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HOUSE BILL NO. 219

Offered January 8, 2020

Prefiled December 27, 2019

A *BILL to amend and reenact §§ 24.2-410.1, 24.2-411.1, 24.2-412, 24.2-413, 24.2-418, 24.2-418.1, 24.2-428.2, 24.2-653, and 24.2-1016 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-411.3, relating to elections; automatic voter registration.*

Patron—Lopez

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-410.1, 24.2-411.1, 24.2-412, 24.2-413, 24.2-418, 24.2-418.1, 24.2-428.2, 24.2-653, and 24.2-1016 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 transmitting voter registration application information* 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 *or declines to respond to the citizenship question*, the Department of Motor Vehicles shall not offer that applicant the opportunity to apply for voter registration *pursuant to § 24.2-411.1*. 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 transmitted to the appropriate general registrar through the Department of Elections*. 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. 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.

§ 24.2-411.1. Offices of the Department of Motor Vehicles.

A. The Department of Motor Vehicles shall provide the opportunity to register to vote to each person ~~who comes to an office of the~~ *Any individual who (i) is not registered to vote, (ii) is of sufficient age to register to vote, (iii) conducts a transaction with the* Department of Motor Vehicles to:

1. ~~Apply for, replace, or renew a driver's license;~~

2. ~~Apply for, replace, or renew a special identification card; or~~

3. ~~Change an address on~~ *(a) apply for a new driver's license or special identification card or (b) replace, renew, or update an existing driver's license or special identification card, and (iv) in the course of such transaction does not provide documentation demonstrating United States citizenship or lack thereof, but does indicate United States citizenship status pursuant to § 24.2-410.1, shall be registered consistent with the requirements of § 24.2-411.3 unless the applicant declines to register to vote or is otherwise ineligible. Any person who, at the time of such transaction, provides a document that demonstrates noncitizen status shall not be offered the opportunity to indicate United States citizenship status pursuant to § 24.2-410.1 or be registered to vote, and no data on such person shall be transmitted to the Department of Elections for the purpose of voter registration.*

B. The method used to receive an application for voter registration shall avoid duplication of the license portion of the license application and require only the minimum additional information necessary

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59 to enable registrars to determine the voter eligibility of the applicant and to administer voter registration
60 and election laws. A person who does not sign the registration portion of the application shall be
61 deemed to have declined to register at that time. The voter application shall include a statement that, if
62 an applicant declines to register to vote, the fact the applicant has declined to register will remain
63 confidential and will be used only for voter registration purposes.

64 Each application form distributed under this section shall be accompanied by the following statement
65 featured prominently in boldface capital letters: "WARNING: INTENTIONALLY MAKING A
66 MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION
67 FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY
68 BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR
69 FINED UP TO \$2,500."

70 Any completed application for voter registration submitted by a person who is already registered
71 shall serve as a written request to update his registration record. Any change of address form submitted
72 for purposes of a motor vehicle driver's license or special identification card shall serve as notification
73 of change of address for voter registration for the registrant involved unless the registrant states on the
74 form that the change of address is not for voter registration purposes. If the information from the
75 notification of change of address for voter registration indicates that the registered voter has moved to
76 another general registrar's jurisdiction within the Commonwealth, the notification shall be treated as a
77 request for transfer from the registered voter. The notification and the registered voter's registration
78 record shall be transmitted as directed by the Department of Elections to the appropriate general registrar
79 who shall send confirmation documents of the transfer to the voter pursuant to § 24.2-424. The
80 Department of Motor Vehicles and Department of Elections shall cooperate in the prompt transmittal by
81 electronic or other means of the notification to the appropriate general registrar.

82 C. The completed voter registration portion of the application shall be transmitted as directed by the
83 Department of Elections not later than five business days after the date of receipt. The Department of
84 Motor Vehicles and Department of Elections shall cooperate in the prompt transmittal by electronic or
85 other means of the voter registration portion of the application of voter registration information to the
86 appropriate general registrar. *Such transmittal shall take place no more than five business days after the*
87 *receipt of such information by the Department of Motor Vehicles.*

88 D. C. The Department of Elections shall maintain statistical records on the number of applications to
89 register to vote with information provided from the Department of Motor Vehicles.

90 E. D. A person who provides services at the Department of Motor Vehicles shall not disclose, except
91 as authorized by law for official use, the social security number, or any part thereof, of any applicant for
92 voter registration.

93 F. E. The Department of Motor Vehicles shall provide assistance as required in providing voter photo
94 identification cards as provided in subdivision A 3 of § 24.2-404.

95 § 24.2-411.3. *Automatic voter registration through the Department of Motor Vehicles and other*
96 *agencies.*

97 A. Any individual who (i) conducts a transaction with the Department of Motor Vehicles to (a) apply
98 for a new driver's license or special identification card or (b) replace, renew, or update an existing
99 driver's license or special identification card and (ii) in the course of such transaction provides
100 documentation demonstrating United States citizenship shall be confirmed in the Department of Motor
101 Vehicles database as meeting the citizenship requirement for eligibility to vote.

102 B. Except as provided in subsection E, the Department of Motor Vehicles shall transmit to the
103 Department of Elections the minimum information necessary to enable general registrars to determine
104 eligibility and to register to vote any individual who (i) is confirmed in the Department of Motor
105 Vehicles database as meeting the citizenship requirement for eligibility to vote, (ii) is not registered to
106 vote, and (iii) is of sufficient age to register to vote. Such information shall be provided at the direction
107 of the individual, as indicated by his signature on the driver's license or special identification card
108 application, renewal, replacement, or change form. Such information shall be transmitted electronically
109 in a format agreed upon by the Department of Motor Vehicles and the Department of Elections.

110 C. Upon receiving the minimum information necessary to enable general registrars to determine
111 eligibility and to register to vote any individual who (i) is confirmed in the Department of Motor
112 Vehicles database as meeting the citizenship requirement for eligibility to vote, (ii) is not registered to
113 vote, and (iii) is of sufficient age to register to vote, the Department of Elections shall provide the
114 information to the general registrar of the county or city in which the person resides. If the Department
115 of Elections determines that an individual is ineligible to register to vote due to a felony conviction or
116 some other disqualifying condition, the Department of Elections shall transmit that information to the
117 appropriate general registrar. The general registrar shall mail any persons whose information was
118 transmitted pursuant to subsection B and who is ineligible to register to vote a notice advising the
119 person of their ineligibility and denial of registration.

120 If the record received from the Department of Elections is not complete for purposes of voter

registration, the general registrar shall not deny the application but shall ask the individual to provide the necessary additional information pursuant to procedures promulgated by the State Board of Elections.

D. For any individual who has provided documentation indicating United States citizenship and provided the minimum information to register to vote, the Department of Motor Vehicles shall immediately provide a printed registration notice in a form prescribed by the Department of Elections. Such notice shall include:

1. A statement that the individual will be registered to vote based on the information provided;
2. Instructions for how he may decline to be registered;
3. An explanation of the eligibility requirement to register to vote;
4. A statement directing the applicant to decline registration if he does not meet the requirements;

and

5. Instructions for furnishing a post office box address located within the Commonwealth in lieu of a street address on the lists of registered voters and persons who voted pursuant to subsection B of § 24.2-418.

E. If an individual declines to register to vote using the instructions provided in the registration notice provided under subsection D after his information has been processed by a general registrar, his registration shall be canceled, and he shall be deemed to have never registered.

F. The Department of Motor Vehicles shall transmit a notice of the change of name or address to the Department of Elections for any individual who (i) is a registered voter in the Commonwealth, (ii) conducts a transaction described in clause (i) of subsection A, and (iii) provides information indicating a name or address different from that on the person's voter registration record. This information shall be transmitted electronically, in a format agreed upon by the Department of Motor Vehicles and the Department of Elections.

The Department of Elections shall forward any change of address to the appropriate general registrar for processing. An individual previously identified as eligible to provide a post office box address pursuant to subsection B of § 24.2-418 shall continue to have his residential address withheld from public disclosures.

G. Each state agency that oversees one or more offices designated as voter registration agencies pursuant to § 24.2-411.2 shall annually provide to the Department of Elections a list with each designated office, the type of services the office provides, and a designated voter registration contact for that office.

Upon a determination by the Commissioner that a voter registration agency collects the necessary information to confirm eligibility for registration or update information for an existing registration in the regular course of business, the agency shall be designated an automatic voter registration agency. The Department of Elections shall establish a schedule by which the designated agency shall begin transmitting information regarding individuals eligible for registration to the Department of Elections.

H. The Department of Elections shall establish adequate and reasonable technological security requirements for the transmission of information related to voter registration between the Department of Elections and the Department of Motor Vehicles or any other agency designated pursuant to subsection G. Before commencing any transmission of information required under this section, and no later than the date such transmittal is required to begin, the Department of Motor Vehicles and any other agency designated pursuant to subsection G shall adhere to the technological security requirements established by the Department of Elections under this section. The security requirements established under this subsection shall be consistent with the security requirements established in § 24.2-410.2.

I. The Department of Elections shall include the following information in the annual report required under subsection F of § 24.2-404:

1. The number of records transferred to the Department of Elections under this section, by source agency;
2. The number of voters newly added to the statewide voter registration list because of records transferred, by source agency;
3. The number of voters on the statewide voter registration list whose information was updated because of records transferred by source agency and type of information updated;
4. The number of individuals who declined voter registration;
5. For each category of information, a breakdown by gender and age of individuals whose information is included in the category;
6. Information on the implementation of security and privacy protocols; and
7. Any planned efforts to improve the efficiency and effectiveness of the voter registration process, by source agency.

J. Nothing in this section shall be construed to require documentary proof of citizenship for voter registration.

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

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

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

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

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

§ 24.2-413. Accessible registration locations.

The office of the general registrar, and each agency, business, and establishment set for registration pursuant to §§ 24.2-411.1, 24.2-411.2, ~~24.2-411.3~~, and subsection B of § 24.2-412 shall be accessible as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The Department shall provide instructions to the Department of Motor Vehicles, state-designated voter registration agencies, local electoral boards, and general registrars to assist them in complying with the requirements of the Acts.

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

§ 24.2-418. Application for registration.

A. ~~Each~~ *Except as permitted by § 24.2-411.3*, each applicant to register shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless physically disabled, he shall sign the application. The application to register shall be only on a form or forms prescribed by the State Board ~~or the U.S. Elections Assistance Commission~~.

~~The~~ *Except as permitted by § 24.2-411.3*, the form of the application to register shall require the applicant to provide the following 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~~ *Except for registration pursuant to § 24.2-411.3*, 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.

§ 24.2-418.1. Receipt for voter registration applicants.

A. The state form for the application to register to vote shall contain a receipt that shall be given to the applicant upon his completion of the form. The receipt shall be completed by the person receiving the form from the applicant and shall include the following information: the name of the office, group, or person receiving the registration application; the date that the office, group, or person received the registration application from the applicant; and the phone number of the general registrar or the toll-free phone number of the Department of Elections that the applicant may call to confirm his registration.

B. The requirement to complete the receipt as provided in subsection A shall not be applicable when a completed form is mailed directly to or completed in the office of a general registrar or the Department or when an applicant is registered pursuant to § 24.2-411.3.

§ 24.2-428.2. Return of registered voter to active status.

A. A registered voter shall be returned to active status from inactive status if, during the period beginning on the date the voter was assigned to inactive status and ending on the day of the second general election for federal office thereafter, the voter:

1. Notifies the general registrar of a change of address within the county or city;

2. Responds to a confirmation notice with information that the voter continues to reside at the registration address;

3. Votes or attempts to vote in a primary or a special or general election and, if necessary, corrects the registration record; or

4. Transfers his registration to another county or city within the Commonwealth, pursuant to § 24.2-424 or subsection E of § 24.2-428; or

5. Conducts a transaction with the Department of Motor Vehicles to (i) apply for a new driver's license or special identification card or (ii) replace, renew, or update an existing driver's license or special identification card.

B. If the registered voter fails to take such action on or before the day of the second general election for federal office after the voter was placed on inactive status, the general registrar shall cancel the person's voter registration.

C. The general registrar shall post at the courthouse or have published in a newspaper of general circulation in his county or city a list of names of persons whose registration has been cancelled pursuant to this section. He shall deliver or mail, obtaining a certificate of mailing, a certified copy of the list to the chairman of each political party in his county or city.

§ 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

305 ballot shall then promptly be placed in the ballot container by an officer of election.

306 An officer of election, by a written notice given to the voter, shall (i) inform him that a
307 determination of his right to vote shall be made by the electoral board, (ii) advise the voter of the
308 beginning time and place for the board's meeting and of the voter's right to be present at that meeting,
309 and (iii) inform a voter voting provisionally when required by § 24.2-643 that he may submit a copy of
310 one of the forms of identification specified in subsection B of § 24.2-643 to the electoral board by
311 facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial
312 mail delivery, to be received by the electoral board no later than noon on the third day after the
313 election. At the meeting, the voter may request an extension of the determination of the provisional vote
314 in order to provide information to prove that the voter is entitled to vote in the precinct pursuant to
315 § 24.2-401. The electoral board shall have the authority to grant such extensions which it deems
316 reasonable to determine the status of a provisional vote.

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

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

330 One authorized representative of each political party or independent candidate in a general or special
331 election or one authorized representative of each candidate in a primary election shall be permitted to
332 remain in the room in which the determination is being made as an observer so long as he does not
333 participate in the proceedings and does not impede the orderly conduct of the determination. Each
334 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each
335 representative, who is not himself a candidate or party chairman, shall present to the electoral board a
336 written statement designating him to be a representative of the party or candidate and signed by the
337 county or city chairman of his political party, the independent candidate, or the primary candidate, as
338 appropriate. If the county or city chairman is unavailable to sign such a written designation, such a
339 designation may be made by the state or district chairman of the political party. However, no written
340 designation made by a state or district chairman shall take precedence over a written designation made
341 by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature,
342 may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

348 If the electoral board determines that such person was not entitled to vote as a qualified voter in the
349 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not
350 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope
351 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be
352 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the
353 Department of Elections or the voter presents proof that indicates the voter submitted an application for
354 registration to the Department of Motor Vehicles or other state-designated voter registration agency *or*
355 *the voter's information was transmitted by the Department of Motor Vehicles or other agency to the*
356 *Department of Elections pursuant to § 24.2-411.3* prior to the close of registration pursuant to
357 § 24.2-416 and the registrar determines that the person was qualified for registration based upon the
358 application for registration submitted by the person pursuant to subsection A. The general registrar shall
359 notify in writing pursuant to § 24.2-114 those persons found not properly registered or whose
360 provisional vote was not counted.

361 If the electoral board determines that such person was entitled to vote, the name of the voter shall be
362 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and
363 the ballot placed in a ballot container without any inspection further than that provided for in
364 § 24.2-646.

365 On completion of its determination, the electoral board shall proceed to count such ballots and certify
366 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No

adjustment shall be made to the statement of results for the precinct in which the person offered to vote. However, any voter who cast a provisional ballot and is determined by the electoral board to have been entitled to vote shall have his name included on the list of persons who voted that is submitted to the Department of Elections pursuant to § 24.2-406.

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

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

§ 24.2-1016. False statements; penalties.

A. Any willfully false material statement or entry made by any person in any statement, form, or report required by this title shall constitute the crime of election fraud and be punishable as a Class 5 felony. Any preprinted statement, form, or report shall include a statement of such unlawful conduct and the penalty provided in this section.

B. *No information transmitted pursuant to § 24.2-410.1, 24.1-411.1, or 24.2-411.3 shall constitute a willfully false material statement or entry under this section unless such false statement or entry was made with the specific intent to fraudulently register to vote.*