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SENATE BILL NO. 1274

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on January 30, 2007)

(Patron Prior to Substitute—Senator Whipple)

A BILL to amend and reenact §§ 24.2-101, 24.2-700, 24.2-701, 24.2-703.1, 24.2-703.2, 24.2-704, 24.2-705, and 24.2-705.1 of the Code of Virginia, relating to voters eligible to vote absentee.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-101, 24.2-700, 24.2-701, 24.2-703.1, 24.2-703.2, 24.2-704, 24.2-705, and 24.2-705.1 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Disability" means a disability as defined by the Virginians with Disabilities Act (§ 51.5-1 et seq.) and the Americans with Disabilities Act (42 U.S.C. § 12131 et seq.).

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Polling place" means the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or

60 subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers
61 to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified
62 voter unless his civil rights have been restored by the Governor or other appropriate authority. No
63 person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as
64 provided by law.

65 "Qualified voter in a town" means a person who is a resident within the corporate boundaries of the
66 town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified
67 voter.

68 "Referendum" means any election held pursuant to law to submit a question to the voters for
69 approval or rejection.

70 "Registered voter" means any person who is maintained on the Virginia voter registration system. All
71 registered voters shall be maintained on the Virginia voter registration system with active status unless
72 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For
73 purposes of applying the precinct size requirements of § 24.2-307, calculating election machine
74 requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election
75 district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306,
76 and determining the number of signatures required for candidate and voter petitions, "registered voter"
77 shall include only persons maintained on the Virginia voter registration system with active status.

78 "Registration records" means all official records concerning the registration of qualified voters and
79 shall include all records, lists, and files, whether maintained in books, on cards, on automated data
80 bases, or by any other legally permitted record-keeping method.

81 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires
82 both domicile and a place of abode. In determining domicile, consideration may be given to a person's
83 expressed intent, conduct, and all attendant circumstances including, but not limited to, financial
84 independence, business pursuits, employment, income sources, residence for income tax purposes,
85 marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real
86 property owned by the person, motor vehicle and other personal property registration, and other factors
87 reasonably necessary to determine the qualification of a person to register or vote.

88 "Special election" means any election that is held pursuant to law to fill a vacancy in office or to
89 hold a referendum.

90 "State Board" or "Board" means the State Board of Elections.

91 "Virginia voter registration system" or "voter registration system" means the automated central
92 record-keeping system for all voters registered within the Commonwealth that is maintained as provided
93 in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

94 § 24.2-700. Persons entitled to vote by absentee ballot.

95 The following registered voters may vote by absentee ballot in accordance with the provisions of this
96 chapter in any election in which they are qualified to vote:

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

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

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

107 4. Any *duly registered* person who is unable to go in person to the polls on the day of election
108 because of a ~~physical~~ disability, *as defined in § 24.2-101*, or ~~physical~~ illness, or *other medical condition*;

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

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

116 7. Any duly registered person who is unable to go in person to the polls on the day of the election
117 because he is primarily and personally responsible for the care of an ~~ill or disabled family member who~~
118 ~~is confined at home individual with a disability, as defined in § 24.2-101~~, *illness, or other medical*
119 *condition requiring continuous care*;

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

9. Any 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 eleven or more hours of the thirteen hours that the polls are open pursuant to § 24.2-603.

§ 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~~ *the applicant is* 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 no later than 5:00 p.m. on the seventh day 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 *any duly registered* person who is unable to go in person to the polls on the day of the election because of a ~~physical~~ disability, *as defined in § 24.2-101*, ~~or physical~~ illness, *or other medical condition*, the nature of the ~~disability~~, *illness or disability*, or *medical condition*; 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~~ *individual with a disability, as defined in § 24.2-101, illness, or other medical condition requiring continuous care*, the name of the individual cared for and the ~~disability, illness, or condition requiring continuous care~~; 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.

§ 24.2-703.1. Special annual applications for absentee ballots for certain eligible voters.

Any person who is eligible for an absentee ballot under subdivision 4 *or 7* of § 24.2-700 ~~because of a physical disability or physical illness~~ and who is likely to remain so ~~disabled or ill~~ *eligible* for the remainder of the calendar year shall be eligible to file a special annual application to receive ballots for all elections in which he is eligible to vote in a calendar year. His first such application shall be accompanied by a statement, on a form prescribed by the State Board and signed by the voter and his physician, *provider as defined in § 37.2-403*, or accredited religious practitioner, that the voter is eligible for an absentee ballot under subdivision 4 *or 7* of § 24.2-700 ~~because of a physical disability or physical illness~~ and likely to remain so ~~disabled or ill~~ *eligible* for the remainder of the calendar year.

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

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

If an official reply to the application or an absentee ballot sent to the applicant is returned as 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 *or 7* 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 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.

§ 24.2-704. Applications and ballots for persons requiring assistance in voting; penalty.

The application for an absentee ballot shall provide space for the applicant to indicate that he will require assistance to vote his absentee ballot by reason of blindness, ~~physical~~ disability, or inability to read or write. On receipt of an application from an applicant marked to indicate he will require assistance, the electoral board shall deliver, with the items required by § 24.2-706, the voter assistance form furnished by the State Board pursuant to § 24.2-649. The voter and any person assisting him shall complete the form by signing the request for assistance and statement required of the assistant. If the voter is unable to sign the request, the witness will note this fact on the line for signature of voter. The provisions of § 24.2-649 shall apply to absentee voting and assistance for absentee voters. Any person who willfully violates the provisions of this section or § 24.2-649 in providing assistance to a person who is voting absentee shall be guilty of a Class 5 felony.

§ 24.2-705. Emergency applications and absentee ballots for persons incapacitated or hospitalized.

Any person registered and otherwise qualified to vote who becomes incapacitated on or after the seventh day preceding an election may request at any time prior to 2:00 p.m. on the day preceding the election that an emergency absentee ballot application be delivered to him. A voter who becomes hospitalized on or after the fourteenth day preceding the election and who is unable, because of his condition, to request an absentee ballot earlier than the seventh day preceding the election may request at any time prior to 2:00 p.m. on the day before an election that an emergency absentee ballot be delivered to him in the hospital. For purposes of this section, "incapacitated" means hospitalized, ill and confined to his residence, bereaved by the death of a spouse, child, or parent, or otherwise incapacitated by an emergency which is found by the electoral board to justify providing an emergency ballot application; and "hospital" means a hospital as defined in § 32.1-123 or 37.2-100 and any comparable hospital in the District of Columbia or any state contiguous to Virginia.

On receipt of the request, the electoral board shall provide an emergency absentee ballot application to the incapacitated voter's designated representative who shall deliver the application to the voter. If the voter is hospitalized, the delivery shall be made to him at the hospital; and if the voter is otherwise incapacitated, the delivery shall be made to him at his current residence address as shown on the registration records. 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 application shall be on a form prescribed by the State Board and shall require the applicant (i) to state the cause of his incapacity, (ii) to state that he is unable to be present at the polls on election day, and that he was either incapacitated on or after the seventh day preceding the election or hospitalized on or after the fourteenth day preceding the election and unable to request the application earlier than the seventh day preceding the election, (iii) to designate a representative to receive, deliver and return the ballot, and (iv) to provide other information required by law for an absentee ballot application.

If the voter is hospitalized, a hospital administrative official ~~or~~, a licensed physician, *or provider as defined in § 37.2-403* attending the applicant shall certify on the form to the hospitalization of the applicant and the applicant's inability to be present at the polls on election day. If the voter is ill and confined to his residence, a licensed physician, *provider as defined in § 37.2-403*, or an accredited religious practitioner attending the applicant shall certify on the form to the incapacity of the applicant and the applicant's inability to be present at the polls on election day. If the voter is bereaved, a licensed physician, an accredited religious practitioner, or a funeral service licensee (as defined in § 54.1-2800) shall certify on the form to the incapacity of the applicant and the applicant's inability to be present at the polls on election day. If the voter is otherwise incapacitated as determined by the electoral board, the secretary of the electoral board shall certify on the form to the incapacity of the applicant and the applicant's inability to be present at the polls on election day. The applicant shall sign the application and 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. His signature shall be witnessed by the designated representative who shall sign and return the completed application to the office of the general registrar no later than 5:00 p.m. on the day preceding the election. For the

306 purposes of this section, "accredited religious practitioner" means a person who has been trained in
307 spiritual healing or the other healing arts and has been so accredited by a formal religious order.

308 On receipt of the completed application and a determination of the qualification of the applicant to
309 vote, the general registrar or secretary of the electoral board shall provide, in accordance with the
310 applicable provisions of this chapter, an absentee ballot to the designated representative for delivery to
311 the incapacitated voter.

312 The incapacitated voter shall vote the absentee ballot as provided by law and mark it in the presence
313 of the designated representative. The representative shall complete a statement, subject to felony
314 penalties for making false statements pursuant to § 24.2-1016, that (i) he is the representative of the
315 incapacitated voter; (ii) he personally delivered the ballot to the voter who applied for it; (iii) in his
316 presence, the voter marked the ballot, the ballot was placed in the envelope provided, the envelope was
317 sealed, and the statement on its reverse side was signed by the incapacitated voter; and (iv) the ballot
318 was returned, under seal, to the electoral board at the registrar's office.

319 The ballot shall be counted only if the ballot is received by the electoral board prior to the close of
320 polls, and the electoral board shall deliver the ballot to the officers of election at each appropriate
321 precinct pursuant to § 24.2-710.

322 § 24.2-705.1. Late applications and in-person absentee voting for business and medical emergencies.

323 Any person registered and otherwise qualified to vote who becomes obligated after 12:00 noon on
324 the Saturday before an election to be absent from his county or city on election day for a purpose
325 pertaining to (i) his business, profession, or occupation, (ii) the hospitalization of the applicant or a
326 member of his immediate family, or (iii) the death of a member of his immediate family, may apply for
327 an absentee ballot and vote absentee in person pursuant to this section and subject to the following
328 conditions:

329 1. The applicant applies in person for an absentee ballot on the Monday immediately preceding the
330 election, before 2:00 p.m., at the principal office of the registrar; and

331 2. The applicant signs a statement, which shall be deemed part of his absentee ballot application and
332 subject to felony penalties for making false statements pursuant to § 24.2-1016, that he is required to
333 leave the county or city before the opening of the polls on election day for a purpose pertaining to (i)
334 his business, profession or occupation, (ii) the hospitalization of the applicant or a member of his
335 immediate family, or (iii) the death of a member of his immediate family, and that he did not have
336 notice or knowledge of such required travel prior to 12:00 noon on the immediately preceding Saturday.
337 "Immediate family" means the children, grandchildren, grandparents, parents, siblings and spouse of the
338 applicant. *"Hospitalization" refers to confinement in a hospital as defined in § 32.1-123 or 37.2-100 and*
339 *any comparable hospital in the District of Columbia or any state contiguous to Virginia.*