

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

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SENATE BILL NO. 1395

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Privileges and Elections
on January 26, 2021)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend and reenact §§ 24.2-105, as it shall become effective, 24.2-306, 24.2-649, 24.2-1000, 24.2-1005, and 24.2-1005.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 24.2-104.1, by adding a section numbered 24.2-1005.2, by adding in Article 5 of Chapter 2 of Title 24.2 a section numbered 24.2-224.1, and by adding in Title 24.2 a chapter numbered 1.1, consisting of sections numbered 24.2-125 through 24.2-130; and to repeal § 24.2-124, as it shall become effective, of the Code of Virginia, relating to elections; prohibited discrimination in voting and elections administration; required process for enacting certain covered practices; civil causes of action; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-105, as it shall become effective, 24.2-306, 24.2-649, 24.2-1000, 24.2-1005, and 24.2-1005.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-104.1, by adding a section numbered 24.2-1005.2, by adding in Article 5 of Chapter 2 of Title 24.2 a section numbered 24.2-224.1, and by adding in Title 24.2 a chapter numbered 1.1, consisting of sections numbered 24.2-125 through 24.2-130, as follows:

§ 24.2-104.1. Civil actions by Attorney General.

A. Whenever the Attorney General has reasonable cause to believe that a violation of an election law has occurred and that the rights of any voter or group of voters have been affected by such violation, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief.

B. In such civil action, the court may:

1. Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title, as is necessary to assure the full enjoyment of the rights granted by this title.

2. Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first violation and (ii) in an amount not exceeding \$100,000 for any subsequent violation. Such civil penalties are payable to the Voter Education and Outreach Fund established pursuant to § 24.2-130.

3. Award a prevailing plaintiff reasonable attorney fees and costs.

C. The court or jury may award such other relief to the aggrieved person as the court deems appropriate, including compensatory damages and punitive damages.

§ 24.2-105. (Effective September 1, 2021) Prescribing various forms.

A. The State Board shall prescribe appropriate forms and records for the registration of voters, conduct of elections, and implementation of this title, which shall be used throughout the Commonwealth.

B. The State Board shall prescribe voting and election materials in languages other than English for use by a county, city, or town that is subject to the requirements of § 24.2-124 § 24.2-128. For purposes of this subsection, voting and election materials mean registration or voting notices, forms, and instructions. For purposes of this subsection, registration notices mean any notice of voter registration approval, denial, or cancellation, required by the provisions of Chapter 4 (§ 24.2-400 et seq.).

The State Board may make available voting and election materials in any additional languages other than those required by subsection A of § 24.2-124 § 24.2-128 as it deems necessary and appropriate. The State Board may accept voting and election materials translated by volunteers but shall verify the accuracy of such translations prior to making the translated materials available to a county, city, or town, or any voter.

CHAPTER 1.1. RIGHTS OF VOTERS.

§ 24.2-125. Definitions.

For purposes of this chapter, "protected class" means a group of citizens protected from discrimination based on race or color or membership in a language minority group.

§ 24.2-126. Vote denial or dilution.

A. No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by the state or any locality in a manner that results in a denial or abridgement of the right of any citizen of the United States to vote based on race or color or membership in a language minority group.

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60 B. A violation of subsection A is established if, on the basis of the totality of circumstances, it is
61 shown that the political processes leading to nomination or election in the state or a locality are not
62 equally open to participation by members of a protected class in that its members have less opportunity
63 than other members of the electorate to participate in the political processes or to elect representatives
64 of their choice. The extent to which members of a protected class have been elected to office in the state
65 or locality is one circumstance that may be considered.

66 C. Nothing in this section shall be construed to establish a right to have members of a protected
67 class elected in numbers equal to their proportion in the population.

68 **§ 24.2-127. Impairment of voting rights of registered voters.**

69 Nothing in this chapter shall be construed to deny, impair, or otherwise adversely affect the right to
70 vote of any registered voter.

71 **§ 24.2-128. Minority language accessibility.**

72 A. The State Board shall designate a county, city, or town as a covered locality if it determines, in
73 consultation with the Director of the Census, on the basis of the 2010 American Community Survey
74 census data and subsequent American Community Survey data in five-year increments, or comparable
75 census data, that (i) more than five percent of the citizens of voting age of such county, city, or town
76 are members of a single language minority and are unable to speak or understand English adequately
77 enough to participate in the electoral process; (ii) more than 10,000 of the citizens of voting age of
78 such county, city, or town are members of a single language minority and are unable to speak or
79 understand English adequately enough to participate in the electoral process; or (iii) in the case of a
80 county, city, or town containing all or any part of an Indian reservation, more than five percent of the
81 American Indian citizens of voting age within the Indian reservation are members of a single language
82 minority and are unable to speak or understand English adequately enough to participate in the
83 electoral process.

84 B. Whenever a covered locality provides any voting or election materials, it shall provide such
85 materials in the language of the applicable minority group as well as in the English language. For
86 purposes of this requirement, "voting or election materials" means registration or voting notices, forms,
87 instructions, assistance, voter information pamphlets, ballots, sample ballots, candidate qualification
88 information, and notices regarding changes to local election districts, precincts, or polling places. For
89 purposes of this requirement, "registration notices" means any notice of voter registration approval,
90 denial, or cancellation required by the provisions of Chapter 4 (§ 24.2-400 et seq.). A covered locality
91 may distribute such materials in the preferred language identified by the voter.

92 C. The Attorney General, or any qualified voter who is a member of a language minority group for
93 whom a covered locality is required to provide voting or election materials in such language, may
94 institute a cause of action in the circuit court of the covered locality to compel the provision of the
95 voting or election materials in the language of the applicable minority group. In such action, the court
96 may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such
97 plaintiff is the prevailing party.

98 **§ 24.2-129. Covered practices; actions required prior to enactment or administration.**

99 A. For the purposes of this section:

100 "Certification of no objection" means a certification issued by the Attorney General that there is no
101 objection to the enactment or administration of a covered practice by a locality because the covered
102 practice neither has the purpose or effect of denying or abridging the right to vote based on race or
103 color or membership in a language minority group nor will result in the retrogression in the position of
104 members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.

105 "Covered practice" means:

106 1. Any change to the method of election of members of a governing body or an elected school board
107 by adding seats elected at large or by converting one or more seats elected from a single-member
108 district to one or more at-large seats or seats from a multi-member district;

109 2. Any change, or series of changes within a 12-month period, to the boundaries of the covered
110 jurisdiction that reduces by more than five percentage points the proportion of the jurisdiction's voting
111 age population that is composed of members of a single racial or language minority group, as
112 determined by the most recent American Community Survey data;

113 3. Any change to the boundaries of election districts or wards in the locality, including changes
114 made pursuant to a decennial redistricting measure;

115 4. Any change that restricts the ability of any person to provide interpreter services to voters in any
116 language other than English or that limits or impairs the creation or distribution of voting or election
117 materials in any language other than English; or

118 5. Any change that reduces the number of or consolidates or relocates polling places in the covered
119 jurisdiction, except where permitted by law in the event of an emergency.

120 "Voting age population" means the resident population of persons who are 18 years of age or older,
121 as determined by the most recent American Community Survey data available at the time any change to

a covered practice is published pursuant to subsection B.

B. Prior to enacting or seeking to administer any voting qualification or prerequisite to voting, or any standard, practice, or procedure with respect to voting, that is a covered practice, the governing body shall cause to be published on the official website for the locality the proposed covered practice and general notice of opportunity for public comment on the proposed covered practice. The governing body shall also publicize the notice through press releases and such other media as will best serve the purpose and subject involved. Such notice shall be made at least 45 days in advance of the last date prescribed in the notice for public comment.

Public comment shall be accepted for a period of no fewer than 30 days. During this period, the governing body shall afford interested persons an opportunity to submit data, views, and arguments in writing by mail, fax, or email, or through an online public comment forum on the official website for the locality if one has been established. The governing body shall conduct at least one public hearing during this period to receive public comment on the proposed covered practice.

The governing body may make changes to the proposed covered practice in response to public comment received. If doing so, the revised covered practice shall be published and public comment shall be accepted in accordance with this subsection, except the public comment period shall be no fewer than 15 days.

C. Following the public comment period or periods prescribed in subsection B, the governing body shall publish the final covered practice, which shall include a plain English description of the practice and the text of an ordinance giving effect to the practice, maps of proposed boundary changes, or other relevant materials, and notice that the covered practice will take effect in 30 days. During this 30-day waiting period, any person who will be subject to or affected by the covered practice may challenge in the circuit court of the locality where the covered practice is to be implemented the covered practice as (i) having the purpose or effect of denying or abridging the right to vote on the basis of race or color or membership in a language minority group or (ii) resulting in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise. In such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.

D. The governing body of a locality seeking to administer or implement a covered practice, in lieu of following the provisions of subsections B and C, may submit the proposed covered practice to the Office of the Attorney General for issuance of a certification of no objection. Such practice shall not be given effect until the Attorney General has issued such certification. A certification of no objection shall be deemed to have been issued if the Attorney General does not interpose an objection within 60 days of the governing body's submission or if, upon good cause shown and to facilitate an expedited approval within 60 days of the governing body's submission, the Attorney General has affirmatively indicated that no such objection will be made. An affirmative indication by the Attorney General that no objection will be made or the absence of an objection to the covered practice by the Attorney General shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

§ 24.2-130. Voter Education and Outreach Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Voter Outreach and Education Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All penalties and charges directed to this fund by § 24.2-104.1 and all other funds from any public or private source directed to the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of educating voters and persons qualified to be voters on the rights ensured to them pursuant to federal and state constitutional and statutory law and remedies. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of Administration or his designee.

§ 24.2-224.1. At-large method of election; limitations; violations; remedies.

A. An at-large method of election, including one that combines at-large elections with district- or ward-based elections, shall not be imposed or applied by the governing body of any locality in a manner that impairs the ability of members of a protected class, as defined in § 24.2-125, to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

B. A violation of subsection A is established if it is shown that racially polarized voting occurs in local elections and that this, in combination with the method of election, dilutes the voting strength of members of a protected class. For purposes of this subsection, "racially polarized voting" refers to the extent to which the candidate preferences of the members of a protected class and other voters in the

jurisdiction have differed in recent elections for the office at issue and other offices in which the voters have been presented with a choice between candidates who are members of the protected class and candidates who are not members of the protected class. A finding of racially polarized voting or a violation of subsection A shall not be precluded by the fact that members of a protected class are not geographically compact or concentrated in a locality. Proof of an intent on the part of voters or elected officials to discriminate against members of a protected class shall not be required to prove a violation of subsection A.

C. Any voter who is a member of a protected class, as defined in § 24.2-125, and who resides in a locality where a violation of this section is alleged shall be entitled to initiate a cause of action in the circuit court of the county or city in which the locality is located. In such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.

D. Upon a finding of a violation of this section, the court shall implement appropriate remedies that are tailored to remedy the violation.

§ 24.2-306. Changes not to be enacted within 60 days of general election; notice requirements.

A. No change in any local election district, precinct, or polling place shall be enacted within 60 days next preceding any general election. ~~Notice~~ In addition to the requirements set forth in § 24.2-129, notice shall be published prior to enactment in a newspaper having general circulation in the election district or precinct once a week for two successive weeks. The published notice shall state where descriptions and maps of proposed boundary and polling place changes may be inspected.

B. Notice of any adopted change in any election district, town, precinct, or polling place other than in the location of the office of the general registrar shall be mailed to all registered voters whose election district, town, precinct, or polling place is changed at least 15 days prior to the next general, special, or primary election in which the voters will be voting in the changed election district, town, precinct, or polling place. Notice of a change in the location of the office of the general registrar shall be given by posting on the official website of the county or city, by posting at not less than 10 public places, or by publication once in a newspaper of general circulation in the county or city within not more than 21 days in advance of the change or within seven days following the change.

C. Each county, city, and town shall comply with the applicable requirements of law, including §§ 24.2-304.3 and 30-395, and send copies of enacted changes, including a Geographic Information System (GIS) map showing the new boundaries of the districts or precincts, to the local electoral board, the Department, and the Division of Legislative Services. Any county, city, or town that does not have GIS capabilities may request the Department of Elections to create on its behalf a GIS map showing the boundaries of the new districts or precincts, and the Department of Elections shall create such a map.

§ 24.2-649. Assistance for certain voters; penalties.

A. Any voter age 65 or older or physically disabled may request and then shall be handed a printed ballot by an officer of election outside the polling place but within 150 feet of the entrance to the polling place. The voter shall mark the printed ballot in the officer's presence but in a secret manner and, obscuring his vote, return the ballot to the officer. The officer shall immediately return to the polling place and shall deposit a paper ballot in the ballot container in accordance with § 24.2-646 or a machine-readable ballot in the ballot scanner machine in accordance with the instructions of the State Board.

Any county or city that has acquired an electronic voting machine that is so constructed as to be easily portable may use the voting machine in lieu of a printed ballot for the voter requiring assistance pursuant to this subsection. However, the electronic voting machine may be used in lieu of a printed ballot only so long as: (i) the voting machine remains in the plain view of two officers of election representing two political parties, or in a primary election, two officers of election representing the party conducting the primary, provided that if the use of two officers for this purpose would result in too few officers remaining in the polling place to meet legal requirements, the voting machine shall remain in plain view of one officer who shall be either the chief officer or the assistant chief officer and (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to this section. After the voter has completed voting his ballot, the officer or officers shall immediately return the voting machine to its assigned location inside the polling place. The machine number, the time that the machine was removed and the time that it was returned, the number on the machine's public counter before the machine was removed and the number on the same counter when it was returned, and the name or names of the officer or officers who accompanied the machine shall be recorded on the statement of results.

B. Any qualified voter who requires assistance to vote by reason of physical disability or inability to read or write may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of election or any other person to assist him. If he is unable to read and write or disabled for any cause other than blindness, he may designate an officer of election or some other person to assist him other than the voter's employer or agent of that employer, or officer or agent of the voter's union.

The officer of election or other person so designated shall not enter the booth with the voter unless (i) the voter signs a request stating that he requires assistance by reason of physical disability or inability to read or write and (ii) the officer of election or other person signs a statement that he is not the voter's employer or an agent of that employer, or an officer or agent of the voter's union, and that he will act in accordance with the requirements of this section. The request and statement shall be on a single form furnished by the State Board. If the voter is unable to sign the request, his own mark acknowledged by him before an officer of election shall be sufficient signature, provided no mark shall be required of a voter who is blind. An officer of election shall advise the voter and person assisting the voter of the requirements of this section and record the name of the voter and the name and address of the person assisting him.

The officer of election or other person so designated shall assist the qualified voter in the preparation of his ballot in accordance with his instructions and without soliciting his vote or in any manner attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise, how the voter voted on any office or question. If a printed ballot is used, the officer or other person so designated shall deposit the ballot in the ballot container in accordance with § 24.2-646 or in the ballot scanner machine in accordance with the instructions of the State Board.

C. If the voter requires assistance in a language other than English and has not designated a person to assist him, an officer of election, ~~before he assists~~ *may assist as an interpreter, but shall first* inquire of the representatives authorized to be present pursuant to § 24.2-604.4 whether they have a volunteer available who can interpret for the voter. One representative interpreter for each party or candidate, insofar as available, shall be permitted to observe the officer of election communicate with the voter. *In any locality designated as a covered locality pursuant to § 24.2-128, the local electoral board shall ensure that interpretation services in the language of the applicable minority group are available and easily accessible to voters needing assistance pursuant to this subsection.* The voter may designate one of the volunteer party or candidate interpreters to provide assistance. A person so designated by the voter shall meet all the requirements of this section for a person providing assistance.

D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor. In addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and 24.2-1012 and the felony penalties for violations of the law related to providing assistance to absentee voters shall be applicable in such cases.

E. In any precinct in which an electronic voting machine is available that provides an audio ballot, the officers of election shall notify a voter requiring assistance pursuant to this section that such machine is available for him to use to vote in privacy without assistance and the officers of election shall instruct the voter on the use of the voting machine. Nothing in this section shall be construed to require a voter to use the machine unassisted.

§ 24.2-1000. Intimidation of officers of election.

Any person who, by bribery, intimidation, *threats, coercion,* or other means in violation of the election laws, willfully hinders or prevents, or attempts to hinder or prevent, the officers of election at any ~~precinct~~ *polling place, voter satellite office, or other location being used by a locality for voting purposes* from holding an election ~~shall be~~ *is* guilty of a Class 5 felony.

§ 24.2-1005. Intimidation of voters; civil cause of action.

A. Any person who ~~(i) by threats, bribery, or other means in violation of the election laws, intimidates, threatens, or coerces, or attempts to influence intimidate, threaten, or coerce, any other person in giving his vote or ballot or by such means who intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce a voter to deter or prevent him from voting; (ii) furnishes a ballot to a person who he knows cannot understand the language in which the ballot is printed and misinforms him as to the content of the ballot with an intent to deceive him and induce him to vote contrary to his desire; or (iii) changes a ballot of a person to prevent the person from voting as he desired, shall be~~ *is* guilty of a Class 1 misdemeanor.

B. *In addition to the criminal penalty provided in subsection A, such actions shall also create a cause of action. A voter who is intimidated, threatened, or coerced by another person in violation of subsection A shall be entitled to institute an action for preventative relief, including an application for a permanent or temporary injunction, restraining order, or other order, against such person. The action shall be instituted in the circuit court of the locality where the violation occurred. In any such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.*

C. This section applies to any election and to any method used by a political party for selection of its nominees and for selection of delegates to its conventions and meetings.

§ 24.2-1005.1. Communication of false information to registered voter.

A. It shall be unlawful for any person to communicate to a registered voter, by any means, false

306 information, knowing the same to be false, intended to impede the voter in the exercise of his right to
307 vote. ~~The provisions of this section shall apply to information only about the date, time, and place of~~
308 ~~the election or the voter's precinct, polling place, or voter registration status. For purposes of this~~
309 ~~section, "false information" shall refer to information only about the date, time, and place of the~~
310 ~~election or the voter's precinct, polling place, registrar's office, voter satellite office, or voter~~
311 ~~registration status.~~

312 B. Any person who violates the provisions of this section ~~shall be~~ is guilty of a Class 1
313 misdemeanor.

314 ~~C. A violation of this section~~ Such violation may be prosecuted either in the jurisdiction from which
315 the communication was made or in the jurisdiction in which the communication was received.

316 C. In addition to the criminal penalty provided in subsection B, a violation of the provisions of this
317 section shall also create a cause of action. A registered voter to whom such false information is
318 communicated shall be entitled to institute an action for preventative relief, including an application for
319 a permanent or temporary injunction, restraining order, or other order, against the person
320 communicating such false information. The action shall be instituted in the circuit court of either the
321 jurisdiction from which the communication was made or the jurisdiction in which the communication
322 was received. In any such action, the court may, in its discretion, allow a private plaintiff a reasonable
323 attorney fee as part of the costs, if such plaintiff is the prevailing party.

324 **§ 24.2-1005.2. Interference with voting.**

325 A. Any person acting under the color of law who, contrary to an official policy or procedure, fails to
326 permit, or refuses to permit, a qualified voter to vote, or who willfully fails or refuses to tabulate, count,
327 or report the vote of a qualified voter, is subject to a civil penalty in an amount not exceeding \$1,000
328 for each affected voter. Such civil penalties are payable to the Voter Education and Outreach Fund
329 established pursuant to § 24.2-130.

330 B. Any person who furnishes a ballot to a person who he knows cannot understand the language in
331 which the ballot is printed and misinforms him as to the content of the ballot with an intent to deceive
332 him and induce him to vote contrary to his desire is guilty of a Class 1 misdemeanor. Any person who
333 changes a ballot of a person to prevent the person from voting as he desires is guilty of a Class 1
334 misdemeanor. This subsection applies to any election and to any method used by a political party for
335 selection of its nominees and for selection of delegates to its conventions and meetings.

336 **2. That § 24.2-124, as it shall become effective, of the Code of Virginia is repealed.**

337 **3. That the provisions of § 24.2-128 of the Code of Virginia, as created by this act, shall become**
338 **effective on September 1, 2021.**

339 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**
340 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
341 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
342 **correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the**
343 **Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant**
344 **to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot**
345 **be determined for periods of commitment to the custody of the Department of Juvenile Justice.**