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**SENATE BILL NO. 1051**

Offered January 11, 2017

Prefiled January 6, 2017

A *BILL to amend and reenact §§ 24.2-410.1, 24.2-412, 24.2-413, 24.2-415.1, 24.2-418, and 24.2-653 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 24.2-411.3, and to repeal § 24.2-411.1 of the Code of Virginia, relating to voter registration at the Department of Motor Vehicles; opt-out voter registration.*

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 Referred to Committee on Privileges and Elections
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-410.1, 24.2-412, 24.2-413, 24.2-415.1, 24.2-418, and 24.2-653 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-411.3 as follows:**

**§ 24.2-410.1. Citizenship status; Department of Motor Vehicles to furnish lists of noncitizens.**

A. The Department of Motor Vehicles shall include on the application for a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card, or renewal thereof issued pursuant to the provisions of Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, as a predicate to offering a voter registration application pursuant to § 24.2-411.1, a statement asking the applicant if he is a United States citizen. ~~If the applicant indicates a noncitizen status, the Department of Motor Vehicles shall not offer that applicant the opportunity to apply for voter registration. If the applicant indicates that he is a United States citizen and that he wishes to register to vote or change his voter registration address, the statement that he is a United States citizen shall become part of the voter registration application offered to the applicant. Information on citizenship status shall not be a determinative factor for the issuance of any document pursuant to the provisions of Chapter 3 (§ 46.2-300 et seq.) of Title 46.2.~~

~~B. Additionally, the~~ The Department of Motor Vehicles shall furnish monthly to the Department of Elections a complete list of all persons who have indicated a noncitizen status to the Department of Motor Vehicles in obtaining a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card, or renewal thereof issued pursuant to the provisions of Chapter 3 (§ 46.2-300 et seq.) of Title 46.2. The Department of Elections shall transmit the information from the list to the appropriate general registrars. Information in the lists shall be confidential and available only for official use by the Department of Elections and general registrars.

~~C. B.~~ For the purposes of this section, the Department of Motor Vehicles is not responsible for verifying the claim of any applicant who indicates United States citizen status when applying for a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card, or renewal thereof issued pursuant to the provisions of Chapter 3 (§ 46.2-300 et seq.) of Title 46.2.

**§ 24.2-411.3. Department of Motor Vehicles.**

A. *The Department of Motor Vehicles shall electronically transmit to the Department of Elections, in accordance with the standards set by the State Board, the information prescribed in subsection B for any person coming into an office of the Department of Motor Vehicles or accessing its website in order to (i) apply for, replace, or renew a driver's license; (ii) apply for, replace, or renew a special identification card; or (iii) change an address on existing driver's license or special identification card, if the Department of Motor Vehicles records indicate that such person (a) is a United States citizen, (b) is 17 or more years old, and (c) at the time of such transaction does not decline to have his information transmitted to the Department of Elections for voter registration purposes.*

B. *For each person described in subsection A, the Department of Motor Vehicles shall electronically transmit, in accordance with the standards set by the State Board, the following information:*

1. Full name;
2. Date of birth;
3. Gender;
4. Residence address;
5. Citizenship status;
6. Driver's license number and social security number;
7. Digital signature;

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59 8. Telephone number and email address, if available;

60 9. An affirmation by the person, subject to felony penalties for making false statements pursuant to  
61 § 24.2-1016, that he meets all voter eligibility requirements, including those related to felony convictions  
62 and adjudications of mental incapacitation; and

63 10. Any additional information as may be required by the State Board.

64 C. Each person coming into an office of the Department of Motor Vehicles or accessing its website  
65 as provided in subsection A shall be presented with the option to decline to have his information  
66 transmitted to the Department of Elections for voter registration purposes. The Department of Motor  
67 Vehicles shall not transmit the information of any person who so declines.

68 The option to decline shall be accompanied by a statement that intentionally making a materially  
69 false statement during the transaction and that voting more than once in any election in the same or  
70 different jurisdictions are both punishable under Virginia law as a felony.

71 D. The Department of Elections shall use the information transmitted to determine whether a person  
72 already has a registration record in the voter registration system.

73 1. For any person who does not yet have a registration record in the voter registration system, the  
74 Department of Elections shall verify, in accordance with the standards set by the State Board, that the  
75 person meets all voter eligibility requirements and, if so finding, shall transmit the information to the  
76 appropriate general registrar. The general registrar shall register such person in accordance with the  
77 provisions of this chapter.

78 The Department of Elections shall hold for transmittal the information of a person under the age of  
79 18 who otherwise meets all voter eligibility requirements but fails to qualify for advance registration  
80 under § 24.2-403.

81 2. For any person who has a registration record in the voter registration system, the Department of  
82 Elections shall use the information transmitted to update the voter's registration records. If the  
83 information indicates that the voter has moved to another general registrar's jurisdiction within the  
84 Commonwealth, the Department of Elections shall transmit the information and the registration record  
85 to the appropriate general registrar, who shall treat such as a request for transfer and process it in  
86 accordance with the provisions of this chapter.

87 3. The Department of Elections and the general registrars shall not register any person who does not  
88 satisfy all voter eligibility requirements.

89 **§ 24.2-412. Other locations and times for voter registration.**

90 A. In addition to voter registration locations provided for in §§ 24.2-411, ~~24.2-411.1, and~~ 24.2-411.2,  
91 and 24.2-411.3, opportunities for voter registration may be provided at other agency offices, business  
92 offices, establishments and occasional sites open to the general public, and shall be provided as required  
93 by this section. Voter registration shall be conducted only in public places open to the general public  
94 and at preannounced hours. Assistant registrars should serve during such hours and at such places. The  
95 conduct of voter registration by the general registrar or an assistant registrar in public places at  
96 preannounced hours shall not be deemed solicitation of registration.

97 B. The general registrar is authorized to set within his jurisdiction ongoing locations and times for  
98 registration in local or state government agency offices or in businesses or other establishments open to  
99 the general public, subject to the approval of, and pursuant to an agreement with, the head of the  
100 government agency, the owner or manager of the business or establishment, or the designee of either.  
101 The agreement shall provide for the appointment of employees of the agency, business, or establishment  
102 to serve as assistant registrars and shall be in writing and approved by the local electoral board prior to  
103 implementation.

104 Employees of the agency, business, or establishment who are appointed to serve as assistant registrars  
105 may be nonresidents of the jurisdiction they are appointed to serve, provided that (i) they are qualified  
106 voters of the Commonwealth and (ii) they serve only at their place of employment within the  
107 jurisdiction they are appointed to serve.

108 C. The general registrar or electoral board may set additional occasional sites and times for  
109 registration within the jurisdiction. A multi-family residential building not usually open to the public  
110 may be used as an occasional registration site so long as the public has free access to the site during the  
111 time for registering voters.

112 **§ 24.2-413. Accessible registration locations.**

113 The office of the general registrar, and each agency, business, and establishment set for registration  
114 pursuant to §§ ~~24.2-411.1, 24.2-411.2 and 24.2-411.3~~ and subsection B of § 24.2-412 shall be accessible  
115 as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting  
116 Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with  
117 Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The Department shall provide  
118 instructions to the Department of Motor Vehicles, state-designated voter registration agencies, local  
119 electoral boards and general registrars to assist them in complying with the requirements of the Acts.

120 In the selection of additional registration sites as provided in § 24.2-412, consideration shall be given

121 to accessibility so that a reasonable number of accessible sites are provided and the requirements of the  
122 above cited Acts are met.

123 **§ 24.2-415.1. Persons authorized to receive voter registration applications.**

124 A. Any designated employee of an office of the Department of Motor Vehicles, a state-designated  
125 voter registration agency, or Armed Forces recruitment office shall be authorized to receive a voter  
126 registration application when hand delivered by the applicant during the hours that the office is open.

127 B. The registration date for a valid voter registration application that has been hand delivered is the  
128 date when received by any general registrar or any person authorized to receive voter registration  
129 applications pursuant to subsection A of this section.

130 **§ 24.2-418. Application for registration.**

131 A. Each applicant to register shall provide, subject to felony penalties for making false statements  
132 pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless  
133 physically disabled, he shall sign the application. The application to register shall be only on a form or  
134 forms prescribed by the State Board.

135 The form of the application to register shall require the applicant to provide the following  
136 information: full name; gender; date of birth; social security number, if any; whether the applicant is  
137 presently a United States citizen; address of residence in the precinct; place of last previous registration  
138 to vote; and whether the applicant has ever been adjudicated incapacitated and disqualified to vote or  
139 convicted of a felony, and if so, whether the applicant's right to vote has been restored. The form shall  
140 contain a statement that whoever votes more than once in any election in the same or different  
141 jurisdictions is guilty of a Class 6 felony. Unless directed by the applicant or as permitted in §  
142 ~~24.2-411.1~~ or 24.2-411.2 or 24.2-411.3, the registration application shall not be pre-populated with  
143 information the applicant is required to provide.

144 B. The form shall permit any individual, as follows, or member of his household, to furnish, in  
145 addition to his residence street address, a post office box address located within the Commonwealth to  
146 be included in lieu of his street address on the lists of registered voters and persons who voted, which  
147 are furnished pursuant to §§ 24.2-405 and 24.2-406, on voter registration records made available for  
148 public inspection pursuant to § 24.2-444, or on lists of absentee voter applicants furnished pursuant to  
149 § 24.2-706 or 24.2-710. The voter shall comply with the provisions of § 24.2-424 for any change in the  
150 post office box address provided under this subsection.

151 1. Any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5 U.S.C. § 8331(20),  
152 but excluding officers whose duties relate to detention as defined in 5 U.S.C. § 8331(20);

153 2. Any party granted a protective order issued by or under the authority of any court of competent  
154 jurisdiction, including but not limited to courts of the Commonwealth of Virginia;

155 3. Any party who has furnished a signed written statement by the party that he is in fear for his  
156 personal safety from another person who has threatened or stalked him, accompanied by evidence that  
157 he has filed a complaint with a magistrate or law-enforcement official against such other person;

158 4. Any party participating in the address confidentiality program pursuant to § 2.2-515.2; and

159 5. Any active or retired federal or Virginia justice or judge and any active or retired attorney  
160 employed by the United States Attorney General or Virginia Attorney General.

161 C. If the applicant formerly resided in another state, the general registrar shall send the information  
162 contained in the applicant's registration application to the appropriate voter registration official or other  
163 authority of another state where the applicant formerly resided, as prescribed in subdivision 15 of  
164 § 24.2-114.

165 **§ 24.2-653. Voter whose name does not appear on pollbook or who is marked as having voted;  
166 handling of provisional ballots; ballots cast after normal close of polls due to court order  
167 extending polling hours.**

168 A. When a person offers to vote pursuant to § 24.2-652 and the general registrar is not available or  
169 cannot state that the person is registered to vote, then such person shall be allowed to vote by printed  
170 ballot in the manner provided in this section. This procedure shall also apply when required by  
171 § 24.2-643 or 24.2-651.1.

172 Such person shall be given a printed ballot and provide, subject to the penalties for making false  
173 statements pursuant to § 24.2-1016, on a green envelope supplied by the Department of Elections, the  
174 identifying information required on the envelope, including the last four digits of his social security  
175 number, if any, full name including the maiden or any other prior legal name, date of birth, complete  
176 address, and signature. Such person shall be asked to present one of the forms of identification specified  
177 in subsection B of § 24.2-643. The officers of election shall note on the green envelope whether or not  
178 the voter has presented one of the specified forms of identification. The officers of election shall enter  
179 the appropriate information for the person in the precinct provisional ballots log in accordance with the  
180 instructions of the State Board but shall not enter a consecutive number for the voter on the pollbook  
181 nor otherwise mark his name as having voted. The officers of election shall provide an application for

182 registration to the person offering to vote in the manner provided in this section.

183 The voter shall then, in the presence of an officer of election, but in a secret manner, mark the  
184 printed ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the  
185 ballot shall then promptly be placed in the ballot container by an officer of election.

186 An officer of election, by a written notice given to the voter, shall (i) inform him that a  
187 determination of his right to vote shall be made by the electoral board, (ii) advise the voter of the  
188 beginning time and place for the board's meeting and of the voter's right to be present at that meeting,  
189 and (iii) inform a voter voting provisionally when required by § 24.2-643 that he may submit a copy of  
190 one of the forms of identification specified in subsection B of § 24.2-643 to the electoral board by  
191 facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial  
192 mail delivery, to be received by the electoral board no later than noon on the third day after the  
193 election. At the meeting, the voter may request an extension of the determination of the provisional vote  
194 in order to provide information to prove that the voter is entitled to vote in the precinct pursuant to  
195 § 24.2-401. The electoral board shall have the authority to grant such extensions which it deems  
196 reasonable to determine the status of a provisional vote.

197 B. The provisional votes submitted pursuant to subsection A, in their unopened envelopes, shall be  
198 sealed in a special envelope marked "Provisional Votes," inscribed with the number of envelopes  
199 contained therein, and signed by the officers of election who counted them. All provisional votes  
200 envelopes shall be delivered either (i) to the clerk of the circuit court who shall deliver all such  
201 envelopes to the secretary of the electoral board or (ii) to the general registrar in localities in which the  
202 electoral board has directed delivery of election materials to the general registrar pursuant to § 24.2-668.

203 The electoral board shall meet on the day following the election and determine whether each person  
204 having submitted such a provisional vote was entitled to do so as a qualified voter in the precinct in  
205 which he offered the provisional vote. If the board is unable to determine the validity of all the  
206 provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot  
207 an extension as provided in subsection A, the meeting shall stand adjourned, not to exceed seven  
208 calendar days from the date of the election, until the board has determined the validity of all provisional  
209 ballots offered in the election.

210 One authorized representative of each political party or independent candidate in a general or special  
211 election or one authorized representative of each candidate in a primary election shall be permitted to  
212 remain in the room in which the determination is being made as an observer so long as he does not  
213 participate in the proceedings and does not impede the orderly conduct of the determination. Each  
214 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each  
215 representative, who is not himself a candidate or party chairman, shall present to the electoral board a  
216 written statement designating him to be a representative of the party or candidate and signed by the  
217 county or city chairman of his political party, the independent candidate, or the primary candidate, as  
218 appropriate. If the county or city chairman is unavailable to sign such a written designation, such a  
219 designation may be made by the state or district chairman of the political party. However, no written  
220 designation made by a state or district chairman shall take precedence over a written designation made  
221 by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature,  
222 may be photocopied and such photocopy shall be as valid as if the copy had been signed.

223 Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),  
224 attendance at meetings of the electoral board to determine the validity of provisional ballots shall be  
225 permitted only for the authorized representatives provided for in this subsection, for the persons whose  
226 provisional votes are being considered and their representative or legal counsel, and for appropriate staff  
227 and legal counsel for the electoral board.

228 If the electoral board determines that such person was not entitled to vote as a qualified voter in the  
229 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not  
230 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope  
231 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be  
232 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the  
233 Department of Elections or the voter presents proof that indicates the voter submitted an application for  
234 registration to the Department of Motor Vehicles or other a state-designated voter registration agency or  
235 the voter's information was transmitted by the Department of Motor Vehicles to the Department of  
236 Elections pursuant to § 24.2-411.3 prior to the close of registration pursuant to § 24.2-416 and the  
237 registrar determines that the person was qualified for registration based upon the application for  
238 registration submitted by the person pursuant to subsection A. The general registrar shall notify in  
239 writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional vote  
240 was not counted.

241 If the electoral board determines that such person was entitled to vote, the name of the voter shall be  
242 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and  
243 the ballot placed in a ballot container without any inspection further than that provided for in

244 § 24.2-646.

245 On completion of its determination, the electoral board shall proceed to count such ballots and certify  
246 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No  
247 adjustment shall be made to the statement of results for the precinct in which the person offered to vote.  
248 However, any voter who cast a provisional ballot and is determined by the electoral board to have been  
249 entitled to vote shall have his name included on the list of persons who voted that is submitted to the  
250 Department of Elections pursuant to § 24.2-406.

251 The certification of the results of the count together with all ballots and envelopes, whether open or  
252 unopened, and other related material shall be delivered by the electoral board to the clerk of the circuit  
253 court and retained by him as provided for in §§ 24.2-668 and 24.2-669.

254 C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any  
255 ballots marked after the normal polling hours by persons who were not already in line at the time the  
256 polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under  
257 this section. The officers of election shall mark the green envelope for each such provisional ballot to  
258 indicate that it was cast after normal polling hours due to the court order, and when preparing the  
259 materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any  
260 provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as  
261 provided in subsection B; however, the counted and uncounted provisional ballots marked after the  
262 normal polling hours shall be kept separate from all other ballots and recorded in a separate provisional  
263 ballots pollbook. The Department of Elections shall provide instructions to the electoral boards for the  
264 handling and counting of such provisional ballots pursuant to this section.

265 **2. That § 24.2-411.1 of the Code of Virginia is repealed.**