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## HOUSE BILL NO. 1904

Offered January 9, 2019

Prefiled January 4, 2019

*A BILL to amend and reenact §§ 24.2-404, 24.2-416, 24.2-416.4, and 24.2-653 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-420.2, relating to voter registration; registration on election day; registration of provisional voters; close of registration records.*

Patrons—Simon, Ayala, Bagby, Gooditis, Hope, Kory, Levine, Lopez, Plum, Rasoul, Rodman, Roem and Turpin

Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-404, 24.2-416, 24.2-416.4, 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 24.2-420.2 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, 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 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. 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~~ *two days prior to any 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,

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58 the Department shall provide a regional or statewide list of registered voters to the general registrar of  
59 the locality. The Department shall determine whether regional or statewide data is provided. Neither the  
60 pollbook nor the regional or statewide list of registered voters shall include the day and month of birth  
61 of the voter, but shall include the voter's year of birth.

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

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

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

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

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

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

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

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

94 F. The Department shall report annually by October 1 for the preceding 12 months ending August 31  
95 to the Committees on Privileges and Elections on each of its activities undertaken to maintain the  
96 Virginia voter registration system and the results of those activities. The Department's report shall be  
97 governed by the provisions of § 2.2-608 and shall encompass activities undertaken pursuant to  
98 subdivisions A 9 and 10 and subsection E and pursuant to §§ 24.2-404.3, 24.2-404.4, 24.2-408,  
99 24.2-409, 24.2-409.1, 24.2-410, 24.2-410.1, 24.2-427, and 24.2-428. This report shall contain the  
100 methodology used in gathering and analyzing the data. The Commissioner of Elections shall certify that  
101 the data included in the report is accurate and reliable.

102 **§ 24.2-416. Closing registration records before elections.**

103 In any county, city, or town in which an election is being held, the registration records shall be  
104 closed for the purpose of registering voters on the election day and during the period in advance of the  
105 election as provided in this section. ~~The registration records shall be closed during the twenty-eight three~~  
106 ~~days before a primary or general any election. Beginning January 1, 2010, the registration records shall~~  
107 ~~be closed during the 21 days before a primary or general election. If the registration records have not~~  
108 ~~been closed previously for a primary or general election, they shall be closed during the six days before~~  
109 ~~a special election called by the Governor, Speaker of the House of Delegates, or President pro tempore~~  
110 ~~of the Senate, or pursuant to rule or resolution of either house of the General Assembly and during the~~  
111 ~~thirteen days before any other special election.~~

112 **§ 24.2-416.4. Return of mail voter registration applications.**

113 A. Notwithstanding the provisions of § 24.2-416, a mail voter registration application returned  
114 through the United States Postal Service shall be deemed to have been made as of the date of the  
115 postmark affixed to such application by the United States Postal Service. If no such postmark is affixed  
116 or if the postmark affixed by the United States Postal Service is illegible or bears no date, such  
117 application shall be deemed to have been timely if received through the United States mail no later than  
118 ~~five days one day~~ following the time for the closing of the registration books pursuant to § 24.2-416.

119 B. In any other case, a completed mail voter registration application shall be deemed timely if

received by any general registrar or any person authorized to receive voter registration applications pursuant to § 24.2-415.1 by 5:00 p.m. on the final day of registration provided for in § 24.2-414.

**§ 24.2-420.2. Registration in person on election day.**

*Notwithstanding the provisions of § 24.2-416, any person who is qualified to register to vote shall be entitled to register to vote and cast a ballot in person in the office of the general registrar, or at another location or locations in the county or city approved by the electoral board, on the day of the election. The Department shall prescribe procedures for the addition of persons registered under this section to the lists of registered voters and shall provide instructions to the general registrars for the handling and counting of such ballots.*

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

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

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

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

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

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

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

One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election shall be permitted to remain in the room in which the determination is being made as an observer so long as he does not participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative, who is not himself a candidate or party chairman, shall present to the electoral board a written statement designating him to be a representative of the party or candidate and signed by the

181 county or city chairman of his political party, the independent candidate, or the primary candidate, as  
182 appropriate. If the county or city chairman is unavailable to sign such a written designation, such a  
183 designation may be made by the state or district chairman of the political party. However, no written  
184 designation made by a state or district chairman shall take precedence over a written designation made  
185 by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature,  
186 may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

192 If the electoral board determines that such person was not entitled to vote as a qualified voter in the  
193 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not  
194 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope  
195 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be  
196 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the  
197 Department of Elections or the voter presents proof that indicates the voter submitted an application for  
198 registration to the Department of Motor Vehicles or other state-designated voter registration agency prior  
199 to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was  
200 qualified for registration based upon the application for registration submitted by the person pursuant to  
201 subsection A.

202 The general registrar shall register any person found to be qualified for registration based upon the  
203 application for registration submitted by the person pursuant to subsection A and shall notify in writing  
204 pursuant to § 24.2-114 those persons found ~~not properly registered~~ not to be qualified for registration or  
205 whose provisional vote was not counted.

206 If the electoral board determines that such person was entitled to vote, the name of the voter shall be  
207 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and  
208 the ballot placed in a ballot container without any inspection further than that provided for in  
209 § 24.2-646.

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

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

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