



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 181

131st General Assembly
(As Introduced)

Rep. Clyde

BILL SUMMARY

Automatic voter registration

- Establishes an automatic voter registration system using the information on file with certain government agencies and schools.
- Requires the Bureau of Motor Vehicles (BMV) and each designated agency to provide electronic records to the Secretary of State concerning each person in the agency's database who appears to be eligible to register to vote or to update the person's registration.
- Requires each public or private secondary school to provide electronic records to the Secretary of State concerning each person who graduates from the school and who appears to be eligible to register to vote or to update the person's registration.
- Requires a board of elections, if it determines that a person is eligible to register to vote or to update the person's registration, to send the person a notice by nonforwardable mail that the person will be registered or have the person's registration updated unless the person declines to do so.
- Specifies procedures for the board to follow if the person declines or if the notice is undeliverable.
- Requires a person who is automatically registered to have submitted the person's information to the BMV, a designated agency, or a school not later than the 30th day before an election to vote in that election.
- Requires the Secretary of State to adopt rules to implement the automatic voter registration system.

- Specifies procedures to cancel any previous registration of a person who is automatically registered to vote or who has the person's registration automatically updated.
- Specifies that a person who is automatically registered to vote or has the person's registration automatically updated may not use the person's notice of voter registration as voter identification (ID).
- Prohibits any election official, person assisting in the registration of electors, or police officer from knowingly refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration of a qualified elector who should be registered automatically under the bill.
- Changes the information that must be included in the Secretary of State's informational brochure about voter registration to accommodate the changes made by the bill.
- Makes conforming changes to several Revised Code sections to acknowledge the automatic voter registration system described above.
- Removes existing requirements that the BMV share information in its database with the Secretary of State for the purpose of maintaining the Statewide Voter Registration Database.

Online voter registration

- Purports to create an online voter registration system, although S.B. 63 of the 131st General Assembly has already created such a system.
- Requires a person who uses the system to affirm the person's eligibility under penalty of perjury instead of under penalty of election falsification, as current law requires.
- Allows a person who does not have a current and valid Ohio driver's license or state ID card to register online or to update the person's registration online by providing the last four digits of the person's Social Security number.
- Specifies procedures that apply if a person who uses the online registration system does not have an electronic copy of the person's signature on file in a government database.

Department of Job and Family Services voter registration program

- Eliminates a provision of law that requires the Department of Job and Family Services to limit administration of the aspects of its voter registration program to the requirements prescribed by the Secretary of State and the requirements of the Revised Code and the National Voter Registration Act (NVRA).

Compensated voter registration workers

- Eliminates several provisions of law that applied to compensated voter registration workers, since those provisions are not being enforced because they have been ruled unconstitutional.

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CONTENT AND OPERATION

Automatic voter registration

Generally

The bill establishes an automatic voter registration system using the information on file with certain government agencies and schools. Under continuing law, government agencies generally must offer the persons with whom they come in contact the opportunity to register to vote or to update their voter registrations (see **COMMENT 1**).

Under the bill, the Bureau of Motor Vehicles (BMV) and each designated agency must electronically provide the following information to the Secretary of State, on a schedule established by the Secretary by rule, concerning each person in the agency's database who appears to be eligible to register to vote or to update the person's registration and about whom the agency has that information:

- The person's legal name;
- The person's residence address;
- The person's date of birth;
- The person's driver's license or state identification (ID) card number or the last four digits of the person's Social Security number;
- Whether the person is a U.S. citizen;
- The person's electronic signature.

Under continuing law, a "designated agency" is (1) an office or agency in Ohio that provides public assistance or that provides state-funded programs primarily engaged in providing services to persons with disabilities and that is required by the National Voter Registration Act of 1993 (NVRA) to implement a program for registering voters or (2) any other public agency or government office or agency that implements a program for registering voters, including the Department of Job and Family Services; the Special Supplemental Nutrition Program for Women, Infants, and Children; the Department of Mental Health and Addiction Services; the Department of Developmental Disabilities; the Opportunities for Ohioans with Disabilities agency; and any other agency designated by the Secretary of State (see **COMMENT 2**).

Additionally, the bill requires each public or private secondary school to provide electronic records of the information listed above to the Secretary of State, in accordance with a schedule established by the Secretary by rule, concerning each person who graduates from the school, who appears to be eligible to register to vote or to update the person's registration, and about whom the school has that information (see **COMMENT 3**).

The Secretary of State then must send that information to the board of elections of the person's county. If the board determines that the person is eligible to register to vote or to update the person's registration, the board must send the person a notice by nonforwardable mail that the person will be registered or have the person's registration updated unless the person declines to do so. The Secretary of State must prescribe the form of the notice after engaging the services of one or more usability, disability, and user interface design experts to test, review, and approve the proposed form.

The notice must include the procedure to decline to register or update; the bureau, agency, or school that provided the information that will be used for the registration or update; the precinct in which the person will be registered to vote; and the same language that currently is included in a notice of voter registration concerning

the ID that voters must bring to the polls. At least 21 days after the board sends the notice, if the person has not declined, the board must register the person to vote or update the person's registration. The electronic records transmitted to the board are considered to be the person's voter registration form.

If a person declines to register after the board has already registered the person, the board must cancel the registration. If the person declines to update the person's registration after the board has completed the update, the board must correct the person's registration to reflect the information it contained before the board made the update. And, if the person has been automatically registered in the wrong precinct by mistake, upon application of the person and proof of the person's true residence, the board must correct the person's registration.

To be eligible to vote in an election, a person who is automatically registered must have submitted the person's information to the BMV, a designated agency, or a school not later than the 30th day before the election. (Current law requires a person to submit a voter registration form not later than that date in order to vote.) Under continuing law, a person who is registered to vote in Ohio but has moved within Ohio and has not updated the person's registration by that deadline still may vote in the election, either by casting a regular ballot or a provisional ballot, depending on the circumstances.

The bill requires the Secretary of State to adopt rules to implement the automatic voter registration system.¹

Undeliverable notice of voter registration

If a board of elections sends a notice of automatic voter registration and the notice is returned to the board, the board must investigate and send the notice to the correct address. If the board cannot verify the person's correct address, the board must register the person and send the person a confirmation notice by forwardable mail. If the person fails to respond to the confirmation notice, update the person's registration, or vote in any election during the period of two federal elections after the mailing of the notice, the board must cancel the person's registration.

When the board sends that confirmation notice, the board also must mark the person's name in the official registration list and in the pollbook to indicate that the person must vote by provisional ballot. At the first election at which the person appears to vote, the person must provide ID to the election officials and cast a provisional ballot.

¹ R.C. 3501.05(R)(2), 3503.10, 3503.11, 3503.16, 3503.19, 3503.21, and 3503.30. See also existing R.C. 3503.11, repealed by the bill, and R.C. 3501.01(X), not in the bill.



If the person's ballot is counted, the board must correct the person's registration, if needed, and remove the marking from the person's name. If the ballot is not counted, the board must cancel the person's registration and notify the person of the cancelation by U.S. mail.²

Cancelation of previous registration

When a board of elections conducts an automatic voter registration or update under the bill, if the board is aware of the person's previous address, and the address is in another state or county, the board must send a notice to cancel the previous registration, along with a copy of the person's most recent registration information, to the board of elections or comparable agency of the proper state and county where the person's previous registration is located. Upon receiving a notice to cancel, a board of elections must compare the person's signature included with the notice with the signature in the board's registration files, remove the registration from the files, and keep the registration and the notice in a separate file for two calendar years.

If the person later declines to register or to update the person's registration, the board that registered the person or updated the person's registration must notify the board of elections or comparable agency to which the board sent the notice to cancel, and the person's previous registration must be restored and treated as though it were never canceled.

Under continuing law, a person who registers or updates the person's registration must authorize the cancelation of any previous voter registration, and the board of elections must send that authorization to the appropriate board of elections or other agency. A board of elections that receives such an authorization must compare it with the person's signature on the person's previous registration, remove the previous registration from the files, and keep the registration and the notice in a separate file for two calendar years.³

Voter identification

The bill specifies that a person who is automatically registered to vote or has the person's registration automatically updated may not use the person's notice of voter registration as voter ID. Continuing law prohibits a person from using a notice of voter

² R.C. 3503.11(C)(2) and 3505.181(A)(4).

³ R.C. 3503.33.

registration received as a result of submitting a voter registration or update form as voter ID.⁴

Preventing the registration of a qualified elector

The bill prohibits any election official, person assisting in the registration of electors, or police officer from knowingly refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration of a qualified elector who should be registered automatically under the bill. Whoever violates that prohibition is guilty of a first degree misdemeanor.

Under continuing law, no such person may knowingly refuse, neglect, or unnecessarily delay, hinder, or prevent the registration of a qualified elector who lawfully applies for registration. A person who violates that prohibition also is guilty of a first degree misdemeanor.⁵

Informational brochure

Under the bill, the Secretary of State's informational brochure about voter registration must include the locations and manner in which a person may register to vote and the manner in which a person may opt out of automatic voter registration. Continuing law requires the brochure to include information about the applicable voter registration deadlines and the ID required to vote.

The bill also removes information from the brochure related to separate requirements for compensated voter registration workers (see "**Compensated voter registration workers**," below).⁶

Conforming changes

The bill makes conforming changes to several Revised Code sections to acknowledge the automatic voter registration system described above. And, the bill removes existing requirements that the BMV share information in its database with the Secretary of State for the purpose of maintaining the Statewide Voter Registration Database, because the bill requires the BMV to share that information in a different manner.⁷

⁴ R.C. 3503.14, 3505.18, 3505.181, 3505.183, 3509.03, 3509.05, 3511.02, and 3511.09.

⁵ R.C. 3599.18.

⁶ R.C. 3503.28.

⁷ R.C. 3503.09, 3503.12, 3503.13, 3503.15, and 3503.16.



Online voter registration

The bill purports to create an online voter registration system. However, after the bill was introduced, the General Assembly enacted S.B. 63, which requires the Secretary of State to establish an online voter registration system that is available for use not earlier than January 1, 2017.

Compared to the current system, the bill's online registration system includes only two substantive differences. First, the bill requires a person who uses the system to affirm the person's eligibility under penalty of perjury, which is a third degree felony and is punishable by a maximum of 36 months in prison and a \$10,000 fine. Under current law, such a person must affirm that fact under penalty of election falsification, which is a fifth degree felony and is punishable by a maximum of 12 months in prison and a \$2,500 fine. Continuing law specifies that any other person who lies on an elections document is guilty of election falsification.

Second, under the bill, a person who does not have a current and valid Ohio driver's license or state ID card may register online or update the person's registration online by providing the last four digits of the person's Social Security number. If an electronic copy of the person's signature is on file in a government database, such as the BMV database, that signature must be used as the person's signature on the registration or update form. Current law requires a person to provide both a driver's license or state ID card number and the last four digits of the person's Social Security number. The Secretary of State then obtains an electronic copy of the person's signature from the BMV database.

Under the bill, if the person is updating the person's registration and an electronic copy of the person's signature is not on file in a government database, the board of elections must create a digital copy of the signature on the person's current registration record and use that signature as the person's signature on the update form. If the person is not currently registered to vote and an electronic copy of the person's signature is not on file in a government database, the board must register the person and send the person a signature card that instructs the person to sign the card and return it to the board. The Secretary of State must prescribe the form of the signature card, and the board must prepay the return postage on the card. If the person signs and returns the card, the board must use the signature on the card as the person's signature on the person's voter registration record.

If the person does not sign and return the card, then the first time the person signs a voter registration update form, a pollbook, a provisional ballot affirmation, or an application for absent voter's ballots, the board must use a digital copy of that signature as the person's signature on the person's voter registration record. (The bill clarifies that



a person who votes on Election Day must sign the pollbook, instead of writing the person's name and address.) Until the board obtains a signature from the person, the person's signature on an election petition is not valid, since the board would not have a signature on file to compare against a petition signature. The online registration form and the signature card must inform the person of that fact.

For a person whose registration record does not yet include a signature, the bill specifies that two continuing law signature comparison requirements do not apply to the person. First, under the bill, a board of elections that is preparing to cancel a person's previous voter registration need not compare the signature on the previous registration with the one on the new registration if the new registration does not include a signature. And, when a person whose registration does not include a signature votes on Election Day, the bill specifies that the election officials are not required to compare the person's signature in the pollbook with the signature on the person's registration record.⁸

Department of Job and Family Services voter registration program

The bill eliminates a provision of current law that requires the Department of Job and Family Services and its departments, divisions, and programs to limit administration of the aspects of the voter registration program for the Department to the requirements prescribed by the Secretary of State and the requirements of the Revised Code and the NVRA.⁹

Compensated voter registration workers

The bill also eliminates several provisions of law that applied to compensated voter registration workers. Under that law, a compensated registration worker was required to do all of the following:

- Pre-register with the Secretary of State and complete an online training;
- Include the worker's own name, address, and employer on each registration form;
- Personally deliver or mail the completed form to the Secretary of State or a board of elections;

⁸ R.C. 3501.05(AA), 3503.14(C), 3503.16(A)(4), 3503.19(A)(1)(e), 3503.20, 3503.33(C)(1)(a)(ii), 3505.18, and 3505.181 and repeal of R.C. 3505.22. See also current R.C. 2921.11, 2929.14, 2929.18, 3503.14, 3503.20, and 3599.11, not in the bill.

⁹ R.C. 3503.10(L).

- Sign and submit with each batch of voter registration forms an affirmation that the worker has completed the training and complied with all laws governing voter registration activities.

This law has not been enforced since 2006 because a federal court ruled that it violates the First Amendment to the U.S. Constitution.¹⁰

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.¹¹ 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, 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 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.¹² 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.¹³ Under the bill, however, an applicant who declined to register would still be automatically registered.

¹⁰ R.C. 3503.14, 3503.19, 3503.28, and 3599.11 and repeal of R.C. 3503.29. See also *Project Vote v. Blackwell*, 455 F.Supp. 2d 694 (N.D. Ohio 2006) and *Project Vote v. Blackwell*, 2008 U.S. Dist. LEXIS 9878 (N.D. Ohio 2008).

¹¹ *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 195 (1999).

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

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



3. It appears that the federal Family Educational Rights and Privacy Act (FERPA) would prevent a public high school or vocational school from releasing to the Secretary of State the information needed to register new graduates to vote. Under FERPA, no school that receives federal funds may release a student's identifying information, including the student's Social Security number, country of citizenship, or signature, without written permission from the student's parents or, if the student is over 18, from the student. A school may release directory information, such as the student's name, address, and date of birth, but only if the school gives public notice of the disclosure and provides a reasonable period of time for parents to object.¹⁴

Moreover, because Ohio law currently prohibits schools from collecting students' Social Security numbers, schools probably could not provide the necessary information to the Secretary of State to register current students to vote.¹⁵

HISTORY

ACTION	DATE
Introduced	04-30-15

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¹⁴ 20 U.S.C. 1232g(a)(5) and (b)(2).

¹⁵ R.C. 3301.0714(D)(1).

