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SUMMARY

Automated Voter Registration and Verification System

- Creates an automated, electronic process called the Automated Voter Registration and Verification System to register eligible persons to vote or update their voter registrations using information from the Bureau of Motor Vehicles (BMV), unless those persons later opt out.

- Requires the Secretary of State to adopt rules to develop, implement, and administer the system.

BMV customers

- Requires that, when a person applies for, renews, or replaces a driver's license, commercial driver's license, or state identification (ID) card, the Registrar of Motor Vehicles or deputy registrar must attempt to obtain all of the information required to register that person to vote or have the person's registration updated.

- Requires the Registrar or deputy registrar, not later than seven days after obtaining all of the required information, to transmit that information and documentation, along with an electronic image of the person's signature and any telephone or email address the person has provided, to the Secretary electronically in a manner prescribed by the Secretary.

- Requires the Registrar or deputy registrar to transmit that information by an earlier deadline established by the Secretary, by rule, if the BMV obtains that information during the period immediately preceding the close of voter registration before an election.

- Requires the BMV, upon receiving a notice of change of address from a registered elector, to transmit the elector's information to the Secretary in the manner described above.

- Requires the Secretary, upon receiving information about the person, to check the Statewide Voter Registration Database (SWVRD) to determine whether the person is registered at the person's current address and under the person's current name, and if not, requires the Secretary to transmit the person's information to the board of elections.

- Specifies that, if the Secretary determines that the person is a participant in the address confidentiality program, the Secretary instead must send a notice to the person explaining the process to register to vote or update the person's registration confidentially through the program.

- Requires the Secretary, if the Secretary determines that the person is registered to vote at the person's current address and under the person's current name, to transmit an electronic record of that fact to the board of elections, including the date of the person's transaction with the BMV.

- Requires the board of elections to determine whether the person is eligible to register or to update the person's registration and, if so, to process the registration or update and send the person a notice of voter registration and an opportunity to decline.

- Provides that the electronic record transmitted to the board must be considered the person's voter registration form for recordkeeping purposes.

- Specifies that if the person later declines, the board must cancel the person's registration or restore the person's registration to its previous state, as applicable.

Erroneous voter registration updates

- Requires the board of elections to correct an elector's registration if it is updated in error under the Automated Voter Registration and Verification System and the elector requests a correction and provides proof of the elector's true name or address.

- Allows an elector whose registration has been updated in error under the system to cast a provisional ballot, provide ID showing the elector's true name and address, and have the ballot counted.

Criminal prohibitions involving voter registration

- Modifies the continuing-law prohibitions against false voter registration to avoid penalizing a person who is registered or has the person's registration updated under the Automated Voter Registration and Verification System, if the person did not intend to trigger a false registration or update.

- Prohibits any election official, any person assisting in the registration of electors, or any police officer from refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration of a qualified elector who should be registered or have the elector's registration updated under the system.

Implementation of system

- Requires the Secretary to implement the Automated Voter Registration and Verification System not later than one year after the bill takes effect.

Expansion of system

- Allows the Secretary, by rule, to require other state agencies to participate in the Automated Voter Registration and Verification System in the same manner as the BMV.

- Requires a state agency, upon the request of the Secretary, to provide any information or assistance the Secretary requires to carry out the Secretary's powers and duties under Title XXXV of the Revised Code.

Conforming changes

- Makes numerous conforming changes to other sections of the Revised Code to acknowledge the Automated Voter Registration and Verification System.

Statewide Voter Registration Database

- Adds a requirement that the Secretary and Registrar ensure the integrity, security, and confidentiality of the voter registration information contained in the SWVRD.

Voter roll maintenance procedures

Confirmation notices

- Consolidates and clarifies the language governing confirmation notices that are mailed to electors.

- Allows an elector to avoid cancellation of the elector's registration if, during the waiting period after the notice is sent, the elector's registration is updated under the Automated Voter Registration and Verification System or the elector votes, signs an election petition, or conducts a transaction with the BMV that confirms the elector's existing information.

Cancellation of registration in former county of residence

- Eliminates a requirement in law that when an elector moves and registers to vote or updates the elector's registration, the elector must submit an authorization to cancel the elector's previous registration, and instead requires the elector's new registration form to operate as that authorization.

- Requires a board of elections that updates an elector's registration under the Automated Voter Registration and Verification System to notify the board of elections of the elector's previous county to cancel the elector's previous registration.

- Requires that, if the elector later declines, the board that receives the declination notice must notify the board responsible for the elector's previous registration to restore it.

Consolidation of voter registration statutes

- Consolidates several provisions of law that describe the methods for registering to vote or updating a voter registration and how the boards of elections must process voter registrations and updates.

Technical changes

- Updates several references in Ohio law to the U.S. Code citations for federal election laws to refer to those laws' current locations in the U.S. Code.

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DETAILED ANALYSIS

Automated Voter Registration and Verification System

The bill creates an automated, electronic process called the Automated Voter Registration and Verification System to register eligible persons to vote or update their voter registrations using information from the Bureau of Motor Vehicles (BMV), unless those persons later opt out. The Secretary of State must adopt rules under the Administrative Procedure Act to develop, implement, and administer the program, including rules prescribing the manner and format in which the BMV must transmit information to the Secretary, an earlier deadline than seven days after obtaining the information for the BMV to transmit that information to the Secretary if obtained during a period immediately preceding the close of voter registration,

and procedures for the BMV, Secretary, and boards of elections to ensure that information transmitted is not considered a public record and remains confidential.[1]

BMV customers

When a person applies for, renews, or replaces a driver's license, commercial driver's license, or state identification (ID) card, the Registrar of Motor Vehicles or a deputy registrar must attempt to obtain all of the required information and documentation about the person necessary to register the person to vote or update the person's registration, unless the Registrar or deputy registrar has information indicating the person is not eligible to vote in Ohio. Not later than seven days after obtaining all of the information and documentation, the Registrar or deputy registrar must electronically transmit that information, along with an electronic image of the person's signature and any telephone number or email address the person has provided to the Secretary, in a manner prescribed by the Secretary. If the BMV obtains the information during the period immediately preceding the close of voter registration before an election, the BMV must transmit that information by an earlier deadline established by the Secretary, by rule. The customer may later opt out of the automated registration or update process by returning a declination notice (see **COMMENT**).[2]

Currently, the BMV must offer customers the opportunity to register to vote or to update their voter registrations, but the registration or update occurs only if the customer opts in and completes the necessary form.[3]

Required information

Under the bill, the Registrar or deputy registrar must attempt to obtain all of the following from a person who applies for, renews, or replaces a driver's license, commercial driver's license, or state ID card in order to register the person to vote or update the person's registration:

- The person's legal name;

- The person's residence address;

- The person's date of birth;

- The person's driver's license or state ID card number;

- The last four digits of the person's Social Security number;

- Documentation indicating that the person is a U.S. citizen.

Continuing Ohio law requires a person to provide all of that information, except documentation of citizenship, in order to register to vote or update the person's registration on

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[1] R.C. 3501.05(R)(2).

[2] R.C. 3501.05(R)(2) and new R.C. 3503.11(A), (B), and (D)(1).

[3] Repeal of R.C. 3503.11.

paper or online; however, a person only needs to provide one form of ID when submitting a paper registration form (a driver's license or state ID card number, the last four digits of the person's Social Security number, or a copy of a current and valid photo ID, military ID, or current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows the person's name and address).[4]

BMV change of address notices

The bill also requires the BMV, not later than seven days after receiving a notice of change of address from a registered elector, to send the elector's updated information to the Secretary for processing as described below. The BMV must send that information sooner, as prescribed by the Secretary by rule, during the period immediately preceding an election.[5]

Secretary of State processing

Under the bill, when the Secretary receives information concerning a person from the BMV, the Secretary must consult the Statewide Voter Registration Database (SWVRD) to determine whether the person is registered to vote at the person's current address and under the person's current name. If not, the Secretary promptly must transmit the person's information electronically to the appropriate board of elections.

If the person is registered to vote at the person's current address and under the person's current name, the Secretary must transmit an electronic notice of that fact to the appropriate board of elections. The notice must include the date of the person's transaction with the Registrar or deputy registrar.

If the Secretary determines that the person is not registered to vote at the person's current address or under the person's current name, but the person is a participant in Ohio's address confidentiality program for certain crime victims (also known as Safe at Home), the Secretary must not transmit the person's information to the board of elections. Instead, the Secretary must send a notice to the person explaining the process to register to vote or update the person's registration confidentially. Under continuing law, the Secretary administers the program and regularly forwards mail to participants in order to shield their residence addresses. The program includes a method for participants to have their voter registration records kept confidential and excluded from public databases.[6]

Board of elections processing; notice and opportunity to decline

If the board of elections determines that the person is eligible to register to vote or to update the person's registration, the board promptly must process the registration or update. The electronic record transmitted to the board must be considered the person's voter

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[4] New R.C. 3503.11(A); R.C. 3503.14 and 3503.20, not in the bill.

[5] R.C. 3501.05(R)(2) and new R.C. 3503.11(B)(2).

[6] New R.C. 3503.11(C). See also R.C. 111.44, not in the bill.

registration form for recordkeeping purposes. The board must send the person a notice of voter registration, as under continuing law. In the case of an automated registration or update, the bill requires the notice also to contain all of the following (see **COMMENT**):

- The procedure to decline to be registered to vote or have the person's registration updated, or to submit corrected information, by signing and returning the notice to the Secretary or board of elections;

- A statement that in order to register to vote, the person must be a U.S. citizen, at least 18 years old at the time of the next general election, and have lived in Ohio for 30 days immediately preceding the next election;

- A statement that election falsification is a fifth degree felony;

- A statement instructing the person to decline to be registered to vote if the person is not eligible to register;

- A statement that if the person declines to be registered or to have the person's registration updated, that fact will remain confidential and will only be used for voter registration purposes;

- A statement that if the person wishes to be registered to vote or to have the person's registration updated, the office at which the person submitted the person's information will remain confidential and will only be used for voter registration purposes.

If the person declines in writing to be registered to vote by returning a declination notice to the Secretary or board, the board must treat the declination as a request to cancel the person's registration. Similarly, if the person declines in writing to have the person's voter registration updated by returning a declination notice to the Secretary or board, the board must correct the person's registration to reflect the name, address, and signature that it contained before the board conducted the update.[7]

Erroneous voter registration updates

Under the bill, if an elector's name or address is updated in error under the Automated Voter Registration and Verification System, and the elector requests a correction and provides proof of the elector's true name or address, the board of elections must correct the elector's registration. Further, if the error is not corrected before Election Day, the elector may cast a provisional ballot using the elector's true name and address and have the ballot counted. If the elector casts the provisional ballot in the precinct in which the elector is erroneously registered, and not in the precinct in which the elector resides, the board must remake the provisional ballot to reflect the offices, questions, and issues for which the individual was eligible to vote and count each vote the elector was eligible to cast.

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[7] New R.C. 3503.11(D) and R.C. 3503.21(A)(7).

For example, if an elector submitted a permanent address change to the National Change of Address Service in order to receive mail at a relative's house, the elector's voter registration was updated to show the relative's address, and the elector's relative lost the notice that was sent to the elector at the relative's address, the elector might not realize that the elector's registration had been updated incorrectly. If the elector discovered the error before Election Day, the elector could request the board of elections to correct the elector's registration. Or, if the elector did not discover the error until the elector appeared to vote on Election Day, the elector could cast a provisional ballot, provide the required ID showing the elector's true residence address, and have that ballot counted. The provisional ballot affirmation also would be treated as a voter registration update form, causing the elector's address to be corrected after the election.[8]

Criminal prohibitions involving voter registration

The bill modifies the continuing-law prohibitions against false voter registration as they apply to persons who are registered or have their registrations updated under the Automated Voter Registration and Verification System to avoid penalizing a person who does not intend to trigger a false registration or update. In general, a person who knowingly registers or attempts to register in a precinct in which the person is not a qualified voter, or who knowingly aids, abets, induces, or attempts to induce another person to do so, is guilty of a fifth degree felony.

Under the bill, if a person's voter registration or update is processed through the program and the person is not a qualified voter in the precinct or under the name indicated, the person commits a crime only if the person knowingly provides or attempts to provide false information with the intention of registering to vote or submitting a registration update using that information.

For example, the bill would not penalize an elector who submitted a relative's address to the National Change of Address Service in order to receive mail there if the elector did not knowingly submit the relative's address with the intention of triggering a voter registration update to that address, even if the elector did not return the declination notice.

Similarly, a person who aids, abets, induces, or attempts to induce another person to have the other person's voter registration or voter registration update processed through the automated system when the other person is not a qualified voter in the precinct or under the name indicated commits a crime only if the person knowingly causes or attempts to cause the other person to be registered to vote or to have the other person's registration updated using information the person knows is false. For instance, the bill would not penalize a BMV employee who entered false information provided by a customer into the BMV's database, causing the customer to be registered incorrectly, unless the employee knew the information was false and knowingly caused the customer to be registered under that false information.

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[8] R.C. 3503.30 and 3505.183.

Finally, the bill prohibits any election official, any person assisting in the registration of electors, or any police officer from refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration of a qualified elector who should be registered or have the elector's registration updated under the Automated Voter Registration and Verification System. Continuing law prohibits those persons from refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration of a qualified elector who applies for registration in a lawful manner. Whoever violates that prohibition is guilty of a first degree misdemeanor.[9]

Implementation of system

The bill requires the Secretary to implement the Automated Voter Registration and Verification System not later than one year after the bill takes effect.[10]

Expansion of system

Under the bill, the Secretary may, by rules adopted under the Administrative Procedure Act, evaluate the information maintained by state agencies other than the BMV, identify state agencies that feasibly could participate in the Automated Voter Registration and Verification System, and require the directors of those agencies to coordinate with the Secretary to establish participation by those agencies in the system in the same manner and in accordance with the same requirements as the BMV. Upon the request of the Secretary, a state agency must provide any information or assistance the Secretary requires to carry out the Secretary's powers and duties under Title XXXV of the Revised Code.[11]

Conforming changes

The bill makes numerous conforming changes to other sections of the Revised Code to acknowledge the Automated Voter Registration and Verification System, including updating the required contents of the Secretary's voter registration brochure to include references to the system and how to decline registration under the system.[12]

Statewide Voter Registration Database security

The bill adds a requirement that the Secretary and Registrar ensure that the procedures implemented under the Automated Voter Registration and Verification System maintain the integrity, security, and confidentiality of the voter registration information contained in the SWVRD. Under continuing law, the Secretary must ensure the integrity, security, and confidentiality of information in the SWVRD.[13]

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[9] R.C. 3599.11(A) and 3599.18.

[10] Section 4 of the bill.

[11] New R.C. 3503.11(F) and R.C. 3501.05.

[12] R.C. 3503.09, 3503.12, 3503.13, 3503.15, 3503.16, 3503.19, 3503.28, and 3505.183.

[13] New R.C. 3503.11(E) and 3503.15.

Voter roll maintenance procedures

Confirmation notices

The bill consolidates and clarifies the language governing confirmation notices that are mailed to electors. Under continuing law, when the confirmation notice process is triggered, a board of elections must send the notice on a form prescribed by the Secretary of State, by forwardable mail and with return postage prepaid, to the elector to confirm the elector's current address. The notice must comply with all applicable requirements of the National Voter Registration Act of 1993, which created the confirmation notice process and lists the required contents of a confirmation notice.

Under the bill, if the elector fails to do one or more of the following at least once during a four-year period that includes two federal general elections, the elector's registration is subject to cancellation:

- Respond to a confirmation notice;

- Update the elector's registration;

- Have the elector's registration updated under the Automated Voter Registration and Verification System created by the bill;

- Conduct a transaction with the Registrar or deputy registrar that confirms the elector's existing information;

- Vote in an election;

- Sign any petition that is filed with a public office for the purpose of becoming a candidate for any nomination or office or for the purpose of holding an election on any issue, so long as the board of elections verifies the signatures on the petition and determines that the elector's signature is valid. (The bill requires a board of elections to continue verifying every signature on a petition even after verifying the minimum number of signatures required for the petition.)

Currently, the Revised Code specifies that the elector's registration is subject to cancellation if the elector does not, during that period, either (1) respond to the confirmation notice and vote, or (2) update the elector's registration and vote. However, federal law only requires an elector who has been mailed a confirmation notice to respond to the notice, update the elector's registration, or vote, not to *both* respond or update the elector's registration *and* vote. It appears that the existing language in Ohio law is an error, and federal law is the controlling authority in this situation.

Continuing law specifies that if the elector does not take the required action, the elector's registration must be canceled not later than 120 days after the second federal general election occurring after the elector is mailed the notice or not later than 120 days after the

expiration of the four-year response period, whichever is later. But, the registration must not be canceled during the 90 days immediately preceding a federal election.[14]

Cancellation of registration in former county of residence

The bill eliminates a requirement in law that when an elector moves and registers to vote or updates the elector's registration, the elector must submit an authorization to cancel the elector's previous registration. Instead, the bill specifies that the elector's new registration form operates as that authorization. And, in the case of an elector who is registered or has the elector's registration updated under the Automated Voter Registration and Verification System created by the bill, the board of elections that processes the elector's registration must create a notice to cancel the elector's previous registration.

When the elector's new registration is processed, the board of elections must send the authorization or notice, along with a copy of the elector's new registration form, to the board of elections of the county where the elector previously was registered or to the comparable agency in another state, if the elector has moved from another state. Under continuing law, the board that receives the authorization or notice must compare the signatures on the old and new registrations, cancel the elector's previous registration, and retain it along with the cancellation authorization in a separate file for two calendar years. The board also must notify the elector of the cancellation.

When an elector is registered or has the elector's registration updated under the Automated Voter Registration and Verification System and the elector later declines, the bill requires the board that receives the declination notice to notify the board of elections or out-of-state agency responsible for the elector's previous registration to restore the previous registration and treat it as though it were never canceled.[15]

Consolidation of voter registration statutes

The bill consolidates several provisions of law that describe the methods for registering to vote or updating a voter registration and how the boards of elections must process voter registrations and updates. While the bill rearranges the statutes and eliminates redundant language, the bill does not substantively change them, other than to include references to the Automated Voter Registration and Verification System.[16]

Technical changes

The bill updates several references in Ohio law to the U.S. Code citations for the federal Voting Rights Act of 1965, National Voter Registration Act of 1993, and Uniformed and

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[14] R.C. 3501.01(W), 3501.38, 3503.19(C)(3), 3503.21, 3513.05, 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, and 3513.259. See also 52 U.S.C. 20507.

[15] R.C. 3503.33.

[16] R.C. 3503.16 and 3503.19, and conforming changes in R.C. 3509.02, 3509.04, 3509.08, and 3599.12.

Overseas Citizens Absentee Voting Act to refer to those acts' current locations in the U.S. Code. The federal election laws were reorganized, but not substantively changed, in 2014.[17]

COMMENT

1. The bill might be vulnerable to a challenge on the ground that it violates the First Amendment to the U.S. Constitution. The U.S. Supreme Court has ruled that because "there are individuals for whom. . . the choice not to register implicates political thought and expression," the First Amendment gives a person the right not to register to vote.[18] If a reviewing court found that the bill impermissibly burdened that right by requiring a person who did not wish to register to vote to follow the procedure to decline to do so by mailing in a notice after the person has already been registered, the court might rule the bill unconstitutional. It appears that this particular issue has not been litigated.

2. A reviewing court might rule that the bill violates the National Voter Registration Act of 1993 (NVRA). Under the NVRA, the voter registration forms used by the BMV and designated agencies must include a space for the applicant to attest, under penalty of perjury, that the applicant is eligible to vote.[19] The bill requires applicants to be registered without signing such an attestation.

The NVRA also requires the registration forms used at the BMV to include language explaining that the applicant may decline to register to vote. And, the forms used by a designated agency that provides service or assistance in addition to conducting voter registration must include boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote. If the applicant does not check either box, the applicant is considered to have declined to register.[20] Under the bill, however, a person who does not wish to register is not given the opportunity to decline before the registration occurs

HISTORY

Action	Date
Introduced	03-05-20

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[17] R.C. 3501.01(Y) and (Z) and 3503.19(B)(1).

[18] *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 195 (1999).

[19] 52 U.S.C. 20504(c)(2)(C) and 20506(a)(6)(A)(i).

[20] 52 U.S.C. 20504(c)(2)(D)(ii) and 20506(a)(6)(B)(iii).