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SENATE BILL NO. 1038

Offered January 9, 2019

Prefiled November 15, 2018

A BILL to amend and reenact § 24.2-653 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 24.2-418.01 and 24.2-653.2, relating to voter registration; verification of social security numbers; provisional registration status.

Patrons—Peake and Chafin

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-653 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 24.2-418.01 and 24.2-653.2 as follows:

§ 24.2-418.01. Verification of social security numbers.

A. Before registering any applicant, the general registrars shall verify that the name, date of birth, and social security number provided by the applicant on the voter registration application match the information on file with the Social Security Administration or other database approved by the State Board. If the information provided by the applicant matches the information on file with the Social Security Administration or other database and the applicant is otherwise qualified, the applicant shall be registered to vote.

B. If the information provided by the applicant does not match the information on file with the Social Security Administration or other database, but the applicant is otherwise qualified, the applicant shall be provisionally registered to vote. The general registrar shall send a notice by mail to the applicant at the address provided on the voter registration application, informing him of his provisional registration status. Such notice shall inform the applicant of the information on his application that did not match and shall provide the opportunity to correct the information or to present 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.

An applicant who corrects the information on his application or presents one of the forms of identification shall be registered to vote. An applicant who does not correct the information on his application or does not present one of the forms of identification shall remain provisionally registered to vote and shall be permitted to vote in accordance with the provisions of § 24.2-653.2.

C. On or before August 1 of each year, the general registrars shall verify that the name, date of birth, and social security number in the registration record of each registered voter in the registrar's jurisdiction match the information on file with the Social Security Administration or other database approved by the State Board. The provisions of § 24.2-429 shall govern the cancellation of the registration of any registered voter whose information does not match the information on file with the Social Security Administration or other database.

D. The State Board may approve the use of any government database to the extent required to enable each general registrar to carry out the provisions of this section and may promulgate rules for the use of such database. The Department shall provide access by the general registrars to the Social Security Administration database and any other database approved by the State Board and shall be required to enter into any agreement with any federal or state agency in order to provide such access.

§ 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, or 24.2-653.2.

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

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59 instructions of the State Board but shall not enter a consecutive number for the voter on the pollbook
60 nor otherwise mark his name as having voted. The officers of election shall provide an application for
61 registration to the person offering to vote in the manner provided in this section.

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

65 An officer of election, by a written notice given to the voter, shall (i) inform him that a
66 determination of his right to vote shall be made by the electoral board, (ii) advise the voter of the
67 beginning time and place for the board's meeting and of the voter's right to be present at that meeting,
68 and (iii) inform a voter voting provisionally when required by § 24.2-643 that he may submit a copy of
69 one of the forms of identification specified in subsection B of § 24.2-643 to the electoral board by
70 facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial
71 mail delivery, to be received by the electoral board no later than noon on the third day after the
72 election. At the meeting, the voter may request an extension of the determination of the provisional vote
73 in order to provide information to prove that the voter is entitled to vote in the precinct pursuant to
74 § 24.2-401. The electoral board shall have the authority to grant such extensions which it deems
75 reasonable to determine the status of a provisional vote.

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

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

89 One authorized representative of each political party or independent candidate in a general or special
90 election or one authorized representative of each candidate in a primary election shall be permitted to
91 remain in the room in which the determination is being made as an observer so long as he does not
92 participate in the proceedings and does not impede the orderly conduct of the determination. Each
93 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each
94 representative, who is not himself a candidate or party chairman, shall present to the electoral board a
95 written statement designating him to be a representative of the party or candidate and signed by the
96 county or city chairman of his political party, the independent candidate, or the primary candidate, as
97 appropriate. If the county or city chairman is unavailable to sign such a written designation, such a
98 designation may be made by the state or district chairman of the political party. However, no written
99 designation made by a state or district chairman shall take precedence over a written designation made
100 by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature,
101 may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

107 If the electoral board determines that such person was not entitled to vote as a qualified voter in the
108 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not
109 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope
110 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be
111 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the
112 Department of Elections or the voter presents proof that indicates the voter submitted an application for
113 registration to the Department of Motor Vehicles or other state-designated voter registration agency prior
114 to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was
115 qualified for registration based upon the application for registration submitted by the person pursuant to
116 subsection A. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found
117 not properly registered or whose provisional vote was not counted.

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

121 § 24.2-646.

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

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

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

142 **§ 24.2-653.2. Voter with provisional registration status.**

143 *Any person who offers to vote and is listed in the pollbook as provisionally registered shall be*
144 *permitted to vote by a provisional ballot in accordance with the provisions of § 24.2-653. Such ballot*
145 *shall not be counted if the voter does not present to the local electoral board, no later than noon on the*
146 *third day after the election, one of the following forms of identification: his valid Virginia driver's*
147 *license, his valid United States passport, or any other photo identification issued by the Commonwealth,*
148 *one of its political subdivisions, or the United States.*