

(PRE-FILED)

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By: **The Speaker and Delegates Hixson, Rosenberg, Barkley, Bobo, Boschert, Bozman, Burns, Cane, G. Clagett, V. Clagett, Conroy, Conway, DeBoy, Donoghue, Feldman, Frush, Gilleland, Gutierrez, Haynes, Healey, Heller, Holmes, Howard, Hubbard, Jones, Kach, Kaiser, King, Krysiak, Leopold, Levy, Love, Madaleno, Malone, Mandel, Menes, Montgomery, Niemann, Patterson, Pendergrass, Petzold, Rosenberg, Ross, Stern, Vallario, Vaughn, and ~~Zirkin~~ Zirkin, Bartlett, Bronrott, Cadden, Cardin, Cryor, C. Davis, Doory, Elmore, Gaines, Goodwin, Gordon, James, Lee, Marriott, McKee, Moe, Myers, Ramirez, and F. Turner**

Requested: November 8, 2004  
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Assigned to: Ways and Means

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 17, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Voters Rights Protection Act of 2005**

3 FOR the purpose of providing that an individual whose ~~identity~~ right to vote is  
4 challenged at the polling place may establish the individual's identity by  
5 presenting a certain form of identification; prohibiting a person from willingly  
6 or knowingly influencing or attempting to influence a voter from going to the  
7 polls to cast a vote through the use of certain means or activities; prohibiting a  
8 person from willingly or knowingly engaging in certain conduct which results in  
9 or has the intent to result in the denial or abridgement of the right of certain  
10 citizens to vote on account of race ~~or color, color, or disability~~; requiring a local  
11 board of elections to count the provisional ballots of certain voters under certain  
12 circumstances; ~~providing that an individual whose right to vote is challenged~~  
13 ~~may establish the individual's identity by presenting certain forms of~~  
14 ~~identification~~; establishing a civil penalty for certain violations; requiring the  
15 State Board of Elections to review its policies and procedures governing the  
16 administration of elections for certain purposes and to submit a report of its  
17 findings and recommendations to the Governor and to the General Assembly by  
18 a certain date; and generally relating to the ~~Voter~~ Voters Rights Protection Act of

1 2005.

2 BY repealing and reenacting, with amendments,  
 3 Article - Election Law  
 4 Section ~~9-404~~, 10-312, 11-303, and 16-201  
 5 Annotated Code of Maryland  
 6 (2003 Volume and 2004 Supplement)

7 BY adding to  
 8 Article - Election Law  
 9 Section 16-903 and 16-1002  
 10 Annotated Code of Maryland  
 11 (2003 Volume and 2004 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Election Law**

15 ~~9-404.~~

16 ~~(a) If an individual is eligible under subsection (b) of this section, the~~  
 17 ~~individual shall be issued and may cast a provisional ballot:~~

18 ~~(1) at a polling place on election day; or~~

19 ~~(2) at the local board office in the county where the individual resides~~  
 20 ~~after the close of registration and before the closing of the polls on election day.~~

21 ~~(b) An individual is eligible to cast a provisional ballot if:~~

22 ~~(1) the individual declares in a written affirmation submitted with the~~  
 23 ~~provisional ballot that the individual is a registered voter in the State and is eligible~~  
 24 ~~to vote in that election; and~~

25 ~~(2) (i) the individual's name does not appear on the precinct register;~~

26 ~~(ii) an election official asserts that the individual is not eligible to~~  
 27 ~~vote; or~~

28 ~~(iii) the individual does not have the necessary identification.~~

29 ~~(C) A LOCAL BOARD SHALL COUNT THE VOTE CAST BY A VOTER FOR EACH~~  
 30 ~~CANDIDATE OR QUESTION APPLICABLE TO THE PRECINCT IN WHICH THE VOTER IS~~  
 31 ~~DETERMINED TO BE REGISTERED, IF:~~

32 ~~(1) THE LOCAL BOARD DETERMINES THAT THE VOTER IS ELIGIBLE TO~~  
 33 ~~CAST A PROVISIONAL BALLOT; AND~~

1           ~~(2) THE PROVISIONAL BALLOT IS CAST AT A LOCATION SPECIFIED IN~~  
2 ~~SUBSECTION (A) OF THIS SECTION.~~

3       ~~[(c)] (D) In addition to the individuals who cast provisional ballots under~~  
4 ~~subsections (a) and (b) of this section, any individual who appears to vote during a~~  
5 ~~period covered by a court order or other order extending the time for closing the polls~~  
6 ~~shall cast a provisional ballot. A provisional ballot cast under this subsection shall be~~  
7 ~~separated and held apart from other provisional ballots cast by those not affected by~~  
8 ~~the order.~~

9 10-312.

10       (a)     (1)     The right of an individual to vote may be challenged at the polls only  
11 on the grounds of identity.

12           (2)     AN INDIVIDUAL WHOSE RIGHT TO VOTE IS CHALLENGED AT THE  
13 POLLS MAY ESTABLISH THE INDIVIDUAL'S IDENTITY BY PRESENTING ANY OF THE  
14 FOLLOWING FORMS OF IDENTIFICATION:

15                   (I)     THE INDIVIDUAL'S VOTER REGISTRATION CARD;

16                   (II)    THE INDIVIDUAL'S SOCIAL SECURITY CARD;

17                   (III)   THE INDIVIDUAL'S VALID MARYLAND DRIVER'S LICENSE;

18                   (IV)   ANY IDENTIFICATION CARD ISSUED TO THE INDIVIDUAL BY A  
19 POLITICAL SUBDIVISION OF THE STATE, THE STATE, THE FEDERAL GOVERNMENT,  
20 OR ANY UNIT OF A POLITICAL SUBDIVISION OF THE STATE, THE STATE, OR THE  
21 FEDERAL GOVERNMENT;

22                   (V)     ANY EMPLOYEE IDENTIFICATION CARD OF THE INDIVIDUAL  
23 THAT CONTAINS A PHOTOGRAPH OF THE INDIVIDUAL AND IS ISSUED BY THE  
24 EMPLOYER OF THE INDIVIDUAL IN THE ORDINARY COURSE OF THE EMPLOYER'S  
25 BUSINESS; OR

26                   (VI)    A COPY OF A CURRENT BILL, BANK STATEMENT, GOVERNMENT  
27 CHECK, PAYCHECK, OR OTHER GOVERNMENT DOCUMENT THAT SHOWS THE NAME  
28 AND CURRENT ADDRESS OF THE INDIVIDUAL.

29           (3)     IF AN INDIVIDUAL ESTABLISHES THE INDIVIDUAL'S IDENTITY  
30 UNDER PARAGRAPH (2) OF THIS SUBSECTION, AN ELECTION JUDGE SHALL  
31 AUTHORIZE THE INDIVIDUAL TO VOTE A REGULAR BALLOT.

32       (b)     A challenge to an individual's right to vote shall be made before the  
33 individual is issued a ballot or a voting authority card.

34       (c)     If a challenge is made, AND THE CHALLENGED INDIVIDUAL DOES NOT  
35 PRESENT ANY OF THE FORMS OF IDENTIFICATION SPECIFIED UNDER SUBSECTION  
36 (A)(2) OF THIS SECTION, the election judge receiving the challenge shall:

1 (1) require the challenger to provide in writing, under penalty of perjury,  
2 the reasons for the challenge;

3 (2) offer the challenged individual the opportunity to:

4 (i) cast a provisional ballot; and

5 (ii) submit an attestation, witnessed by the election judge, of the  
6 individual's identity; and

7 (3) submit the provisional ballot and other materials related to the  
8 challenge to the local board.

9 (d) During the canvass of provisional ballots, the local board shall determine,  
10 based on the information submitted by the challenger and the challenged individual,  
11 whether the challenged individual is:

12 (1) the registered voter he or she claims to be; and

13 (2) otherwise qualified to vote.

14 11-303.

15 (a) Following an election, each local board shall meet at its designated  
16 counting center to canvass the provisional ballots cast in that election in accordance  
17 with the regulations and guidelines established by the State Board.

18 (b) A local board may not open an envelope of a provisional ballot until the  
19 local board has approved the provisional ballot application.

20 (c) The State Board shall adopt regulations to implement this section.

21 (d) (1) A local board may not reject a provisional ballot except by unanimous  
22 vote and in accordance with regulations of the State Board.

23 (2) The local board shall reject a provisional ballot if:

24 (i) pursuant to paragraph (4) of this subsection, the local board  
25 determines that the individual who cast the provisional ballot is not qualified to vote  
26 that provisional ballot;

27 (ii) the individual failed to sign the oath on the provisional ballot  
28 application;

29 (iii) the individual cast more than one ballot for the same election;  
30 or

31 (iv) the local board determines that a provisional ballot is  
32 intentionally marked with an identifying mark that is clearly evident and placed on  
33 the ballot for the purpose of identifying the ballot.

1           (3)     If the intent of the voter with respect to a particular contest is not  
 2 clearly demonstrated, the local board shall reject only the vote for that contest.

3           (4)     For the purposes of this section, an individual is qualified to vote the  
 4 provisional ballot cast if the local board determines that:

5                   (i)     the individual is registered in the State;

6                   (ii)     [based on the address given on the provisional ballot  
 7 application, the individual resides in the precinct in which the individual seeks to  
 8 vote;

9                   (iii)    if the provisional ballot was cast because the voter failed to  
 10 provide required identification, the individual who cast the provisional ballot has met  
 11 the identification requirements established by the State Board; and

12                   [(iv)]    (III)    if the provisional ballot was cast during a period covered  
 13 by a court order or other order extending the time for closing the polls, the order has  
 14 not been invalidated by a subsequent court order.

15     (E)     A LOCAL BOARD SHALL COUNT:

16           (1)     THE ENTIRE PROVISIONAL BALLOT IF THE ADDRESS ON THE  
 17 PROVISIONAL BALLOT APPLICATION IS WITHIN THE PRECINCT WHERE THE  
 18 PROVISIONAL BALLOT WAS CAST; OR

19           (2)     ONLY THE VOTES CAST BY THE VOTER FOR EACH CANDIDATE OR  
 20 QUESTION APPLICABLE TO THE PRECINCT IN WHICH THE VOTER RESIDES, AS  
 21 DETERMINED BY THE ADDRESS ON THE PROVISIONAL BALLOT APPLICATION OF THE  
 22 VOTER.

23     [(e)]    (F)     (1)     The State Board shall ensure the establishment of a system  
 24 that any individual who casts a provisional ballot may access without cost to discover  
 25 whether the ballot was counted and, if not counted, the reason it was not.

26           (2)     The system established under paragraph (1) of this subsection shall  
 27 ensure the confidentiality of the individual who accesses the system and the secrecy  
 28 of each ballot.

29 16-201.

30     (a)     A person may not willfully and knowingly:

31           (1)     (i)     impersonate another person in order to vote or attempt to vote;  
 32 or

33                   (ii)    vote or attempt to vote under a false name;

34           (2)     vote more than once for a candidate for the same office or for the  
 35 same ballot question;

1 (3) vote or attempt to vote more than once in the same election, or vote in  
2 more than one election district or precinct;

3 (4) vote in an election district or precinct without the legal authority to  
4 vote in that election district or precinct; [or]

5 (5) influence or attempt to influence a voter's voting decision through the  
6 use of force, threat, menace, intimidation, bribery, reward, or offer of reward;

7 (6) INFLUENCE OR ATTEMPT TO INFLUENCE A VOTER'S DECISION  
8 WHETHER TO GO TO THE POLLS TO CAST A VOTE THROUGH THE USE OF FORCE,  
9 FRAUD, THREAT, MENACE, INTIMIDATION, BRIBERY, REWARD, OR OFFER OF REWARD;  
10 OR

11 (7) ENGAGE IN CONDUCT THAT RESULTS OR HAS THE INTENT TO  
12 RESULT IN THE DENIAL OR ABRIDGEMENT OF THE RIGHT OF ANY CITIZEN OF THE  
13 UNITED STATES TO VOTE ON ACCOUNT OF RACE ~~OR COLOR~~, COLOR, OR DISABILITY.

14 (b) A EXCEPT AS PROVIDED IN § 16-1002 OF THIS TITLE. A person who violates  
15 this section is guilty of a misdemeanor and on conviction is subject to a fine of not  
16 more than \$2,500 or imprisonment for not more than 5 years or both.

17 (c) A person who violates this section is subject to § 5-106(b) of the Courts  
18 Article.

19 16-903.

20 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON  
21 MAY NOT ATTIRE OR EQUIP AN INDIVIDUAL, OR PERMIT AN INDIVIDUAL TO BE  
22 ATTIRED OR EQUIPPED, IN A MANNER WHICH CREATES THE APPEARANCE THAT THE  
23 INDIVIDUAL IS PERFORMING AN OFFICIAL OR GOVERNMENTAL FUNCTION IN  
24 CONNECTION WITH AN ELECTION, INCLUDING:

25 (1) WEARING A PUBLIC OR PRIVATE LAW ENFORCEMENT OR SECURITY  
26 GUARD UNIFORM;

27 (2) USING AN ARMBAND; OR

28 (3) EXCEPT AS REQUIRED BY LAW OR BY REGULATION ADOPTED BY THE  
29 STATE BOARD IN CONNECTION WITH BALLOT SECURITY ACTIVITIES, CARRYING OR  
30 DISPLAYING A GUN OR BADGE WITHIN 100 FEET OF A POLLING SITE ON ELECTION  
31 DAY.

32 (B) (1) A LAW ENFORCEMENT OFFICER OR SECURITY GUARD WHO IS ON  
33 DUTY OR TRAVELING TO OR FROM DUTY MAY VOTE WHILE WEARING A UNIFORM.

34 (2) A LAW ENFORCEMENT OFFICER WHO IS PERFORMING AN OFFICIAL  
35 GOVERNMENTAL FUNCTION MAY WEAR A UNIFORM AT A POLLING SITE.

1 ~~(B)~~ (C) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO THE CIVIL  
2 PENALTY SPECIFIED UNDER § 16-1002 OF THIS TITLE.

3 16-1002.

4 A PERSON WHO VIOLATES § 16-201(A)(6) OR (7) OR § 16-903 OF THIS TITLE  
5 WITHOUT KNOWING THAT THE ACT IS ILLEGAL SHALL PAY A CIVIL PENALTY AND  
6 HAVE THE MATTER ADJUDICATED IN ACCORDANCE WITH § 13-604 OF THIS ARTICLE.

7 SECTION 2. AND BE IT FURTHER ENACTED, That:

8 (1) the State Board of Election shall review for effectiveness, clarity, and  
9 completeness its policies and procedures governing the administration of elections,  
10 and verify that its policies and procedures:

11 (i) require the posting of a "Voter Bill of Rights" in each polling site ~~and~~  
12 ~~in State and local government office locations specified under law where individuals~~  
13 ~~may register to vote;~~

14 (ii) require the State Board of Elections to work with law enforcement to  
15 impose a clear definition and consistent standard of the purpose, role, and  
16 responsibility of law enforcement officers stationed at polling places;

17 (iii) are effective in the recruitment and training of election judges and  
18 poll workers, particularly with regard to the requirements of the Help America Vote  
19 Act 2002, identification requirements, and provisional ballots;

20 (iv) require the State Board of Elections to work with law enforcement to  
21 provide for the deployment of police officers and attorneys to monitor, investigate, and  
22 record incidents of voter intimidation;

23 (v) include a "hotline" for the public to report incidents of voter  
24 intimidation;

25 (vi) require that local boards of elections ensure that each polling place is  
26 open on time and specify what action will be taken if a polling site does not open on  
27 time;

28 (vii) guarantee that any voter removed from the voter registration rolls  
29 due to a ~~change of address or~~ conviction will be provided timely notice in writing;

30 ~~(viii) require that, prior to each election, a list is compiled of previously~~  
31 ~~registered voters who have been purged from the rolls and that the list is made~~  
32 ~~available to the public at each polling site;~~

33 ~~(ix)~~ (viii) ensure that an "inactive voter" is afforded the opportunity to  
34 cast a provisional ballot in order to restore the voter's status to that of an eligible  
35 voter; and

1           ~~(x)~~     (ix)     clarify the responsibility of the Motor Vehicle Administration to  
2 process and forward ~~in a timely manner~~ within 5 business days of receiving an  
3 individual's voter registration application to the State Board of Elections and  
4 delineate what actions will be taken if the Administration fails to do so; and

5           ~~(xi)~~     ~~provide that individuals who register at the Motor Vehicle~~  
6 ~~Administration and who are not on the voter registration list at their polling site may~~  
7 ~~cast a provisional ballot that will be counted; and~~

8           (2)     on or before December 1, 2005, submit a report of its findings and  
9 recommendations to the Governor, and, in accordance with § 2-1246 of the State  
10 Government Article, to the General Assembly.

11           (3)     the report required under subsection (2) of this section shall:

12                     (i)     specify the policies and standards that the State Board of  
13 Elections implemented as a result of its review;

14                     (ii)    include a list of all violations that occurred during the 2005  
15 municipal elections; and

16                     (iii)   include the penalties that have been enforced as a result of the  
17 violations.

18     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 July 1, 2005.