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## Bill Analysis

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**Primary Sponsors:** Reps. Seitz and Ray

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### SUMMARY

- Enacts the Ohio Election Security and Modernization Act to make several changes to the Election Law, including creating an Automated Voter Registration and Verification System through the Bureau of Motor Vehicles (BMV); modifying the procedures for voter roll maintenance; and making changes concerning absent voting and election administration.

### Automated Voter Registration and Verification System

- Requires the Secretary of State to implement an Automated Voter Registration and Verification System not later than two years after the bill takes effect and specifies rulemaking requirements concerning the System.
- Specifies that, 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 the Election Law.
- Requires that, when a person applies to receive or renew a driver's license or state identification (ID) card in person at the BMV, the Registrar or deputy registrar must follow a process to obtain the person's identifying information and confirm whether the person is registered to vote under the person's current name and address.
- Requires the Registrar or deputy registrar, if the person is not registered to vote or is registered but has had a change of name, to offer the person an opportunity to register using a customer-facing electronic display, unless the Registrar or deputy registrar has information indicating that the person is not eligible to vote in Ohio.
- Requires the Secretary and the Registrar jointly to prescribe procedures to offer voter registration when a customer renews a driver's license or state ID card online through the BMV, which will be available beginning July 1, 2022.

- Requires the BMV, if a customer has had a change of address, to automatically transmit the person's current information, along with any phone number or email address the person has provided, to the Secretary.
- Requires that when a BMV customer applies for or renews a driver's license or state ID card, and the person's voter registration is already up to date, the Registrar or deputy registrar must notify the Secretary so that the transaction can be noted in the person's registration record.
- Specifies procedures for the Secretary to process voter registration information received from the BMV and send it on to the appropriate board of elections.
- Specifies procedures for the board of elections to process voter registration information received from the Secretary.
- Requires the board, when registering a person or updating the person's registration through the System, to send the person a modified notice of voter registration that includes the process to decline the registration or update.
- Allows the person to decline the registration or update by signing and returning the notice.
- Requires the board to correct an elector's registration if the elector's name or address is updated in error under the System, and the elector requests a correction and provides identification.
- Specifies that 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.
- Modifies the continuing-law prohibitions against false voter registration as they apply to persons who are registered or have their registrations updated under the System to avoid penalizing a person who does not intend to trigger a false registration or update.
- Makes numerous conforming changes to other sections of the Revised Code to acknowledge the Automated Voter Registration and Verification System.

## **Voter roll maintenance procedures**

- Adds to the types of voter activity that allow an elector to avoid having the elector's registration canceled after the elector is sent a confirmation notice, including conducting a transaction with the BMV or signing an election petition.
- Consolidates and clarifies statutory language governing confirmation notices.
- 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.

- Specifies procedures to cancel an elector's previous registration in another county when the registration is updated through the Automated Voter Registration and Verification System.
- 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.

## **Voter identification**

- Provides expanded definitions of "utility bill" and "bank statement" for when an elector uses one of those documents as a form of voter ID, allowing an elector to provide an electronic bill or statement.
- Specifies that for purposes of voting in person, an elector who uses a utility bill or bank statement as ID may either show a paper copy of the document or show the document on the elector's personal electronic device.
- Clarifies that in every context where an elector currently may provide the elector's driver's license number as identification, the elector instead may provide the elector's state ID card number.

## **Curbside voting**

- Allows any in-person voter who travels to a polling place or to the office of the board of elections, but is physically unable to enter, to vote curbside (that is, in a vehicle or at the door).
- Allows the Secretary of State, during the period of a statewide emergency declared by the Governor, to prescribe procedures to allow other electors to vote curbside, as necessary to protect the public health and safety.
- Prohibits voters from voting curbside under any other circumstance.
- Codifies the curbside voting procedure currently found in Secretary of State directives.

## **Absent voting by mail**

- Shortens the deadline to submit an application to cast absent voter's ballots by mail from noon on the third day before Election Day to the close of business on the tenth day before Election Day.
- Requires the Secretary of State, not later than one year after the bill takes effect, to establish a secure online system for electors to apply to receive absent voter's ballots by mail, and provides requirements for the system.
- Changes the language of the identification envelope statement of voter (the absentee ballot envelope form) in order to express a preference for the type of ID the voter provides.

- Specifies that absent voter's ballots that are not returned to the board by mail must be returned to the office of the board, and not to any other location, such as to a drop box elsewhere in the county.
- Allows the board, during the period beginning on the tenth day before Election Day and ending at the close of the polls on Election Day, to provide a maximum of three secure outdoor drop boxes on the premises of the office of the board.
- Emphasizes the continuing-law principle that absent voter's ballots that are personally returned to the board must be delivered by the elector or a listed relative, and not by any other person.
- Prohibits absent voter's ballots from being counted if they are returned to the board with the ballots not inside the identification envelope.
- Prohibits any public office, and any public official or employee who is acting in an official capacity, from prepaying the return postage on an application for absent voter's ballots or on an absent voter's ballot return envelope.
- Changes numerous references in the law governing absent voting to refer to a board of elections receiving, sending, and processing applications and ballots, rather than the *director* of the board performing those functions.

### **In-person absent voting**

- Requires in-person absent voting to be permitted for all voters beginning on the day after the close of voter registration before an election and ending on the Sunday before the election.
- Clarifies that an in-person absent voter is not required to complete a written application for absent voter's ballots.
- Rewords, but does not substantively change, the list of forms of ID that are acceptable for in-person absent voting.
- Adds a requirement that, if the voter provides a driver's license or state ID card number or the last four digits of the voter's Social Security number, the election officials verify that the number or digits are not different from the number or digits in the voter's registration record.
- Requires the office of a board of elections to meet the same accessibility requirements for persons with disabilities as polling places currently must meet.

### **Election administration**

- Codifies a requirement currently found in Secretary of State directives that each board of elections prepare an Election Administration Plan (EAP) before each presidential primary election and each general election held in an even-numbered year.
- Removes the requirement that a 17-year-old high school student be a senior in order to serve as a precinct election official through the Youth at the Booth program.

- Prohibits a voter registration system or piece of voting equipment from being used in Ohio if an elected official or the official’s spouse is a partner, owner, or member of the manufacturer or distributor.
- Updates the law requiring pre-election testing of voting equipment to more closely match existing Secretary of State directives.
- Prohibits any voting machine, marking device, or piece of automatic tabulating equipment from being used in an election without undergoing successful testing.

## Technical changes

- Makes a clarifying change to the law governing in-person voting on Election Day to specify that a voter must sign the pollbook, instead of requiring the voter to write the voter’s name and address.
- Updates several references in Ohio law to federal election laws to refer to those laws’ current locations in the U.S. Code.

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## DETAILED ANALYSIS

The bill, designated as the Ohio Election Security and Modernization Act, makes several changes to the Election Law, including creating an Automated Voter Registration and Verification System through the Bureau of Motor Vehicles (BMV); modifying the procedures for

voter roll maintenance; and making changes concerning absent voting and election administration.<sup>1</sup>

## **Automated Voter Registration and Verification System**

### **Background on the current process**

The National Voter Registration Act of 1993 (NVRA) requires the states to offer voter registration opportunities for federal elections at motor vehicle agencies, among other places, and provides requirements for that process, such as specific language that must appear on voter registration forms.

Currently, Ohio implements the motor vehicle-related NVRA requirements by requiring the BMV Registrar and deputy registrars to offer customers the opportunity to register to vote each time they apply for or renew a driver's license or state identification (ID) card. The Registrar and deputy registrars must make voter registration forms available to all other customers, but are not required to offer assistance to those customers in completing the form. The Registrar or deputy registrar must send any completed form to the appropriate board of elections, either electronically or on paper, within five days.

As with any other registration form, the statute requires the board of elections to process the registration form and register the applicant within 20 business days after receiving the form, unless the application is received during the 30 days before Election Day (that is, after the voter registration deadline and before Election Day).

The Revised Code also requires the Registrar to send any completed change of residence or change of name form processed electronically by the BMV to the Secretary of State within five days. (The BMV allows customers to submit changes of address online, but it appears that the BMV does not allow online name changes.)<sup>2</sup>

### **Implementation of new system**

The bill replaces the current process with an automated, electronic process called the Automated Voter Registration and Verification System. The bill requires the Secretary of State to implement the Automated Voter Registration and Verification System not later than two years after the bill takes effect.

The Secretary must adopt rules under the Administrative Procedure Act to develop, implement, and administer the System, including rules prescribing the manner and format in which the BMV must transmit information to the Secretary and procedures for the BMV, the Secretary, and the boards of elections to ensure that transmitted information that is not considered a public record remains confidential.

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<sup>1</sup> Section 5 of the bill.

<sup>2</sup> Repeal of current R.C. 3503.11; R.C. 3503.19.

The bill specifies that, 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 the Election Law.<sup>3</sup>

### **Registration with in-person BMV transaction**

The bill requires that, when a person applies to receive or renew a driver's license (including a commercial driver's license) or state ID card in person at the BMV, or to receive a duplicate or replacement, the Registrar or deputy registrar must attempt to obtain all of the following information for voter registration purposes:

- The person's legal name;
- The person's residence address;
- The person's date of birth;
- The person's current or newly-assigned driver's license or state ID card number;
- The last four digits of the person's Social Security number.

Upon obtaining that information, the Registrar or deputy registrar must consult the Statewide Voter Registration Database (SWVRD) to determine whether the person is registered to vote and, if so, whether the person is registered at the address and under the name provided to the BMV.

If the person is not registered to vote or is registered but has had a change of name, the Registrar or deputy registrar must offer the person an opportunity to register to vote using a customer-facing electronic display (the new registration operates as a notice of change of name, if applicable). But, the Registrar or deputy registrar must not offer the person voter registration if the BMV has information indicating that the person is not eligible to vote in Ohio. For example, if the person is not a U.S. citizen, that fact likely will be included in BMV records because the BMV regularly collects information about customers' citizenship or immigration status when they apply for a driver's license or state ID card.

The Secretary must prescribe the language to appear on the display. The display must inform the person that if the person declines to register, that fact will remain confidential and will only be used for voter registration purposes, and that, if the person wishes to be registered to vote, 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 indicates that the person wishes to be registered to vote, the display must show the following statements and require the person to electronically sign the display attesting under penalty of election falsification that all of the statements are true:

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<sup>3</sup> R.C. 3501.05 and Section 4 of the bill.



- A statement that to register to vote, the person must be a U.S. citizen, at least 18 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.

The Secretary and the Registrar must prescribe procedures to offer voter registration in a manner compliant with the Americans with Disabilities Act and related federal regulations, such as in cases where a customer is unable to use the electronic display.

Not later than seven days after the Registrar or deputy registrar obtains all of the required information, along with the person's electronic signature, the Registrar or deputy registrar must transmit it electronically to the Secretary, in the manner prescribed by the Secretary, along with any phone number or electronic mail address the person has provided. The bill requires the Secretary to prescribe by rule an earlier deadline for Registrar and deputy registrars to transmit the information during the period immediately preceding the close of voter registration before an election.<sup>4</sup>

### **Registration with online renewal of driver's license or state ID card**

The Secretary and the Registrar also must jointly prescribe procedures to offer voter registration when a customer renews a driver's license or state ID card online through the BMV, which will be available beginning July 1, 2022. The online process must offer voter registration to an applicant who is not registered to vote under the applicant's current name and who is eligible to vote.<sup>5</sup>

### **Changes of address through the BMV**

#### **When applying for or renewing a driver's license or state ID card**

When a BMV customer who is applying for or renewing a driver's license or state ID card reports a change of address, either in person or online, the bill requires the BMV to automatically transmit the person's current information, along with any phone number or email address the person has provided, to the Secretary in the same manner as for new registrations. The BMV customer is not required to take any action on the electronic display or the website in order for the address update to take place.<sup>6</sup>

#### **When submitted separately**

The bill retains, but rewords, the current requirement that when a BMV customer separately reports a change of address to the BMV, either through the BMV's online portal or

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<sup>4</sup> R.C. 3501.05(R) and new R.C. 3503.11. See also Ohio BMV, [Acceptable Documents](#).

<sup>5</sup> R.C. 4507.061(F)(1).

<sup>6</sup> New R.C. 3503.11(C)(2) and R.C. 4507.061(F)(2).

using a paper form, the Registrar must automatically transmit the person's information to the Secretary. Under the bill, the BMV must transmit that information to the Secretary, along with any phone number or electronic mail address the person has provided, in the same manner as for new registrations.<sup>7</sup>

### **BMV transactions with no voter registration update**

Additionally, the bill requires that when a BMV customer applies for or renews a driver's license or state ID card, and the person's voter registration is already up to date, the Registrar or deputy registrar must notify the Secretary of the transaction, similar to how they transmit a voter registration or update. The Registrar or deputy registrar must include the transaction date, along with any newly assigned driver's license or state ID card number and any phone number or email address the person provided. As is explained below, the BMV transaction is considered voter activity for purposes of the confirmation notice process.<sup>8</sup>

### **Secretary of State processing**

Once the Secretary receives the required information from the BMV, the Secretary must compare the information against the 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 must promptly transmit the registration information to the appropriate board of elections. However, if the person is a participant in the Address Confidentiality Program operated by the Secretary for victims of certain crimes, the Secretary instead must send a notice to the person explaining how to register to vote or update the person's confidential registration under the Program.

If the person is registered to vote at the person's current address and under the person's current name, the Secretary must promptly transmit to the appropriate board of elections the date of the person's transaction with the BMV, any new driver's license or state ID card number, and any phone number or email address provided. The board must record the date of the transaction in the elector's registration record.<sup>9</sup>

### **Board of elections processing; notice and opportunity to decline**

Upon receiving a person's information from the Secretary, if the board of elections determines that the person is eligible to register to vote or to update the person's voter registration, the board promptly must process the registration or update. The electronic record transmitted to the board of elections is considered to be the person's voter registration form. The BMV transaction must take place not later than the 30<sup>th</sup> day before an election in order for a new registrant to be eligible to vote in the election, and the board must register the person to vote or update the person's registration within 20 days after receiving the application.

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<sup>7</sup> New R.C. 3503.11(C)(2).

<sup>8</sup> New R.C. 3503.11(C)(3) and R.C. 4507.061(F)(3).

<sup>9</sup> New R.C. 3503.11(D) and (E)(2).

When the board processes a voter registration or update through the Automated Voter Registration and Verification System, the board must send the elector a notice of voter registration, as required under continuing law for all voter registrations and updates, but also must include all of the following in the notice:

- The fact that the person has been registered to vote or has had the person's registration updated, as applicable, and may vote at the next election occurring at least 30 days after the BMV transaction;
- The process to decline the registration or update or to submit corrected registration information by signing and returning the notice to the Secretary of State or the board;
- A statement that if the person declines to be registered to vote 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 the registration by signing and returning the notice, the board must treat the declination as a request for cancellation. If the person uses that process to decline to have the person's voter registration updated, the board must correct the person's voter registration to reflect the name, address, and signature that it contained before the board updated it.<sup>10</sup>

### **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 identification, 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. And, the provisional ballot affirmation must be treated as a voter registration update form, causing the elector's address to be corrected after the election.<sup>11</sup>

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<sup>10</sup> New R.C. 3503.11(E) and R.C. 3503.19(C).

<sup>11</sup> R.C. 3503.30 and 3505.183.

## **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 System 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 provided the BMV with a mailing address that was not the electors' true residence address, so long as the elector did not knowingly submit the mailing address with the intention of triggering a voter registration update to that address, even if the elector did not return the notice of voter registration and decline the update. 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 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.

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 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.<sup>12</sup>

## **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.<sup>13</sup>

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<sup>12</sup> R.C. 3599.11(A) and 3599.18.

<sup>13</sup> R.C. 3503.09, 3503.12, 3503.13, 3503.14, 3503.15, 3503.16, 3503.19, 3503.28, and 3505.183.

## Voter roll maintenance procedures

### Confirmation notices

The bill adds to the types of voter activity that allow an elector to avoid having the elector's registration canceled after the elector is sent a confirmation notice. The bill also consolidates and clarifies the statutory language governing confirmation notices. However, the bill does not alter the process for determining when election officials send a confirmation notice to an elector, such as the National Change of Address Service process or the supplemental process found in Secretary of State directives.

Under continuing law, when a confirmation notice process is triggered, the 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 NVRA, which created the confirmation notice process and lists the required contents of a confirmation notice.

Under the bill, after an elector is sent a confirmation notice, 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 must be canceled:

- 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 BMV that confirms the elector's existing information;
- Vote in an election;
- Sign any election petition, including a candidate, initiative, or referendum petition, 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 an elector's registration must be canceled if the elector is sent a confirmation notice and 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.<sup>14</sup>

### **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.<sup>15</sup>

### **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.<sup>16</sup>

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<sup>14</sup> 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 and Ohio Secretary of State, *Election Official Manual*, ch. 3, p. 55.

<sup>15</sup> R.C. 3503.33.

<sup>16</sup> R.C. 3503.16 and 3503.19, and conforming changes in R.C. 3509.02, 3509.04, 3509.08, and 3599.12.

## Voter identification

### Utility bills and bank statements

The bill provides expanded definitions of “utility bill” and “bank statement” for when an elector uses one of those documents as a form of voter ID. Under the bill:

- “Utility bill” means a statement of fees owed or paid for services including water, sewer, electric, heating, cable, internet, telephone, or cellular telephone services. “Utility bill” includes a statement mailed to a person or delivered or made available to the person electronically.
- “Bank statement” includes a statement from any financial or brokerage institution and includes a statement mailed to a person or delivered or made available to the person electronically.

These definitions are consistent with current Secretary of State directives, but the bill also makes clear that electronic statements and bills are acceptable.

Further, the bill specifies that for purposes of voting in person, an elector who uses a utility bill or bank statement as ID may either show a paper copy of the document or show the document on the elector’s personal electronic device. This provision applies to all in-person voting situations, including in-person absent voting and Election Day voting by regular or provisional ballot.<sup>17</sup>

### State ID card numbers

The bill clarifies that in every context where an elector currently may provide the elector’s driver’s license number as identification, the elector instead may provide the elector’s state ID card number.

Current law explicitly allows an elector to provide a state ID card number when registering to vote online or casting a provisional ballot, but not when submitting a paper registration form or applying for or casting absent voter’s ballots. And, the law currently does not require the SWVRD to record electors’ state ID card numbers.<sup>18</sup>

## Curbside voting

### Eligibility

Under the bill, any in-person voter who travels to a polling place or to the office of the board of elections, but is physically unable to enter, must be permitted to vote curbside. And, during the period of a statewide emergency declared by the Governor, the bill allows the

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<sup>17</sup> R.C. 3501.01(BB) and (CC), 3505.18(A)(1), and 3509.051(B)(1). See also Ohio Secretary of State, *Directive 2008-80* (September 5, 2008).

<sup>18</sup> R.C. 3503.14, 3503.15, 3509.03, 3509.04, 3509.06, 3511.02, 3511.05, 3511.09. See also R.C. 3503.20, 3505.181, and 3505.182, not in the bill.

Secretary of State to prescribe procedures to allow other electors to vote curbside, as necessary to protect the public health and safety. Voters may not vote curbside under any other circumstance.

Under existing law, election officials are required to allow curbside voting only at a polling place, and only if the Secretary has exempted the polling place from compliance with continuing-law accessibility standards because the board could not make it compliant. The current statute also limits the right to vote curbside to a “handicapped elector” who is unable to enter the polling place. “Handicapped” means that a person has “lost the use of one or both legs, one or both arms, or any combination thereof,” or that the person is “blind or so severely disabled as to be unable to move about without the aid of crutches or a wheelchair.”

Current Secretary of State directives require election officials to allow any Election Day voter who is physically unable to enter the polling place to vote curbside.<sup>19</sup>

## **Procedure**

The bill codifies the curbside voting procedure currently found in Secretary of State directives. A qualifying voter must be permitted to vote in the vehicle that conveyed the voter to the polling place or office or at the door of the polling place or office.

A bipartisan team of election officials must permit the voter to provide ID and sign the voter’s signature in the poll list or signature pollbook or on a separate sheet to be added to the poll list or signature pollbook. If the election officials do not challenge the voter’s right to vote, or if the voter is challenged but establishes the voter’s right to vote, the election officials then must provide the voter with the appropriate paper ballots, along with an envelope or secrecy sleeve to protect the voter’s privacy.<sup>20</sup>

## **Absent voting by mail**

### **Application deadline**

The bill shortens the deadline to submit an application to cast absent voter’s ballots by mail from noon on the third day before Election Day to the close of business on the tenth day before Election Day. That deadline applies to applications delivered to the office of the board in person or by mail or submitted online, as described below.

However, the bill retains a provision of current law that allows an elector to submit an application not later than 3:00 p.m. on Election Day if the elector or the elector’s minor child has been unexpectedly hospitalized.<sup>21</sup>

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<sup>19</sup> R.C. 3501.29, 3505.18(C), and 3509.051(F). See also Ohio Secretary of State, *Election Official Manual*, ch. 7, p. 13.

<sup>20</sup> R.C. 3505.18(C) and 3509.051(F).

<sup>21</sup> R.C. 3503.16(E), 3509.03(D), 3509.031(A)(2), 3509.08, 3511.02, and 3511.04.



## Online applications

Under the bill, not later than one year after the bill takes effect, the Secretary of State must establish a secure online system for electors to apply to receive absent voter's ballots by mail. (The online system is in addition to the continuing-law procedures that allow a uniformed services or overseas absent voter to submit an application electronically.)

The online application must require an applicant to provide all of the following and to check a box affirming under penalty of election falsification that the applicant is a qualified elector:

- The elector's name;
- The address at which the elector is registered to vote, or, if the elector is a participant in the Address Confidentiality Program, the elector's program participant ID number;
- The elector's date of birth;
- The elector's driver's license or state ID card number;
- The last four digits of the elector's Social Security number;
- An indication of the election for which the absent voter's ballots are requested;
- If the request is for primary election ballots, the political party whose ballots the elector wishes to cast;
- The address to which the ballots should be mailed, if different from the elector's registration address.

Those fields match the information that must be included on a paper application for absent voter's ballots, except that the bill requires two forms of ID (both a driver's license or state ID card number and the last four digits of a Social Security number) in order to apply online.

Under continuing law, an elector who submits a paper application may provide just one of those numbers or a copy of the elector's current and valid photo ID, a copy of a military ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows the elector's name and address. On a paper application, the elector also must provide the elector's signature, which serves as a second form of ID.

The bill requires the Secretary to transmit each completed online application to the appropriate board of elections. The Secretary also must employ security measures necessary to ensure the integrity and accuracy of information submitted through the system. Errors in processing applications through the system must not prevent an elector from receiving absent voter's ballots.<sup>22</sup>

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<sup>22</sup> R.C. 3509.031 and Section 4 of the bill.

## Identification envelope statement of voter

The bill changes the language of the identification envelope statement of voter (the absentee ballot envelope form) in order to express a preference for the type of ID the voter provides. The voter's driver's license or state ID card number is the most preferred, followed by the last four digits of the voter's Social Security number, followed by the other forms of acceptable ID under continuing law.

Currently, the form instructs the voter to provide a type of ID from among a list of options. The bill requires the relevant portion of the form to read substantially as follows:

"You must provide one of the following:

Your driver's license or state identification card number:

\_\_\_\_\_

If you do not have or cannot provide a driver's license or state identification card number, the last four digits of your Social Security number: \_\_\_\_\_

If you do not have or cannot provide a driver's license or state identification card number or the last four digits of your Social Security number, a copy of a current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows your name and address. If you provide a copy of one of those documents, enclose it in the return envelope along with the identification envelope."

However, under the bill, the ballot is eligible to be counted if the voter provides any of the acceptable forms of ID, just as under current law. A voter is not penalized for providing a less-preferred form of ID, even if the voter could have provided a more-preferred form of ID.<sup>23</sup>

## Return procedures

### Background on drop boxes

Current law allows a voter to return an absentee ballot by mailing it "to the director" of the board of elections, personally delivering it "to the director," or having a listed relative deliver it "to the director." The law does not mention the idea of ballot drop boxes at the office of the board or anywhere else.<sup>24</sup>

In 2020, an Ohio appeals court ruled that the statute allows, but does not require, a board of elections to place one or more ballot drop boxes at the office of the board or in other

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<sup>23</sup> R.C. 3509.04 and 3511.05. See also R.C. 3509.05(B) and 3509.06.

<sup>24</sup> R.C. 3509.05.

locations. The court also ruled that the Secretary of State has the authority under existing law to regulate the boards' use and placement of drop boxes, including requiring them to have a drop box at the board's office and prohibiting them from placing drop boxes in locations other than the board's office.<sup>25</sup>

### **Drop boxes under the bill**

The bill specifies that absent voter's ballots that are not returned to the board by mail must be personally returned to the office of the board, and not to any other location, such as to a drop box elsewhere in the county.

During the period beginning on the tenth day before Election Day and ending at the close of the polls on Election Day, the bill allows the board of elections to provide a maximum of three secure outdoor drop boxes on the premises of the office of the board. Each drop box must be monitored by video surveillance 24 hours a day during the time that ballots may be deposited in the drop box.

Continuing law allows ballots to be personally returned inside the office of the board at any time during the absent voting period, beginning on the day after the close of voter registration before the election (generally, 29 days before the election) and ending at the close of the polls on Election Day.<sup>26</sup>

### **Who may deliver ballots**

Further, the bill's language emphasizes the continuing-law principle that absent voter's ballots that are personally returned to the board must be delivered by the elector or a listed relative, and not by any other person. Under continuing law, those relatives are:

- The elector's spouse;
- The elector's parent, including an adopting parent or stepparent;
- The elector's parent-in-law;
- The elector's grandparent;
- The elector's sibling, including a half sibling;
- The elector's child, including an adopted child or stepchild;
- The elector's aunt or uncle;
- The elector's niece or nephew.

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<sup>25</sup> *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778 (10<sup>th</sup> Dist. Ct. App. 2020).

<sup>26</sup> R.C. 3509.05(C) and 3511.09(E).

Continuing law prohibits any person from possessing the absent voter's ballot of another, except as authorized under the Election Law. Whoever violates that prohibition is guilty of a fourth degree felony.<sup>27</sup>

### **Ballots not enclosed in the identification envelope**

Under the bill, absent voter's ballots must not be counted if the ballots are returned to the board with the ballots not inside the identification envelope. That is, the ballots are invalid if the election officials open the return envelope and find loose ballots that are not inside the identification envelope, regardless of whether the identification envelope is present or the form on it has been completed. The bill does not allow the board to return the ballots to the voter, to allow the voter to cast replacement ballots, or otherwise to permit the voter to cure the problem.<sup>28</sup>

### **Postage**

The bill prohibits any public office, and any public official or employee who is acting in an official capacity, from prepaying the return postage on an application for absent voter's ballots or on an absent voter's ballot return envelope. Existing law prohibits a board of elections from prepaying that postage, but does not explicitly prohibit the Secretary of State or another official from doing so.

Continuing law requires an absent voter who returns the voter's ballots by mail to mail them "postage prepaid," meaning that the voter must attach sufficient postage to the ballots before mailing them. The bill adds an exception to that requirement for uniformed services and overseas absent voter's ballots delivered by the U.S. Postal Service because federal law requires the U.S. Postal Service to deliver those materials free of charge.<sup>29</sup>

### **Change from "director" to "board"**

The bill changes numerous references in the law governing absent voting to refer to a board of elections receiving, sending, and processing applications and ballots, rather than the *director* of the board performing those functions. These changes do not affect the substance of the law, but they clarify that the director is not required to personally carry out all of those duties. Under continuing law and practice, the board delegates its many duties under the Election Law to the director and deputy director and to other employees.<sup>30</sup>

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<sup>27</sup> R.C. 3509.05 and 3511.09(E). See also R.C. 3599.21, not in the bill.

<sup>28</sup> R.C. 3509.07 and 3511.11. See also R.C. 3509.06, regarding curing ballots with other types of defects.

<sup>29</sup> R.C. 3509.03(E), 3509.04, 3509.05, 3511.02, 3511.04, and 3511.09(E).

<sup>30</sup> R.C. 3509.03, 3509.04, 3509.05, 3509.06, 3509.08, 3509.09, 3511.02, 3511.04, 3511.05, 3511.06, 3511.07, 3511.08, 3511.09, 3511.10, 3511.11, and 3511.13.

## In-person absent voting

### Days available

Under the bill, in-person absent voting must be permitted for all voters beginning on the day after the close of voter registration before an election and ending on the Sunday before the election. Compared to the current schedule instituted by Secretary of State directive, the bill eliminates one day of in-person absent voting – the day before Election Day (Monday).<sup>31</sup>

The current statute provides that in-person absent voting ends at 6:00 p.m. on the Friday before Election Day, except that uniformed services and overseas absent voters may cast absent voter's ballots at the office of the board through the close of the polls on Election Day. However, a federal court has ruled that this disparity violates the Equal Protection Clause of the 14<sup>th</sup> Amendment. In 2014, the court issued a permanent injunction requiring Ohio to allow in-person absent voting for all voters on the Saturday, Sunday, and Monday before Election Day. Because the bill establishes the same in-person absent voting deadline for all voters, it appears that the bill eliminates the disparity that was the basis of the court's decision, meaning that the court's order would no longer apply.<sup>32</sup>

### Procedure

The bill clarifies that an in-person absent voter is not required to complete a written application for absent voter's ballots. Under continuing law, such a voter also is not required to fill out an identification envelope statement of voter (the form on the ballot envelope). Instead, the voter must provide ID and sign a pollbook, similar to the procedures on Election Day.

The bill rewords, but does not substantively change, the list of forms of ID that are acceptable for in-person absent voting. Continuing law allows the voter to provide any of the following:

- A current and valid photo ID;
- A military ID;
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows the voter's name and current address;
- The voter's driver's license or state ID card number (as discussed above, the bill adds a reference to the state ID card number);
- The last four digits of the voter's Social Security number.

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<sup>31</sup> R.C. 3509.03, 3509.051(A), 3511.02, and 3511.10 and conforming changes in R.C. 3509.01. See also Ohio Secretary of State, *Election Official Manual*, ch. 5, p. 9.

<sup>32</sup> R.C. 3509.03, 3511.02, and 3511.10 and *Obama for America v. Husted*, 2014 U.S. Dist. LEXIS 79409, Case No. 2:12-CV-00636 (S.D. Ohio June 11, 2014).

The bill adds a requirement that, if the voter provides a driver's license or state ID card number or the last four digits of the voter's Social Security number, the election officials must verify that the number or digits are not different from the number or digits in the voter's registration record.<sup>33</sup>

## **Accessibility**

The bill requires the office of a board of elections to meet the same accessibility requirements for persons with disabilities as polling places currently must meet. Those requirements include all of the following:

- That the office be free of barriers that would prevent persons with disabilities from entering or exiting;
- That the office have a minimum number of accessible parking spaces;
- That the entrances to the office be level or include a nonskid ramp that complies with the Americans with Disabilities Act;
- That the doors be at least 32 inches wide.

As with a polling place, if the board certifies that it has made a good faith, but unsuccessful, effort to make its office compliant, the Secretary of State may exempt the office from the accessibility requirements.

Further, as is described above, the bill allows a qualifying in-person absent voter to vote curbside in the same manner as at a polling place.<sup>34</sup>

## **Election administration**

### **Election Administration Plans**

The bill codifies a requirement currently found in Secretary of State directives that each board of elections prepare an Election Administration Plan (EAP) before each presidential primary election and each general election held in an even-numbered year. Under the bill, the board must submit its EAP not later than 75 days before the election. The existing directives place that deadline at 60 days before a presidential primary election and 120 days before a general election.

Under the bill, the EAP must be on a template prescribed by the Secretary and must include all of the following:

- Precinct election official recruitment, training, and accountability;
- Resource allocation;
- Communication before and on the day of the election;

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<sup>33</sup> R.C. 3509.051 and conforming changes in R.C. 3509.05.

<sup>34</sup> R.C. 3501.29.

- Materials;
- Contingencies and continuity planning;
- Security;
- Voter registration;
- Absent voting;
- Polling places and accessibility;
- Ballot preparation;
- Pre-election testing;
- Reconciliation and audits;
- A master calendar;
- Any other topic prescribed by the Secretary.

These topics are the same as those found on the Secretary's current EAP template.<sup>35</sup>

## **Youth at the Booth**

The bill removes the requirement that a high school student be a senior in order to serve as a precinct election official through the Youth at the Booth program. Under continuing law, the student must be at least 17, a U.S. citizen, and a resident of the county, and must apply through a program at the student's school. Students recruited through the program may not be voting location managers, and continuing law also limits the number who may be assigned to any given precinct.<sup>36</sup>

## **Equipment**

### **Manufacturers and distributors**

Under the bill, no voter registration system, voting machine, marking device, or automatic tabulating equipment may be used in Ohio if an elected official or the official's spouse (1) is a partner, owner, or member of the person or entity that manufactured, assembled, or otherwise made the system, machine, device, or equipment, or (2) is a partner, owner, or member of the person or entity from which the system, machine, device, or equipment is acquired.

An elected official or the official's spouse is not considered an owner of a publicly traded person or entity if the official's and the spouse's combined ownership interest in the person or entity is less than 10%. A person is considered an elected official for this purpose if the person is

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<sup>35</sup> R.C. 3501.10(BB). See also Ohio Secretary of State, *Election Official Manual*, ch. 2, sec. 1.06 and ch. 15, sec. 1.08.

<sup>36</sup> R.C. 3501.22(C).

an elected officer of the state, any political subdivision, or the U.S., other than a member of a central committee of a political party.

“Voter registration system” means software and any related equipment used by a board of elections or the Secretary of State to process, store, organize, maintain, or retrieve voter registration records. “Voting machine,” “marking device,” and “automatic tabulating equipment” have the same meanings as in the continuing law generally requiring voting equipment to be approved before being used in Ohio.<sup>37</sup>

### **Pre-election testing**

The bill updates the law requiring pre-election testing of voting equipment to more closely match existing Secretary of State directives. Under the bill, no voting machine, marking device, or piece of automatic tabulating equipment may be used in an election without undergoing successful testing.

First, under continuing law, the board must test and audit the variable codes applicable to the election to verify the accuracy of any computer program that will be used for counting votes in the election.

The board also must conduct systematic logic and accuracy testing of every component of every voting machine, marking device, or piece of automatic tabulating equipment with every ballot style to be used in the election to ascertain that the ballots are accurate and that the machines, devices, and equipment will accurately record, mark, or count all votes cast. The bill adds the references to testing marking devices.

Under continuing law, the logic and accuracy testing must be conducted by processing a pre-audited group of ballots that are marked so as to record a predetermined number of valid votes. The ballots must include at least one over-voted ballot for each office. A different number of valid votes must be assigned to each candidate for an office, and for and against each question and issue. If an error is detected, the board must ascertain and correct the cause of the error and complete an errorless count. Automatic tabulating equipment must pass this test at the beginning and at the end of the Election Day count before the election results may be approved as official.

The bill requires the board to give public notice of the time and place of all testing. Currently, the board must give public notice of the logic and accuracy testing, but not the testing and auditing of software codes.

Finally, the bill adds a requirement that all testing be conducted by bipartisan teams of election officials.<sup>38</sup>

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<sup>37</sup> R.C. 3506.24. See also R.C. 3506.01, not in the bill.

<sup>38</sup> R.C. 3506.14.



## Technical changes

The bill makes a clarifying change to the law governing in-person voting on Election Day to specify that a voter must sign the pollbook, instead of requiring the voter to write the voter's name and address. This change is consistent with long-standing practice and with other continuing provisions of the Election Law that refer to the voter signing the pollbook.<sup>39</sup>

The bill also 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 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.<sup>40</sup>

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## HISTORY

Action	Date
Introduced	05-06-21

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H0294-I-134/ec

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<sup>39</sup> R.C. 3505.18(B).

<sup>40</sup> R.C. 3501.01(Y) and (Z) and 3503.19(B)(1).