

# TENNESSEE BILL TARGETING VOTER-REGISTRATION DRIVES

## *Overview of Requirements and Penalties*

Tennessee HB1079 creates new requirements and penalties for some organizations that conduct voter-registration drives.

The bill passed the House (71-26 on April 15) and the Senate (26-5 on April 25) on largely party-line votes. The House then adopted the version passed by the Senate (72-25 on April 29). Once he receives the enrolled bill from the General Assembly, Governor Lee will have ten days (excluding Sundays) to sign it, veto it or let it become law without his signature.

This memo summarizes the bill and its potential consequences. Three components are particularly noteworthy:

- I. **New requirements:** The bill places new requirements on individuals and organizations that conduct paid voter-registration drives, mainly a training prior to collecting registration applications and a deadline by which those applications must be submitted. It also prohibits data-entering or copying the information on applications unless the applicant gives permission.
- II. **Criminal and civil penalties:** The bill adds new civil and criminal penalties to third-party voter-registration activity. It makes Tennessee the only state in the nation to subject individuals and organizations to penalties for submitting incomplete voter-registration forms.
- III. **Restrictions on communication:** The bill requires any organization that “intentionally and knowingly” reminds the public to check their voter-registration or to get registered to display a disclaimer noting that the communication is not authorized by the Secretary of State.

### OVERVIEW OF THE BILL

HB1079 primarily addresses five areas of Tennessee election code: (1) voter-registration drives; (2) public communications about voter-registration; (3) poll watchers; (4) state election commissioners; and (5) voting systems vendors. Additionally, the bill cleans up existing code by deleting language pertaining to procedures for counting punchcard ballots, which are no longer in use in the state.

The voter-registration drive portion of this bill places new requirements and potential penalties on a person or organization that conducts a supplemental voter-registration drive attempting to register 100 or more people. Individuals and organizations that are not paid to collect voter-registration applications and that use only unpaid volunteers to collect voter-registration applications are exempt from the bill’s requirements and penalties pertaining to voter-registration drives.

Other components of the bill include a new restriction that all appointed poll watchers must now be residents of the state, and a new procedure by which the general assembly may remove a member of the state election commission. The bill also establishes new restrictions on voting systems vendors, limiting the types of relationships and behavior allowable between vendors, their representatives and state and local election officials.

## NEW REQUIREMENTS AND RESTRICTIONS

### I. **New requirements, including training and submission deadlines, apply to individuals and organizations that conduct paid voter-registration drives attempting to register more than 100 people.**

Individuals or organizations attempting to register 100 or more people to vote must follow these new guidelines:

- Provide the Coordinator of Elections with contact information for the person conducting or the officers of an organization conducting a voter-registration drive;
- Provide the names of the county or counties where the drives will be held;
- Complete a free training administered by the Coordinator of Elections to be made available online;
- File a sworn statement stating the person or organization shall obey all laws and procedures regarding the registration of voters;
- Ensure that individuals who conduct voter-registration drives for an organization have completed the training administered by the Coordinator of Elections; and
- Deliver or mail completed voter-registration forms within 10 days of the date of the voter-registration drive, or no later than the voter-registration deadline if the date of the voter-registration drive is within 10 days of the deadline.

In addition to these guidelines and the deadline for application submissions, the bill also prohibits these acts:

- Groups cannot copy, photograph or in any way retain the voter information and data collected on the voter-registration application unless the applicant consents;
- Groups cannot compensate individuals based on the number of voter-registration forms completed; and
- Groups cannot set quotas or a minimum number of completed forms to be collected by individuals conducting a drive.

Anyone who intentionally or knowingly violates any of these provisions commits a Class A misdemeanor, and each violation constitutes a separate offense.

### II. **Individuals, organizations and political committees are now required to display a disclaimer on public communications and websites regarding voter-registration status and voter-lookup that such communications are not authorized by or made in conjunction with the Secretary of State.**

Public communications – defined as those made using newspapers or magazines, mass mailings, phone bank or text messages, email systems or websites – regarding voter registration status must display a visible disclaimer that the communication has not been made in conjunction nor authorized by the Secretary of State. Similar disclaimers must be made on websites pertaining to voter-registration or look-up websites that capture and collect voter information. The disclaimer must be clear, conspicuous and prominently placed.

Any person who intentionally and knowingly violates this section commits a Class A misdemeanor and each violation constitutes a separate offense.

## NEW CRIMINAL AND CIVIL PENALTIES

- I. **New criminal penalties are assessed for intentional or knowing violations of the new voter-registration and communication requirements. New civil penalties are assessed for submitting incomplete forms.**

### Criminal Penalties

Intentional or knowing violation of any of the new requirements placed on paid third-party voter-registration drives is a Class A misdemeanor, with each violation constituting a separate offense. Class A misdemeanors, the most serious misdemeanor, are punishable by up to 11 months and 29 days in jail, a fine of up to \$2,500, or both.

### Civil Penalties

In addition to introducing new requirements guiding paid third-party voter-registration drives' activity prior to and during efforts to collect voter-registration applications, the bill introduces new civil fines on individuals or organizations who submit voter-registration applications that are incomplete.

Fines are assessed based on the number of incomplete forms submitted within a calendar year and escalate based on the number of incomplete forms turned in:

- 100 – 500 incomplete forms: Class 1 offense punishable by a civil penalty of not more than \$150 up to a maximum of \$2000 in each county where the violation occurred.
- More than 500 incomplete voter-registration forms: Class 2 offense punishable by a civil penalty of not more than \$10,000 in each county where the violation occurred.

Funds collected are to be deposited into the general fund of the county or counties in which the violation occurred. The accumulation of incomplete forms is cumulative, meaning the penalty would kick in if an organization filed five incomplete registrations in 20 different counties.

### ***Incomplete Voter-Registration Applications***

The bill defines incomplete voter-registration applications as those missing an applicant's name, residential address, date of birth, declaration of eligibility or signature. Individuals and organizations become subject to the civil penalties above when they submit 100 or more voter-applications missing one of those fields.<sup>1</sup> The bill further clarifies that applications containing only a name or initial are not required to be submitted to election officials.

## POTENTIAL CONSEQUENCES OF THE NEW RESTRICTIONS AND PENALTIES

Many of the new requirements are in line with practices in other states – *e.g.*, required trainings, deadlines on submitting collected applications and prohibiting compensation based on the number of applications collected. In fact, some other states' guidelines are stricter than those imposed by this bill. **Texas** and **Colorado** require successful completion of a test after receiving the required training, and **Missouri, Texas** and **New Mexico** have shorter than a 10-day window for submitting collected forms.

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<sup>1</sup> The Tennessee state voter-registration application requires an applicant's full Social Security Number. This field has been exempted from the list of required fields for third-party voter-registration efforts as the state expects a high number of applicants will choose to leave that field blank.

Though repeatedly amended to include important clarifications and definitions, concerns remain about the bill's potentially unintended consequences, particularly with respect to the new civil penalties.

**Tennessee would be the only state in the nation to assess civil penalties on third parties for submitting incomplete voter-registration forms.**

Other states penalize parties for falsifying forms, but not for submitting incomplete forms. **Texas** requires third parties to review the forms in the presence of the applicant to ensure that they are complete, but it does not penalize organizations that turn in incomplete forms. **North Carolina** and **California** instruct third parties to flag deficient or incomplete forms but require the forms to be submitted so that the appropriate election officials can review them to determine accuracy.

**The civil penalties carry no mens rea requirement – they apply to anyone who turns in enough incomplete forms, whether mistakenly or intentionally.**

Following a line of questioning from Senators during discussion of the bill, the Coordinator of Elections acknowledged that current state law already punishes individuals intentionally submitting fraudulent forms, and that this bill would be introducing civil fines for individuals who have a high error rate or were simply not very good at their jobs.

**Third-party canvassers may find themselves forced to make decisions about which voter-registration applications to submit.**

This bill specifies that third-party voter-registration drives are not required to submit applications that only contain a name or initial, but it provides no guidance to organizations that collect forms containing more than a name or initial but less than the new regulations require. It thus creates a legal gray area in which, out of fear of accruing 100 incomplete forms and facing financial penalties, third-party individuals or organizations may be incentivized to discard forms that are missing one of the required fields but that contain enough information for election officials to follow-up with the applicant.

This jeopardizes all would-be voters attempting to register to vote through a third-party drive, as their applications are now subject to the determination of the individual or organization of whether to submit the application to be processed.

For a large-scale voter-registration drive, 100 incomplete voter-registration applications within a calendar year can be a low threshold, as errors are likely to occur even with the best intentions.<sup>2</sup> Election officials receive incomplete forms from a variety of sources – those received in the mail, from the Department of Safety and even from the online voter registration system.<sup>3</sup>

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<sup>2</sup> The Election Assistance Commission reports that 10.3% of total registrations received across the country in 2016 were not accepted as valid, and in 2012 that rate was 13.9%. Only 50.8% of the over 1 million registration forms received by Tennessee counties in 2018 were considered valid voter-registrations. The remaining 49.2% “not valid” forms include those defined as duplicates, address changes and fraudulent or deficient forms.

<sup>3</sup> The online voter registration (OVR) system reduces the opportunity for applications to be submitted with required fields missing. However, opportunities remain for error. For example, an applicant may enter “No middle name” as a response to the “middle name” field.

## RELEVANT AMENDMENTS MADE TO THE BILL RELATED TO VOTER REGISTRATION

Since its introduction, the bill has undergone several iterations with a series of key amendments, both additions and deletions, to more clearly define the bill's requirements and implications.

- **Volunteer Exemption:** Initially, the bill's requirements and penalties applied to all supplemental voter-registration drives attempting to register 100 or more people to vote. It has been amended to exclude individuals and organizations who are not paid to collect voter-registration applications.
  - **“Conduct” → “Collect”:** An early amendment excluded individuals or organizations who are “not paid to conduct” a voter registration drive from both the new requirements and the penalties.<sup>4</sup> The bill was further amended to change “conduct” a voter-registration drive to exclude individuals or organizations who are not paid to “collect voter registration applications” and that use only “unpaid volunteers to collect voter-registration applications.”
- **Free and Online Training:** Initially, the bill stated that the training (still undefined) “may be web-based.” The bill has been amended to state that the Coordinator of Elections shall, “at a minimum, offer the training online and shall not charge a fee for the training.”<sup>5</sup>
- **“Deficient” → “Incomplete”:** Initially, the bill placed civil penalties on third-party voter-registration drives for submitting “deficient” forms. An individual or organization conducting a third-party voter-registration drive cannot realistically be expected to verify the information an applicant provides on their application.
  - **“Incomplete” Definition:** The Tennessee state voter-registration application includes questions a voter is not required to answer, but not all of those questions are listed as optional. It had previously been unclear which missing fields would constitute “incomplete” and accrue against an organization's civil penalty assessment.
  - **Forms with Initial or Name Only:** The bill has been amended to clarify that third-parties are not required to submit voter-registration applications returned to them with only an initial or name.<sup>6</sup>
- **Calendar Year Time-Period:** Initially, the bill did not specify the time period for accruing incomplete forms.
- **Communication Intent:** Initially, the bill did not include a mens rea clause on the Class A misdemeanor violations of the public communications requirements.<sup>7</sup>
- **Mail Tracking Requirement:** Initially, the bill required completed forms be mailed to election officials in “a manner that provides a tracking number for the voter-registration form and allows the sender or election commission to track the mailer.” That requirement has been removed.

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<sup>4</sup> This amendment was meant to exclude volunteer-based drives like those conducted by the League of Women Voters or the Boy Scouts, but during the Senate committee discussion of the bill, legislators expressed confusion as to what constituted a paid voter-registration effort. The Coordinator of Elections indicated at the time that any organization that received grant funding or paid for a staff person whose job responsibilities included overseeing voter-registration efforts would constitute a paid drive and would fall under the bill's guidelines.

<sup>5</sup> Each individual participating in an applicable voter-registration drive is required to complete the training. Third-party efforts could be delayed if the training was only available in person or prevented entirely if an organization was unable to afford training fees.

<sup>6</sup> The Coordinator of Elections highlighted as examples, incomplete forms received in 2018 that contained only a name or an initial. Yet third-party groups were under the impression that they were required to turn in every form collected. Forms that are submitted that contain more than a name or initial but are missing one of the defined “incomplete” fields will count towards a group's 100 or more incomplete forms leading to civil penalties.

<sup>7</sup> The bill was amended to include “intentionally and knowingly.”