



Ohio Legislative Service Commission

Final Analysis

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Sub. S.B. 63

131st General Assembly
(As Passed by the General Assembly)

Sens. LaRose, Hite, Jones, Gardner, Lehner, Hottinger, Tavares, Brown, Coley, Bacon, Balderson, Beagle, Burke, Eklund, Faber, Manning, Obhof, Patton, Peterson, Sawyer, Seitz, Thomas, Uecker, Yuko, Hackett

Reps. Brown, R. Smith, Anielski, Antani, Arndt, Baker, Blessing, Buchy, Cupp, Dovilla, Duffey, Green, Grossman, Hambley, Henne, Koehler, Landis, Manning, McClain, McColley, Pelanda, Perales, Reineke, Rezabek, Rogers, Schaffer, Schuring, Sears, Slaby, K. Smith, Sprague, Terhar, Thompson

Effective date: September 13, 2016

ACT SUMMARY

Online voter registration

- Requires the Secretary of State to establish a secure online process for voter registration and registration updates and specifies information that an applicant must provide to use the online system.
- Requires the Secretary of State to obtain an electronic copy of the applicant's signature that is on file with the Bureau of Motor Vehicles, to be used as the applicant's signature on voter registration records.
- Requires the online voter registration system, beginning 29 days before election day and ending on election day, to display a notice indicating that the applicant will not be registered to vote for that election.
- Requires the Secretary of State to employ necessary security measures to ensure the integrity and accuracy of the system.
- Specifies that errors in processing online voter registration applications must not prevent an applicant from registering or voting.

* This version updates the effective date and the list of sponsors.

- Prohibits the online voter registration process from operating before January 1, 2017.
- Specifies that if any online voter registration provision is held invalid, then all online voter registration provisions cease to operate.

Statewide Voter Registration Database

- Requires that certain state agencies that transfer data to the Secretary of State for the Statewide Voter Registration Database, do so not later than the last day of each month.
- Requires the Secretary of State to transmit information to the boards of elections for the Database in accordance with federal and state law.
- Requires the Secretary of State to annually review the Database to determine whether any individuals who are not U.S. citizens are registered to vote.

Certification of voting equipment

- Permits a voting machine, marking device, or automatic tabulating equipment to meet either Election Assistance Commission (EAC) guidelines or Federal Election Commission (FEC) standards.
- Specifies that the federal certification requirements do not apply to equipment if the EAC does not certify it as part of its testing and certification program.

Filling vacancies in local offices

- Specifies that if a vacancy occurs in certain local offices, the vacancy must be filled by the local central committee of the political party that nominated the former officer or officer-elect as a candidate for that office for the current term.
- Clarifies that, if the former officer or officer-elect was elected as an independent to serve the current term, certain local officials must fill the vacancy.

CONTENT AND OPERATION

Online voter registration

Application

The act requires the Secretary of State to establish a secure online voter registration system. The system must allow an applicant to register to vote or to update the applicant's name, address, or both.



The applicant must provide all of the following information:

- The applicant's name;
- The applicant's address;
- The applicant's date of birth;
- The last four digits of the applicant's Social Security number;
- The applicant's Ohio driver's license or state ID card number.

Under the act, the applicant must be qualified to register to vote and must attest to the truth and accuracy of the submitted application information under penalty of election falsification. The online application must include the following language, along with a box that the applicant must mark in order to submit the application:

By clicking the box below, I affirm all of the following under penalty of election falsification, which is a felony of the fifth degree:

- (1) I am the person whose name and identifying information is provided on this form, and I desire to register to vote, or update my voter registration, in the State of Ohio.
- (2) All of the information I have provided on this form is true and correct as of the date I am submitting this form.
- (3) I am a United States citizen.
- (4) I will have lived in Ohio for thirty days immediately preceding the next election.
- (5) I will be at least eighteen years of age on or before the day of the next general election.
- (6) I authorize the Bureau of Motor Vehicles to transmit to the Ohio Secretary of State my signature that is on file with the Bureau of Motor Vehicles, and I understand and agree that the signature transmitted by the Bureau of Motor Vehicles will be used by the Secretary of State to validate this electronic voter registration application as if I had signed this form personally.



The act specifies that beginning 29 days before election day and ending on election day, the online voter registration system must display a notice indicating that the applicant will not be registered to vote for that election. Under continuing law, a person must be registered to vote not later than 30 days before election day to vote in that election.¹

Processing applications

Under the act, when an individual uses the online system to register to vote or to update the individual's registration, the application information must be consistent with the information on file with the Bureau of Motor Vehicles (BMV). The Secretary of State must obtain an electronic copy of the individual's signature that is on file with the BMV to use as the individual's signature on voter registration records, for all election and signature-matching purposes. The act specifies that an application submitted through the online registration system need not contain a signature to be valid.²

Administration

The act requires the Secretary of State to employ necessary security measures to ensure the integrity and accuracy of voter registration information submitted through the online system. It also specifies that errors in processing online voter registration applications must not prevent an applicant from registering or voting.

The online voter registration process must not operate before January 1, 2017.³

Unity clause

The act specifies that if any of its online voter registration provisions are held invalid, or if the application of any of those provisions to any person or circumstance is held invalid, then all of the act's online voter registration provisions cease to operate. By contrast, the general rules of statutory construction state that the invalidity of one provision does not affect other related provisions, if those other provisions can be given effect without the invalid provision.⁴

¹ R.C. 3503.01, not in the act, and 3503.20.

² R.C. 3503.14(E) and 3503.20.

³ R.C. 3503.20.

⁴ R.C. 1.50, not in the act, and 3503.20(F).



Statewide Voter Registration Database

Data sharing with state agencies

Under the act, certain state agencies that continuing law requires to provide data to the Secretary of State for the Statewide Voter Registration Database must provide that data according to a specified schedule. Specifically, the Department of Health, the Bureau of Motor Vehicles, the Department of Job and Family Services, the Department of Medicaid, and the Department of Rehabilitation and Corrections must do so not later than the last day of each month. Formerly, only the Department of Health was required to share data with the Secretary of State according to a specific schedule. The act changes that schedule to require the Department to file reports with the Secretary of State not later than the last day of each month, instead of at least once each month.⁵

Database maintenance

The act requires the Secretary of State to regularly transmit to the boards of elections data received from state agencies and from other states to ensure that the Statewide Voter Registration Database is maintained under applicable state and federal law. Federal law and continuing Ohio law require the Secretary of State and boards of elections to share data to maintain the Database, however, the act specifies in more detail the purpose and requirements of sharing that information. The Secretary of State must transmit data that is necessary to do the following:⁶

- Ensure the boards of elections maintain the Database so that the name of each registered elector appears, that only individuals who are not registered or eligible to vote are removed, and that duplicate registrations are eliminated;
- Require the boards of elections to make a reasonable effort to remove individuals who are not eligible to vote from the Database;
- Establish safeguards to ensure that eligible electors are not removed in error from the Database.

Annual citizenship review

Under the act, the Secretary of State must conduct an annual review of the Statewide Voter Registration Database to determine whether any individuals who are not U.S. citizens are registered to vote. The review must not occur during the 90 days

⁵ R.C. 3503.15 and 3503.18.

⁶ R.C. 3501.05, not in the act, and 3503.15. See also 52 U.S.C. 21083.



immediately before a primary or general election for federal office. In conducting the review, the Secretary of State must compare the information in the Database with the information the Secretary obtains from the Bureau of Motor Vehicles (BMV) under continuing law to identify any person who does all of the following, in the following order:

- Submits documentation to the BMV that indicates that the person is not a U.S. citizen;
- Registers to vote, updates the person's name or address in the person's voter registration, or votes;
- Submits documentation to the BMV that indicates that the person is not a U.S. citizen.

The Secretary of State must send a written notice to each such person, instructing the person either to confirm that the person is a U.S. citizen or to submit a completed voter registration cancellation form. The notice must include a blank cancellation form. If the person fails to respond to the notice not later than 30 days after the notice was sent, the Secretary of State promptly must send the person a second notice and form.

If the person responds to the notice not later than 60 days after the first notice was sent and confirms that the person is a U.S. citizen, the Secretary of State must take no action concerning the person's registration. If the person responds during that time by sending a completed cancellation form to the Secretary of State, the Secretary must instruct the board of elections to cancel the person's registration.

If the person fails to respond to a second notice not later than 30 days after it was sent, the Secretary of State must refer the matter to the Attorney General for further investigation and possible prosecution under the laws that prohibit ineligible persons from registering to vote or voting, or under any other applicable provision of Ohio law. If, after the 30th day after the second notice was sent, the person sends the Secretary of State a completed cancellation form, the Secretary must instruct the board to cancel the person's registration and notify the Attorney General of the cancellation.⁷

Certification of voting equipment

The act requires any voting machine, marking device, or automatic tabulating equipment ("voting equipment") to meet either the 2002 Federal Election Commission (FEC) voting system standards or the most recent federal Election Assistance

⁷ R.C. 3503.15(H) and 3503.21.



Commission (EAC) voluntary voting system guidelines. If the voting equipment was initially certified or acquired on or after December 1, 2008, it also must have the most recent federal certification number issued by the EAC. However, under the act, those requirements do not apply to voting equipment that the EAC does not certify as part of its testing and certification program.

Former law specifies that any voting equipment initially certified or acquired on or after December 1, 2008, must have had the most recent federal certification number issued by the EAC. But, voting equipment that was certified for use in Ohio on September 12, 2008, must have met the 2002 FEC voting system standards.⁸

Filling vacancies in local offices

The act clarifies the manner in which a vacancy in certain local offices must be filled until an election is held. The act affects the city offices of mayor, director of law, auditor, and treasurer. And, the act affects the county offices of county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, and coroner.

Under the act, if a vacancy occurs in any of those offices, the vacancy must be filled by the county central committee of the political party that nominated the former officer or officer-elect as a candidate for that office for that term. However, for a vacancy in the office of mayor, if the party has a city central committee, that committee fills the vacancy. Prior law stated that these vacancies were to be filled by the city or county central committee, of the party with which the former officer or officer-elect "was affiliated."

Under continuing law, if the former officer or officer-elect was elected as an independent candidate, certain local officers must appoint a person to fill the vacancy. The act clarifies that this procedure applies if the person was elected *to serve the current term* as an independent candidate. For a county office, the board of county commissioners fills the vacancy, except that if the vacancy is in the office of county commissioner, the prosecuting attorney and the remaining commissioners make the appointment. If the vacancy is in the office of city mayor, the city's legislative authority fills the vacancy. And, if the vacancy is in the office of city director of law, auditor, or treasurer, the mayor fills the vacancy.⁹

As a result, the act clarifies the procedure for filling a vacancy if the former officer or officer-elect has changed the person's political party affiliation between the

⁸ R.C. 3506.05(H)(4).

⁹ R.C. 305.02, 733.08, and 733.31.



time of the election and the time of the vacancy. The Ohio Attorney General and the Ohio Supreme Court have stated that the former law was ambiguous because it did not account for such a situation.¹⁰ The table below illustrates the effect of the act.

Officer's affiliation at time of election	Officer's affiliation at time of vacancy	Who filled the vacancy under former law	Who fills the vacancy under the act
Party A	Party A	Party A	Same as former law.
Party B	Party B	Party B	Same as former law.
Independent	Independent	Local officials	Same as former law.
Party A	Party B	Unclear	Party A
Party B	Party A	Unclear	Party B
Party A	Independent	Unclear	Party A
Independent	Party A	Unclear	Local officials

HISTORY

ACTION	DATE
Introduced	02-18-15
Reported, S. Gov't Oversight & Reform	06-24-15
Passed Senate (31-1)	06-24-15
Reported, H. Gov't Accountability & Oversight	05-11-16
Passed House (95-2)	05-24-16
Senate concurred in House amendments (33-0)	05-25-16

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¹⁰ 2015 Op. Att'y Gen. 38 (2015) and *State ex rel. Herman v. Klopfleisch*, 72 Ohio St.3d 581 (1995).

