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SENATE BILL NO. 1253

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on January 24, 2017)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact §§ 24.2-404, 24.2-405, 24.2-406, 24.2-444, 24.2-611, 24.2-643, and 46.2-208.1 of the Code of Virginia, relating to voter identification; photographs contained in electronic pollbook.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-404, 24.2-405, 24.2-406, 24.2-444, 24.2-611, 24.2-643, and 46.2-208.1 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-404. Duties of Department of Elections.

A. The Department of Elections shall provide for the continuing operation and maintenance of a central recordkeeping system, the Virginia voter registration system, for all voters registered in the Commonwealth.

In order to operate and maintain the system, the Department shall:

1. Maintain a complete, separate, and accurate record of all registered voters in the Commonwealth.
2. Require the general registrars to enter the names of all registered voters into the system and to change or correct registration records as necessary.

3. Provide to each general registrar, (i) voter confirmation documents for newly registered voters and for notice to registered voters on the system of changes and corrections in their registration records and polling places and (ii) voter photo identification cards containing the voter's photograph and signature for free for those voters who do not have one of the forms of identification specified in subsection B of § 24.2-643. The Department shall promulgate rules and regulations authorizing each general registrar to obtain a photograph and signature of a voter who does not have one of the forms of identification specified in subsection B of § 24.2-643 for the purpose of providing such voter a voter photo identification card containing the voter's photograph and signature. The Department shall provide each general registrar with the equipment necessary to obtain a voter's signature and photograph and no general registrar shall be required to purchase such equipment at his own expense. Photographs and signatures obtained by a general registrar shall be submitted to the Department, *and the Department shall make such photographs available to the general registrars for download to electronic pollbooks.* The Department may contract with an outside vendor for the production and distribution of voter photo identification cards.

4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated, (v) is known not to be a United States citizen by reason of reports from the Department of Motor Vehicles pursuant to § 24.2-410.1 or from the Department of Elections based on information received from the Systematic Alien Verification for Entitlements Program (SAVE Program) pursuant to subsection E, or (vi) is otherwise no longer qualified to vote as may be provided by law. Such action shall be taken no later than 30 days after notification from the Department. The Department shall promptly provide the information referred to in this subdivision, upon receiving it, to general registrars.

5. Retain on the system for four years a separate record for registered voters whose names have been deleted, with the reason for deletion.

6. Retain on the system permanently a separate record for information received regarding deaths, felony convictions, and adjudications of incapacity pursuant to §§ 24.2-408 through 24.2-410.

7. Provide to each general registrar, at least 16 days prior to a general or primary election and three days prior to a special election, an alphabetical list of all registered voters in each precinct or portion of a precinct in which the election is being held in the county, city, or town. These precinct lists shall be used as the official lists of qualified voters and shall constitute the pollbooks. The Department shall provide instructions for the division of the pollbooks and precinct lists into sections to accommodate the efficient processing of voter lines at the polls. Prior to any general, primary, or special election, the Department shall provide any general registrar, upon his request, with a separate electronic list of all registered voters in the registrar's county or city. If electronic pollbooks are used in the locality or electronic voter registration inquiry devices are used in precincts in the locality, the Department shall provide a regional or statewide list of registered voters to the general registrar of the locality. The Department shall determine whether regional or statewide data is provided. Neither the pollbook nor the regional or statewide list of registered voters shall include the day and month of birth of the voter, but shall include the voter's year of birth.

60 8. Acquire by purchase, lease, or contract equipment necessary to execute the duties of the
61 Department.

62 9. Use any source of information that may assist in carrying out the purposes of this section. All
63 agencies of the Commonwealth shall cooperate with the Department in procuring and exchanging
64 identification information for the purpose of maintaining the voter registration system. The Department
65 may share any information that it receives from another agency of the Commonwealth with any Chief
66 Election Officer of another state for the maintenance of the voter registration system.

67 10. Cooperate with other states and jurisdictions to develop systems to compare voters, voter history,
68 and voter registration lists to ensure the accuracy of the voter registration rolls, to identify voters whose
69 addresses have changed, to prevent duplication of registration in more than one state or jurisdiction, and
70 to determine eligibility of individuals to vote in Virginia.

71 11. Reprint and impose a reasonable charge for the sale of any part of Title 24.2, lists of precincts
72 and polling places, statements of election results by precinct, and any other items required of the
73 Department by law. Receipts from such sales shall be credited to the Board for reimbursement of
74 printing expenses.

75 12. *Enter into an agreement with the Department of Motor Vehicles and an agreement with the*
76 *credentials vendor of the Department of Motor Vehicles for the purpose of electronically requesting and*
77 *receiving a registered voter's photograph stored in the voter's Department of Motor Vehicles record. The*
78 *Department shall make such photographs available to the general registrars for download to electronic*
79 *pollbooks.*

80 B. The Department shall be authorized to provide for the production, distribution, and receipt of
81 information and lists through the Virginia voter registration system by any appropriate means including,
82 but not limited to, paper and electronic means. The Virginia Freedom of Information Act (§ 2.2-3700 et
83 seq.) shall not apply to records about individuals maintained in this system.

84 C. The State Board shall institute procedures to ensure that each requirement of this section is
85 fulfilled. As part of its procedures, the State Board shall provide that the general registrar shall mail
86 notice of any cancellation pursuant to clause (v) of subdivision A 4 to the person whose registration is
87 cancelled.

88 D. The State Board shall promulgate rules and regulations to ensure the uniform application of the
89 law for determining a person's residence.

90 E. The Department shall apply to participate in the Systematic Alien Verification for Entitlements
91 Program (SAVE Program) operated by U.S. Citizenship and Immigration Services of the U.S.
92 Department of Homeland Security for the purposes of verifying that voters listed in the Virginia voter
93 registration system are United States citizens. Upon approval of the application, the Department shall
94 enter into any required memorandum of agreement with U.S. Citizenship and Immigration Services. The
95 State Board shall promulgate rules and regulations governing the use of the immigration status and
96 citizenship status information received from the SAVE Program.

97 F. The Department shall report annually by August 1 for the preceding 12 months ending June 30 to
98 the Committees on Privileges and Elections on each of its activities undertaken to maintain the Virginia
99 voter registration system and the results of those activities. The Department's report shall encompass
100 activities undertaken pursuant to subdivisions A 9 and 10 and subsection E and pursuant to
101 §§ 24.2-404.3, 24.2-404.4, 24.2-408, 24.2-409, 24.2-409.1, 24.2-410, 24.2-410.1, 24.2-427, and 24.2-428.

102 **§ 24.2-405. Lists of registered voters.**

103 A. The Department of Elections shall provide, at a reasonable price, lists of registered voters for their
104 districts to (i) courts of the Commonwealth and the United States for jury selection purposes, (ii)
105 candidates for election or political party nomination to further their candidacy, (iii) political party
106 committees or officials thereof for political purposes only, (iv) political action committees that have filed
107 a current statement of organization with the Department of Elections pursuant to § 24.2-949.2, or with
108 the Federal Elections Commission pursuant to federal law, for political purposes only, (v) incumbent
109 officeholders to report to their constituents, (vi) nonprofit organizations that promote voter participation
110 and registration for that purpose only, and (vii) commissioners of the revenue, as defined in § 58.1-3100,
111 and treasurers, as defined in § 58.1-3123, for tax assessment, collection, and enforcement purposes. The
112 lists shall be furnished to no one else and used for no other purpose. However, the Department of
113 Elections is authorized to furnish information from the voter registration system to general registrars for
114 their official use and to the Department of Motor Vehicles and other appropriate state agencies for
115 maintenance of the voter registration system, and to the Chief Election Officers of other states for
116 maintenance of voter registration systems.

117 B. The Department of Elections shall furnish, at a reasonable price, lists of the addresses of
118 registered voters for their localities to local government census liaisons and their staffs for the sole
119 purpose of providing address information to the United States Bureau of the Census. The Department of
120 Elections shall also furnish, at a reasonable price, such lists to the Clerk of the Senate and the Clerk of
121 the House of Delegates for the sole purpose of maintaining a database of constituent addresses for the

General Assembly. The information authorized under this subsection shall be furnished to no other person and used for no other purpose. No list furnished under this subsection shall contain the name of any registered voter. For the purpose of this subsection, the term "census liaison" shall have the meaning provided in 13 U.S.C. § 16.

C. In no event shall any list furnished under this section contain the social security number, or any part thereof, of any registered voter except a list furnished to a court of the Commonwealth or of the United States for jury selection purposes, a commissioner of the revenue or a treasurer for tax assessment, collection, and enforcement purposes, or to the Chief Election Officer of another state permitted to use social security numbers, or any parts thereof, that provides for the use of such numbers on applications for voter registration in accordance with federal law, for maintenance of voter registration systems.

D. Any list furnished under subsection A shall contain the post office box address in lieu of the residence street address for any individual who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address pursuant to subsection B of § 24.2-418.

E. No list furnished under this section shall contain the photograph of any registered voter.

§ 24.2-406. Lists of persons voting at elections.

A. The Department of Elections shall furnish, at a reasonable price, lists of persons who voted at any primary, special, or general election held in the four preceding years to (i) candidates for election or political party nomination to further their candidacy, (ii) political party committees or officials thereof for political purposes only, (iii) political action committees that have filed a current statement of organization with the Department of Elections pursuant to § 24.2-949.2 or with the Federal Elections Commission pursuant to federal law, for political purposes only, (iv) incumbent officeholders to report to their constituents, and (v) members of the public or a nonprofit organization seeking to promote voter participation and registration by means of a communication or mailing without intimidation or pressure exerted on the recipient, for that purpose only. Such lists shall be furnished to no one else and shall be used only for campaign and political purposes and for reporting to constituents. Unless such lists are not available due to a pending recount or election contest, the general registrar shall submit the list of persons who voted to the Department of Elections within 14 days after each election. The general registrars of localities using nonelectronic pollbooks shall submit the list of persons who voted to the Department of Elections within seven days after the pollbooks are released from the possession of the clerk of court. The Department of Elections shall make available such lists no later than seven days after receiving them from the general registrar.

B. The Department of Elections shall furnish to the Chief Election Officer of another state, on request and at a reasonable price, lists of persons who voted at any primary, special, or general election held for the four preceding years. Such lists shall be used only for the purpose of maintenance of voter registration systems and shall be transmitted in accordance with security policies approved by the State Board of Elections.

C. In no event shall any list furnished under this section contain the social security number, or any part thereof, of any registered voter, except for a list furnished to the Chief Election Officer of another state permitted to use social security numbers, or any parts thereof, that provides for the use of such numbers on applications for voter registration in accordance with federal law, for maintenance of voter registration systems.

D. Any list furnished under this section shall contain the post office box address in lieu of the residence street address for any individual who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address pursuant to subsection B of § 24.2-418.

E. No list furnished under this section shall contain the photograph of any registered voter.

§ 24.2-444. Duties of general registrars and Department of Elections as to voter registration records; public inspection; exceptions.

A. Registration records shall be kept and preserved by the general registrar in compliance with §§ 2.2-3803, 2.2-3808, and 24.2-114. The Department shall provide to each general registrar, for each precinct in his county or city, lists of registered voters for inspection. The lists shall contain the name, address, year of birth, gender and all election districts applicable to each registered voter. The lists shall be opened to public inspection at the office of the general registrar when the office is open for business. New lists shall be provided not less than once each year to all localities except those in which an updated list is made available electronically for public inspection, and supplements containing additions, deletions, and changes shall be provided not less than (i) weekly during the 60 days preceding any general election and (ii) monthly at other times. Notwithstanding any other provision of law regarding the retention of records, upon receipt of any new complete list, the general registrar shall destroy the obsolete list and its supplements. The Department shall provide to each general registrar lists of persons denied registration for public inspection. Such lists may be provided electronically through the Virginia voter registration system and produced in whole or in part upon a request for public inspection.

183 B. The general registrars shall maintain for at least two years and shall make available for public
184 inspection and copying and, where available, photocopying at a reasonable cost, all records concerning
185 the implementation of programs and activities conducted for the purpose of ensuring the accuracy and
186 currency of the registration records pursuant to §§ 24.2-427, 24.2-428 and 24.2-428.1, including lists of
187 the names and addresses of all persons to whom notices are sent, and information concerning whether
188 each person has responded to the notice as of the date that inspection of the records is made.

189 C. No list provided by the Department under subsection A nor any record made available for public
190 inspection under subsection B shall contain any of the following information: (i) an individual's social
191 security number, or any part thereof; (ii) the residence address of an individual who has furnished a post
192 office box address in lieu of his residence address as authorized by subsection B of § 24.2-418; (iii) the
193 declination by an individual to register to vote and related records; (iv) the identity of a voter
194 registration agency through which a particular voter is registered; or (v) the day and month of birth of
195 an individual. No voter registration records other than the lists provided by the Department under
196 subsection A and the records made available under subsection B shall be open to public inspection.

197 *D. No list furnished under this section shall contain the photograph of any registered voter.*

198 **§ 24.2-611. Form and signing of pollbooks; records of persons voting; electronic pollbooks.**

199 A. The following oath shall be on a form prescribed by the State Board, administered to all officers
200 of election, and kept by the officers of election with the pollbook:

201 "I do solemnly swear (or affirm) that I will perform the duties for this election according to law and
202 the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in
203 conducting this election."

204 The oath shall be administered to each officer of election by the general registrar, a member of the
205 electoral board, or an officer of election designated by the general registrar and secretary of the electoral
206 board, who shall be so identified on the form. The oath shall be signed by each officer of election and
207 the person administering the oath. The pollbook shall be marked to identify the election for which it is
208 used.

209 B. The State Board shall provide the pollbook pursuant to subdivision A 7 of § 24.2-404. The
210 pollbook shall (i) provide a space for the officer of election to record the name and consecutive number
211 of the voter at the time he offers to vote and (ii) be retained in accordance with the provisions
212 governing pollbooks in this title. The State Board shall make available a numerical check sheet required
213 to be used with pollbooks in printed form to determine the consecutive number to be recorded with the
214 name of the voter by the officer of election. In electronic pollbooks, the consecutive number shall be
215 entered automatically when the officer of election records that the voter has voted. When the name and
216 number of the last qualified voter have been entered on the pollbook, the officer of election responsible
217 for that pollbook shall sign a statement on the check sheet, or on a separate form if an electronic
218 pollbook is used, certifying the number of qualified registrants who have voted. The State Board shall
219 provide instructions to the local electoral boards, general registrars, and officers of election for the
220 conduct of the election and for procedures for entering a voting record for each voter and recording each
221 voter's name, including voters unable to enter the polling place, and for verifying the accurate entry of
222 the voting record for each registrant on the Virginia Voter Registration System. Notwithstanding any
223 other provision of this title, for any election held on or after November 1, 2010, all pollbooks provided
224 by the State Board shall be in electronic form only.

225 *C. Every locality shall include in its electronic pollbooks the photographs of registered voters
226 received by the Department and made available for download pursuant to subdivisions A 3 and 12 of
227 § 24.2-404. The general registrars shall follow the procedures set by the State Board for the secure
228 download of such photographs.*

229 *Such photographs shall be accessible by the officer of election responsible for the pollbook. Except
230 for official use, no photograph contained in the electronic pollbook shall be disclosed to any party.*

231 D. The State Board shall incorporate safeguards to assure that the records of the election, including
232 the pollbook, voter count sheets, or other alternative records, will provide promptly an accurate and
233 secure record of those who have voted.

234 ~~D.~~ E. Any locality may expend its own funds to purchase electronic pollbooks that have been
235 approved for use in elections by the State Board.

236 ~~E.~~ F. In the event that the electronic pollbooks for a precinct fail to operate properly and no
237 alternative voter list or pollbook is available, the officers of election, in accordance with the instructions
238 and materials approved by the State Board, shall (i) maintain a written list of the persons voting and (ii)
239 provide to each person voting a provisional ballot to be cast as provided in § 24.2-653.

240 **§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification.**

241 A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers
242 of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the
243 voting booth and furnishing an official ballot to him.

244 B. An officer of election shall ask the voter for his full name and current residence address and the

voter may give such information orally or in writing. The officer of election shall repeat, in a voice audible to party and candidate representatives present, the full name and address provided by the voter. The officer shall ask the voter to present any one of the following forms of identification: his valid Virginia driver's license, his valid United States passport, or any other photo identification issued by the Commonwealth, one of its political subdivisions, or the United States; any valid student identification card containing a photograph of the voter and issued by any institution of higher education located in the Commonwealth or any private school located in the Commonwealth; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

However, if the electronic pollbook contains the photograph of the voter received from the Department of Elections, the officer shall access the photograph for that voter and the voter shall not be required to present one of the forms of identification specified in this subsection.

Any voter who does not show one of the forms of identification specified in this subsection *or does not have a photograph in the electronic pollbook* shall be offered a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall provide an ID-ONLY provisional ballot envelope that requires no follow-up action by the registrar or electoral board other than matching submitted identification documents from the voter for the electoral board to make a determination on whether to count the ballot.

If the voter presents one of the forms of identification ~~listed above~~ *specified in this subsection or has a photograph in the electronic pollbook*, if his name is found on the pollbook in a form identical to or substantially similar to the name on the presented form of identification and the name provided by the voter, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Each voter whose name has been marked on the pollbooks as present to vote and entitled to a ballot shall remain in the presence of the officers of election in the polling place until he has voted. If a line of voters who have been marked on the pollbooks as present to vote forms to await entry to the voting booths, the line shall not be permitted to extend outside of the room containing the voting booths and shall remain under observation by the officers of election.

A voter may be accompanied into the voting booth by his child age 15 or younger.

C. If the current residence address provided by the voter is different from the address shown on the pollbook, the officer of election shall furnish the voter with a change of address form prescribed by the State Board. Upon its completion, the voter shall sign the prescribed form, subject to felony penalties for making false statements pursuant to § 24.2-1016, which the officer of election shall then place in an envelope provided for such forms for transmission to the general registrar who shall then transfer or cancel the registration of such voter pursuant to Chapter 4 (§ 24.2-400 et seq.).

D. At the time the voter is asked his full name and current residence address, the officer of election shall ask any voter for whom the pollbook indicates that an identification number other than a social security number is recorded on the Virginia voter registration system if he presently has a social security number. If the voter is able to provide his social security number, he shall be furnished with a voter registration form prescribed by the State Board to update his registration information. Upon its completion, the form shall be placed by the officer of election in an envelope provided for such forms for transmission to the general registrar. Any social security numbers so provided shall be entered by the general registrar in the voter's record on the voter registration system.

§ 46.2-208.1. Electronic transfer of information in Department records for voter registration purposes.

A. Notwithstanding the provisions of § 46.2-208, the Commissioner shall provide for the electronic transfer of information from the Department's records to the State Board of Elections and the general registrars for the purpose of voter registration as required by Chapter 4 (§ 24.2-400 et seq.) of Title 24.2, including but not limited to the purposes of § 24.2-410.1. Except as provided in §§ 24.2-404 and 24.2-444, the State Board of Elections and the general registrars shall not make information provided by the Department available to the public and shall not provide such information to any third party.

B. The Department shall establish a method by which the Department's credentials vendor and the Department of Elections may electronically share a registered voter's photograph, including the date such image was created, stored in the voter's Department of Motor Vehicles record.

2. That the provisions of this act shall become effective on July 1, 2018.