



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 305

130th General Assembly  
(As Introduced)

**Reps.** Becker, Hood

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#### **BILL SUMMARY**

- Changes the method by which an elector's political party affiliation must be determined, for the purposes of voting at primary elections, signing nominating petitions for party candidates, or running for partisan office.
- Specifies that an elector's political party affiliation is determined based on the party the elector indicated on the elector's most recent voter registration or update form.

#### **Registration form and change of political party affiliation form**

- Allows an applicant to select or write the name of a recognized party or to choose not to be affiliated with a party on the applicant's registration or update form.
- Specifies that if an elector is registered before the bill takes effect, the elector's registration form must be deemed to indicate an affiliation with the political party whose ballot the elector voted at the most recent primary election within the year of the bill's effective date and the immediately preceding two calendar years.
- Requires an elector's political party affiliation to be included in the elector's notice of registration and in the elector's entry on the statewide voter registration database website.
- Incorporates references to change of political party affiliation forms in the sections of law that require the Bureau of Motor Vehicles, schools, and certain other government agencies to provide voter registration and update forms to individuals.
- Requires a board of education to notify students who are participating in an in-class voter registration program that registering as affiliated with a particular political

party or registering to vote and remaining unaffiliated will not affect the students' grades, activities, benefits, or privileges.

- Adds references to political party affiliation to certain continuing sections of law that define criminal offenses related to voter registration, including bribery, false registration, and tampering with registration records.

### **Eligibility to vote at a primary election**

- Requires an elector to be registered as affiliated with a political party at least 30 days before the day of a primary election in order to vote that party's ballot in the primary.
- Requires an applicant for absent voter's ballots for a primary election to indicate either the political party with which the elector is registered as affiliated, or that the elector wishes to vote only for the questions and issues appearing on the ballot.
- Allows a person whose registration record does not indicate that the person is registered as affiliated with the party whose primary ballot the person seeks to vote to cast a provisional ballot.
- Specifies that such a person's provisional ballot must not be counted if the person is not registered as affiliated with that party or if the board of elections is unable to determine whether the person is so registered.

### **Eligibility to sign a declaration of candidacy**

- Specifies that an elector must be registered as affiliated with a political party in order to sign or circulate the petition portion of a declaration of candidacy for a candidate who seeks to appear on that party's ballot in a primary election.

### **Eligibility to be a political party candidate**

- Requires a person to be registered as affiliated with a political party in order to be a candidate for nomination or election at the party's primary election.
- Specifies that a person must not be registered as affiliated with a political party in order to be an independent candidate.
- Requires a person who currently holds an elective office for which candidates are nominated at a party primary, and who wishes to run in the primary election of a party with which the person is not affiliated, to register as affiliated with the person's new party.

- Maintains the requirement that such a person also file a declaration of intent, which the person may not file more than once in a period of ten years.
- Modifies the requirement that a candidate forfeit the candidate's nomination if the candidate is nominated at one party's primary election but votes in the primary as a member of a different party to refer to the fact that the candidate would be required to register as affiliated with a different party before voting in that party's primary.

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## CONTENT AND OPERATION

The bill changes the method by which an elector's political party affiliation must be determined, for the purposes of voting at primary elections, signing nominating petitions for party candidates, or running for partisan office.

Under the bill, an elector's political party affiliation is determined based on the party the elector indicated on the elector's most recent voter registration or update form. Existing law specifies that an elector is considered to be affiliated with the political party whose ballot the elector voted in the most recent primary election within the current year and the immediately preceding two calendar years.<sup>1</sup>

### Registration form and change of political party affiliation form

When a person registers to vote, the bill allows the person to do one of the following on the person's form:

- Select a political party from a list of the parties that are recognized in Ohio at the time the form is printed (see **COMMENT 1**);
- Write the name of a recognized party that is not listed on the form, if the person wishes to be affiliated with that party;
- Check a box to indicate that the person does not wish to be affiliated with any party; or
- Refrain from doing any of the above.

The registration form must instruct the person to select or write the name of only one recognized party and must state that the person is not required to select a party. If the person does not select or write the name of a recognized political party, or indicates

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<sup>1</sup> R.C. 3503.23 and 3513.05.



that the person does not wish to be affiliated with a party, the person must be considered not to be affiliated with any party.<sup>2</sup>

The bill specifies that if an elector is registered before the bill takes effect, the elector's registration form must be deemed to indicate an affiliation with the political party whose ballot the elector voted at the most recent primary election within the year of the bill's effective date and the immediately preceding two calendar years.<sup>3</sup>

The bill also requires the Secretary of State to prescribe a change of political party affiliation form to be used in Ohio. This form must contain the same fields as the voter registration form, including the political affiliation options described above. Under the bill, an elector may change the elector's party affiliation by submitting a change of political party affiliation form in the same manner as a registered elector may update the elector's name or address. Continuing law allows an elector to submit a change of residence or change of name form (1) in person or by mail to the Secretary of State or the office of a board of elections, or (2) in person at a polling place or at the offices of many government agencies, including the office of a deputy registrar of a Bureau of Motor Vehicles, a public library, and certain public assistance offices. However, under the bill, an elector may not file a change of political party affiliation form at a polling place on the day of a primary election. The bill requires an elector to be registered as affiliated with a political party not less than 30 days before the day of a primary election in order to vote in that party's primary (see "**Eligibility to vote at a primary election**").<sup>4</sup>

When a board of elections receives a valid application to register to vote or to update the applicant's registration, the bill requires the board to include the applicant's registered political party affiliation, if any, in the notice of registration that the board, under continuing law, must send to the applicant. An elector's political party affiliation, if any, also must appear in the elector's entry on the statewide voter registration database website.<sup>5</sup>

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<sup>2</sup> R.C. 3503.14 and 3503.23.

<sup>3</sup> R.C. 3503.23.

<sup>4</sup> R.C. 3503.14, 3503.16, and 3503.19.

<sup>5</sup> R.C. 3503.15(G) and 3503.19(C).



## **Voter registration agencies**

The bill incorporates references to change of political party affiliation forms in the sections of law that require the Bureau of Motor Vehicles, schools, and certain other government agencies to provide voter registration and update forms to individuals.<sup>6</sup>

The bill also amends the statement that, under continuing law, a board of education must distribute to students if a public high school or vocational school conducts an in-class voter registration program. Under the bill, that statement must be as follows (new text is shown in italics):<sup>7</sup>

*Applying to register or declining to register to vote, or registering as affiliated with a particular political party or registering to vote and remaining unaffiliated, will not affect or be a condition of your receiving a particular grade in or credit for a school course or class, participating in a curricular or extracurricular activity, receiving a benefit or privilege, or participating in a program or activity otherwise available to pupils enrolled in this school district's schools.*

## **Voter registration offenses**

The bill adds references to political party affiliation to certain continuing sections of law that define criminal offenses related to voter registration. Specifically, under the bill, a person who solicits, requests, demands, receives, or contracts for any money, gift, loan, property, influence, position, employment, or other thing of value for that person or for another person for registering, or refraining from registering, as affiliated with a political party is guilty of bribery, which is a fourth degree felony. Under continuing law, a fourth degree felony is punishable by imprisonment for a term of 6 to 18 months and a fine of not more than \$5,000. A person convicted of bribery under this statute must be disenfranchised and excluded from holding public office for five years immediately following the person's conviction.<sup>8</sup>

The bill also specifies that no person may knowingly register, apply or attempt to register, aid or abet any person to register, or attempt to register or induce or attempt to induce another person to register as affiliated with a political party with which the person does not desire to be affiliated or whose principles the person does not support.

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<sup>6</sup> R.C. 3503.10(E), 3503.11, 3503.14, 3503.16, 3503.19, and 4507.06.

<sup>7</sup> R.C. 3503.10(G).

<sup>8</sup> R.C. 2929.14 (not in the bill), 2929.18 (not in the bill), and 3599.02.



A person who violates this prohibition is guilty of a fifth degree felony, which, under continuing law, is punishable by imprisonment for a term of 6 to 12 months and a fine of not more than \$2,500.<sup>9</sup>

Finally, the bill prohibits an election official, a person assisting in the registration of electors, or a police officer from knowingly altering an elector's political party affiliation or lack of political party affiliation on the elector's registration card or form. A person who violates this statute is guilty of a first degree misdemeanor, which, under continuing law, is punishable by imprisonment for a term of not more than 180 days and a fine of not more than \$1,000.<sup>10</sup>

### **Eligibility to vote at a primary election**

The bill requires an elector to be registered as affiliated with a political party at least 30 days before the day of a primary election in order to vote that party's ballot in the primary. The continuing deadline and postmark requirements that apply to new voter registrations apply to change of party affiliation forms. Specifically, if the form is returned by mail to the office of the Secretary of State or a board of elections, the form must be postmarked not later than the 30th day before the day of the primary election. If the form is submitted in person to the office of the Secretary of State, the board of elections, or another government agency that is required by law to accept those forms, the form must be submitted no later than the 30th day before the day of the primary election. Valid forms received after the deadline permit the elector to vote at the elector's new party's subsequent primary elections. The bill specifies that an elector may not file a change of political party affiliation form at the polling place on the day of a primary election.<sup>11</sup>

Under the bill, when an elector appears to vote at a primary election, the elector may vote a political party's ballot only if the elector is registered as affiliated with that party. Continuing law allows an elector instead to request to vote only for the questions and issues appearing on the ballot in a special election held on the day of a primary (an "issues only" ballot), regardless of the elector's party affiliation or lack of affiliation.<sup>12</sup>

Correspondingly, the bill requires an applicant for absent voter's ballots for a primary election to indicate either the political party with which the elector is registered as affiliated, or that the elector wishes to vote only for the questions and issues

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<sup>9</sup> R.C. 2929.14 (not in the bill), 2929.18 (not in the bill), and 3599.11.

<sup>10</sup> R.C. 2929.24 (not in the bill), 2929.28 (not in the bill), and 3599.18.

<sup>11</sup> R.C. 3503.16 and 3503.19.

<sup>12</sup> R.C. 3513.18 and 3513.19.



appearing on the ballot. Existing law only requires the applicant to state the applicant's party affiliation.<sup>13</sup>

If a person offers to vote a political party's ballot at a primary election, and the person's registration record does not indicate that the person is registered as affiliated with that party, the bill allows the person to cast a provisional ballot. The bill adds a space to the provisional ballot affirmation form for an elector to write the name of the party whose ballot the elector is voting, if applicable, and requires the elector to swear or affirm that the elector is registered as affiliated with the party whose ballot the elector is voting.

In order for a provisional ballot cast in a primary election to be eligible to be counted, the bill requires the provisional ballot affirmation to include the above statement of affiliation. The board of elections must examine its records, the affirmation, and any additional information the provisional voter provided, in order to determine whether the person who cast the ballot is registered as affiliated with the party whose ballot the person has voted. If the individual is not registered as affiliated with that party, or if the board is unable to determine whether the person is so registered, the provisional ballot must not be counted (see **COMMENT 2**).<sup>14</sup>

Under existing law, an elector is considered to be affiliated with the political party whose ballot the elector voted in the most recent primary election within the current year and the immediately preceding two calendar years. If an elector seeks to vote a different political party's ballot at a primary election, an election official may challenge the elector on the basis that the elector is not affiliated with or is not a member of that political party.<sup>15</sup> However, any qualified elector may vote a new party's primary ballot at the first primary election in which the party is permitted to participate, regardless of the elector's prior party affiliation.

If an elector wishes to vote the primary ballot of a party other than the one with which the elector is affiliated, current law allows the elector to sign a statement, under penalty of election falsification, that the elector desires to be affiliated with and supports

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<sup>13</sup> R.C. 3509.03 and 3511.02.

<sup>14</sup> R.C. 3505.181(A)(11), 3505.182, 3505.183, and 3513.19.

<sup>15</sup> The Secretary of State currently instructs precinct election officials to challenge an elector's political party affiliation only if the official has personal knowledge that the elector is not affiliated with or a member of that party. The official must not rely solely on the notation of party affiliation that appears in the poll book. Ohio Secretary of State, *Precinct Election Official Training Supplement for May 6, 2014 Primary Election* at 2. Available at [sos.state.oh.us/SOS/Upload/elections/EOresources/peoTraining/PEOTrainingSupplement\\_5\\_14.pdf](http://sos.state.oh.us/SOS/Upload/elections/EOresources/peoTraining/PEOTrainingSupplement_5_14.pdf), accessed March 20, 2014.

the principles of the party whose ballot the elector wishes to vote. The statement also must include the elector's name, age, address, and length of residence in the precinct, county, and state. An elector who signs such a statement may cast a regular ballot in the primary election. If the elector refuses to sign the statement, the elector may cast a provisional ballot.<sup>16</sup>

### **Eligibility to sign a declaration of candidacy**

Continuing law requires an elector to be a member of a political party in order to sign or circulate the petition portion of a declaration of candidacy for a candidate who seeks to appear on that party's ballot in a primary election. Under the bill, an elector may sign or circulate such a petition if the elector's voter registration record indicates that the elector is affiliated with that political party.

Existing law allows an elector to sign or circulate such a declaration of candidacy if the elector voted in the candidate's party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years. The Revised Code previously allowed any elector to sign a declaration of candidacy for a candidate seeking the nomination of a newly recognized party at that party's first primary election. The bill purports to eliminate this exception. However, the exception previously was eliminated by S.B. 193 of the 130th General Assembly, which took effect February 5, 2014.<sup>17</sup>

### **Eligibility to be a political party candidate**

Under the bill, in order to be a candidate for nomination or election at a party primary, a person must be registered as affiliated with that party. And, in order to be an independent candidate, a person must not be registered as affiliated with any party. Existing law generally allows any person who claims to be a member of a party to be a candidate at the party's primary, regardless of which party's primary ballot the person has recently voted. An independent candidate currently must claim not to be affiliated with a political party.<sup>18</sup>

Further restrictions apply to a person who currently holds an elective office for which candidates are nominated at a party primary, if the person wishes to run in the primary election of a party with which the person is not affiliated. (That is, the person

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<sup>16</sup> R.C. 3513.19 and repeal of R.C. 3513.20 and 3517.016.

<sup>17</sup> R.C. 3513.05 and repeal of R.C. 3517.015. (R.C. 3517.015 was repealed in S.B. 193 of the 130th General Assembly.)

<sup>18</sup> R.C. 3501.01(I) and (K), 3513.19, and 3513.191.



holds a partisan office and was affiliated with Party A, but the person now wishes to seek Party B's nomination for an office in the upcoming primary election). The bill requires such a person to register to vote as a member of the person's new political party.

Under continuing law, the person also must file a declaration of intent to seek the nomination of the person's new party, unless the person's new party is a newly recognized party conducting its first primary election. The declaration of intent must be made on a form prescribed by the Secretary of State, and must be filed not later than 4 p.m. of the 30th day before the person's declaration of candidacy and petition must be filed, with the same official with whom the person must file the declaration of candidacy and petition. After a person files a declaration of intent, the person may not file another for a period of ten years.<sup>19</sup>

Finally, under continuing law, if a candidate is nominated at a party primary election but votes in the primary as a member of a different party from the one that nominated the candidate, the candidate must forfeit the nomination, and the candidate's party may fill the vacancy on the ballot. The bill modifies this provision to refer to the fact that such a candidate would be required to register as affiliated with a different party before voting in that party's primary.<sup>20</sup>

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## COMMENT

1. Currently, Ohio does not have an official list of groups that qualify as political parties. S.B. 193 of the 130th General Assembly established a set of requirements for recognition as a political party for the purpose of the 2014 primary and general elections and another set of requirements for recognition as a political party after those elections. However, a federal court issued a preliminary injunction that prevents the 2014 requirements from being enforced. The court has ordered Ohio to recognize the plaintiffs in that case (the Libertarian Party of Ohio, the Green Party of Ohio, and the Constitution Party of Ohio) as political parties for the purpose of the 2014 elections. This issue is still being litigated, and the courts have not made a final ruling concerning Ohio's requirements for a group to qualify as a political party.<sup>21</sup>

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<sup>19</sup> R.C. 3513.19, 3513.191, and 3517.013 and repeal of R.C. 3517.014.

<sup>20</sup> R.C. 3513.192.

<sup>21</sup> *Libertarian Party of Ohio v. Husted*, Case No. 2:13-cv-953 (S.D. Ohio January 7, 2014). Available at [moritzlaw.osu.edu/electionlaw/litigation/documents/Plorder.pdf](http://moritzlaw.osu.edu/electionlaw/litigation/documents/Plorder.pdf), accessed March 20, 2014.



2. The Provisional Ballot Law, as it appears in the bill, has since been amended in S.B. 216 of the 130th General Assembly.<sup>22</sup> Those amendments take effect June 2, 2014. The Revised Code sections that appear in the bill need to be updated in order to reflect those changes and to show how the bill will affect the language of the provisional ballot affirmation form and the counting standards for those ballots as they will exist as of June 2, 2014.

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## HISTORY

ACTION	DATE
Introduced	10-16-13

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<sup>22</sup> R.C. 3505.181, 3505.182, and 3505.183.

