

# ARTICLE. V ELECTIONS

## **§ 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.

## **§ 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 or she may offer to vote, and in which he or she 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 or she shall at the time be a resident, and in which he or she 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 or she shall be able to read this Constitution in the English language and write his or her 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 person adjudged mentally incompetent 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 after the expiration of the 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 provision of this paragraph shall not apply to (1) those persons who were convicted of any felony of murder or manslaughter, (except vehicular homicide); or (2) those persons who were convicted of any felony constituting an offense against public administration involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or of the District of Columbia.

## **§ 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 or her 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 or she 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 or she not moved, and provided that he or she 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 or she has not resided in his or her county, hundred or election district for a sufficient length of time.

### **§ 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 or her removal to this State, or would have been eligible to vote in such other state had he or she remained there until such election, and provided that he or she 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 or she had not resided in this State for one year.

### **§ 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, 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 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 or her vote, shall swear or affirm before such officers that he or she 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.

### **§ 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 or her disability or absence from the County, to any Judge entitled to sit in the Supreme Court, whose determination shall be final; and he or she 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 6. Voting machine recording tapes, voting machine certificate, and absentee ballots; delivery to Prothonotary; duties and composition of court; quorum.**

Section 6. Said presiding election officer of each election district, following the close of the polls on the day of the general election, shall deliver the copy of each voting machine recording tape containing the signatures of the election officers present at the opening and closing of the polls from each voting machine assigned to his or her district and one copy of the voting machine certificate, made and certified by law, together with the ballot box or ballot boxes containing absentee ballots and other papers required by law to be placed therein, to the Prothonotary of the Superior Court of the county, who at 10 o'clock a.m. on the second day after the election 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 determining the aggregate number of votes for each office given in the election districts of the county and for every person who received votes for each office.

Said presiding election officer shall also deliver a copy of each voting machine recording tape from each voting machine assigned to his or her district, one copy of the voting machine certificate and absentee ballots to the Department of Elections following close of the polls on the day of the general election, which at 10 o'clock a.m. on the second day after the election and shall appear at said Court with said voting machine recording tapes, voting machine certificates and absentee ballots for use, as necessary, in ascertaining the state of the election.

In case any voting machine recording tape, voting machine certificate, absentee ballot box, and/or any other document required by law shall not be produced, or in the case of a complaint under oath of fraud or mistake in any such tape or certificate, or in case fraud or mistake is evident on the face of any document completed by any election officer, the Court shall have the power to issue summary process against any election officer or any other person to bring such persons forthwith into Court with the election papers in their possession or control; and to open any absentee ballot box and take therefrom any paper contained therein, and to recount the absentee ballots; and to correct any fraud or mistake on the voting machine recording tape(s) or on any document completed by any election officers 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 or her 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 Judge; in Kent County of the resident Judge and an Judge designated by the President Judge; and in Sussex County of the resident Judge and a 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.

### **§ 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.

### **§ 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 or her, 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 or her 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 or her 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 or she 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 or her, and to bind him or her with sufficient surety, or, for want of bail, commit him or her for his or her 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 or her appeal pursuant to the rules and practices herein provided for.

### **§ 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.