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THE NATIONAL VOTER REGISTRATION ACT (NVRA) AND AUTOMATIC VOTER REGISTRATION

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THE NVRA: STATED PURPOSES

Congress enacted the NVRA, also known as the "Motor Voter Act," to:

1. increase the number of eligible citizens who register to vote,
2. help government agencies implement the act's provisions in a way that enhances voter participation,
3. protect the integrity of the electoral process, and
4. ensure that agencies maintain accurate and current voter registration rolls (52 USC § 20501(b)).

ISSUE

What are the requirements for states under the National Voter Registration Act of 1993 (NVRA) regarding voter registration services? How many states have enacted automatic voter registration laws? Have any states established automatic voter registration without legislation?

SUMMARY

The NVRA (P.L. 103-31) generally requires states to offer eligible citizens the opportunity to register to vote by:

1. applying as part of a motor vehicle driver's license application or renewal;
2. sending a mail-in application; or
3. applying in person at a designated voter registration agency, including offices providing public assistance or services to individuals with disabilities.

The requirements apply to federal elections, but in practice, states, including Connecticut, have extended the procedures to state and local elections.

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The NVRA also sets requirements for voter registration administration. These provisions generally cover removing names from the voter registry list and conducting a uniform, nondiscriminatory voter registry list maintenance program that complies with the federal Voting Rights Act. This report focuses on the NVRA's voter registration service requirements, not the administrative requirements.

According to the U.S. Department of Justice (DOJ), six states are exempt from the NVRA because they have had, continuously since August 1, 1994, (1) Election Day registration (Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming) or (2) no voter registration requirements (North Dakota). The remaining 44 states and Washington D.C. are covered.

"Automatic voter registration" refers to a process by which an individual is registered to vote even if he or she does not take affirmative steps to register. We identified four states with legislation establishing automatic voter registration: California, Oregon, Vermont, and West Virginia. Currently, only Oregon has implemented it. Additionally, New Jersey passed an automatic registration bill in 2015 that was vetoed. We did not identify any states that established automatic voter registration without legislation.

Additionally, elections policy researchers with whom we spoke identified four states (Delaware, Maryland, New Mexico, and West Virginia) with voter registration processes that closely resemble automatic voter registration. The primary difference is that in these states, an individual must affirmatively indicate whether he or she would like to register, where as in the automatic voter registration states the individual is automatically registered unless he or she opts out.

Of these four states, we did not identify any that acted without legislation but it appears that (1) Maryland passed legislation after state agencies began developing the new process and (2) Delaware agencies acted under broad statutory authority to use digital signatures in voter registration. The researchers indicated that other states may have similar procedures. If you would like additional research on this category, please let us know.

THE NVRA

Application with Driver's License Application

The NVRA requires covered states to offer voter registration services at state motor vehicle offices. Specifically, motor vehicle driver's license applications, including renewals, must serve as voter registration applications unless an individual fails to

sign the voter registration application. Similarly, any driver's license change of address form must serve as a change of address notification for voter registration purposes, unless the registrant indicates otherwise on the form (52 USC § 20504).

Under the NVRA, a "motor vehicle driver's license" includes any personal identification document issued by a state motor vehicle authority.

Form. The voter registration portion of the driver's license application cannot require information that duplicates information required for the driver's license portion. In addition, it must, among other things:

1. require only the minimum information necessary to (a) prevent duplicate voter registrations and (b) enable state election officials to assess applicants' eligibility and administer the election process, including voter registration;

2. state each voter eligibility requirement, such as age and citizenship, and require applicants to sign an attestation under penalty of perjury that they meet the requirements; and

3. state the penalties for submitting a false voter registration application.

Such applications must update any preexisting voter registration information.

Transmission Procedures. Voter registration applications accepted at state motor vehicle offices must be transmitted to the appropriate state election official within 10 days after the acceptance date. But if an application is accepted within five days before the state deadline for registering to vote in an election, it must be transmitted no later than five days after the acceptance date (52 USC § 20504). In Connecticut, the DMV commissioner must transmit applications to the applicable registrars of voters (CGS § 9-19h(b)).

Application by Mail

Covered states must accept and use the National Mail Voter Registration Form prescribed by the U.S. Election Assistance Commission. States may develop equivalent mail-in forms to use in addition to the federal form, provided they meet the NVRA's criteria (52 USC § 20505).

Form. The NVRA sets the same requirements for the mail-in form as it does for the voter registration portion of the driver's license application. Among other things, the form may require only such identifying and other information necessary to enable state election officials to assess the applicant's eligibility and administer the election process, including voter registration. It must state each eligibility

requirement, contain an attestation, and require the applicant to sign under penalty of perjury. It must also state the penalties for submitting a false voter registration application (52 USC § 20508).

In conjunction with the NVRA's requirements, the federal Help America Vote Act of 2002 (HAVA) (P.L. 107-252) requires that the National Mail Voter Registration Form include additional information. Specifically, it requires that the form:

1. ask "Are you a citizen of the United States of America?" and include boxes for applicants to check their response;
2. ask "Will you be 18 years of age on or before election day?" and include boxes for applicants to check their response;
3. state, "If you checked 'no' in response to either of these questions, do not complete this form."; and
4. inform individuals that if the form is submitted by mail and they are registering for the first time, they must include the appropriate identification to avoid additional identification requirements when voting for the first time.

(For more information on voter ID requirements in Connecticut, see OLR Report 2008-R-0301.)

Distribution Procedures. The chief state election official (i.e., the secretary of the state, in Connecticut) must make the mail-in forms available for distribution through public and private entities, with an emphasis on organized voter registration programs. According to DOJ, most states satisfy these requirements by making the forms available at local registrars' offices, motor vehicle offices, public assistance offices, and disability-service offices; to groups conducting voter registration drives; and on the chief election official's website.

Voter Registration Agencies

The NVRA requires covered states to designate as voter registration agencies (1) all offices that provide federal or state public assistance, (2) all offices that provide state-funded programs primarily engaged in providing services to individuals with disabilities, and (3) Armed Forces recruitment offices. States must also designate additional voter registration agencies, which may include (1) state or local offices like public libraries or schools, fishing and hunting license bureaus, or unemployment compensation offices or (2) with their agreement, federal or nongovernmental offices (52 USC § 20506).

Generally, all voter registration agencies must:

1. distribute the National Mail Voter Registration Form;
2. provide an "information form" on the voter-registration process;
3. help applicants complete the registration application, unless they refuse assistance; and
4. accept completed voter registration applications and transmit them to the appropriate state election official within a prescribed timeframe.

Those agencies that provide public assistance or services to individuals with disabilities must include the National Mail Voter Registration Form, or an equivalent form that they design, with each application, recertification, renewal, or change of address form related to the assistance or services. Those providing in-home services to individuals with disabilities must provide the above-listed registration services in such an individual's home.

The NVRA prohibits voter registration agencies from:

1. attempting to influence an applicant's registration or political preference,
2. displaying a political preference or party allegiance, or
3. making a statement or taking an action to discourage an applicant from registering or lead an applicant to believe that the decision to register has any bearing on service availability.

Information Form. Voter registration agencies must provide a form to applicants with specified information. The form may be part of or separate from the voter-registration form and must include, among other things:

1. the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";
2. if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."; and
3. boxes for applicants to check whether they would like to register or decline to register, together with the statement, "IF YOU DO NOT CHECK EITHER YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.".

Transmission Procedures. Voter registration agencies must comply with the same transmission procedures as state motor vehicle offices. Specifically, voter registration applications must be transmitted to the appropriate state election official within 10 days after the acceptance date. If an application is accepted within five days before the state deadline for registering to vote in an election, the application must be transmitted no later than five days after the acceptance date.

AUTOMATIC VOTER REGISTRATION

We identified four states with legislation establishing automatic voter registration: California, Oregon, Vermont, and West Virginia. As described above, the NVRA requires that motor vehicle driver's license applications, including renewals, serve as voter registration applications unless an individual fails to sign the voter registration application. In the four automatic registration states, driver's license applications automatically serve as voter registration applications unless the voter opts out.

The laws in these states generally require motor vehicle agencies to automatically send, to state election agencies, certain information obtained during licensing transactions (e.g., address, date of birth, and citizenship status). The California, Oregon, and West Virginia laws require that this transmission be electronic. (Vermont's does not specify a transmission method.) If election officials determine that an individual is not already registered to vote but is eligible to do so, they register the individual unless he or she opts or has opted out. The laws in California, Vermont, and West Virginia allow people to opt out of voter registration during the transaction at the motor vehicle agency. In Oregon, however, the opt-out opportunity occurs after the motor vehicle transaction. The state mails eligible applicants Oregon Motor Voter (OMV) cards, which they must sign and return to opt out of voter registration. Recipients who do not return the card within 21 days after it is mailed are registered as unaffiliated voters.

Currently, only Oregon has an active automatic voter registration system. Vermont's and West Virginia's laws are not effective until July 1, 2017, and California's system cannot be implemented until its secretary of state makes certain certifications (see Table 1 below). Oregon is also the only one of the four states that has adopted implementing regulations.

Table 1 provides selected provisions of the four states' laws.

Table 1: Automatic Voter Registration Laws

State and Bill Number	*Effective Date*	*Applies to*	*Opt-Out Provision*	*Political Party Registration*	*Other Provisions*
California AB 1461 (2015)	No later than one year after secretary of state makes certain certifications (see Other Provisions)	Applicants for a driver's license or identification card or address change on one of them	Must affirmatively decline registration during transaction	May register with a party during transaction	The program cannot be implemented unless the secretary of state certifies that (1) the state has a HAVA-compliant statewide voter registration database, (2) the legislature has appropriated funds necessary for implementing and maintaining the program, and (3) he has adopted regulations required by the enabling act.
Oregon HB 2177 (2015)	January 1, 2016	Applicants for an original, renewal, or replacement driver's license, permit, or identification card State also registers people who completed these transactions in 2014 or 2015	Must sign and return OMV card affirmatively declining registration	May register with a party by signing and returning OMV card	The state adopted implementing regulations with additional procedural details
Vermont Act 80 (§§ 1-6, 2016)	July 1, 2017	Applicants for original or renewal driver's licenses or identification cards	Must affirmatively decline registration during transaction	Party registration is separate from automatic voter registration	N/A
West Virginia HB 4013 (Article 2, 2016)	July 1, 2017	Applicants for issuance, renewal, or change of address for a driver's license or official identification card	Must affirmatively decline registration during transaction	May register with a party during transaction	Secretary of state must adopt implementing regulations Bill establishes a "Combined Voter Registration and Driver Licensing Fund," in which the state must deposit 50 cents from each license fee to support the program's costs Even if an individual opts out, the motor vehicle department must send his or her information to the secretary of state in order to facilitate future voter registration attempts

States with Similar Processes

Elections policy researchers at the National Conference of State Legislatures (NCSL) and Pew Charitable Trusts indicated that several other states, although not labeled as automatic registration states, have established voter registration processes that integrate data from motor vehicle offices and statewide voter files. NCSL and Pew consider these processes similar to automatic registration. The primary difference between these states and the "automatic voter registration" states is that an individual must affirmatively indicate whether he or she would like to register to vote, whereas in the automatic registration states the individual is automatically registered unless he or she opts out.

For example, in 2009 Delaware established an "e-signature" program. Under this program, when an individual conducting a licensing transaction provides his or her personal information to the motor vehicle office, the office matches the individual's information against the statewide voter file. If there is no match, the individual is asked if he or she would like to register and, if so, must affirm U.S. citizenship. If there is a match with the voter file, the individual is asked if he or she would like to update his or her information. He or she may also register with a political party during the transaction. The individual cannot complete the licensing transaction without answering these voter registration questions.

The individual views these questions and indicates his or her choices on a credit card-style signature pad. When the transaction is complete, the individual's information is immediately transmitted to election officials in his or her home county to complete the registration process.

NCSL and Pew consider Maryland, New Mexico, and West Virginia to have processes modeled after Delaware's and indicated that there may be others. In addition, in November 2015, Alabama entered into an agreement with DOJ to resolve claims that the state violated the NVRA. The state agreed to, among other things, integrate an electronic, NVRA-compliant voter registration application into each in-person application for an Alabama driver's license or other personal identification document. However, it is unclear how Alabama will implement its electronic application.

Statutory Authority. Table 2 shows the statutory authority in the four states identified by NCSL and Pew as having processes similar to automatic voter registration. According to Delaware's elections commissioner, the state's statutory authority was enacted in 2003 with the goal of making voter registration electronic,

but the legislation did not specify a method for doing so. Delaware's elections and motor vehicle agencies subsequently used this legislation as the authority for their e-signature program, which was implemented in 2009.

In Maryland, the legislature enacted statutory authority during the 2012 session after the State Board of Elections and Motor Vehicle Administration announced plans in March 2011 to develop a new electronic registration process. Additionally, in April 2011 the legislature passed a law requiring the two agencies to report to the legislature on their implementation progress.

Table 2: Statutory Authority in States with Processes Similar to Automatic Registration

State and Citation	*Description*
Delaware Del. Code tit. 15, § 1302(e)	Allows an individual's voter registration application signature to be a digitized signature obtained by a state agency as part of a process that includes registering an individual to vote or updating his or her voter registration information
Maryland Md. Code, Elec. Law § 3-204(f) HB 561, § 2 (2011) (not codified in statute)	Allows an applicant registering to vote at a voter registration agency to affirmatively consent to the use of an electronic copy of his or her signature that is on file with the voter registration agency as the individual's signature for the application being submitted Required the State Board of Elections and Motor Vehicle Administration to report to the legislature by October 1, 2011 on actions taken and plans to implement a "fully automated voter registration system"
New Mexico N.M. Stat. § 1-4-47 C. (2)	Requires motor vehicle offices to conduct voter registration in a manner under which applicants complete the full certificate of registration electronically
West Virginia W. Va. Code § 3-2-11(a)	Allows people to apply for voter registration using an approved electronic voter registration system if available at a Division of Motor Vehicles office

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