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**HOUSE BILL NO. 334**

Offered January 11, 2006

Prefiled January 5, 2006

*A BILL to amend and reenact §§ 24.2-612, 24.2-700, 24.2-701, 24.2-703.2, and 24.2-706 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 24.2-701.1, and to repeal §§ 24.2-702, 24.2-702.1, 24.2-703, and 24.2-703.1 of the Code of Virginia, relating to ballots and to qualifications, procedures, and special provisions for absentee voting.*

Patron—Toscano

Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-612, 24.2-700, 24.2-701, 24.2-703.2, and 24.2-706 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 24.2-701.1 as follows:**

§ 24.2-612. List of offices and candidates filed with State Board and checked for accuracy; when ballots printed; number required.

Immediately after the expiration of the time provided by law for a candidate for any office to qualify to have his name printed on the official ballot and prior to printing the ballots for an election, each electoral board shall forward to the State Board a list of the county, city, or town offices to be filled at the election and the names of all candidates who have filed for each office. In addition, each electoral board shall forward the name of any candidate who failed to qualify with the reason for his disqualification. The State Board shall promptly advise the electoral board of the accuracy of the list. The failure of any electoral board to send the list to the State Board for verification shall not invalidate any election.

Each electoral board shall have printed the number of ballots it determines will be sufficient to conduct the election.

Notwithstanding any other provisions of this title, the State Board may print or otherwise provide (i) one statewide paper ballot style for each paper ballot style in use for presidential and vice-presidential electors for use only by persons eligible to vote for those offices only under § 24.2-402 or clause (iii) or (v) of subsection B of § 24.2-416.1, (ii) one statewide paper ballot style for each paper ballot style in use for Governor, Lieutenant Governor or Attorney General only for use as the early absentee ballot specified in ~~§ 24.2-702 subsection D of § 24.2-701.1~~, and (iii) single paper ballot styles for each ballot style in use for each congressional district for federal offices for use only by overseas voters eligible to vote in federal elections only pursuant to Article 7 (§ 24.2-440 et seq.) of Chapter 4 of this title. The State Board may apportion or authorize the printer or vendor to apportion the costs for these ballots among the localities based on the number of ballots ordered. Any printer employed by the State Board shall execute the statement required by § 24.2-616. The State Board shall designate a representative to be present at the printing of such ballots and deliver them to the appropriate electoral boards pursuant to § 24.2-617. Upon receipt of such paper ballots, the electoral board shall affix its seal. Thereafter, such ballots shall be handled and accounted for, and the votes counted as the State Board shall specifically direct.

The electoral board shall make printed ballots available for absentee voting at least (i) 45 days prior to any November general election or special election held at the same time; (ii) 30 days prior to any other general, special, or primary election; or (iii) in the case of a special election, if time is insufficient to meet the applicable deadline established herein, then as soon after the deadline as possible.

Only the names of candidates for offices to be voted on in a particular election district shall be printed on the ballots for that election district.

The electoral boards shall send to the State Board a statement of the number of paper ballots ordered to be printed, proofs of each paper and voting equipment ballot for verification, and copies of each final ballot. If the State Board finds that, in its opinion, the number of ballots ordered to be printed by any local electoral board is not sufficient, it may direct the local board to order the printing of a reasonable number of additional ballots.

§ 24.2-700. Persons entitled to vote by absentee ballot.

~~The following~~ Any registered voters voter may vote by absentee ballot in accordance with the provisions of this chapter in any election in which ~~they are~~ he is qualified to vote.

1. Any person who, in the regular and orderly course of his business, profession, or occupation or while on personal business or vacation, will be absent from the county or city in which he is entitled to

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59 vote;

60 2. Any person who is (i) a member of a uniformed service of the United States, as defined in 42  
61 U.S.C. § 1973ff-6 (7), on active duty, or (ii) a member of the merchant marine of the United States, or  
62 (iii) who temporarily resides outside of the United States, or (iv) the spouse or dependent residing with  
63 any person listed in (i), (ii), or (iii), and who will be absent on the day of the election from the county  
64 or city in which he is entitled to vote;

65 3. Any student attending a school or institution of learning, or his spouse, who will be absent on the  
66 day of election from the county or city in which he is entitled to vote;

67 4. Any person who is unable to go in person to the polls on the day of election because of a  
68 physical disability or physical illness;

69 5. Any person who is confined while awaiting trial or for having been convicted of a misdemeanor,  
70 provided that the trial or release date is scheduled on or after the third day preceding the election. Any  
71 person who is awaiting trial and is a resident of the county or city where he is confined shall, on his  
72 request, be taken to the polls to vote on election day if his trial date is postponed and he did not have  
73 an opportunity to vote absentee;

74 6. Any person who is a member of an electoral board, registrar, officer of election, or custodian of  
75 voting equipment;

76 7. Any duly registered person who is unable to go in person to the polls on the day of the election  
77 because he is primarily and personally responsible for the care of an ill or disabled family member who  
78 is confined at home;

79 8. Any duly registered person who is unable to go in person to the polls on the day of the election  
80 because of an obligation occasioned by his religion; or

81 9. Any person who, in the regular and orderly course of his business, profession, or occupation, will  
82 be at his place of work and commuting to and from his home to his place of work for eleven or more  
83 hours of the thirteen hours that the polls are open pursuant to § 24.2-603.

84 § 24.2-701. Application for absentee ballot.

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

87 The State Board shall implement a system that enables eligible persons to request and receive an  
88 absentee ballot application electronically through the Internet. Electronic absentee ballot applications  
89 shall be in a form approved by the State Board.

90 Except as provided in ~~§ 24.2-703~~ §§ 24.2-701.1 and 24.2-703.1, a separate application shall be  
91 completed for each election in which the applicant offers to vote. An application for an absentee ballot  
92 may be accepted the later of (i) 12 months before an election, or (ii) the day following any election held  
93 in the twelfth month prior to the election in which the applicant is applying to vote.

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

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

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

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

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

118 For federal elections held after January 1, 2004, this paragraph shall apply in the case of any voter  
119 who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to  
120 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~~ § 24.2-701.1, 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; and

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.

§ 24.2-701.1. Special absentee voting provisions.

A. The provisions of this section shall apply to a qualified absentee voter who will be absent on the day of the election from the county or city in which he is entitled to vote and who is (i) a member of a uniformed service of the United States, as defined in 42 U.S.C. § 1973ff-6 (7), on active duty; (ii) a member of the merchant marine of the United States; (iii) temporarily residing outside of the United

182 States; or (iv) the spouse or dependent residing with any person listed in clause (i), (ii), or (iii). A  
183 qualified absentee voter may file an application for an absentee ballot on a Federal Post Card  
184 Application prescribed pursuant to 42 U.S.C. § 1973ff (b) (2).

185 B. 1. Notwithstanding any other provision of this title, any person who is subject to the provisions of  
186 subsection A may use a federal write-in absentee ballot in general, special, and primary elections for  
187 federal office. Such ballot shall be submitted and processed in the manner provided by the Uniformed  
188 and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.) and this chapter.

189 2. Notwithstanding any other provision of this title, a federal write-in absentee ballot submitted  
190 pursuant to subdivision B 1 shall be considered valid for purposes of simultaneously satisfying both an  
191 absentee ballot application and a completed absentee ballot for federal offices only, provided that the  
192 ballot is received not less than five days prior to the election in which the voter offers to vote, and the  
193 application on the envelope contains the following information: (i) the voter's signature; however, if the  
194 voter is unable to sign, the person assisting the voter will note this fact in the voter signature box; (ii)  
195 the voter's printed name; (iii) the county or city in which he is registered and offers to vote; (iv) the  
196 residence address at which he is registered to vote; and (v) his current military or overseas address.  
197 The envelope must be witnessed, and the witness shall provide his signature, printed name and address  
198 in the witness signature box.

199 C. Any person who is subject to the provisions of subsection A or who is eligible for temporary  
200 registration under Articles 7 (§ 24.2-440 et seq.) or 7.1 (§ 24.2-443.1 et seq.) of Chapter 4, may file a  
201 single application to receive ballots for all elections in which he is eligible to vote absentee. The  
202 application shall be on a Federal Post Card Application. The application from any person who is  
203 covered by subsection A shall be valid for any election conducted five or more days after receipt of the  
204 application by the general registrar through the next two regularly scheduled general elections for  
205 federal office following its receipt. The application from any person applying for temporary registration  
206 under Articles 7 or 7.1 of Chapter 4 shall be accepted at any time until the registration records are  
207 closed pursuant to § 24.2-416 and shall be valid through the next two regularly scheduled general  
208 elections for federal office following the receipt of the application by the general registrar. The general  
209 registrar shall retain the application and process the applicant's request for an absentee ballot for each  
210 election in accordance with procedures established by the State Board. The applicant shall specify by  
211 party designation the primary ballots he is requesting. If an official reply to the application or an  
212 absentee ballot sent to the applicant is returned as undeliverable, no ballots for subsequent elections  
213 shall be sent. No ballot shall be sent to the applicant, and no voted ballot received from the applicant  
214 shall be valid (i) for any election held after the voter has notified the registrar that the voter no longer  
215 wishes to be registered or (ii) after the registrar has received notification that the voter has registered  
216 to vote in another state.

217 D. Notwithstanding any other provision of this title, a person who is subject to the provisions of  
218 subsection A and qualified under this subsection may apply, not later than 90 days before that election,  
219 for an early absentee ballot only for elections for Governor, Lieutenant Governor, or Attorney General.  
220 In order to qualify for the early absentee ballot, the voter shall state that he is unable to vote in any  
221 other manner due to overseas military service or due to living in an isolated or extremely remote  
222 overseas area. This statement and application may be made on the Federal Post Card Application. On  
223 receipt of the application, the electoral board shall issue, at least 90 days before an election, the printed  
224 ballot only for elections for Governor, Lieutenant Governor, or Attorney General. No additional ballot  
225 or ballots shall be provided to such applicants for that election date.

226 E. Any person who is subject to the provisions of subsection A except that he has not registered may  
227 file the applications to register and for an absentee ballot simultaneously.

228 F. Any person who is eligible for an absentee ballot and has a physical disability or physical illness  
229 and who is likely to remain so disabled or ill for the remainder of the calendar year shall be eligible to  
230 file a special annual application to receive ballots for all elections in which he is eligible to vote in a  
231 calendar year. His first such application shall be accompanied by a statement, on a form prescribed by  
232 the State Board and signed by the voter and his physician or accredited religious practitioner, that the  
233 voter is unable to go to the polls because of a physical disability or physical illness and is likely to  
234 remain so disabled or ill for the remainder of the calendar year.

235 In accordance with procedures established by the State Board, the general registrar shall retain the  
236 application and form, enroll the applicant on a special absentee voter applicant list, and process the  
237 applicant's request for an absentee ballot for each succeeding election in the calendar year. The  
238 applicant shall specify by party designation the primary ballots he is requesting.

239 The general registrar shall send each such enrolled applicant a blank application by December 15  
240 for each ensuing calendar year, and upon completion thereof, the applicant shall be eligible to receive  
241 ballots for all elections in which he is eligible to vote in that calendar year.

242 If an official reply to the application or an absentee ballot sent to the applicant is returned as  
243 undeliverable, or the general registrar knows that the applicant is no longer a qualified voter, no ballot

for any subsequent election shall be sent to the voter until a new application is filed and accepted.

§ 24.2-703.2. Replacement absentee ballots for certain disabled or ill voters; penalty.

A voter seeking to cast an absentee ballot may obtain a replacement absentee ballot subject to the following conditions: (i) the voter applied for an absentee ballot under subdivision 4 of § 24.2-700 because of a physical disability or physical illness; (ii) the application was approved and an absentee ballot mailed to the voter; and (iii) the voter did not receive or has lost the absentee ballot on or before the Saturday before the election. In such case, the voter may request a replacement absentee ballot by the close of business for the local elections office on the Saturday before election day, *state that he is unable to go to the polls because of a physical disability or physical illness*, and designate, in writing, a representative to obtain a replacement absentee ballot on his behalf from the electoral board or general registrar and to return the properly completed ballot as directed by the electoral board or general registrar no later than the close of polls on the day of election for which the absentee ballot is valid. The representative shall be age eighteen or older and shall not be an elected official, a candidate for elected office, or the deputy, spouse, parent, or child of an elected official or candidate. The voter and representative shall complete the form prescribed by the State Board to implement the provisions of this section. The form shall include a statement signed by the voter that he did not receive the ballot or has lost the ballot. Statements on the form shall be subject to felony penalties for making false statements pursuant to § 24.2-1016.

§ 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

304 envelope containing the standard oath prescribed by the presidential designee under section 101 (b) (7)  
305 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.) shall be sent  
306 to voters who are qualified to vote absentee under that Act.

307 3. A properly addressed envelope for the return of the ballot to the electoral board by mail or by the  
308 applicant in person.

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

311 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of  
312 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time the  
313 voter votes in a federal election in the state, the printed instructions shall direct the voter to submit with  
314 his ballot: (i) a copy of a current and valid photo identification; or (ii) a copy of a current utility bill,  
315 bank statement, government check, paycheck or other document that shows the name and address of the  
316 voter. Such individual who desires to vote by mail but who does not submit one of the forms of  
317 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as  
318 a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall provide  
319 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to  
320 subsection B of § 24.2-653 and this section.

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

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

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

334 If the applicant states as the reason for his absence on election day any of the reasons set forth in  
335 ~~subdivision 2 of § 24.2-700~~ is subject to the provisions of subsection A of § 24.2-701.1, the electoral  
336 board shall mail or deliver in person to the applicant in the office of the secretary or general registrar,  
337 the items as set forth in subdivisions 1 through 4 and, if necessary, an application for registration. A  
338 certificate of mailing shall not be required.

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

341 2. That §§ 24.2-702, 24.2-702.1, 24.2-703, and 24.2-703.1 of the Code of Virginia are repealed.