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SENATE BILL NO. 219

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 6, 2020)

(Patron Prior to Substitute—Senator Marsden)

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 automatic voter registration.

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. Registration of Department of Motor Vehicles customers.

A. Each 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 an existing driver's license or special identification card shall be presented with (a) a question asking whether or not the person is a United States citizen and (b) the option to decline to have his information transmitted to the Department of Elections for voter registration purposes. The citizenship question and option to decline shall be accompanied by a statement that intentionally making a materially false statement during the transaction constitutes election fraud and is punishable under Virginia law as a felony.

The Department of Motor Vehicles may not transmit the information of any person who so declines. The Department of Motor Vehicles may not transmit the information of any person who indicates that he is not a United States citizen, nor may such person be asked any additional questions relevant to voter registration but not relevant to the purpose for which the person came to an office of the Department of Motor Vehicles or accessed its website.

B. For each person who does not select the option to decline to have his information transmitted to the Department of Elections for voter registration purposes and who has identified himself as a United States citizen, the Department of Motor Vehicles shall request any information as may be required by the State Board to ensure that the person meets all voter registration eligibility requirements.

C. 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 collected pursuant to subsection B for any person who (i) has indicated that he is a United States citizen, (ii) has indicated that he is 17 years of age or older, and (iii) at the time of such transaction did not decline to have his information

60 transmitted to the Department of Elections for voter registration purposes.

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

63 1. For any person who does not yet have a registration record in the voter registration system, the
64 Department of Elections shall transmit the information to the appropriate general registrar. The general
65 registrar shall accept or reject the registration of such person in accordance with the provisions of this
66 chapter.

67 2. For any person who already has a registration record in the voter registration system, if the
68 information indicates that the voter has moved within the Commonwealth, the Department of Elections
69 shall transmit the information and the registration record to the appropriate general registrar, who shall
70 treat such transmittal as a request for transfer and process it in accordance with the provisions of this
71 chapter.

72 3. General registrars shall not register any person who does not satisfy all voter eligibility
73 requirements.

74 **§ 24.2-412. Other locations and times for voter registration.**

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

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

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

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

97 **§ 24.2-413. Accessible registration locations.**

98 The office of the general registrar, and each agency, business, and establishment set for registration
99 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
100 as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting
101 Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with
102 Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The Department shall provide
103 instructions to the Department of Motor Vehicles, state-designated voter registration agencies, local
104 electoral boards, and general registrars to assist them in complying with the requirements of the Acts.

105 In the selection of additional registration sites as provided in § 24.2-412, consideration shall be given
106 to accessibility so that a reasonable number of accessible sites are provided and the requirements of the
107 above cited Acts are met.

108 **§ 24.2-415.1. Persons authorized to receive voter registration applications.**

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

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

115 **§ 24.2-418. Application for registration.**

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

120 The form of the application to register shall require the applicant to provide the following
121 information: full name; gender; date of birth; social security number, if any; whether the applicant is

presently a United States citizen; address of residence in the precinct; place of last previous registration to vote; and whether the applicant has ever been adjudicated incapacitated and disqualified to vote or convicted of a felony, and if so, whether the applicant's right to vote has been restored. The form shall contain a statement that whoever votes more than once in any election in the same or different jurisdictions is guilty of a Class 6 felony. Unless directed by the applicant or as permitted in § ~~24.2-411.1~~ or 24.2-411.2 or 24.2-411.3, the registration application shall not be pre-populated with information the applicant is required to provide.

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

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

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

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

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

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

6. Any person who has been approved to be a foster parent pursuant to Chapter 9 (§ 63.2-900 et seq.) of Title 63.2.

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

§ 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

183 reasonable to determine the status of a provisional vote.

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

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

197 One authorized representative of each political party or independent candidate in a general or special
198 election or one authorized representative of each candidate in a primary election shall be permitted to
199 remain in the room in which the determination is being made as an observer so long as he does not
200 participate in the proceedings and does not impede the orderly conduct of the determination. Each
201 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each
202 representative, who is not himself a candidate or party chairman, shall present to the electoral board a
203 written statement designating him to be a representative of the party or candidate and signed by the
204 county or city chairman of his political party, the independent candidate, or the primary candidate, as
205 appropriate. If the county or city chairman is unavailable to sign such a written designation, such a
206 designation may be made by the state or district chairman of the political party. However, no written
207 designation made by a state or district chairman shall take precedence over a written designation made
208 by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature,
209 may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

215 If the electoral board determines that such person was not entitled to vote as a qualified voter in the
216 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not
217 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope
218 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be
219 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the
220 Department of Elections or the voter presents proof that indicates the voter submitted an application for
221 registration to the Department of Motor Vehicles or other a state-designated voter registration agency or
222 the voter's information was transmitted by the Department of Motor Vehicles to the Department of
223 Elections pursuant to § 24.2-411.3 prior to the close of registration pursuant to § 24.2-416 and the
224 registrar determines that the person was qualified for registration based upon the application for
225 registration submitted by the person pursuant to subsection A. The general registrar shall notify in
226 writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional vote
227 was not counted.

228 If the electoral board determines that such person was entitled to vote, the name of the voter shall be
229 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and
230 the ballot placed in a ballot container without any inspection further than that provided for in
231 § 24.2-646.

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

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

241 C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any
242 ballots marked after the normal polling hours by persons who were not already in line at the time the
243 polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under
244 this section. The officers of election shall mark the green envelope for each such provisional ballot to

245 indicate that it was cast after normal polling hours due to the court order, and when preparing the
246 materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any
247 provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as
248 provided in subsection B; however, the counted and uncounted provisional ballots marked after the
249 normal polling hours shall be kept separate from all other ballots and recorded in a separate provisional
250 ballots pollbook. The Department of Elections shall provide instructions to the electoral boards for the
251 handling and counting of such provisional ballots pursuant to this section.
252 **2. That § 24.2-411.1 of the Code of Virginia is repealed.**
253 **3. That the provisions of this act shall not become effective unless an appropriation effectuating**
254 **the purposes of this act is included in a general appropriation act passed in 2020 by the General**
255 **Assembly that becomes law.**