; 15 Del. C. 1953, § 7107.)

§ 7108. Vacancies among election officers or challengers.

In case any inspector, judge or clerk of election or challenger of any election district, within the senatorial or representative district in which any special election is to be held to fill any vacancy in the Senate or House of Representatives, who served at the next preceding general election, shall be dead, removed, unable to serve or shall refuse to serve an inspector, judge or clerk of election or challenger shall be appointed or supplied to fill such vacancy, in the same manner as prescribed in the case of the general election. (Code 1852, §§ 327, 385, 386; 13 Del. Laws, c. 122, § 1; 17 Del. Laws, c. 29, § 1; 20 Del. Laws, c. 394, § 2; Code 1915, §§ 1820, 1822; Code 1935, §§ 1909-1911; 45 Del. Laws, c. 154, §§ 19, 20; 15 Del. C. 1953, § 7108.)

§ 7109. General election laws applicable.

Every special election in a representative or senatorial district shall be provided for, opened, held, conducted and closed and the result thereof ascertained and certified in the same manner, at the same places and subject to the same laws, so far as the same may be applicable, as are prescribed for the general election; provided, however, that the department shall not be required to publish in a newspaper 10 days before the election the nominations made in anywise for such special election. (Code 1852, § 387; Code 1915, § 1823; Code 1935, § 1912; 45 Del. Laws, c. 154, § 21; 15 Del. C. 1953, § 7109.)

§ 7110. Board of canvass.

The Superior Court of any county, in which the special election shall be held, as constituted under article V, § 6 of the State Constitution, shall, at 12:00 on the second day after such special election, convene and perform its duties, prescribed by such section, with reference to such special election, at the same place, with the same powers and in the same manner as for a general election. (Code 1852, § 388; Code 1915, § 1824; Code 1935, § 1913; 15 Del. C. 1953, § 7110.)

§ 7111. Term of office of one elected to fill vacancy.

The person chosen to fill a vacancy in the General Assembly shall hold office for the residue of the term. (Code 1852, § 379; Code 1915, § 1816; Code 1935, § 1905; 15 Del. C. 1953, § 7111.)

§ 7112. Costs of special election.

All necessary costs and expenses incurred in carrying into effect the proclamation of the Governor or of the presiding officer of the house in which the vacancy exists, relative to special elections, unless otherwise provided by the laws of this State, including the compensation of election officers, shall be paid by the State Treasurer from any moneys in the State Treasury not otherwise appropriated, upon proper warrants and vouchers submitted to the Governor and approved by the Auditor of Accounts. (27 Del. Laws, c. 65, § 24; Code 1915, § 1815; 38 Del. Laws, c. 88, § 1; Code 1935, § 1904; 15 Del. C. 1953, § 7112.)

CHAPTER 73. VACANCY IN OFFICE OF REPRESENTATIVE IN CONGRESS, UNITED STATES SENATOR OR PRESIDENTIAL ELECTOR

Subchapter I. Representative in Congress

Sec.

- 7301. Special election to fill vacancy.
- 7302. Time of election; general election.
- 7303. Writs of election.
- 7304. Notice to the public.
- 7305. Notice to election officers and department of elections.
- 7306. Conduct of special election.
- 7307. Vacancies among election officers.

Subchapter II. United States Senator

Sec.

- 7321. Vacancy; temporary appointment; term.
- 7322. Certification of appointment; form.

Subchapter III. Electors of President and Vice-President

- 7331. Procedure in case of failure to elect electors.
- 7332. Mode of choosing by General Assembly.
- 7333. Member of General Assembly ineligible.
- 7334. Certificates of appointment by General Assembly.

Subchapter I. Representative in Congress

§ 7301. Special election to fill vacancy.

Whenever a vacancy shall happen by death, resignation or otherwise in the representation from this State in the House of Representatives of the United States, an election shall be held to fill such vacancy on such day as the Governor shall appoint, in the several counties, at the same places which at the time shall be prescribed by law for holding the general election. (Code 1852, § 415; Code 1915, § 1880; Code 1935, § 1999; 15 Del. C. 1953, § 7301.)

§ 7302. Time of election; general election.

It shall be in the discretion of the Governor whether to appoint a day for holding elections under this chapter, before the day of holding the general election next after the happening of a vacancy, and, if the day of holding the general election shall be appointed, then the election shall be held and conducted and all the proceedings touching the same had as part of the general election. (Code 1852, § 421; Code 1915, § 1887; Code 1935, § 2006; 15 Del. C. 1953, § 7302.)

§ 7303. Writs of election.

The Governor shall issue writs of election to the department of elections of the several counties reciting the vacancy and commanding each department to cause an election to be held in its county on the day mentioned in the writ, at the place by law prescribed for holding the general election in its county, for choosing a Representative in place of him whose seat shall so have become vacant, which writ shall be delivered to each department at least 40 days before the day therein appointed for holding the election. (Code 1852, § 416; Code 1915, § 1881; Code 1935, § 2000; 45 Del. Laws, c. 153, § 1; 15 Del. C. 1953, § 7303.)

§ 7304. Notice to the public.

Each department shall, within 10 days after receiving a writ, advertise by suitable news media or by publishing the same each day for at least 5 days in 1 or more daily newspapers printed in the county or, if no daily newspaper is published in the county, in an edition of each of 2 weekly newspapers. Such notice shall state the day and place of the election and the officer to be chosen. (Code 1852, §§ 417, 418; Code 1915, §§ 1882, 1884; Code 1935, §§ 2001, 2003; 45 Del. Laws, c. 153, §§ 2, 3; 15 Del. C. 1953, § 7304; 58 Del. Laws, c. 215, § 40.)

§ 7305. Notice to election officers and department of elections.

(a) The department shall also, upon receiving a writ, notify the inspector, judges of election and clerks of election of each election district in the respective counties who served at the preceding general election, and, if any such officer of any such election district be dead, removed, unable to serve or shall refuse to serve, then also to the person of any such election district who shall be appointed to fill the vacancy in such office.

(b) [Repealed]. (Code 1852, §§ 417, 418; Code 1915, § 1884; Code 1935, § 2003; 45 Del. Laws, c. 153, § 3; 15 Del. C. 1953, § 7305; 49 Del. Laws, c. 4, § 5; 58 Del. Laws, c. 148, § 142; 61 Del. Laws, c. 480, § 22.)

§ 7306. Conduct of special election.

A special election for Representative in Congress shall be conducted in the same manner and form and by the same persons and officers and under the same regulations in all respects as a special election to supply a vacancy in either house of the General Assembly, and the votes given in each county shall be calculated, ascertained and certified at the same time and place and

in like manner and by the same method and regulation as in case of such special election. (Code 1852, §§ 419, 420; Code 1915, §§ 1885, 1886; Code 1935, §§ 2004, 2005; 15 Del. C. 1953, § 7306.)

§ 7307. Vacancies among election officers.

In case any election officer of any election district who served at the next preceding general election shall be dead, removed, unable to serve or shall refuse to serve, an officer shall be appointed or supplied to fill such vacancy in the same manner as prescribed in the case of the general election. (Code 1852, § 327; 17 Del. Laws, c. 29, § 7; 19 Del. Laws, c. 39, § 3; 21 Del. Laws, c. 41, § 1; Code 1915, § 1883; Code 1935, § 2002; 15 Del. C. 1953, § 7307.)

Subchapter II. United States Senator

§ 7321. Vacancy; temporary appointment; term.

Whenever a vacancy shall happen by death, resignation or otherwise in the office of Senator from this State in the Senate of the United States, the Governor may make a temporary or ad interim appointment from among the qualified electors of this State of some person to fill such vacancy until the same shall be filled at the next ensuing general election in the manner prescribed by law. The office of such temporary appointee shall terminate upon the election, under this title, of a Senator from this State in the Senate of the United States to fill the vacancy. (Code 1915, § 1890; 28 Del. Laws, c. 101; Code 1935, § 2009; 15 Del. C. 1953, § 7321.)

§ 7322. Certification of appointment; form.

(a) If a vacancy in the office of United States Senator is filled by temporary appointment by the Governor, the Governor shall certify the appointment of a Senator from this State in the Senate of the United States, under the Great Seal of the State, to the President of the Senate of the United States. Such certificates shall be countersigned by the Secretary of State of Delaware.

(b) The certificate, in the case of a temporary appointment by the Governor, may be in the following form, viz.:

"To the President of the Senate of the United States: Be it known that I,, Governor of the State of Delaware, according to the form of the Act of the General Assembly of said State, have appointed to be a Senator from the said State in the Senate of the United States, to serve as such Senator until the electors of the said State shall fill the vacancy caused by the death (resignation or otherwise) of, lately Senator from said State, in the Senate of

the United States. Given under our hands, in obedience to the said Act of the General Assembly and of the said Act of Congress, the day of A. D. 19.....”.

(Code 1915, § 1892; 28 Del. Laws, c. 101; Code 1935, § 2010; 15 Del. C. 1953, § 7322.)

Subchapter III. Electors of President and Vice-President

§ 7331. Procedure in case of failure to elect electors.

If upon examining the certificates of the boards of canvass it shall appear to the Governor that there has been a failure to choose 1 or more of the electors of a President and Vice-President of the United States to be appointed in this State or, if from any cause such electors shall fail to be chosen, he shall immediately issue writs for convening the General Assembly, at Dover, on the fourth Monday of the same November, and the elector or electors to be appointed in this State for the election of a President and Vice-President of the United States and not chosen at the general election shall be appointed by ballot by the General Assembly so convened in joint meeting of the Senate and House of Representatives. (Code 1852, § 404; Code 1915, § 1861; Code 1935, § 1980; 15 Del. C. 1953, § 7331.)

§ 7332. Mode of choosing by General Assembly.

In the joint meeting provided for by § 7331 of this title there shall be a distinct balloting for each elector, and a majority of all the votes given shall be necessary to an appointment; but if upon any ballotings 2 persons only shall be voted for and each shall receive an equal number of votes, the President of the Senate shall give an additional casting vote; if upon twice balloting in succession more than 2 persons be voted for and 1 of such persons on each balloting receive one half the number of all the votes given, the President of the Senate may, on the second balloting, give an additional casting vote to the person having one half of the number of all the votes given, or, if he decline, the Speaker of the House of Representatives may, if he think proper, give an additional casting vote to the person having one half of such vote. (Code 1852, § 405; Code 1915, § 1862; Code 1935, § 1981; 15 Del. C. 1953, § 7332.)

§ 7333. Member of General Assembly ineligible.

No member of the General Assembly for the time being shall be appointed an elector of President and Vice-President under § 7332 of this title. (Code 1852, § 406; Code 1915, § 1863; Code 1935, § 1982; 15 Del. C. 1953, § 7333.)

§ 7334. Certificates of appointment by General Assembly.

Certificates of appointment of electors by the General Assembly shall be duly made and signed by the President of the Senate and the Speaker of the House of Representatives and attested by the clerks of the houses respectively, and shall be transmitted by the President of the Senate as follows: One to the Governor, in order that lists may be made, certified and delivered, according to the Act of Congress in that behalf and 1 to each of the electors appointed. (Code 1852, § 407; Code 1915, § 1864; Code 1935, § 1983; 15 Del. C. 1953, § 7334.)

CHAPTER 75. MUNICIPAL ELECTIONS

Subchapter I. General Provisions

Sec.

7501. Deposit and count of ballots.
7502. Local elections when there is only 1 candidate.

Subchapter II. City of Wilmington

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Subchapter III. Special Elections for Annexations for City of Wilmington under Title 22, § 101A

Sec.

7540. Date for election.
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Subchapter I. General Provisions

§ 7501. Deposit and count of ballots.

The board of elections or other officers conducting any election held in any municipality of this State shall deposit all ballots as the same are voted in a ballot box and shall not remove the ballots until the election is closed.

When the election is closed, the ballots cast shall be removed from the ballot box and shall be counted openly and publicly and in the presence of such citizens of the municipality as shall desire to attend.

This section shall be deemed and taken to be an amendment to all charters granted to any municipality in this State. (41 Del. Laws, c. 127, §§ 1, 2; 15 Del. C. 1953, § 7501.)

Cross references. — As to costs for use of voting machines in municipal elections, see § 5003 of this title.

§ 7502. Local elections when there is only 1 candidate.

In any town or municipal election where there is only 1 official candidate for each office, if none of the official candidates has a formal opponent on the day of election, the official candidates may assume office without the holding of a formal election. (60 Del. Laws, c. 561, § 1; 63 Del. Laws, c. 454, § 1.)

Subchapter II. City of Wilmington

§ 7521. Elections.

Registration and elections in the City of Wilmington for the Mayor, Council and other officers of the City of Wilmington shall in all respects be conducted in conformity with the provisions governing general elections as provided under this title, except that the canvass of the vote shall be conducted by the Department of Elections for New Castle County, which shall certify those candidates elected to office. (45 Del. Laws, c. 144, § 34; 15 Del. C. 1953, § 7521; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 2; 61 Del. Laws, c. 428, § 1.)

Constitutionality. — That part of this section which attempts to require the Superior Court to canvass the vote of the city elections is unconstitutional and void, since under art. V, § 6, Del. Const., the Superior Court's jurisdiction as a board of canvass is limited to general elections and other elections over which the former boards of canvass had jurisdiction. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

The repealing clauses in § 10 of 50 Del. Laws, c. 390 and § 1 of 50 Del. Laws, c. 392 were ineffectual insofar as they attempted to change the method of canvassing the vote of

the city election, since the substituted method of canvassing was void and it could not be supposed that the legislature intended that there should be no canvass whatever. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

The vote of an election in the City of Wilmington should be canvassed by the Department of Elections of New Castle County, where the portion of this section attempting to require the Superior Court to canvass the vote was unconstitutional and void. *Abrahams v. Superior Court*, Del. Supr., 131 A.2d 662 (1957).

§ 7522. Definition of political party.

A political party existing only within the City of Wilmington shall be qualified to nominate candidates for the municipal election if it is a bona fide organization of registered voters of the City of Wilmington who:

- (1) Elect a city committee and officers of the city committee;
- (2) Nominate candidates for the municipal election by a secret ballot of those enrolled for purposes of the municipal election as members of the party taken at a convention or by some other method of polling the party membership;
- (3) Not later than August 15 of the year of the municipal election, file with the Department of Elections for New Castle County petitions certifying that the party exists and desires to have its candidates placed on the ballot for the forthcoming election. These petitions shall be signed by a number of registered voters of the City of Wilmington not less than 5 percent of the total number of registered voters within the City as of December 31 of the year immediately preceding the municipal election. These petitions shall be prepared between January 1 and August 15 of

the year of the election. They shall include the signature, printed name, address at which registered and social security number of each qualified voter signing the petition. Each petition shall also include the following declaration subscribed to under oath by each person signing the petition:

By dating and affixing my signature to this petition, I hereby swear (or affirm) that: (1) My full name, address at which registered and social security number are as stated herein; (2) I am a duly registered voter of the State of Delaware, New Castle County and the City of Wilmington; (3) For the purposes of the municipal election only, I am a member of the and I support its

name of party

efforts to have its name, party device and candidates listed on the next municipal election ballot; (4) The date entered opposite my signature is the date on which I signed this petition; and (5) I have read and understand this petition, and I understand that by intentionally entering false information hereon I shall be subject to prosecution for perjury.

The petition shall also include a sworn statement, signed by the person gathering the signatures and sworn to before a notary public, that such person witnessed the placing of each signature on the petition and, to the best of his knowledge or belief, all those who signed the petition were duly registered voters of the City of Wilmington. This statement shall be followed by a warning that any person who knowingly signs a statement which contains falsehoods shall be subject to prosecution for perjury. (15 Del. C. 1953, § 7522; 50 Del. Laws, c. 390, § 3; 61 Del. Laws, c. 428, § 2.)

§ 7523. Certificates of nomination.

The nominations made under this subchapter for the various offices of the City of Wilmington, together with the name of the party and its device, shall be certified to the Department of Elections for New Castle County by the presiding officer and secretary of each political party on the date and in the manner prescribed for other nominations for the general election made under this title. (15 Del. C. 1953, § 7523; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 4; 61 Del. Laws, c. 428, § 3.)

§ 7524. Title and device of party.

No party shall use the name of another party appearing anywhere on the ballot either in whole or in part, or any variation thereof, in its own title. The words "Independent" or "Decline," being terms employed in this title, or any variation thereof, shall not be used as the title, or part of the title, of any party. Each party shall select an appropriate figure or device to designate that

party, but the coat of arms, seal or flag of the United States, this State or the City of Wilmington, or any part or variation thereof, shall not be used as such figure or device.

In case of a division in any party qualified under this subchapter and a claim by 2 or more factions to the same party name or title, figure or device, the Board of Elections for New Castle County shall determine to which faction the name and device properly belong. If, within 5 days thereafter, the other faction fails to present and certify some other party title and/or device, the Board shall select some suitable title and/or device to represent that party upon the ballot. (15 Del. C. 1953, § 7524; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 5; 61 Del. Laws, c. 428, § 4.)

§ 7525. Ballots.

The names of the candidates for the Mayor, Council and other officers of the City of Wilmington shall be printed on the single ballot as prescribed by § 4501 of this title and to meet the requirements of §§ 5001-5011 of this title. (15 Del. C. 1953, § 7525; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 6.)

§ 7526. Supplemental certificates of nomination.

Supplemental certificates of nomination for offices of the City of Wilmington shall be issued as prescribed in § 3306 of this title. (15 Del. C. 1953, § 7526; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 7; 58 Del. Laws, c. 148, § 143; 61 Del. Laws, c. 428, § 5.)

§ 7527. Contest of election.

If any candidate for any of the offices before mentioned shall choose to contest the right of any person claiming to have been elected to said office, the causes for such contests and all of the other provisions now set out in §§ 5941-5955 of this title shall be applicable, and all such contests shall be determined pursuant to all of said sections. (15 Del. C. 1953, § 7527; 50 Del. Laws, c. 390, § 8.)

§ 7528. General provisions.

All of the provisions of this title pertaining to elections, including registration of voters, Chapters 11, 13, 15, 17, 19, 21, and 23, primary elections and nomination of candidates, Chapters 31 and 33, general elections, Chapters 41, 45, 47, 49, 51, 53, 55, and 57, as well as Chapter 50 of this title, shall be applicable to the holding of elections in accordance with this subchapter. (15 Del. C. 1953, § 7528; 49 Del. Laws, c. 4, § 5; 50 Del. Laws, c. 390, § 9.)

*Subchapter III. Special Elections for Annexations for City of
Wilmington under Title 22, § 101A*

Revisor's note. — Section 3 of 66 Del. Laws, c. 135, provides: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which shall be given effect without the invalid provision or application, and to this

end the provisions of this act are declared to be severable."

Section 4 of 66 Del. Laws, c. 135, provides: "This act shall become effective 30 days after it is enacted." This act was signed by the Governor on July 9, 1987.

§ 7540. Date for election.

(a) Upon the enactment of a county ordinance pursuant to § 101A(a)(2)c of Title 22, for a proposed annexation of territory by the City of Wilmington, and its approval by the County Executive pursuant to § 101A(a)(2)d of Title 22, the County Council, by resolution, shall fix a date for the special election required by § 101A(a)(2)e of Title 22, at which all voters qualified under § 7543 of this title may vote, on the question whether the proposed annexation should be approved.

(b) The special election shall be held not less than 30 days nor more than 60 days after the date of approval of the county ordinance enacted pursuant to § 101A(a)(2)c of Title 22. (66 Del. Laws, c. 135, § 2.)

§ 7541. Contents of notice of special election.

The special election shall be held on the date fixed by County Council pursuant to § 7540 of this title and shall be previously advertised by publishing a notice in a newspaper published within the County and having a general circulation therein, once in each of 2 weeks preceding the week in which the special election is held, and by posting a notice in a prominent place in the building at which County Council meets for the conduct of legislative business. The notices shall state the time and place of the special election and further state that the purpose of the special election is to determine whether a majority of the qualified voters in each parcel of the territory are in favor of the annexation by the City of Wilmington. The posted notice shall also provide a detailed description of the territory, including but not limited to a map showing the territory in relation to the City of Wilmington and the area surrounding the territory. (66 Del. Laws, c. 135, § 2.)

§ 7542. Place, time and manner of voting; duties of Clerk of the Peace.

(a) The special election shall be held in the building in which is situated the offices of the Clerk of the Peace. The polls shall be open from 9:00 a.m. to 6:00 p.m. on the day of the special election and voting shall be by printed ballot, which shall give the qualified voters an opportunity clearly to indicate their consent or objection to the annexation of the territory by the City of Wilmington.

(b) The Clerk of the Peace shall:

- (1) Act as judge of the special election;
- (2) Prepare, publish and post the notices required under § 7541 of this title;
- (3) Prepare the ballots required for the special election; and
- (4) Perform such other duties as provided in this subchapter for the Clerk of the Peace. (66 Del. Laws, c. 135, § 2.)

§ 7543. Qualified voters; voting list.

(a) The following shall be considered qualified voters for a special election held with respect to an annexation initiated pursuant to § 101A of Title 22 for the City of Wilmington and shall be entitled to vote in such election as provided herein:

(1) Every person 18 years of age or older who at least 30 days prior to the date of the special election is a duly registered voter in the election district or districts of the County in which the territory is located, and who resides in said territory, shall be entitled to 1 vote each.

(2) Unless already qualified to vote under paragraph (1) of this subsection and subject to subsection (b) of this section each owner of a parcel of real estate located in the territory, as evidenced by the assessment records of the County, shall be entitled to 1 vote each. Corporations, limited partnerships or other entities which own real estate in the territory shall be entitled to 1 vote each under this subsection, which right to vote shall be permitted by the judge of the election at the special election upon receipt of a sealed, certified copy of a corporate resolution passed by the governing body of the corporation, or the equivalent of such resolution of the entity involved, authorizing an officer, agent or other person to vote on behalf of the entity at the special election.

(3) Unless already qualified to vote under paragraph (1) or (2) of this subsection, each holder of a then-current leasehold interest in a parcel in the territory, as evidenced by a certified copy of the lease reflecting that interest submitted to the judge of the election at the time of the special election, shall be entitled to 1 vote each, which shall be permitted in the

same fashion as if carried out under the provisions of paragraph (1) or (2) of this subsection, as the case may be.

(4) Unless already qualified to vote under paragraph (1), (2) or (3) of this subsection, each person, corporation, limited partnership or other entity, who in the determination of the judge of the election is qualified to vote under the provisions of subsection (b) of this section, shall be entitled to 1 vote each, which shall be permitted in the same fashion as if carried out under the provisions of paragraph (1) or (2) of this subsection, as the case may be.

(5) In no event shall any person, corporation, limited partnership or other entity, or any holder of a leasehold interest, who or which is qualified to vote under this section, be entitled to more than 1 vote in such special election.

(b) Not less than 14 days prior to the special election, the Clerk of the Peace shall prepare from the books and records of the county Board of Assessment a list of the real estate owners of each parcel of the territory for which the special election is to be held. In addition, not less than 21 days prior to the special election the Department of Elections for the County shall provide the Clerk of the Peace with a current list of registered voters in the election district or districts in which the territory is located, who reside in the territory. From the 2 lists prepared pursuant to this subsection the Clerk of the Peace shall compile the voting list of the qualified voters for the special election. The voting list shall be evidence of the right of qualified voters to vote in the special election, except as hereinafter provided:

(1) Real estate owners who sold their property or properties in the territory prior to the date of the special election shall not be permitted to vote but the then owners of the property or properties shall be entitled to vote in their place and stead upon furnishing the judge of the election with the original or a certified copy of the deed to the property or properties, which deed shall clearly evidence that it was duly recorded; provided, however, that if the new owner is a corporation, limited partnership or other entity, the new owner must also comply with the provisions of subsection (a)(2) of this section;

(2) Any person claiming the right to vote at the election as an heir of any real estate owner in the territory who has died since the preparation of the voting list, or as trustee or guardian under the terms of the last will and testament of such real estate owner (who has died since the preparation of the voting list) shall furnish the judge of election with the original or a certified copy of the will or other document evidencing his ownership of, or interest in, the property of such real estate owner, and shall thereupon be permitted to vote as if qualified under subsection (a)(2) of this section; or

(3) Each person, corporation, limited partnership or other entity qualified to vote in the special election pursuant to subsection (a)(3) of this section shall be permitted to vote despite their absence from the voting list prepared by the Clerk of the Peace. (66 Del. Laws, c. 135, § 2.)

§ 7544. Certification of result of special election; retention of ballots.

No later than 3 days after the holding of the special election, the judge of the election shall tabulate the ballots and certify the result to the County Council and to the Wilmington City Council under his or her hand and seal. The ballots shall be retained in the safekeeping of the county government for 1 year before being destroyed. (66 Del. Laws, c. 135, § 2.)

§ 7545. Alternative approval procedure when only 1 qualified voter exists.

If only 1 qualified voter in the territory exists for the purpose of determining whether an annexation initiated pursuant to § 101A of Title 22 for the City of Wilmington shall be approved, notwithstanding any other provisions in this subchapter or in Title 22 the annexation shall be deemed approved if, within 7 days of the County Executive's approval of the county ordinance pursuant to § 101A(a)(2)f of Title 22, the qualified voter files with the Clerk of the Peace a sworn affidavit approving of the annexation. If the qualified voter is a corporation, limited partnership or other entity, such affidavit must be accompanied by a suitable sealed, certified copy of a corporate resolution or its equivalent authorizing an officer, agent or other person to execute the affidavit approving the annexation on behalf of the entity. On receipt of said affidavit, together with the authorization, if any, the Clerk of the Peace shall certify the approval to the County Council and to the Wilmington City Council under his or her hand and seal. Said certification shall, for all intents and purposes, be construed as the required certificate under § 7544 of this title and § 101A(a)(2)f of Title 22. (66 Del. Laws, c. 135, § 2.)

§ 7546. Definitions.

For the purposes of this subchapter, the following terms shall have the meanings described herein:

- (1) "Clerk of the Peace" shall mean the Clerk of the Peace for New Castle County.
- (2) "County" shall mean New Castle County.
- (3) "County Council" shall mean the New Castle County Council.
- (4) "County Executive" shall mean the New Castle County Executive.

(5) "Parcel" shall have the meaning set forth in § 101A(c)(4) of Title 22.

(6) "Territory" shall have the meaning set forth in § 101A(c)(6) of Title 22. (66 Del. Laws, c. 135, § 2.)

CHAPTER 77. CONVENTION TO ACT UPON AMENDMENTS TO FEDERAL CONSTITUTION

Sec.	Sec.
7701. Date of election of delegates; proclamation.	7710. Alternates.
7702. Qualification of voters.	7711. Printing of ballots; to whom delivered; additional ballots.
7703. Registration.	7712. Use of separate ballot; form.
7704. Election, how conducted; results, how ascertained.	7713. Election of nominees; vacancies.
7705. Number and residence of delegates.	7714. Meeting of delegates.
7706. Qualifications of delegates; nomination by petition.	7715. Election of officers and adoption of rules.
7707. Determination of nominations.	7716. Journal of convention.
7708. What nominations shall be effective.	7717. Certification of results.
7709. Certification of nominations.	7718. Compensation of delegates, officers and employees; expenses.
	7719. Applicability of act of Congress.

§ 7701. Date of election of delegates; proclamation.

Whenever the Congress of the United States proposes an amendment to the Constitution of the United States and proposes that the same shall be valid when ratified by conventions in three fourths of the several States, the Governor of this State shall fix by proclamation the date of an election for the purpose of electing delegates to such convention of this State. Such election may be either at a special election or may be held at the same time as a general election or special, but shall be held at least as soon as the next general election occurring more than 3 months after the amendment has been proposed by the Congress. (38 Del. Laws, c. 5, § 1; Code 1935, § 6206; 15 Del. C. 1953, § 7701.)

§ 7702. Qualification of voters.

(a) If the election of delegates is held at the same time as a general election, all persons qualified to vote at such general elections for representatives to the General Assembly of this State shall be entitled to vote.

(b) If such election is held at a time other than at the same time as a general election, all persons qualified to vote for representatives to the General Assembly of this State at the last general election next preceding such special election shall be entitled to vote. (38 Del. Laws, c. 5, § 2; Code 1935, § 6207; 15 Del. C. 1953, § 7702.)

§ 7703. Registration.

(a) If the election of delegates is to be held at a date other than the date of a general election, there shall be 1 or more registration days prior to such election. The Governor shall fix the date or dates of such registration and shall include an announcement of the registration dates in his proclamation, fixing the date of the election. No registration shall be held within 10 days next prior to such special election.

(b) On the registration day or days persons whose names are not on the list of registered voters established by law for the last general election may apply for registration, and on such registration day or days applications may be made to strike from the registration list names of persons on such list who are not eligible to vote at such election. (38 Del. Laws, c. 5, § 2; Code 1935, § 6207; 15 Del. C. 1953, § 7703.)

§ 7704. Election, how conducted; results, how ascertained.

Except as in this chapter otherwise provided, the election of delegates shall be conducted and the results thereof ascertained and certified in the same manner as in the case of the election of electors of President and Vice-President in this State and the Governor shall, without delay, examine the certificates and ascertain the delegates to such convention chosen and make known the same by proclamation and cause notice to be given to each delegate so elected of his election as a delegate. All provisions of the laws of this State relative to elections, except as far as inconsistent with this chapter, shall be applicable to such election. (38 Del. Laws, c. 5, § 3; Code 1935, § 6208; 15 Del. C. 1953, § 7704.)

§ 7705. Number and residence of delegates.

The number of delegates to be chosen to such convention shall be 17, to be elected from the State at large. Seven of such delegates shall be residents of New Castle County, 5 of such delegates shall be residents of Kent County, and 5 of such delegates shall be residents of Sussex County. (38 Del. Laws, c. 5, § 4; Code 1935, § 6209; 15 Del. C. 1953, § 7705.)

§ 7706. Qualifications of delegates; nomination by petition.

Candidates for the office of delegate to the convention shall be citizens and qualified voters of this State. Nominations shall be by petition and not otherwise. A single petition may nominate any number of candidates not exceeding the total number of delegates to be elected from each county, and all candidates on any such petition shall be residents of the same county and shall

reside in the county which said candidates propose to represent at such convention and every such petition shall be signed by not less than 100 persons who are qualified voters of the county wherein such candidates reside. Nominating petitions shall be filed with the department of elections of the county which such candidates propose to represent. Nominations shall be without party or political designation, but the nominating petitions shall contain a statement as to each nominee to the effect that he favors ratification or that he opposes ratification or that he remains uncommitted to either ratification or rejection of the proposed amendment to the Constitution of the United States, and no nominating petition shall contain the name of any nominee whose position as stated therein is inconsistent with that of the position of any other nominee as stated therein. (38 Del. Laws, c. 5, § 5; Code 1935, § 6210; 15 Del. C. 1953, § 7706; 61 Del. Laws, c. 480, § 23.)

§ 7707. Determination of nominations.

The sixteenth day before the day fixed for the holding of the election of delegates shall be the last day for the filing of nominating petitions with the respective departments of election or, if such sixteenth day falls upon a Sunday or a legal holiday, the day following shall be the last day for the filing of such nominating petitions, and thereafter nominations for the office of delegate to such convention shall be closed. After the closing of such nominations, the respective departments of election shall forthwith count and determine the number of signatures which each candidate for nomination as delegate to such convention has obtained upon his or their respective nominating petition or petitions. In making such count and determination, the respective departments of election shall only count the signatures of those persons who are qualified voters of the county which the candidates propose to represent at such convention. A signature to such nominating petition shall be prima facie evidence that the person purporting to sign the same did actually sign the same and that such person is a qualified voter of the same county as the county of residence of the candidate or candidates whose names appear in such nominating petition, and all signatures to such nominating petitions shall be counted by the respective departments of election, unless, within 5 days after the closing of nominations, evidence satisfactory to the department of elections shall have been produced before him that a person whose name purports to have been signed to a nominating petition is either a fictitious person or not a qualified voter of the county of residence of the candidate or candidates whose nominating petition he purports to have signed. After the closing of nominations all nominating petitions shall be open to the inspection of any qualified voter of the county in which such petitions have been filed. (38 Del. Laws, c. 5, § 6; Code 1935, § 6211; 15 Del. C. 1953, § 7707; 61 Del. Laws, c. 480, § 23.)

§ 7708. What nominations shall be effective.

No nominations shall be effective except those of the 7 candidates from New Castle County in favor of ratification, the 7 candidates from New Castle County against ratification and the 7 candidates from New Castle County not committed to either ratification or rejection of the proposed amendment, the 5 candidates from Kent County in favor of ratification, the 5 candidates from Kent County against ratification and the 5 candidates from Kent County not committed to either ratification or rejection of the proposed amendment, the 5 candidates from Sussex County in favor of ratification, the 5 candidates from Sussex County against ratification and the 5 candidates from Sussex County not committed to either ratification or rejection of the proposed amendment, whose nomination petitions have respectively been signed by the largest number of qualified persons, ties to be decided by lot drawn by the respective departments of election. (38 Del. Laws, c. 5, § 7; Code 1935, § 6212; 15 Del. C. 1953, § 7708; 61 Del. Laws, c. 480, § 23.)

§ 7709. Certification of nominations.

After the nominees for delegates to the convention are determined by the departments of election, each department of elections shall certify to the other departments of election in this State the names of the nominees from their respective counties to such convention and shall further certify which nominees from their respective counties were nominated as in favor of ratification, which nominees from their respective counties were nominated as opposed to ratification and which nominees from their respective counties were nominated as uncommitted either to ratification or rejection of the proposed amendment. (38 Del. Laws, c. 5, § 8; Code 1935, § 6213; 15 Del. C. 1953, § 7709; 61 Del. Laws, c. 480, § 23.)

§ 7710. Alternates.

Candidates for nomination not nominated as provided in the preceding provisions of this chapter shall be deemed to be alternates to the nominees in their respective groups in the order of the number of signatures which they have respectively received upon their nominating petitions and in the event of the death, resignation or removal of any nominee, the first alternate shall take his place as nominee, and so on, ties to be decided by lot drawn by the respective departments of election. In the event of such death, resignation or removal, the department of elections of the county from which such nominee was nominated shall forthwith certify to the other departments of election the fact of such death, resignation or removal, together with the name of the new nominee. In the event of the death, resignation or removal of any nominee

after the printing of the ballots for such election, the departments of election shall provide the election officers of each election district with a number of pasters containing only the name of such nominee, at least equal to the number of ballots provided for each election district and the clerks of election shall put 1 of such pasters in a careful and proper manner in the proper place on each ballot before they shall deliver the same to voters. (38 Del. Laws, c. 5, § 9; Code 1935, § 6214; 15 Del. C. 1953, § 7710; 61 Del. Laws, c. 480, § 23.)

§ 7711. Printing of ballots; to whom delivered; additional ballots.

The department of elections of each county shall cause to be printed and distributed the ballots for the election of delegates in the quantity and in the manner provided by law for general elections; provided that such ballots as are required under the election laws to be delivered to the chairmen of the various political parties shall, in lieu thereof, be distributed to the various nominees as equally as possible, and provided further that the department of elections in each county, in addition to the ballots mentioned in this section, shall cause to be printed such further number of ballots as shall be directed by any nominee in any county; provided, however, that the department of elections shall not have printed any ballots upon the order or request of any nominee, unless the request shall have been made to him in writing at least 10 days prior to the holding of the election at which the ballots are to be used, nor unless a deposit sufficient to cover the cost of the ballots be made at the time they are ordered. The ballots so ordered by the nominees shall be delivered to the nominees or to their agents upon their request or order at least 5 days before the election at which the ballots are to be used. (38 Del. Laws, c. 5, § 10; Code 1935, § 6215; 15 Del. C. 1953, § 7711; 61 Del. Laws, c. 480, § 23.)

§ 7712. Use of separate ballot; form.

The election shall be by ballot, separate from any ballot to be used at the same election. Such ballot, if used at a general election, shall be enclosed in the same envelope as the ballot for use at such general election, otherwise each ballot cast shall be enclosed in a separate envelope. The ballot shall first state the substance of the proposed amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively in plain type "For Ratification," "Against Ratification" and "Uncommitted." In the column headed "For Ratification" shall be placed the names of the nominees nominated from the entire State as in favor of ratification, in alphabetical order. In the column headed "Against Ratification" shall be placed the names of the nominees nominated from the entire State as against ratification, in alphabetical order. In the

column headed "Uncommitted" shall be placed the names of the nominees nominated from the entire State as uncommitted to either ratification or rejection, in alphabetical order. The voter shall indicate his choice by making 1 or more cross marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross mark is irregular in character. The ballot shall be so arranged that the voter may by making a single cross mark, vote for the entire group of nominees whose names are comprised in any column. The ballot shall be as like as possible to the form of the official ballot now used in this State and substantially in the following form:

CONVENTION TO RATIFY FEDERAL
CONSTITUTIONAL AMENDMENT
OFFICIAL BALLOT
PROPOSED AMENDMENT TO THE
CONSTITUTION OF
UNITED STATES

Delegates to the Convention to Ratify the Proposed Amendment.

The Congress has proposed an amendment to the Constitution of the United States which provides (insert here the substance of the proposed amendment).

The Congress has also proposed that the amendment shall be ratified by Conventions in the States.

INSTRUCTIONS TO VOTERS

Do not vote for more than 17 candidates.

To vote for all candidates in favor of Ratification of the proposed amendment, or for all candidates against Ratification of the proposed amendment, or for all candidates who intend to remain uncommitted to either Ratification or Rejection of the proposed amendment, make a cross mark in the Block at the head of the list of candidates for whom you wish to vote. If you do this, make no other mark.

To vote for an individual candidate make a cross mark in the Block at the left of the name.

RATIFICATION	AGAINST RATIFICATION	UNCOMMITTED
For Delegates to the Con- vention	For Delegates to the Con- vention	For Delegates to the Con- vention
JOHN DOE JOHN DOE JOHN DOE JOHN DOE	JOHN DOE JOHN DOE JOHN DOE JOHN DOE	JOHN DOE JOHN DOE JOHN DOE JOHN DOE

All ballots used at elections for ratifying conventions shall be printed as outlined in this section. However, the Governor may, if he deems it expedient, in his proclamation calling for election of delegates to a ratifying convention, direct that there be printed on the ballots additional information that will be more informative to the electorate on the subject which is being voted upon. (38 Del. Laws, c. 5, § 11; Code 1935, § 6216; 15 Del. C. 1953, § 7712.)

§ 7713. Election of nominees; vacancies.

The 17 nominees who receive the highest number of votes shall be the delegates to the convention. If there is a vacancy in the convention caused by the death or disability of any delegate or any other cause, the same shall be filled by appointment by the majority vote of the delegates comprising the group from which such delegate was elected and, if the convention contains no other delegate of that group, shall be filled by the Governor. (38 Del. Laws, c. 5, § 12; Code 1935, § 6217; 15 Del. C. 1953, § 7713.)

§ 7714. Meeting of delegates.

The delegates to the convention shall meet in the Senate Chamber at the State House in Dover on the twenty-eighth day after their election at 12:00 noon, and shall thereupon constitute a convention to pass upon the question of whether or not the proposed amendment shall be ratified. (38 Del. Laws, c. 5, § 13; Code 1935, § 6218; 15 Del. C. 1953, § 7714.)

§ 7715. Election of officers and adoption of rules.

The convention may elect its president, secretary and other officers and adopt its own rules. (38 Del. Laws, c. 5, § 14; Code 1935, § 6219; 15 Del. C. 1953, § 7715.)

§ 7716. Journal of convention.

The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment. (38 Del. Laws, c. 5, § 15; Code 1935, § 6220; 15 Del. C. 1953, § 7716.)

§ 7717. Certification of results.

After the sense of the majority of the total number of delegates composing the convention is taken upon the question of the ratification of the proposed amendment to the Constitution of the United States, the convention shall certify a resolution of its vote over the hand of the president, attested by the secretary and signed by all of the members of the convention. Such resolution shall be so certified in duplicate originals. The duplicate originals shall then be delivered by the convention to the Secretary of State together with the journal and any other records of the convention.

If it appears from the resolutions so certified to the Secretary of State that the proposed amendment to the Constitution of the United States has been ratified by the convention, the Secretary of State of Delaware shall send to the Secretary of State of the United States 1 of the duplicate originals certified under his hand and the seal of the State. The remaining duplicate original shall be proclaimed by publication and shall be deposited together with the journal and any other records of the convention in the State Archives. If it appears from the resolutions so certified to the Secretary of State that the proposed amendment to the Constitution of the United States has not been ratified, the resolution shall be proclaimed by publication and the duplicate originals of the resolution together with the journal and any other record of the convention shall be deposited in the State Archives. (38 Del. Laws, c. 5, § 16; Code 1935, § 6221; 15 Del. C. 1953, § 7717.)

§ 7718. Compensation of delegates, officers and employees; expenses.

Every delegate to the convention shall receive \$10 for every day he is in attendance at such convention, not exceeding 3, and in addition thereto, 10 cents for each mile necessarily travelled by him in making 1 round trip from the place of his residence to Dover. The president, secretary and other officers shall receive such compensation as may be fixed by the convention not in excess of \$25 for any such officer, in addition to his compensation as such delegate. Disbursements for the purposes mentioned in this and for other necessary expenses of the convention, when approved by the convention and signed by the president, shall be paid by the State Treasurer out of any

moneys not otherwise appropriated. The expenses of holding a special election shall be borne as provided by law for the holding of a general election. (38 Del. Laws, c. 5, § 17; Code 1935, § 6222; 15 Del. C. 1953, § 7718.)

§ 7719. Applicability of act of Congress.

If at or about the time of submitting any such amendment, Congress shall, either in the resolution submitting the same or by a statute, prescribe the manner in which the conventions shall be constituted, and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions, the provisions of this chapter shall be inoperative, the convention shall be constituted and shall operate as the resolution or act of Congress shall direct, and all officers of this State who may by the resolution or statute be authorized or directed to take any action to constitute such a convention for this State shall act thereunder and in obedience thereto with the same force and effect as if acting under a statute of this State. (38 Del. Laws, c. 5, § 18; Code 1935, § 6223; 15 Del. C. 1953, § 7719.)

ELECTION LAWS

PART VI

Election Campaigns

CHAPTER 80. CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

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8010. Contribution limits for candidates.
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8046. Short title.

Revision of chapter. — 67 Del. Laws, c. 449, repealed and reenacted this chapter, substituting present §§ 8001 to 8046 for former §§ 8001 to 8013. No detailed explanation of the changes made by c. 449 has been attempted, but where appropriate, historical citations to the former sections have been added to corresponding sections in the revised chapter.

Section 3 of 67 Del. Laws, c. 449, provides: "If any provision of this act, any amendment made to this act or the application of any such provision to any person or circumstance is held in-

valid, the validity of any other such provision and the application of such provision to other persons and circumstances shall not be affected thereby."

Section 4 of 67 Del. Laws, c. 449, provides: "This act shall become effective on January 1, 1991, except that any reports which, under this chapter before the enactment of this act, were required to be filed in January 1991, shall be filed pursuant to this chapter as it existed before the enactment of this act."

*Subchapter I. General Provisions***§ 8001. Purpose.**

The purpose of this chapter is to protect the public interest by requiring full disclosure of the source of all funds used in political campaigns, providing reasonable limits on the amounts of contributions and providing a manner to enforce this law. (67 Del. Laws, c. 449, § 1.)

§ 8002. Definitions.

As used in this chapter:

(1) "Candidate" means a person who seeks nomination for or election to public office, or who has taken action necessary under the law to qualify for nomination or election under the laws of the State, or has authorized the solicitation of any contribution or the making of any expenditure in his or her behalf.

(2) "Candidate committee" means each political committee formed on behalf of a candidate for public office.

(3) "Cash" includes currency, money orders, travelers checks and other negotiable instruments that do not disclose on their face the true name of the contributor.

(4) "Chapter" includes, in addition to the provisions of this chapter, the rules and regulations made by the Commissioner.

(5) "Commissioner" means the State Election Commissioner, or the designee of the Commissioner.

(6) "Contribution" means any advance, deposit, gift, expenditure or transfer, of money or any other thing of value, to or for the benefit of any candidate or political committee involved in an election, including without limitation any:

a. Gift, subscription, advance, deposit, expenditure or transfer of any thing of value;

b. Discount or rebate not available to the general public (except a party's abatement or refund of a filing fee otherwise required under § 3103 of this title);

c. Loan (except a loan of money by a national or state bank, building and loan association or licensed lender made in the ordinary course of business);

d. Purchase of tickets, goods or services sold to raise funds for a campaign, whether or not the tickets, goods or services are used by the buyer;

e. Forgiveness of indebtedness or payment of indebtedness by another person;

f. Service or use of property without full payment therefor (except the contribution of services by an individual, the use of an individual's residence, the contribution of such items as invitations, food and beverages by an individual volunteering personal services or the individual's residence, or the use of the telephone equipment of any person); or

g. Any other thing of value (except an independent expenditure).

(7) "Election" means the action by qualified voters of the State either to nominate by vote a candidate for public office or to select a candidate to fill a public office, whether in a primary, general or special election.

(8) "Election period" means:

a. For a candidate committee:

1. For a candidate for reelection to an office to which the candidate was elected in the most recent election held therefor, the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.

2. For a candidate for reelection to an office which the candidate attained since the last election held therefor (whether the candidate attained the office by succession, appointment or otherwise), the period beginning on the day the candidate succeeded to or was appointed to the office, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.

3. For a candidate for election to an office which the candidate does not hold, the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate's spouse) in support of his or her candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office.

4. Notwithstanding the foregoing, for purposes of the limitations under § 8010 of this title on contributions from persons other than political parties and political action committees, for a candidate in a general election who was nominated for such office in a primary election, the election period shall end on the day of the primary and the next election period shall begin on the day after the primary.

b. For a political party and for a political action committee, the period beginning on the January 1 immediately after a general election, and ending on the December 31 immediately after the next general election.

c. For a candidate committee for a person who does not hold public office and who has not taken action necessary under the law to qualify for nomination or election under the laws of the State, the period beginning on the date the first contribution is received or expenditure is made by the committee and ending on the fourth December 31 following such date; provided, however, that if such person takes action necessary under the law to qualify for nomination or election under the laws of the State, the period shall be determined under subdivision a. of this paragraph.

d. For a person who makes independent expenditures, the election period shall begin and end at the same time as that of the candidate whose election is advocated or opposed by the independent expenditures, without regard to subdivision a.4. of this paragraph.

(9) "Expenditure" means any payment made or debt incurred, by or on behalf of a candidate or political committee, or to assist in the election of any candidate or in connection with any election campaign.

(10) "Independent expenditure" means any expenditure made by any individual or other person (other than a candidate committee or a political party) expressly advocating the election or defeat of a clearly identified candidate, which is made without cooperation or consultation with any candidate, or any committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any committee or agent of such candidate.

(11) "Person" includes any individual, corporation, company, incorporated or unincorporated association, general or limited partnership, society, joint stock company, and any other organization or institution of any nature.

(12) "Political committee" means any organization or association, whether permanent or created for the purposes of a specific political campaign, which accepts contributions or makes expenditures for or against any candidate or candidates, and includes all political parties, political action committees and any candidate committee.

(13) "Political action committee" means a political committee which is neither a political party nor a candidate committee.

(14) "Political party" means an organization eligible to be listed on any general election ballot under § 3001 of this title, or any other organization which desires to be listed on any ballot on any election, and any constituent part of such party which receives contributions and makes expenditures. For purposes of the contribution limits of subchapter II of this chapter, a "political party" includes all constituent parts of such party, including the statewide, county, regional, municipal and district committees, all finance committees and all other committees, subdivisions and organizations related to the political party.

(15) "Public office" means an office of this State or any political subdivision thereof which is required by law to be determined by an election.

(16) "Treasurer" means the individual appointed by a candidate to assist the candidate with the duties imposed by this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8003. Duties of a candidate.

(a) A candidate shall establish a candidate committee. There shall only be 1 candidate committee for any candidate, although such candidate committee may have subcommittees. The candidate committee may continue in existence for more than 1 election period, and with respect to more than 1 elective office. Each candidate committee or subcommittee shall notify the Commissioner as required under § 8005 of this title, and shall comply with all the other requirements of this chapter. A candidate shall be responsible for the lawful operation of his or her candidate committee and all subcommittees thereof.

(b) Except for independent expenditures that meet the requirements of this chapter, all contributions to or on behalf of a candidate shall be placed into the candidate committee, and all expenditures to or on behalf of a candidate shall be made from the candidate committee.

(c) A candidate shall cause his or her candidate committee to keep complete records of all contributions received and all expenditures made by or on behalf of his or her candidacy, and shall retain such records for 3 full years following the election in which he or she was a candidate; provided, however, that the candidate need not keep records of the names and mailing addresses of persons making contributions of \$100 or less in an election period.

(d) A candidate shall file or cause to be filed with the Commissioner the reports required of his or her campaign committee under § 8030 of this title.

(e) A candidate shall designate an individual as treasurer of his or her candidate committee, in order to assist with the duties under this chapter, but nothing shall relieve the candidate from the responsibility for keeping the records and filing the reports required by this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8004. School boards and offices paying under \$1,000.

(a) Notwithstanding anything provided elsewhere in this chapter, no candidate for election to any school board or to any other public office that pays less than \$1,000 per year shall be required to form a candidate committee if he or she signs under penalty of perjury a statement in a form prepared by the Commissioner, certifying that such candidate does not intend nor expect that his or her campaign will receive nor spend, from the date of the first contribution or expenditure on behalf of such candidate's election until the end of the

year in which the election for such office is held, more than \$2,000. If, notwithstanding the execution of such a statement, such candidate's campaign nevertheless receives more than \$2,000 in contributions or expends more than \$2,000 (including any contributions or expenditures by the candidate) before the end of the year in which the election for such office is held, the candidate shall within 7 days thereafter, so notify the Commissioner, and shall cause to be filed all reports that would otherwise have been required theretofore under this chapter.

(b) No candidate who has filed the statement in subsection (a) of this section shall be required to file any reports with the Commissioner; provided, however, that if such candidate's campaign receives more than \$2,000 in contributions or expends more than \$2,000 (including any contributions or expenditures by the candidate) before the end of the year in which the election for such office is held, such committee shall, within 7 days thereafter, so notify the Commissioner and shall file all reports that would otherwise have been required theretofore under this chapter. (67 Del. Laws, c. 449, § 1.)

§ 8005. Duties of a political committee.

A political committee shall:

(1) No later than 7 days after it first receives any contribution or makes any expenditure, file a complete list of its officers with the Commissioner, one of whom shall be an individual named as its treasurer. A political committee must report any change in its officers within 7 days after such change becomes effective.

(2) Keep complete records of all contributions received and all expenditures made by or on behalf of the political committee, and shall retain such records for 3 full years following the election in connection with which the contributions and expenditures were made.

(3) File with the Commissioner a concise statement of its purposes or goals as a political committee.

(4) File with the Commissioner the reports required under this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8006. Prohibitions.

(a) No person shall, directly or through any other person, solicit or promise any contract, any vote, any employment or other service, or any official action or lack of action, in connection with any contribution.

(b) No person shall make, and no candidate, treasurer or other person acting on behalf of a candidate or political committee shall knowingly accept a contribution made in a fictitious name or in the name of another person. No person shall make, and no candidate, treasurer or other person acting on

behalf of a candidate or political committee shall knowingly accept a contribution whose donor's true name and address is not made known to the political committee that receives it. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§§ 8007-8009. Limits on expenditures; Reports and sworn statements; Public disclosure; Certificates of election.

Repealed by 67 Del. Laws, c. 459, § 1 eff. Jan. 1, 1991.

Subchapter II. Contribution Limits

§ 8010. Contribution limits for candidates.

(a) No person (other than a political party) shall make, and no candidate, treasurer or anyone acting on behalf of any candidate or candidate committee shall accept, any contribution which will cause the total amount of such person's contributions to or in support of such candidate to exceed, with respect to a statewide election, \$1200 during an election period, or with respect to any election that is not statewide, \$600 during an election period.

(b) No political party shall make, and no candidate, treasurer or anyone acting on behalf of any candidate or candidate committee shall accept, any contribution which will cause the total amount of contributions from any political party to or in support of a candidate in an election period of such candidate to exceed, for the following offices:

- (1) Governor: \$75,000;
- (2) All other State-wide offices: \$25,000;
- (3) N.C.C. Executives: \$25,000;
- (4) N.C.C. President: \$15,000;
- (5) All other county offices: \$5,000;
- (6) State Senate: \$5,000;
- (7) State House of Representatives: \$3,000;
- (8) All other offices: \$3,000. (67 Del. Laws, c. 449, § 1.)

§ 8011. Contribution limits for parties.

No person shall make any contributions which will cause the total amount of such person's contributions to a political party to exceed \$20,000 during an election period. No treasurer or other person acting on behalf of any political party shall accept any contribution which such person knows will cause the total amount of the donor's contributions to a political party to exceed \$20,000 during an election period. The contribution limits set forth in this chapter

shall not be applicable to any contributions received by a political party from or on behalf of any national political party, any organization subordinate to such national political party or any other national political organization established for the purpose of supporting elections to national, state and local offices including, but not limited to, the Republican and Democratic Senatorial Campaign Committees, the Republican and Democratic Congressional Campaign Committees, the Republican and Democratic Victory Funds, the Republican and Democratic Governors' Associations. (67 Del. Laws, c. 449, § 1.)

§ 8012. Contribution limits generally.

(a) No person shall make, and no candidate, treasurer or any other person acting on behalf of a political committee shall accept, any contribution in excess of \$50 in cash to a political committee during an election period.

(b) No political party shall make any contribution to any political action committee.

(c) Any contribution by a political action committee shall be by a check which discloses the full name and address of said political action committee.

(d) No agency of the State, no political subdivision of the State, no agency of any political subdivision of the State and no agency authorized by an act of the General Assembly shall make any contribution to any political committee or candidate for any elective office. No candidate, treasurer or other person acting on behalf of a political committee shall accept any contribution from any agency of the State, any political subdivision of the State, any agency of any political subdivision of the State or any agency authorized by an act of the General Assembly.

(e) A corporation, partnership or other entity (other than a political committee) which makes a contribution to a political committee shall notify such political committee in writing of the names and addresses of all persons who, directly or otherwise, own a legal or equitable interest of 50 percent or greater (whether in the form of stock ownership, percentage of partnership interest, liability for the debts of the entity, entitlement to the profits from the other entity or other indicia of interest) in such corporation, partnership or other entity, or that no such persons exist. The political committee may rely on such notification, and should the notification provided by the representative of the entity be inaccurate or misleading, the person or persons responsible for the notification, and not the political committee which received the contribution, shall be liable therefor. A ratable portion of the contribution by the corporation, partnership or other entity shall be deemed to be a contribution under this chapter to the political committee by each such person who owns a 50 percent or greater interest in the entity, shall be included within the limit imposed by this section on individual contributions, and shall be so included

in the reports filed by the candidate committee with the Commissioner under § 8030 of this title.

(f) Any expenditure made by any political committee on behalf of or in connection with the campaign of any candidate (except an independent expenditure that meets the requirements of this chapter) shall be deemed a contribution under this chapter, shall be included within the limit imposed by § 8010(a) of this title on individual contributions, provided, however, that such expenditures by political parties shall be included within the limit imposed by § 8010(b) of this title on contributions by political parties, and shall be so included in the reports filed by the candidate committee with the Commissioner under § 8030 of this title. Where such an expenditure by any political committee benefits more than 1 candidate, such expenditure shall be prorated among the candidates benefitted for purposes of the limits on contributions. For example, if a billboard depicts 2 candidates' names and likenesses with equal prominence, each candidate is benefitted equally by the expenditure for the billboard.

(g) For purposes of this chapter:

(1) Amounts paid by a political party to compensate individuals working on behalf of all of the candidates of the party, and amounts incurred on behalf of or in connection with 5 or more candidates shall not be deemed to be contributions to the candidates of such political party;

(2) Any reimbursement paid by 1 political committee to another political committee for costs actually incurred by the other political committee on behalf of the political committee that makes the reimbursement shall not be deemed to be a contribution to such other political committee;

(3) If two or more candidate committees share the amount of any expenditure permitted under this chapter, no contribution is made, so long as the amounts respectively paid by the respective candidate committees reasonably reflects the amount of the use made by each candidate committee of goods or services for which the expenditure was made; and

(4) Costs incurred by political parties for voter registration and get-out-the vote activities conducted by a political party shall not be considered contributions to any candidate. (67 Del. Laws, c. 449, § 1.)

§ 8013. Short title.

Repealed by 67 Del. Laws, c. 459, § 1 eff. Jan. 1, 1991.

*Subchapter III. Expenditures***§ 8020. Authorized campaign expenditures.**

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

- (1) Wages of full-time or part-time campaign staff (but no salary nor wage for a candidate or a candidate's spouse);
- (2) Travel expenses of the candidate and campaign staff;
- (3) Payment of fees or charges for placing the name of the candidate on the ballot, and for collecting the returns of the election;
- (4) Costs of telephone and other communications services;
- (5) Costs of postage and other delivery services;
- (6) Printing and stationery;
- (7) Food, refreshments and related supplies;
- (8) Purchase and preparation of lists of voters;
- (9) Taking polls and making canvasses of voters;
- (10) Payment for election watchers;
- (11) Rental of office and rental and purchase of equipment;
- (12) Advertising and publicity;
- (13) In the case of a candidate committee, purchase of tickets to permit the candidate's attendance at civic or political events; and in the case of a political action committee, contributions within authorized limits, to any other political committee;
- (14) Holding, promoting and furnishing meetings, demonstrations, conventions, and paying musicians and others rendering services thereto;
- (15) Employing attorneys, accountants and other professional advisors;
- (16) In the case of a candidate committee, contributions, within the limits set forth in § 8010(a) of this title, to another candidate committee, or as otherwise provided in § 8022 of this title;
- (17) In the case of a political party or a political action committee, contributions, within authorized limits, to a candidate committee;
- (18) In the case of any political action committee, in addition to any other expenditure authorized by this chapter, contributions to a political party within the limits set forth in § 8011 of this title. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8021. Identification of purchaser.

All campaign literature or advertising, except on items with a surface of less than 9 square inches, shall display prominently the statement: "Paid for by (name of political committee or other person paying for such literature or advertising)." (67 Del. Laws, c. 449, § 1.)

§ 8022. Leftover funds.

Any funds remaining in any political committee which has completed its activities and paid all its creditors shall be paid to a successor committee or committees without being subject to the contribution limits set forth in this chapter or shall be donated to any religious, charitable, educational or scientific organization exempt from Delaware income tax under § 1902(b)(2) of Title 30 or to any volunteer fire company, and to no other person, except that an amount not in excess of the amount listed in § 8011 of this title may be given to the political party eligible to be listed on any general election ballot under § 3001 of this title. For purposes of this section, the term "successor committee" shall include any political committee, or committees, as that term is defined by § 8002(12) of this title; provided, however, that where the successor committee is one other than a candidate committee formed to promote the election of the same candidate to a different office than that for which the candidate's original candidate committee was formed, the contribution limits set forth in this chapter shall apply. (67 Del. Laws, c. 449, § 1.)

§ 8023. Independent expenditures.

(a) All campaign literature, advertising (except on items with a surface of less than 9 square inches) or other message paid for by independent expenditures shall prominently and at all times display the following statement: "Paid for by (name of person paying for the literature, advertising or other message). Not authorized nor paid for by any candidate or by any committee of any candidate. The cost of presenting this message is not subject to any campaign contribution limits." If the independent expenditure is made or reimbursed by a political action committee or other person other than an individual, the names of the president (or other chief officer) and treasurer of such organization shall be prominently displayed with the rest of the above statement.

(b) An expenditure shall constitute an expenditure in coordination, consultation or concert with a candidate and shall not constitute an independent expenditure where:

(1) There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the

person (including any officer, director, employee or agent of such person) making the expenditure;

(2) The person making the expenditure (including any officer, director, employee or agent of such person) has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects or needs relating to the candidate's pursuit of nomination or election, in the same election period, including any advice relating to the candidate's decision to seek office;

(3) The expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects or needs; provided, that the candidate or the candidate's agent is aware that the other person has made or is planning to make expenditures advocating the candidate's election. (67 Del. Laws, c. 449, § 1.)

Subchapter IV. Public Disclosure

§ 8030. Reports of political committees.

(a) Each candidate (except a candidate who is excused from filing a report under § 8004 of this title) and every treasurer (except of a candidate excused from filing a report under § 8004 of this title) shall be responsible for filing with the Commissioner reports of contributions and expenditures on forms prescribed by the Commissioner for every reporting period during which a political committee is in existence. A candidate shall be jointly responsible with the treasurer for the filing of the report of a candidate committee.

(b) A reporting period shall begin on the day after the previous reporting period (except that for a newly formed committee, the reporting period begins on the date the first contribution is received or expenditure made by or on behalf of such committee) and shall end on the following dates:

(1) December 31 of every year, before or after an election, from the time the committee receives its first contribution or makes its first expenditure, until and including the year in which contributions and expenditures are balanced and the political committee terminates;

(2) Twenty days before any election (except for committees of candidates not on the ballot at such election).

(c) Each report required by this section shall be filed by the political committee and received by the Commissioner by 4:30 p.m. of the 2nd day after the end of the reporting period which is not a state holiday under Chapter 5 of Title 1.

(d) Each report under this section shall disclose all of the following information, for the entire reporting period:

(1) Amount of cash and other intangible assets on hand at the beginning of the reporting period;

(2) Full name and mailing address of each person who has made contributions to such political committee (including the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events, whether or not the tickets were used by the person who paid for them) during the election period in an aggregate amount or value in excess of \$100, the total of all contributions from such person during the election period, and the amount and date of all contributions from such person during the reporting period;

(3) Total of contributions made to such political committee during the reporting period and not reported under paragraph (2) of this subsection;

(4) Name and address of each political committee from which the political committee received, or to which the political committee made, any transfer of funds, together with the amounts and dates of all transfers, no matter what the amount;

(5) The amount of each debt in excess of \$50, owed to or owing by such political committee at the end of the reporting period, the full names and mailing addresses of any lender, borrower and endorser of such debt, the date and the interest rate of such loan, and a description of any security given therefor;

(6) Total amount of proceeds from:

a. Sale of tickets to each reception, meal, rally or other fund-raising event;

b. Collections made at such events; and

c. Sales of items such as campaign pins, buttons, badges and similar materials; provided, however, that all payments and contributions by any person, whether as gifts, as purchases of tickets or other goods or services, or partially as gifts and partially as purchases, by any person during any election period, shall be aggregated and, if such aggregate total exceeds \$50 during such election period, shall be reported under paragraph (2) of this subsection;

(7) Each contribution or other receipt in excess of \$100 not otherwise listed under paragraphs (2) through (6) of this subsection;

(8) Total receipts by such political committee or candidate during the reporting period;

(9) Full name and mailing address of each person to whom any expenditure has been made by such political committee during the reporting period in an aggregate amount in excess of \$100, the amount, date and purpose of each such expenditure and the name of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) Total expenditures made by such political committee or candidate in connection with such campaign; and

(11) All goods and services that are contributed in kind, or at no charge or at a cost less than fair market value (except for services excluded from the definition of "contribution" under § 8002 of this title) to the extent that the fair market value, less any amount paid by the candidate or committee, exceeds \$100.

(e) The reports required to be filed by this section shall be cumulative for the election period to which they relate, but where there has been no change in an item previously reported, only the amount need be carried forward.

(f) Each statement shall be accompanied by an affidavit verified by the candidate or the treasurer of the political committee, which states as follows:

"I solemnly swear [or affirm] that the foregoing statement is in every respect true and correct, and discloses all contributions received and expenditures required by me under Title 15, Chapter 80 of the Delaware Code." (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8031. Reports of independent expenditures.

(a) Any person who makes any independent expenditure that causes the aggregate amount of independent expenditures made by such person in an election period to exceed \$100 during such election period shall file a report with the Commissioner. Such report shall be filed in accordance with the deadlines provided under § 8030 of this title, and shall contain the information required under § 8030 of this title for all contributions received by and made by such person. Such report shall also include a list of every person to whom any disbursement has been made during the election period in connection with an independent expenditure, together with the date, amount and purpose of such independent expenditure and a statement under penalty of perjury whether each such expenditure has been made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any candidate committee or agent of either.

(b) Any person who makes an independent expenditure aggregating more than \$100 after the 20th day, but more than 1 day, before any election shall, within 24 hours after such independent expenditure is made, file with the Commissioner a report under oath or affirmation with respect to such independent expenditure that contains the information required by § 8030 of this title and by this section. (67 Del. Laws, c. 449, § 1.)

§ 8032. Public disclosure.

All reports made to the Commissioner and all rulings made by the Commissioner under this chapter shall be public and shall, immediately upon their filing, be made available by the office of the Commissioner for inspection and copying at reasonable cost by the public, except that the identity of the candidate or committee which requested a ruling shall not be disclosed without the candidate's or committee's consent. The Office of the Election Commissioner shall remain open beyond the ordinary close of business on the day the reports are due to be received under § 8030(c) of this title, until all persons who are present at said office at the time of the ordinary close of business have had an opportunity to make reasonable inspection and copying of said reports. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

*Subchapter V. Enforcement***§ 8040. Certificates of election.**

No certificate of election shall be granted to any candidate until the Superior Court has certified that such candidate has caused to be filed all reports required by § 8030 of this title to be filed prior to the election. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8041. Duties and powers of Commissioner.

The Commissioner shall:

(1) Make and publish such rules and regulations not inconsistent with the provisions of this chapter as are necessary to implement and enforce this chapter. Upon their adoption under the provisions of the Administrative Procedures Act, such rules and regulations shall have the force and effect of law.

(2) At the request of any person, make a ruling that applies this chapter to a set of facts specified by the person. The entire such ruling shall be made in writing, and a copy thereof shall be made available to any person, except that the identity of the person that requested the ruling shall not be disclosed without the person's consent. Copies of the ruling shall be mailed immediately to the Governor, the Attorney General and the chair of each political party entitled to be listed on any general election ballot under § 3001 of this title. Within 7 days after any such ruling is made, a summary thereof shall be mailed to each candidate having a committee which has not completed its activities on file in the office of the Commissioner and shall be distributed to any person who has, within the previous 12 months, requested distribution of such summaries. Any candidate or

treasurer who reasonably and in good faith acts in reliance upon any ruling requested by that candidate or treasurer pursuant to this section, shall not be liable nor subject to any penalty with respect to conduct conforming to the ruling, provided there was a full disclosure to the Commissioner of all material facts necessary for the ruling.

(3) Mail to the treasurer of every political committee, to every candidate for whom a political committee has been formed, and to every candidate who has notified the Commissioner of his or her candidacy under § 3101 of this title, a copy of this chapter, the rules and regulations thereunder and a concise explanation of their terms, responsibilities and penalties, not later than 15 days after such political committee has been formed or such candidate has filed for office. In January of every election year, the Commissioner shall send similar documents to the chairs of all political parties' legally recognized political party subdivisions, down to the local organizing district level.

(4) Retain and permit public inspection of all reports required to be filed under this chapter for 10 years after the end of the calendar year to which they pertain. (67 Del. Laws, c. 449, § 1.)

§ 8042. Civil remedies.

For purposes of any civil remedy on behalf of any injured person, the Court of Chancery shall have jurisdiction. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8043. Violations; penalties; jurisdiction in Superior Court.

(a) Any person who knowingly violates any provision of § 8003, § 8004 or § 8005 of this title shall be guilty of a class B misdemeanor.

(b) Any person who knowingly accepts or knowingly makes an unlawful contribution or expenditure in violation of any provision of subchapter II or III or this title shall be guilty of a class A misdemeanor.

(c) Any candidate or treasurer who knowingly files any report required by § 8023 or subchapter IV of this chapter that is false in any material respect, or fails to file any such report shall be guilty of a class A misdemeanor.

(d) Any person who knowingly violates any provision of § 8006 of this title shall be guilty of a class G felony.

(e) A candidate or treasurer who reasonably relies upon information provided by another person which is inaccurate, false or misleading and who has no reason to know that such information was inaccurate, false or misleading, shall not be liable for any report filed by such candidate or treasurer which is inaccurate, false or misleading as a result of such information, if such candi-

date or treasurer, within 30 days after learning that such information was inaccurate, false or misleading, files an amended report with the Commissioner that corrects the inaccurate, false or misleading aspects of the report filed by the candidate or treasurer. Where a candidate or treasurer files an amended report later than 30 days after learning that such information was inaccurate, false or misleading, the candidate or treasurer shall not be liable if the candidate or treasurer shows good cause for filing the amended report beyond the 30-day period.

(f) The Superior Court shall have jurisdiction over all offenses under this chapter.

(g) A candidate and a treasurer shall report immediately to the Commissioner and the Attorney General any attempt to make a prohibited contribution, or to demand a prohibited expenditure, where such attempt is made with intent to violate this chapter.

(h) A candidate or a treasurer who receives a prohibited contribution or makes a prohibited expenditure without any intention to violate this chapter, but who returns the contribution or reimburses the political committee for such expenditure within 7 days after learning that the contribution or expenditure was prohibited, shall not be liable for any violation of this chapter. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

§ 8044. Tardy reports.

Any candidate, political committee or other person that fails to file or deliver to the Commissioner any report required by § 8023 or § 8030 of this title shall be assessed a fine by the Commissioner of 50 dollars per month, or fraction thereof, that such report is tardy in delivery to the Commissioner. Within 30 days after the Commissioner assesses such a fine, such person shall have the opportunity to show the Commissioner that such tardiness was due to reasonable cause and not wilful neglect. Such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the committee, its treasurer or, in the case of a candidate committee, the candidate, or in the case of an independent expenditure, the person making such expenditure. (67 Del. Laws, c. 449, § 1.)

§ 8045. Attorney General candidates.

Whenever it shall be alleged that an offense under this chapter has been committed by a candidate for the office of Attorney General of Delaware, if the Chancellor of the State of Delaware finds probable cause, based on sworn information, to believe this chapter has been violated, a member of the Bar of the Supreme Court of the State of Delaware shall be appointed as independent counsel by the Chancellor. Such independent counsel shall have the authority

to prosecute any violation of this chapter that has been committed by any candidate for the office of Attorney General. (59 Del. Laws, c. 580, § 1; 67 Del. Laws, c. 449, § 1.)

Constitutionality. — The Attorney General is not a judicial officer subject to the jurisdiction of the court, and the provisions of a former similar section empowering the court to investigate complaints against candidates for Attorney General, were unconstitutional. In re Oberly, Del. Supr., 524 A.2d 1176 (1987).

The provisions of a former similar section, which required the appointment of a special prosecutor where an action before the courts of Delaware was initiated, was severable from the balance of the section, which was deemed unconstitutional. In re Oberly, Del. Supr., 524 A.2d 1176 (1987).

§ 8046. Short title.

This chapter shall be known as the Campaign Financing and Disclosure Act of 1990. (67 Del. Laws, c. 449, § 1.)



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