

## CHAPTER 2: THE CONSTITUTION and CONSTITUTIONAL OFFICES

<http://delcode.delaware.gov/constitution/index.shtml>

The framework of customs, principles and laws by which each state and national government functions is called a constitution. Laws or statutes that form the specifics of government then fill in the body of that basic frame.



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### DELAWARE STATE SEAL

The original design of the seal was adopted in 1777 and was modified in 1793, 1847 and 1907. The seal includes a shield on which are represented a sheaf of wheat, an ear of corn and an ox, symbolizing farming in early Delaware. Flanking the shield is a farmer with a hoe, a rifleman, a ship under full sail and the state motto: "Liberty and Independence."

### History

The present revision of Delaware's constitution, written in 1897, is the fourth in the state's history. All revisions (1776, 1792, 1831, 1897) were written by constitutional conventions. The only referendum on a proposed constitution for Delaware was defeated in 1852.

The constitution of 1776 created the state of Delaware and included a weak executive office, a bicameral legislature and a judiciary. In 1792 a governor elected by the people was established, and in both

1831 and 1897 radical changes were made in the judiciary. Revisions made by the convention of 1897 included establishment of a Supreme Court, abolishment of payment of a county tax as a prerequisite for voting (an education requirement was added for voting – a voter must be able to read the Delaware constitution and be able to sign his name), provision for a board of pardons and for incorporation law, the latter destined to bring large revenues to the state. An interesting feature of this constitution was the prohibition of slavery contained in the 26<sup>th</sup> article.

Unlike the constitution of the United States, which lists each amendment clearly and separately, amendments to the Delaware constitution are written directly into the main body of the document in a printing following the final meeting of each two-year General Assembly. This practice makes study of amendments difficult because there is no comparison between the old and new versions. It can only be done through tedious comparisons of old printings with the new.

Far fewer amendments are passed than the number proposed. However, since 1897 more than 88 amendments have passed - of these 25 dealt with judicial reform, 19 involved the legislative branch (6 of these increased legislative pay), 11 dealt with election procedures, 9 with revenue and taxation and 6 with the executive branch. A 1975 amendment removed legislative pay from the constitution. The General Assembly immediately enacted for itself a pay raise from \$6,000 to \$9,000 per year.

## **Present Constitution**

Delaware's constitution begins with a preamble which recognizes all authority as being derived from the people. Its 17 articles are:

**Article 1: Bill of Rights** guarantees basic individual rights. Every state constitution contains a bill of rights. Many of these rights secured in the state constitution are guaranteed also by the first ten amendments to the constitution of the United States and are made applicable to the states by the 14th amendment. Contrary to the assumption of many people, not all of the United States' Bill of Rights is applicable to the states.

The 14th federal amendment<sup>1</sup> sets standards below which no statement may fall. The Supreme Court of the United States, interpreting the 14th amendment, has established that the terms "liberty" and "due process of law" guarantee to all citizens those rights provided by the first amendment, the freedom of religion, speech and press and the right of assembly; and by the fourth amendment, public trial with the assistance of counsel where the Supreme Court considers it essential; and by the eighth amendment, freedom from cruel and unusual punishment.

Some of the provisions which guarantee rights in federal courts but not in state or local courts are the right to grand jury indictment, the privilege against self incrimination in the 5th amendment, and the right to trial by jury guaranteed by the 6th and 7th amendments. There is no reason why a state should not extend the guarantees of personal and political freedom beyond the minimum required by the 14th amendment.

Rights protected by Delaware's constitution are substantive and procedural. Substantive rights that protect individuals are freedom of religion, assembly, press and security from search and seizure. Procedural rights that protect individuals who have been charged with violation of a law provide for trial by jury, the right to bail, freedom from double jeopardy, protection against indictment by information, the right to a speedy trial and the right to counsel.

**Article II: Legislature** vests legislative power in a bicameral General Assembly. The General Assembly makes the laws, sets the amount of money to be collected in taxes and decides how the money should be spent.

**Article III: Executive** vests power in a governor and states the powers, responsibilities and qualifications of the office. The line of succession to the office in the event of death or removal of the governor is lieutenant governor, secretary of state, attorney general, president pro tem of the Senate and speaker of the House. Qualifications for elected and appointed county officers are given, and dual office-holding is prohibited in certain positions.

**Article IV: Judiciary** provides for the composition, powers, and jurisdiction of the state courts and for the powers and limitations of the powers of judges.

**Article V: Elections** provides instructions and detailed regulations on voting. <sup>2</sup>

**Article VI: Impeachment and Treason** states that the grounds for impeachment are treason, bribery, and high crime or misdemeanor in office. The House has the sole power of impeachment by a two-thirds vote of its members; the Senate conducts the trial.

**Article VII: Pardons** may be granted by the governor on recommendation of the Board of Pardons after a hearing. Members of the board are the Chancellor of the Court of Chancery, Lieutenant Governor, Secretary of State, Treasurer and Auditor of Accounts.

**Article VIII: Revenue and Taxation** defines the power of the legislature to tax and sets some restrictions on spending. Taxes must be uniformly imposed but some property may be exempted. Revenue bills begin in the House, and borrowing (the bond bill) must be approved by a three-fourths vote in both the House and Senate.

**Article IX: Corporations** states that general incorporation laws must be passed by a two-thirds vote in each house, each corporation must have a Delaware agent and corporate shares owned by non-Delawareans may not be taxed by Delaware.

**Article X: Education** provides for the establishment and maintenance of compulsory, free, public educational facilities. Money for teachers' salaries and books must be equitably apportioned among the counties. Funds must be used only for public schools except for transportation of students from nonpublic, nonprofit schools.

**Article XI: Agriculture** establishes a state Board of Agriculture whose duties include disease prevention in plants and animals and securing immigration of industrious and useful settlers to the state.

**Article XII: Health** created the state Board of Health with powers and duties to be set by law. *This article has been repealed.*

**Article XIII: Local Option** gives each election district the right to decide whether alcoholic beverages may be sold in that district.

**Article XIV: Oath of Office** gives the form of the oath to be taken by public officers and members of the General Assembly.

**Article XV: Miscellaneous** provides for the following:

The chancellors, judges and attorney general shall be the conservators of peace throughout the state.

Receipts must be given for fees paid.

Court costs will not be paid by the defendant if found not guilty.

No term of office can be extended nor can pay be reduced after election or appointment.

Public officers hold office until their successors qualify.

Public officers must behave themselves in office.

Justices of the Peace and judges of lower courts may indict on information<sup>3</sup>; persons accused of vote fraud may also be indicted upon verification of information.

Supplies or services for governmental operations must be obtained by contract to the lowest bidder and members of departments must not receive any personal gain from the contract.

The constitution must be prefixed to every codification of state law.

No citizen shall be prevented from holding public office because of his or her sex.

**Article XVI: Amendments and Convention** establishes two methods for revising the constitution. The amendment procedure may be proposed in either the House or the Senate. A proposed

amendment must be approved by two-thirds of all the members. It must be published by local newspapers in each county three months before the next general election. After the election, the amendment must again be proposed and passed for the second time by two-thirds of the members of the House and Senate. The amendment then becomes part of the constitution replacing the former language. The governor's signature is not required.

A constitutional convention may be called when two-thirds of the members of both the House and Senate vote to submit the question to the voters. If a majority of the voters vote "yes" to holding a convention to revise the constitution, the General Assembly must make arrangements by the next session to provide for the election of delegates to the convention at the next general election. There must be 41 delegates; one from each representative district and two elected at large from each county.<sup>4</sup> Delegates convene in September the year after their election, and "the constitution as written by this convention shall stand without further review or approval by the governor, General Assembly or the people."<sup>5</sup>

**Article XVII: Continuity of Government** provides for continuity of state and local government in emergency from disaster caused by enemy attack.

## **Constitutional Revisions**

When speaking of the need for occasional constitutional revision, Thomas Jefferson once observed that he knew that "laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened...institutions must advance also and keep pace with the times." The National Municipal League in its model state constitution, from which this quote is taken, suggests that state constitutions which most closely follow the U.S. constitution in simplicity, forming a skeletal framework for government, are those that work best. Delaware's constitution is in need of major<sup>6</sup> revision because it is lengthy, containing much detail that is defined by statute; its language is archaic;<sup>7</sup> some of its content is obsolete or irrelevant;<sup>8</sup> and some provisions are in direct conflict with U.S. constitutional law.<sup>9</sup>

Efforts were made in 1967-1974 to make major revisions to the constitution by using the amendment method. Those efforts failed for many reasons including clerical errors, opposition to changes recommended by the Long Range Court's Planning Committee, and objections to making major changes by amendment rather than through constitutional convention. Since 1974, no further effort has been made to write a revised state constitution.

Sources:

Conrad, H.C. History of the State of Delaware

Constitution Revision Commission, side by side comparison and recordings of the deliberation of the commission, February 1970.

Delaware constitution 1897 with amended versions published in 1918, 1923, 1925, 1931, 1940, 1952, 1960, 1964 and 1975 Delaware Laws.

*The Delaware Constitution 1897-1997 – The First 100 Years*; Delaware Bar Association, Harvey Rubenstein, chair, Randy J. Holland, editor-in-chief, Delaware Supreme Court, provides extensive history and analysis, a copy of the 1897 constitution, and a list of amendments.

Legislative Council, Division of Research

Liberman, Rosbrow and Rubenstein - The Delaware Citizen Legislative Council

Long Range Court's Planning Committee report, February, 1973

Reed, H.C. and M.B. ed. - Delaware, a History of the First State

Scharf, J.T. - History of Delaware 1609-1888, 2 vol.

## Constitutional Offices

<http://legis.delaware.gov/>

Six state offices, 62 members of the General Assembly (21 in the Senate and 41 in the House), and four county row officers (Clerk of Peace, Register of Deeds, Register of Wills, Sheriff) are required by the state constitution to be elected by Delaware voters. The Governor, Lt. Governor and Insurance Commissioner are elected in a presidential election year while the Attorney General, Auditor & Treasurer are elected in the alternate two years.

OFFICE	QUALIFICATIONS/TERM	DUTIES	SALARY
General Assembly House	Citizen, resident of state 3 years, district 1 year 24 years old, 2-year term	Legislative	\$42,750 + \$7,334 expense allowance
Senate	27 years old, 4-year term		\$42,750 + \$7,334 expense allowance
Governor	Citizen 12 years, resident of state 6 years, 30 years old, 4-year term	Chief executive	\$132,500
Lieutenant Governor	Same as governor	Presides over Senate, succeeds if governor unable to serve, votes to break tie	\$ 76,250
Attorney General	Lawyer, 4-year term	Heads Dep't. of Justice, legal advisor to	\$140,950

		governor & state agencies, represents the state on all legal measures	
Auditor	4-year term	Audits state finances	\$105,350
Insurance Commissioner	4-year term	Supervises insurance	\$105,350
Treasurer	4-year term	Supervises financial affairs	\$106,166

The makeup and functions of the General Assembly are described in Chapter 3: The Legislature. The duties and functions of the Governor and the Lieutenant Governor are described in Chapter 4: The Executive Branch.

## **The Department of Justice**

<http://attorneygeneral.delaware.gov>

The Department of Justice is headed by the attorney general, a constitutional officer who is elected to a four-year term as the state's chief law enforcement and legal officer. Assisted by a chief deputy, he acts independently of other branches of government. The attorney general supervises the following divisions:

The **Administrative Division** provides administrative and operational support to all divisions of the department in order to permit them to perform their duties as efficiently and effectively as possible. It provides counseling, information and assistance in immigration and naturalization matters, performs extraditions and

processes gun permits through the state detectives assigned to the division.

The **Appeals Division**, with five attorneys, represents the state in criminal appeals in the Delaware Supreme Court and in the United States Supreme Court.

The **Civil Division**, with 68 attorneys headed by the state solicitor, is responsible for providing legal services to the Governor and the General Assembly, as well as to officers, departments, boards, agencies, commissions, and instrumentalities of state government. Among other responsibilities, the division provides formal and informal opinions of the attorney general, represents the state's interests in civil litigation, conducts administrative prosecutions, acts as counsel to administrative bodies, provides representation to the public in child support cases and in certain labor matters, and provides legislative drafting and review services for members of the General Assembly and state agencies.

The **Criminal Division**, with 81 attorneys headed by the state prosecutor, prosecutes violations of criminal law statewide so that the ends of justice are best served. The division provides counseling, referral, notification and information services to victims and witnesses of crime, and provides legal assistance to other law enforcement agencies.

The **Fraud Division**, with 13 attorneys, administers investigation and prosecution of civil and criminal cases in areas of security, antitrust, consumer fraud, arson, Medicaid fraud, and personal income.

## **The Office of Auditor of Accounts**

<http://www.auditor.delaware.gov/about.shtml>

The mission of the state auditor's office is to provide Delaware's citizens and government leaders with professional, independent evaluations of the state's fiscal accountability and public program performance. It assures that our state government is executing its management responsibilities in compliance with applicable laws,

rules, regulations and policies. The auditor also evaluates management controls and policies to make more efficient and effective use of public resources.

The auditor's office issues audit reports and reviews detailing their findings and recommendations for corrective action. These reports are sent to the auditee, the Governor, the attorney general, the secretary of finance, the state budget director, and the controller general. Reports are readily available via the website for all citizens to review.

In recent years, the auditor's office has focused a good deal of its resources on protecting all Delaware taxpayers with the creation of the FRAUD HOTLINE at

<http://www.auditor.delaware.gov/services/fwaTip.shtml>

or 1-800-553-7283. This confidential, toll-free hotline offers a venue for taxpayers to identify fraud, waste, or abuse in state government. To date, the office has a 100 percent conviction rate for all cases that have been referred to the attorney general's office for criminal prosecution.

#### Contact Information

Main office, Dover: (302) 739-4241;

Wilmington (302) 577-3870

Fraud hotline: 1-800-553-7283

Constituent/Media Relations: 1-302-739-5055

#### **Department of Insurance**

<http://www.delawareinsurance.gov>

The Department of Insurance is headed by the Insurance Commissioner who, unlike commissioners in most states, is elected directly by the voters, not appointed.

The **Insurance Department** protects the public interest by regulating the insurance industry, licensing agents and brokers, enforcing the Unfair Practices Act as it relates to insurance and by reducing the occurrence of insurance fraud. The office consists of four divisions with a staff of 67 plus contracts to 60 outside experts. The four divisions are:

**Bureau of Company Examination, Rehabilitation and Guaranty** ensures reliable insurance coverage at reasonable rates.

**Consumer Services and Investigation Division** protects the welfare of insurance consumers.

**Producer Licensing and Continuing Education Division** ensures competency and ethical conduct by insurance agents, brokers, limited agents, adjusters, appraisers and consultants.

**The Fraud Prevention Bureau** acts to reduce the cost of insurance fraud to consumers.

Consumer Services 1-800-282-8611

Fraud 1-800-632-5154

Elder Information 1-800-336-9500

Main number: 302-674-7300

## **Treasurer**

<http://treasurer.delaware.gov>

The treasurer, with a staff of 22, is the state's bonding officer, custodian and disbursing officer of state funds, trustee of the school fund, and administrator of the employee deferred compensation program. The treasurer is a member of the Cash Management Policy Board, Board of Pardons, Delaware Economic and Financial Advisory Council, Group Health Insurance Committee, Group Insurance

Committee, Deferred Compensation Council, Budget Commission, and Agricultural Lands Preservation Foundation.

(302-672-6700)

Notes:

<sup>1</sup> Article XIV, Section I: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>2</sup> In 1965, to conform to the U.S. Constitution, male was stricken as a requirement.

<sup>3</sup> Information for an indictment can come from police or any one who feels justified in bringing charges.

<sup>4</sup> The directions for selection of delegates are in violation of the U.S. Supreme Court ruling on apportionment, Roman v. Sincock (known as 'one man, one vote'). Since the U.S. Constitution and Supreme court decisions take precedence over state constitutions, 47 delegates would need to be elected rather than the 41 stated in the state constitution.

<sup>5</sup> No General Assembly since 1897 has passed a bill which would place, on the ballot, the question "Should a constitutional convention be called?"

<sup>6</sup> Examples are: Detailed direction under which lotteries, bingo and gambling can occur, much of the Judiciary Article is covered by statute or court rules and penalties for election offenses, and Article III (Local Option) is covered by statute.

<sup>7</sup> Sections remain giving the General Assembly authority to reorganize the Judiciary and abolish some courts. This took place in 1951 but the authorization still remains.

<sup>8</sup> Cabinet secretaries now manage boards in charge of Agriculture and Health, mandated in Articles XI & XII.

<sup>9</sup> Article X Section 3 Education stating "separate schools for white and colored children shall be maintained was deleted by amendment in 1995.