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SENATE BILL NO. 472

Senate Amendments in [] — February 3, 2006

A *BILL to amend and reenact §§ 24.2-701 and 24.2-706 of the Code of Virginia, relating to absentee ballot applications and their processing.*

Patrons Prior to Engrossment—Senators Norment and Stolle; Delegates: Sickles and Tata

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That §§ 24.2-701 and 24.2-706 of the Code of Virginia are amended and reenacted as follows:**

§ 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.

The State Board shall implement a system that enables eligible persons to request and receive an absentee ballot application electronically through 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

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

66 3. ~~[The State Board shall deploy an online]~~ For elections held after January 1, 2007, the State
67 Board shall deploy a secure online tool allowing submission of absentee ballot applications to local
68 registrars. Upon completion of the form available on the official State Board website and based on the
69 county or city of residence as declared by the applicant, the information shall be ~~[automatically;~~
70 ~~electronically transmitted directly to the indicated local registrar by e-mail;~~ automatically transmitted in
71 a secured electronic format directly to the indicated local registrar.] The online application shall
72 contain all the fields of information required by law for an absentee ballot application except for the
73 signature requirement. The online application shall include a mandatory field for the e-mail address of
74 the person submitting the application. In lieu of the signature requirement, the online application shall
75 include a field for the applicant to indicate (i) that to the best of his knowledge and belief the facts
76 contained in the application are true and correct, (ii) that the applicant has not and will not vote in the
77 election at any other place in Virginia or any other jurisdiction, (iii) that the person completing the
78 absentee ballot application is the applicant for whom it is being completed unless the assisted voter
79 section of the application is completed, and (iv) that the applicant has provided the facts and
80 information on the application subject to felony penalties for making false statements pursuant to
81 § 24.2-1016. ~~[The application~~ The secured online application shall also include a field for the applicant
82 to indicate (i) his full social security number and (ii) date of birth. The secure application] shall be
83 made through the State Board website directly to the appropriate registrar not less than five days prior
84 to the election in which the applicant offers to vote. Upon submission of the completed online
85 application to the registrar, the State Board website shall automatically generate an e-mail to the
86 applicant confirming the receipt of the application and the fact that it has been submitted to the
87 appropriate local registrar. ~~[The State Board shall not store or retain the application information in~~
88 ~~any manner except as required to complete the submission process.~~ No automated system may replicate
89 the State Board of Elections secure online submission.]

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

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

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

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

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

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

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

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

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

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

118 10. In the case of a person who is unable to go to the polls on the day of election because he is
119 primarily and personally responsible for the care of an ill or disabled family member who is confined at
120 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.

§ 24.2-706. 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 *or submitted electronically to the State Board official website pursuant to subdivision B 3 of § 24.2-701* 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

181 voter votes in a federal election in the state, the printed instructions shall direct the voter to submit with
182 his ballot: (i) a copy of a current and valid photo identification; or (ii) a copy of a current utility bill,
183 bank statement, government check, paycheck or other document that shows the name and address of the
184 voter. Such individual who desires to vote by mail but who does not submit one of the forms of
185 identification specified in this paragraph may cast such ballot by mail and the ballot shall be [~~counted~~
186 *treated*] as a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall
187 provide instructions to the electoral boards for the handling and counting of such provisional ballots
188 pursuant to subsection B of § 24.2-653 and this section.

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

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

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

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

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

208 *If the application form has been submitted electronically to the State Board official website pursuant*
209 *to subdivision B 3 of § 24.2-701, the registrar [or the secretary of the electoral board] may ensure the*
210 *signature on the final completed ballot matches the signature provided in the original voter registration*
211 *form for that individual. If the two signatures do not resemble each other and the registrar is unsure of*
212 *the validity of the ballot signature, the ballot shall be [~~considered provisional until the ballot signature~~*
213 *of the voter can be confirmed**; treated as a provisional ballot under the provisions of § 24.2-653. The*
214 *State Board of Elections shall provide instructions to the electoral boards for the handling and counting*
215 *of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.]*