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SENATE BILL NO. 646

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend and reenact §§ 24.2-700, 24.2-701, 24.2-702, 24.2-702.1, 24.2-703, 24.2-703.1, 24.2-703.2, and 24.2-706 of the Code of Virginia, relating to absentee voting; persons eligible to vote absentee; and applications and procedures for absentee ballots.*

Patrons—Ticer and Petersen; Delegates: Caputo, Marsden and Watts

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-700, 24.2-701, 24.2-702, 24.2-702.1, 24.2-703, 24.2-703.1, 24.2-703.2, and 24.2-706 of the Code of Virginia are amended and reenacted as follows:

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

A. *Any registered voter may vote absentee in person in accordance with the provisions of this chapter in any election in which he is qualified to vote.*

B. The following registered voters may vote by absentee ballot *other than in person* in accordance with the provisions of this chapter in any election in which they are 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 vote;

2. Any person 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, or (ii) a member of the merchant marine of the United States, or (iii) who temporarily resides outside of the United States, or (iv) the spouse or dependent residing with any person listed in (i), (ii), or (iii), and who will be absent on the day of the election from the county or city in which he is entitled to vote;

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

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

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

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

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

8. Any duly registered person who is unable to go in person to the polls on the day of the election 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

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59 hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately
60 preceding all general elections, except May general elections held in towns, and on the Saturday
61 immediately preceding any primary election, May general election held in a town, or special election.

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

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

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

80 For federal elections held after January 1, 2004, this paragraph shall apply in the case of any voter
81 who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to
82 show identification the first time that voter votes in a federal election in the state. After completing an
83 application for an absentee ballot in person, such voter shall present: (i) a current and valid photo
84 identification; or (ii) a copy of a current utility bill, bank statement, government check, paycheck or
85 other document that shows the name and address of the voter. Such individual who desires to vote in
86 person but who does not show one of the forms of identification specified in this paragraph shall be
87 offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of
88 subsection B of § 24.2-643, nor the identification requirements of subsection A of § 24.2-653, shall
89 apply to such voter at that election. The State Board of Elections shall provide instructions to the
90 electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of
91 § 24.2-653 and this section.

92 2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile
93 device if one is available to the office of the general registrar or the office of the State Board if a
94 device is not available locally, or other means. The application shall be on a form furnished by the
95 registrar or, if made under subdivision B 2 of § 24.2-700, may be on a Federal Post Card Application
96 prescribed pursuant to 42 U.S.C. § 1973ff (b) (2). The Federal Post Card Application may be accepted
97 the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth
98 month prior to the election in which the applicant is applying to vote. The application shall be made to
99 the appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the
100 applicant offers to vote.

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

102 1. The applicant's printed name, the last four digits of the applicant's social security number, and the
103 reason the applicant will be absent or cannot vote at his polling place on the day of the election;

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

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

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

119 5. In the case of a student, or the spouse of a student, who is attending a school or institution of
120 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.

D. A registered voter who applies to vote absentee in person and votes in person in accordance with the provisions of this chapter shall provide the following information on his application:

1. The applicant's printed name and the last four digits of the applicant's social security number; and

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.

A voter who applies to vote absentee in person and votes in person shall not be required to provide the information delineated in subdivisions C 3 through C 12.

The State Board may provide a special application for the purposes of this subsection for the use of the general registrars and applicants.

§ 24.2-702. Application for early absentee ballot; procedures.

Notwithstanding any other provisions of this title, a person, who is eligible for an absentee ballot under subdivision B 2 of § 24.2-700 and qualified under this section, may apply, not later than ninety days before that election, for an absentee ballot only for elections for Governor, Lieutenant Governor, or Attorney General.

The application may be made on the Federal Post Card Application.

In order to qualify for the absentee ballot, the voter shall state that he is unable to vote in any other manner due to overseas military service or due to living in an isolated or extremely remote overseas area. This statement may be made on the Federal Post Card Application.

On receipt of the application, the electoral board shall issue, at least ninety days before an election, the printed ballot only for elections for Governor, Lieutenant Governor, or Attorney General. No additional ballot or ballots shall be provided to such applicants for that election date.

§ 24.2-702.1. Federal write-in absentee ballots.

A. Notwithstanding any other provision of this title, a qualified absentee voter who is eligible for an absentee ballot under subdivision B 2 of § 24.2-700 may use a federal write-in absentee ballot in general, special, and primary elections for federal office. Such ballot shall be submitted and processed in the manner provided by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.) and this article.

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

§ 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 B 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. The application shall be on a Federal Post Card Application. The application from any person

182 who is eligible for an absentee ballot under subdivision *B* 2 of § 24.2-700 that is received by the general
183 registrar no later than 5:00 p.m. on the seventh day prior to the election shall be valid through the next
184 two regularly scheduled general elections for federal office following its receipt. The application from
185 any person applying for temporary registration under Articles 7 or 7.1 of Chapter 4 of this title shall be
186 accepted at any time until the registration records are closed pursuant to § 24.2-416 and shall be valid
187 through the next two regularly scheduled general elections for federal office following the receipt of the
188 application by the general registrar.

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

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

197 § 24.2-703.1. Special annual applications for absentee ballots for certain ill or disabled voters.

198 Any person who is eligible for an absentee ballot under subdivision *B* 4 of § 24.2-700 because of a
199 physical disability or physical illness and who is likely to remain so disabled or ill for the remainder of
200 the calendar year shall be eligible to file a special annual application to receive ballots for all elections
201 in which he is eligible to vote in a calendar year. His first such application shall be accompanied by a
202 statement, on a form prescribed by the State Board and signed by the voter and his physician or
203 accredited religious practitioner, that the voter is eligible for an absentee ballot under subdivision *B* 4 of
204 § 24.2-700 because of a physical disability or physical illness and likely to remain so disabled or ill for
205 the remainder of the calendar year.

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

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

213 If an official reply to the application or an absentee ballot sent to the applicant is returned as
214 undeliverable, or the general registrar knows that the applicant is no longer a qualified voter, no ballot
215 for any subsequent election shall be sent to the voter until a new application is filed and accepted.

216 § 24.2-703.2. Replacement absentee ballots for certain disabled or ill voters; penalty.

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

232 § 24.2-706. Duty of general registrar and electoral board on receipt of application; statement of voter.

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

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

242 The completion and timely delivery of an application for an absentee ballot shall be construed to be
243 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 no later than 5:00 p.m. on the seventh day 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 B 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.

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