

# Election Statute Navigator: Delaware

The Election Law Program prepared this Election Law Navigator to highlight state election statutes particularly relevant to the 2020 cycle. The Election Law Navigator is updated as of October 19, 2020. Please contact [elect@wm.edu](mailto:elect@wm.edu) with questions or suggestions. To access COVID-specific legal information impacting this state's election process, please use this link: <https://ebenchmark.org/delaware/covid/#tracker>.

## *Voter Registration*

- Voters (other than above) register prior to Election Day **§ 2036**
  - The last date to register to vote for any presidential primary, primary and general election shall be the fourth Saturday prior to the date of the election
- Online registration available
  - [See official Delaware online registration website](#)
- Registration via mail available **§ 2036(1)**
  - [See official Delaware registration website](#)
  - Mail applications postmarked on or before the deadline shall be considered to be on-time and shall be immediately processed by the Department
- In-Person registration available **§ 2036(2)**
  - [See official Delaware registration website](#)
  - Applications taken by agencies in accordance with subchapter VII of this chapter on or before the deadline shall be considered on-time and shall be processed by the Department immediately upon receipt.
- Preregistration allowed **§ 1701(b)**
  - The Department shall permit registration of any citizen and bona fide resident of this State 16 years of age or older through the Division of Motor Vehicles as set forth in § 2050(a) of this title, provided that such applicant shall not be a qualified voter unless qualified under subsection (a) of this section.
- Residency requirement **§ 1101**
- Prior conviction eligibility **Title 15 Chapter 61**
- Voters judged mentally incompetent cannot vote **§ 1701(a)**
  - For purposes of this chapter, the term “adjudged mentally incompetent” refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment.



- Voter list maintenance guidelines
  - **§ 1102** - Voter registration drive standards
  - **§ 1702** - Removal of names
  - **§ 304** - Lists and files of registered voters
- Other:
  - **§ 1705** - Cancellation of registration of persons reported as deceased

### *State Absentee, Early, and Mail Voting*

- Early voting allowed
  - Will begin January 1, 2022 (**HB38**)
- Listed excuses to vote absentee **§ 5502**
- Online absentee ballot application available **§ 5503**
  - [See official Delaware online registration website](#)
- Absentee ballot application is verified **§ 5504**
- Permanent absentee voting options **§ 5503(k)**
  - Notwithstanding any other provision of this title, a registered voter eligible to vote by absentee ballot for reasons stated in § 5502 (1), (2), (4), (7) or (8) of this title or because a person's business or occupation is providing care to his or her parent, spouse or child who is living at home and requires constant care due to illness, disability, or injury may apply in writing to the Department for permanent absentee status
- Absentee ballot verification details **§ 5514**
- Return of ballot **§ 5507(4)**
  - The elector shall return the sealed ballot envelope to the Department by:
    - a. Depositing it in a United States postal mailbox, thereby mailing it to the Department; or
    - b. Delivering it, or causing it to be delivered, to the Department before the polls close on the day of the election.
- Deadline by which election official must receive absentee/mailed ballots **§ 5508**
- Absentee ballot processing and counting procedures **§ 5510**
- Absentee ballots are reported separately **§ 5510**
- Spoiling ballot restrictions **§ 4948(g)**



- A voter who spoils that voter's own ballot shall, upon request, be given a replacement ballot after surrendering the spoiled ballot.
- Other:
  - **§ 5504(c)** - Postage for all mailings made pursuant to this subsection shall be pre-paid by the Department

### *In-Person Voter ID*

- ID requirements **§ 4937**
- Options for voters without ID **§ 4937(a)**
  - In the event the voter does not have proof of identity with them, the voter shall sign an affidavit of affirmation that the voter is the person listed on the election district record.
- Other:
  - **§ 4937** - Voting procedure

### *Provisional Voting*

- Provisional ballot availability **§ 4948**
- Time allotted to determine the status of provisional ballot **§ 4948(h)(1)**
  - The day following an election in which provisional ballots were used, the Department shall meet to examine the provisional ballots, determine which of the ballots should be tallied in accordance with the rules stated below, and then tally those ballots.
- Provisional ballot rejection reasons **§ 4948(h)**
  - **(5):** Where the provisional ballot affidavit is incomplete, the ballot shall be set aside, not opened and the votes not tallied. An incomplete affidavit shall be defined as one that does not include all of the following information: full name, complete address, political party affiliation (primary elections only), and date of birth.
  - **(6):** Where the person who voted by provisional ballot did not show suitable identification at the polling place, the ballot shall be set aside, not opened and the votes not tallied.
  - **(7):** Provisional ballots cast by persons who are not registered to vote in the state or who are not registered to vote in the election district in which they were cast shall be set aside, not opened and the votes not tallied.



- Method for informing voters whether provisional vote was counted **§ 4948(i)(1)**
  - As soon as practical, but not later than 30 days following an election in which provisional ballots were used, the Department shall enter the appropriate data into a free access system so that a person who voted by provisional ballot may determine whether or not that person's ballot was counted, and if it was not counted, the reason or reasons for which it was not counted.
- Other:
  - **§ 4948(i)(2)** - The Department shall use the provisional ballot affidavit as authority to register a person to vote who voted by provisional ballot in an election and who is not already registered to vote providing that the minimum information required to register a person to vote is provided. The provisional ballot envelope shall be used to transfer a registered voter's address and/or update the registered voter's name when the address and/or name is different than the information on the person's voter registration record.

## *Polling Place*

- Polling Place availability and requirements
  - § 4512 - Polling places; designation and preparation
  - § 4513 - Substitute polling places
- Electioneering must not be closer than 50 feet to the entrance of the polling place § 4942(a)
- Rules governing poll observers
  - § 4948(h)(3) - The county chairperson of each political party with a candidate on a provisional ballot within the county may appoint in writing 1 observer to be in the room where provisional ballots are being reviewed and tallied.
  - § 5701(a) - Convening and composition of Court
- Poll watcher qualifications
  - § 4934 - Challengers; appointment and powers
- Other:
  - § 4933 - Persons permitted in the voting room

## *State Emergency Rules and How Elections are Affected*

- Emergency authority for the State Election Commissioner



- **§ 5524** - The state election commissioner can adopt special procedures for UOCAVA voters during an emergency
- **§ 7550** - State Election Commissioner may, unless otherwise provided in the municipality's charter and/or ordinance, cancel any municipal election the conduct of which is rendered impracticable due an emergency.
- Listed triggers for Emergency Rules
  - **§ 5524(a)** - Such an emergency may be a natural and/or humanitarian disaster; and/or armed conflict involving United States Armed Forces to include mobilized State National Guard and/or Reserve components.
  - **§ 7550(h)** - Any municipal election the conduct of which is rendered impracticable due to severe inclement weather, acts of God or similar emergencies outside of the municipality's control.
- Explicit remedies in election statute
  - **§ 1103** - Disaster recovery and continuity of operations
- Other:
  - **20 Del. C. § 3116(a)(2)** - In addition to any other powers conferred upon the Governor by law, the Governor may: Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency or disaster

## Counting Rules

- Voting system requirements
  - **§ 5001A** - Requirements
  - **§5004A** - Number of voting devices per election district
- Counting procedures
  - **§ 5510** - Counting procedure for absentee ballots
  - **§ 7578** - Counting procedure for absentee ballots in municipal elections except for city of Wilmington
- Other:
  - **§ 7582** - Rejected ballots
  - **§ 4977** - Persons authorized to be present during the count and tabulation



## *Contest/Protest, Recount Rules*

- Contest filing guidelines
  - **§ 5941** - Who may contest; causes
- Challenging a voter
  - **§ 4936** - Order of voting; determination of challenge
  - **§ 4939** - Determination of challenge based on identity of voter
  - **§ 4940** - Disqualification because of bribery; determination of challenge
  - **§ 4941** - Residency of voter
- Contest/Protest recount
  - **§ 5702(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 one half of one 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.
- Other:
  - **§ 4934** - Challengers; appointment and powers

