

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 410

*An Act to amend and reenact §§ 24.2-405, 24.2-406, 24.2-419, 24.2-441, 24.2-442, 24.2-443.2, 24.2-443.3, 24.2-643, 24.2-653, 24.2-668, 24.2-701, 24.2-703, 24.2-706, and 24.2-802 of the Code of Virginia, relating to changes in election laws and procedures for implementation of the Help America Vote Act; voter registration, identification and provisional voting; absentee voting for military and overseas voters; and recounts.*

[S 462]

Approved April 12, 2004

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-405, 24.2-406, 24.2-419, 24.2-441, 24.2-442, 24.2-443.2, 24.2-443.3, 24.2-643, 24.2-653, 24.2-668, 24.2-701, 24.2-703, 24.2-706, and 24.2-802 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-405. Persons who may obtain lists of registered voters.

A. The State Board shall furnish, at a reasonable price, lists of registered voters for their districts to (i) courts of the Commonwealth and the United States for jury selection purposes, (ii) candidates for election or political party nomination to further their candidacy, (iii) political party committees or officials thereof for political purposes only, (iv) political action committees that have filed a current statement of organization with the State Board pursuant to § 24.2-908, or with the Federal Elections Commission pursuant to federal law, for political purposes only, (v) incumbent officeholders to report to their constituents, and (vi) nonprofit organizations that promote voter participation and registration for that purpose only. The lists shall be furnished to no one else and used for no other purpose. However, the State Board is authorized to furnish information from the voter registration system to general registrars for their official use and to the Department of Motor Vehicles and other appropriate state agencies for maintenance of the voter registration system.

B. The State Board shall furnish, at a reasonable price, lists of the addresses of registered voters for their localities to local government census liaisons and their staffs for the sole purpose of providing address information to the United States Bureau of the Census. The State Board shall also furnish, at a reasonable price, such lists to the Clerk of the Senate and the Clerk of the House of Delegates for the sole purpose of maintaining a database of constituent addresses for the General Assembly. The information authorized under this subsection shall be furnished to no other person and used for no other purpose. No list furnished under this subsection shall contain the name of any registered voter. For the purpose of this subsection, the term "census liaison" shall have the meaning provided in 13 U.S.C. § 16.

C. In no event shall any list furnished under this section contain the social security number of any registered voter except a list furnished to a court of the Commonwealth or of the United States for jury selection purposes.

D. Any list furnished under subsection A of this section shall contain the post office box address in lieu of the residence street address for any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5 U.S.C.A. § 8331 (20) but excluding officers whose duties relate to detention as defined in paragraphs (A) through (D) of § 8331 (20), who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address located in the Commonwealth for use on such lists.

E. Any ~~printed precinct~~ list furnished under subsection A of this section shall contain the post office box address in lieu of the residence street address for any party granted a protective order issued by or under the authority of any court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia, who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address located in the Commonwealth for use on such lists.

§ 24.2-406. Persons who may obtain lists of persons voting at primaries and elections.

The State Board shall furnish to candidates, elected officials, or political party chairmen and to no one else, on request and at a reasonable price, lists for their districts of persons who voted at any primary, special, or general election held in the four preceding years. Such lists shall be used only for campaign and political purposes and for reporting to constituents.

In no event shall any list furnished under this section contain the social security number of any registered voter.

Any list furnished under this section shall contain the post office box address in lieu of the residence street address for any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5 U.S.C.A. § 8331 (20) but excluding officers whose duties relate to detention as defined in paragraphs (A) through (D) of § 8331 (20), who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address located in the Commonwealth for use on such

lists.

Any ~~printed precinct~~ list furnished under this section shall contain the post office box address in lieu of the residence street address for any party granted a protective order issued by or under the authority of any court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia, who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address located in the Commonwealth for use on such lists.

§ 24.2-419. Extended time for certain persons to register by mail.

~~Notwithstanding the provisions of § 24.2-416,~~ The registration application of the following persons may accompany an application for an absentee ballot and shall be on a form prescribed by the State Board ~~or on a Federal Post Card Application~~:

1. Any member of a uniformed service of the United States, as defined in 42 U.S.C. § 1973ff-6 (7), who is on active duty;
2. Any member of the merchant marine of the United States; ~~and~~
3. Any spouse or dependent residing with a person listed in subdivisions 1 or 2; ~~and~~
4. *Any person temporarily residing outside the United States.*

*The registration application from a person listed in subdivisions 1, 2 and 3 of this section may be accepted notwithstanding the provisions of § 24.2-416 if they are eligible to be registered and if, by reason of active duty, they are normally absent from the city or county in which they reside.*

§ 24.2-441. Application for temporary registration.

Any person intending to register and vote under the provisions of this article shall apply by mail to the general registrar of the county or city in which he wishes to vote prior to the federal election. The application shall be on a form prescribed or approved by the State Board ~~or on a Federal Post Card Application~~. The application shall be signed by the applicant who shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information required for registration under § 24.2-418, the applicant's resident address of previous domicile in Virginia and date of departure from this domicile, if applicable, and any information necessary to implement the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.).

§ 24.2-442. Registration records to be maintained by registrars; when registration permitted; lapse of registration.

The general registrar shall maintain and make available for inspection by any registered voter the applications for temporary registration for his jurisdiction and separate lists for each precinct of persons registering to vote in the federal election. Registration under this article shall be permitted ~~from six months in advance of the federal election~~ until the registration records are closed pursuant to § 24.2-416 *and shall be valid for all elections for which the voter is eligible through the next two regularly scheduled general elections for federal office following its receipt. After the second federal general election, registration under this article shall no longer be valid. If an official reply to the application or an absentee ballot sent to the applicant is returned as undeliverable, no ballots for subsequent elections shall be sent under that application. No ballot shall be sent to the applicant, and no voted ballot received from the applicant shall be valid, (i) for any election held after the voter has notified the registrar that the voter no longer wishes to be registered or (ii) after the registrar has received notification that the voter has registered to vote in another state.*

§ 24.2-443.2. Application for temporary registration.

Any person intending to register and vote under the provisions of this article shall apply to the general registrar of the county or city in which he had been registered immediately preceding his moving overseas prior to ~~each~~ the election in which he seeks to vote. The application shall be on a form prescribed ~~or approved~~ by the State Board ~~or on a Federal Post Card Application~~. The application shall be signed by the applicant who shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information required for registration under § 24.2-418 and the provisions of this article, including the applicant's resident address of previous place of abode and domicile in Virginia and any additional information necessary to implement the provisions of this article.

§ 24.2-443.3. Registration records to be maintained by registrars; when registration permitted.

The general registrar shall maintain and make available for inspection by any registered voter the applications for temporary registration for his jurisdiction and separate lists for each precinct of persons registering to vote pursuant to this article. Registration under this article shall be permitted ~~from six months in advance of the election~~ until the registration records are closed pursuant to § 24.2-416 *and shall be valid for all elections for which the voter is eligible through the next two regularly scheduled general elections for federal office following its receipt. If an official reply to the application or an absentee ballot sent to the applicant is returned as undeliverable, no ballots for subsequent elections shall be sent under that application. No ballot shall be sent to the applicant, and no voted ballot received from the applicant shall be valid, (i) for any election held after the voter has notified the registrar that the voter no longer wishes to be registered or (ii) after the registrar has received notification that the voter has registered to vote in another state.*

§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification.

A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers

of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him.

B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

If the voter's name is found on the pollbook, if he presents one of the forms of identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth.

*Except as provided in subsection E of this section*, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.

A voter may be accompanied into the voting booth by his child age 15 or younger.

C. If the current residence address stated by the voter is different from the address shown on the pollbook, the officer of election shall furnish the voter with a change of address form prescribed by the State Board. Upon its completion, the voter shall sign the prescribed form, subject to felony penalties for making false statements pursuant to § 24.2-1016, which the officer of election shall then place in an envelope provided for such forms for transmission to the general registrar who shall then transfer or cancel the registration of such voter pursuant to Chapter 4 (§ 24.2-400 et seq.) of this title.

D. At the time the voter is asked his full name and current residence address, the officer of election shall ask any voter for whom the pollbook indicates that an identification number other than a social security number is recorded on the Virginia voter registration system if he presently has a social security number. If the voter is able to provide his social security number, he shall be furnished with a voter registration form prescribed by the State Board to update his registration information. Upon its completion, the form shall be placed by the officer of election in an envelope provided for such forms for transmission to the general registrar. Any social security numbers so provided shall be entered by the general registrar in the voter's record on the voter registration system.

*E. For federal elections held after January 1, 2004, this subsection shall apply in the case of any voter who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time the voter votes in a federal election in the state. At such election, such voter shall present: (i) a current and valid photo identification; or (ii) a copy of a current utility bill, bank statement, government check, paycheck or other document that shows the name and address of the voter. Such individual who desires to vote in person but who does not show one of the forms of identification specified in this paragraph shall be offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of subsection B of this section, nor the identification requirements of subsection A of § 24.2-653, shall apply to such voter at that election. The State Board of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.*

§ 24.2-653. Voter whose name does not appear on pollbook; handling of provisional ballots; ballots cast after normal close of polls due to court order extending polling hours.

A. When a person offers to vote pursuant to § 24.2-652 and the general registrar is not available or cannot state that the person is registered to vote, then such person shall be allowed to vote by paper ballot in the manner provided in this section.

Such person shall be given a paper ballot and provide, subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied by the State Board, the identifying information required in § 24.2-652. Such person shall be asked to present one of the forms of identification specified in subsection B of § 24.2-643. If he is unable to present one of these forms of identification, he shall sign a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be, and the officers of election shall note on the green envelope that the required statement was signed in lieu of presenting one of the specified forms of identification. The officers of election shall enter the appropriate information for the person on the pollbook in accordance with the instructions of the State Board but shall not enter a

consecutive number for the voter nor otherwise mark his name as having voted.

The voter shall then, in the presence of an officer of election, but in a secret manner, mark the ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the ballot shall then be placed in the ballot container by an officer of election.

An officer of election shall inform the voter that a determination of his right to vote shall be made by the electoral board on the following day and advise the voter of the beginning time and place for the board's meeting and of the voter's right to be present at that meeting.

B. The ~~conditional~~ *provisional* votes submitted pursuant to subsection A, in their unopened envelopes, shall be sealed in a special envelope marked "~~Conditional~~ *Provisional* Votes," inscribed with the number of envelopes contained therein, and signed by the officers of election who counted them. All ~~conditional~~ *provisional* votes envelopes shall be delivered either (i) to the clerk of the circuit court who shall deliver all such envelopes to the secretary of the electoral board or (ii) to the general registrar in localities in which the electoral board has directed delivery of election materials to the general registrar pursuant to § 24.2-668.

The electoral board shall meet on the day following the election and determine whether each person having submitted such a ~~conditional~~ *provisional* vote was entitled to do so as a qualified voter in the precinct in which he offered the ~~conditional~~ *provisional* vote. One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election, who is a qualified voter of the city or county, shall be permitted to remain in the room in which the determination is being made so long as he does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of the county or city. Each representative, who is not himself a candidate or party chairman, shall present to the electoral board a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied and such photocopy shall be as valid as if the copy had been signed.

If the electoral board determines that such person was not entitled to vote as a qualified voter in the precinct in which he offered the ~~conditional~~ *provisional* vote, or is unable to determine his right to vote, the envelope containing his ballot shall not be opened and his vote shall not be counted. However, the ~~conditional~~ *provisional* vote shall be counted if such person is entitled to vote in the precinct pursuant to § 24.2-401. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly registered.

If the electoral board determines that such person was entitled to vote, the name of the voter shall be entered in a ~~conditional~~ *provisional* votes pollbook and marked as having voted, the envelope shall be opened, and the ballot placed in a ballot container without any inspection further than that provided for in § 24.2-646.

On completion of its determination, the electoral board shall proceed to count such ballots and certify the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No adjustment shall be made to the statement of results for the precinct in which the person offered to vote.

The certification of the results of the count together with all ballots and envelopes, whether open or unopened, and other related material shall be delivered by the electoral board to the clerk of the circuit court and retained by him as provided for in §§ 24.2-668 and 24.2-669.

*C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any ballots marked after the normal polling hours by persons who were not already in line at the time the polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under this section. The officers of election shall mark the green envelope for each such provisional ballot to indicate that it was cast after normal polling hours due to the court order, and when preparing the materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as provided in subsection B of this section; however, the counted and uncounted provisional ballots marked after the normal polling hours shall be kept separate from all other ballots and recorded in a separate provisional ballots pollbook. The State Board of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to this section.*

§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or general registrar.

A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted ballots envelope or container, and the unused, defaced, spoiled and set aside ballots properly accounted for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they cannot otherwise agree, to the clerk of court by noon on the day following the election.

The clerk shall retain custody of the pollbooks until the time has expired for initiating a recount, contest, or other proceeding in which the pollbooks may be needed as evidence and there is no

proceeding pending. After that time the clerk shall deliver the pollbooks to the general registrar who shall return the pollbooks or transfer a copy of the electronic data to the State Board as directed by § 24.2-114 for voting credit purposes. After the pollbooks are returned by the State Board, the general registrar shall retain the pollbooks in his principal office for two years from the date of the election. The clerk shall retain the statement of results and any printed inspection and return sheets for two years and may then destroy them.

B. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the materials to the principal office of the general registrar on the night of the election or the morning following the election as the board directs. The general registrar shall secure and retain the materials in his office and shall convey to the clerk of the court by noon of the day following the election all of the election materials, except the envelopes containing the "~~Conditional~~ Provisional Votes," and the envelopes containing the pollbooks, the statements of results and, if mechanical voting machines are used, one copy of the printed return sheet from each machine. Following the ascertainment of the results of the election by the electoral board, the general registrar shall retain for public inspection one copy of the statement of results and shall immediately convey to the clerk sealed envelopes containing all remaining election materials.

C. If an electronic pollbook is used, the data disc or cartridge containing the electronic records of the election, or, alternately, a printed copy of the pollbook records of those who voted, shall be transmitted, sealed and retained as required by this section, and otherwise treated as the pollbook for that election for all purposes subsequent to the election. Nothing in this title shall be construed to require that the equipment or software used to produce the electronic pollbook be sealed or retained along with the pollbook, provided that the records for the election have been transferred or printed according to the instructions of the State Board.

#### § 24.2-701. Application for absentee ballot.

A. The State Board shall furnish each general registrar with a sufficient number of applications for official absentee ballots. The registrars shall furnish applications to persons requesting them.

~~Beginning with the general election in November 1999,~~ The State Board shall implement a system that enables eligible persons to request and receive an absentee ballot application electronically through the ~~global information system known as the~~ Internet. Electronic absentee ballot applications shall be in a form approved by the State Board.

Except as provided in § 24.2-703, a separate application shall be completed for each election in which the applicant offers to vote. An application for an absentee ballot may be accepted the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth month prior to the election in which the applicant is applying to vote.

Any application received before the ballots are printed shall be held and processed as soon as the printed ballots for the election are available.

For the purposes of this chapter, the general registrar's office shall be open a minimum of eight hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately preceding all general elections, except May general elections held in towns, and on the Saturday immediately preceding any primary election, May general election held in a town, or special election.

Unless physically disabled, all applications for absentee ballots shall be signed by the applicant who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that to the best of his knowledge and belief the facts contained in the application are true and correct and that he has not and will not vote in the election at any other place in Virginia or in any other state. If the applicant is unable to sign the application, a person assisting the applicant will note this fact on the applicant signature line and provide his signature, name, and address.

B. Applications for absentee ballots shall be completed in the following manner:

1. An application completed in person shall be made not less than three days prior to the election in which the applicant offers to vote and completed only in the office of the general registrar. The applicant shall sign the application in the presence of a registrar or a member of the electoral board. The applicant shall provide one of the forms of identification specified in subsection B of § 24.2-643, or if he is unable to present one of the forms of identification listed in that section, he shall sign a statement, subject to felony penalties for making false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. An applicant who requires assistance in voting by reason of physical disability or inability to read or write may request assistance pursuant to § 24.2-649 and be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding persons who are unable to sign shall be followed when assisting an applicant in completing this statement.

*For federal elections held after January 1, 2004, this paragraph shall apply in the case of any voter who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time that voter votes in a federal election in the state. After completing an application for an absentee ballot in person, such voter shall present: (i) a current and valid photo identification; or (ii) a copy of a current utility bill, bank statement, government check, paycheck or*

*other document that shows the name and address of the voter. Such individual who desires to vote in person but who does not show one of the forms of identification specified in this paragraph shall be offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of subsection B of § 24.2-643, nor the identification requirements of subsection A of § 24.2-653, shall apply to such voter at that election. The State Board of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.*

2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile device if one is available to the office of the general registrar or the office of the State Board if a device is not available locally, or other means. The application shall be on a form furnished by the registrar or, if made under subdivision 2 of § 24.2-700, may be on a Federal Post Card Application prescribed pursuant to 42 U.S.C. § 1973ff (b) (2). The Federal Post Card Application may be accepted the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth month prior to the election in which the applicant is applying to vote. The application shall be made to the appropriate registrar not less than five days prior to the election in which the applicant offers to vote.

C. Applications for absentee ballots shall contain the following information:

1. The applicant's printed name and the reason the applicant will be absent or cannot vote at his polling place on the day of the election;

2. A statement that he is registered in the county or city in which he offers to vote and his residence address in such county or city. Any person temporarily residing outside the United States shall provide the last date of residency at his Virginia residence address, if that residence is no longer available to him. Any person who makes application under subdivision 2 of § 24.2-700 who is not a registered voter may file the applications to register and for a ballot simultaneously;

3. The complete address to which the ballot is to be sent directly to the applicant, unless the application is made in person at a time when the printed ballots for the election are available and the applicant chooses to vote in person at the time of completing his application. The address given shall be either the address of the applicant on file in the registration records or the address at which he will be located while absent from his county or city. No ballot shall be sent to, or in care of, any other person; and

4. In the case of a person, or the spouse or dependent of a person, who is on active service as a member of the armed forces of the United States or a member of the merchant marine of the United States, the branch of service to which he or the spouse belongs, and his or the spouse's rank, grade, or rate, and service identification number; or

5. In the case of a student, or the spouse of a student, who is attending a school or institution of learning, the name and address of the school or institution of learning; or

6. In the case of a person who is unable to go in person to the polls on the day of the election because of a physical disability or physical illness, the nature of the illness or disability; or

7. In the case of a person who is confined awaiting trial or for having been convicted of a misdemeanor, the name and address of the institution of confinement; or

8. In the case of a person who will be absent on election day for business reasons, the name of his employer or business; or

9. In the case of a person who will be absent on election day for personal business or vacation reasons, the name of the county or city in Virginia or the state or country to which he is traveling; or

10. In the case of a person who is unable to go to the polls on the day of election because he is primarily and personally responsible for the care of an ill or disabled family member who is confined at home, the name of the family member and the nature of his illness or disability; or

11. In the case of a person who is unable to go to the polls on the day of election because of an obligation occasioned by his religion, his religion and the nature of the obligation; or

12. In the case of a person who, in the regular and orderly course of his business, profession, or occupation, will be at his place of work and commuting to and from his home to his place of work for 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his business or employer, address of his place of work, and hours he will be at the workplace and commuting on election day.

§ 24.2-703. Application for absentee ballots for multiple elections for uniformed and overseas voters.

Any person who is eligible for an absentee ballot under subdivision 2 of § 24.2-700, *or for temporary registration under Articles 7 (§ 24.2-440 et seq.) or 7.1 (§ 24.2-443.1 et seq.) of Chapter 4 of this title*, may file a single application to receive ballots for all elections in which he is eligible to vote absentee ~~during the calendar year~~. The application shall be on a Federal Post Card Application. The application ~~may be accepted the later of (i) twelve months before an election, or (ii) the day following any election held in the twelfth month prior to the election in which the applicant is applying to vote,~~ and from any person who is eligible for an absentee ballot under subdivision 2 of § 24.2-700 shall be valid for any election conducted five or more days after receipt of the application by the general registrar *through the next two regularly scheduled general elections for federal office following its*

*receipt. An application received between a November election date and December 31 shall be accepted as an application for the succeeding calendar year and for any special elections held prior to December 31 in the year the application is made. The application from any person applying for temporary registration under Articles 7 or 7.1 of Chapter 4 of this title shall be accepted at any time until the registration records are closed pursuant to § 24.2-416 and shall be valid through the next two regularly scheduled general elections for federal office following the receipt of the application by the general registrar.*

The general registrar shall retain the application and process the applicant's request for an absentee ballot for each election in accordance with procedures established by the State Board. The applicant shall specify by party designation the primary ballots he is requesting.

If an official reply to the application or an absentee ballot sent to the applicant is returned as undeliverable, no ballots for subsequent elections shall be sent ~~during the calendar year~~. *No ballot shall be sent to the applicant, and no voted ballot received from the applicant shall be valid, (i) for any election held after the voter has notified the registrar that the voter no longer wishes to be registered or (ii) after the registrar has received notification that the voter has registered to vote in another state.*

§ 24.2-706. Duty of general registrar and electoral board on receipt of application; statement of voter.

On receipt of an application for an absentee ballot, the general registrar shall enroll the name and address of each registered applicant on an absentee voter applicant list that shall be maintained in the office of the general registrar with a file of the applications of the listed applicants. The list and the applications shall be available for inspection and copying by any registered voter during regular office hours.

No list or application containing an individual's social security number shall be made available for inspection or copying by anyone. The State Board of Elections shall prescribe procedures for local electoral boards and general registrars to make the information in the lists and applications available in a manner that does not reveal social security numbers.

The completion and timely delivery of an application for an absentee ballot shall be construed to be an offer by the applicant to vote in the election.

The general registrar shall note on each application received whether the applicant is or is not a registered voter and notify the secretary of the electoral board. In reviewing the application for an absentee ballot, the general registrar and electoral board shall not reject the application of any individual because of an error or omission on any record or paper relating to the application, if such error or omission is not material in determining whether such individual is qualified to vote absentee.

If the application has been properly completed and signed and the applicant is a registered voter of the precinct in which he offers to vote, the electoral board shall immediately send to the applicant by mail, obtaining a certificate of mailing, or deliver to him in person in the office of the secretary or registrar, the following items and nothing else:

1. An envelope containing the folded ballot, sealed and marked "Ballot within. Do not open except in presence of a witness."

2. An envelope, with printing only on the flap side, for resealing the marked ballot, on which envelope is printed the following:

"Statement of Voter."

"I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that my FULL NAME is ..... (last, first, middle); that I am now or have been at some time since last November's general election a legal resident of ..... (STATE YOUR LEGAL RESIDENCE IN VIRGINIA including the house number, street name or rural route address, city, zip code); that I received the enclosed ballot(s) upon application to the registrar of such county or city; that I opened the envelope marked 'ballot within' and marked the ballot(s) in the presence of the witness, without assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am returning the form required to report how I was assisted); that I then sealed the ballot(s) in this envelope; and that I have not voted and will not vote in this election at any other time or place.

Signature of Voter .....

Date .....

Signature of witness ..... "

*For elections held after January 1, 2004, instead of the envelope containing the above oath, an envelope containing the standard oath prescribed by the presidential designee under section 101 (b) (7) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.) shall be sent to voters who are qualified to vote absentee under that Act.*

3. A properly addressed envelope for the return of the ballot to the electoral board by mail or by the

applicant in person.

4. Printed instructions for completing the ballot and statement on the envelope and returning the ballot.

*For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time the voter votes in a federal election in the state, the printed instructions shall direct the voter to submit with his ballot: (i) a copy of a current and valid photo identification; or (ii) a copy of a current utility bill, bank statement, government check, paycheck or other document that shows the name and address of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.*

5. *For any voter entitled to vote absentee under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.), information provided by the State Board specific to the voting rights and responsibilities for such citizens, or information provided by the registrar specific to the status of the voter registration and absentee ballot application of such voter, may be included.*

The envelopes and instructions shall be in the form prescribed by the State Board.

If the applicant makes his application to vote in person under § 24.2-701 at a time when the printed ballots for the election are available, the general registrar or the secretary of the electoral board, on the determination of the qualifications of the applicant to vote, shall provide to the applicant the items set forth in subdivisions 1 through 4, and no item shall be removed by the applicant from the office of the general registrar or the secretary of the electoral board. On the request of the applicant, made at least five days prior to the election in which the applicant offers to vote, the general registrar or the secretary may send the items set forth in subdivisions 1 through 4 to the applicant by mail, obtaining a certificate of mailing.

If the applicant states as the reason for his absence on election day any of the reasons set forth in subdivision 2 of § 24.2-700, the electoral board shall mail or deliver in person to the applicant in the office of the secretary or general registrar, the items as set forth in subdivisions 1 through 4 and, if necessary, an application for registration. A certificate of mailing shall not be required.

When the statement prescribed in subdivision 2 has been properly completed and signed by the registered voter and witnessed, his ballot shall not be subject to challenge pursuant to § 24.2-651.

§ 24.2-802. Procedure for recount.

A. The State Board of Elections shall promulgate standards for (i) the proper handling and security of voting and counting devices, ballots, and other materials required for a recount, (ii) accurate determination of votes based upon objective evidence and taking into account the counting device and form of ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a timely and accurate resolution of the recount. The chief judge of the circuit court or the full recount court may, consistent with State Board of Elections standards, resolve disputes over the application of the standards and direct all other appropriate measures to ensure the proper conduct of the recount.

The recount procedures to be followed throughout the election district shall be as uniform as practicable, taking into account the types of ballots and voting devices in use in the election district.

B. Within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court. As part of the preliminary hearing, the chief judge may permit the petitioner and his counsel, together with each other party and his counsel and at least two members of the electoral board and the custodians, to examine any mechanical or direct electronic voting device of the type that prints returns when the print-out sheets are not clearly legible. The petitioner and his counsel and each other party and their counsel under supervision of the electoral board and its agents shall also have access to pollbooks and other materials used in the election for examination purposes, provided that individual ballots cast in the election shall not be examined at the preliminary hearing. The chief judge during the preliminary hearing shall review all security measures taken for all ballots and voting devices and direct, as he deems necessary, all appropriate measures to ensure proper security to conduct the recount.

The chief judge, subject to review by the full court, may set the place or places for the recount and may order the delivery of election materials to a central location and the transportation of voting devices to a central location in each county or city under appropriate safeguards.

After the full court is appointed under § 24.2-801 or § 24.2-801.1, it shall call a hearing at which all motions shall be disposed of and the rules of procedure shall be fixed finally. The court shall call for the advice and cooperation of the State Board or any local electoral board, as appropriate, and such boards shall have the duty and authority to assist the court. The court shall fix procedures that shall provide for the accurate determination of votes in the election.



The determination of the votes in a recount shall be based on votes cast in the election and shall not take into account (i) any absentee ballots or ~~conditional~~ *provisional* ballots sought to be cast but ruled invalid and not cast in the election, (ii) ballots cast only for administrative or test purposes and voided by the officers of election, or (iii) ballots spoiled by a voter and replaced with a new ballot.

The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.

C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, to select an equal number of the officers of election to be recount officials and to count ballots, or in the case of mechanical or direct electronic voting devices to redetermine the vote. The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team of recount officials to recount paper ballots and to redetermine the vote cast on mechanical or direct electronic devices of the type that prints returns for the election district at large in which the recount is being held. There shall be at least one team from each locality in the election district to redetermine the vote on other types of mechanical voting devices. There shall be at least one team from each locality using electronic counting devices to insert the ballots into one or more counting devices. The counting devices shall be programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Each team shall be composed of one representative of each party.

The court may provide that if, at the time of the recount, any recount official fails to appear, the remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On request of a party to the recount, the court shall allow each party to appoint one representative observer for each team of recount officials. The expenses of its representatives shall be borne by each party.

D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials.

The redetermination of the vote in a recount shall be conducted as follows:

1. For paper ballots, the recount officials shall hand count the ballots using the standards promulgated by the State Board pursuant to subsection A.

2. For mechanical lever machines without printouts, the recount officials shall open the machines and read the counters.

3. For mechanical lever machines with printouts and direct recording electronic machines (DREs), the recount officials shall open the envelopes with the printouts and read the results from the printouts. If the printout is not clear, or on the request of the court, the recount officials shall rerun the printout from the machine or examine the counters as appropriate.

4. For optical scan tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted using the standards promulgated by the State Board pursuant to subsection A.

5. For punchcard tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes and, if possible, overvotes and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted using the standards promulgated by the State Board pursuant to subsection A and the standards set forth in this subdivision. The following standards shall apply in determining whether a ballot has been properly voted and should be counted. A chad is the small piece of a punch card ballot that, when removed by the voter in the voting process, leaves a hole that is recognizable by a ballot tabulator. A ballot on which the chad indicating the selection of a candidate or position on an issue is broken or separated from the card at two or more corners shall be deemed a vote and counted; a chad on which only one corner is broken or separated from the card shall not be considered a vote. No other depression, dimple, or other mark on the ballot shall be counted as a vote. On any ballot on which two or more corners of the chad indicating the selection of a candidate or position have been broken or separated from the card and the voter has also cast a vote for another candidate for the same office or position on the same issue, the partially punched chad also shall be deemed a vote and, if the voter has cast more votes than the number for which he was lawfully entitled to vote, the ballot shall be deemed an overvote and shall not be counted with respect to that office or issue.

There shall be only one redetermination of the vote in each precinct.

At the conclusion of the recount of each precinct, the recount officials shall write down the number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates or for and against the question. They shall submit the ballots or the statement of results used, as to the validity of which questions exist, to the court. The written statement of any one recount official challenging a ballot shall be sufficient to require its submission to the court. If, on all mechanical or direct electronic voting devices, the number of persons voting in the election, or the number of votes cast for the office or on the question, totals more than the number of names on the pollbooks of persons voting on the devices, the figures recorded by the devices shall be accepted as correct.

At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and votes. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for each party to the recount and declare the person who received the higher number of votes to be nominated or elected, as appropriate, or (b) the votes for and against the question and declare the outcome of the referendum.

E. Costs of the recount shall be assessed against the counties and cities comprising the election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated or elected and the candidate petitioning for the recount a difference of not more than one-half of one percent of the total vote cast for the two such candidates as determined by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate petitions for a recount, the court may assess costs in an equitable manner between the counties and cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

F. The court shall determine the costs of the recount subject to the following limitations: (i) no per diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the county or city for service on election day; and (iii) per diem payments to alternates shall be allowed only if they serve.

G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.

H. The recount proceeding shall be final and not subject to appeal.

I. For the purposes of this section:

"Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or positions than the number for which he was lawfully entitled to vote and no vote shall be counted with respect to that office or issue.

"Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or positions than the number for which he was lawfully entitled to vote.

**2. That an emergency exists and this act is in force from its passage.**

**3. That the provisions of this act affecting uniformed and overseas voters as defined in the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.) shall be applicable to any Federal Post Card Application received from such voter after November 4, 2003.**