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HOUSE BILL NO. 1672

Offered January 14, 2009

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A BILL to amend and reenact §§ 24.2-702.1, 24.2-704, 24.2-706, and 24.2-707 of the Code of Virginia, relating to elections; absentee voting procedures; witness requirements.

Patrons—Dance and Melvin

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-702.1, 24.2-704, 24.2-706, and 24.2-707 of the Code of Virginia are amended and reenacted as follows:

§ 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 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.~~

§ 24.2-704. 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, 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 person assisting the voter~~ 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.

§ 24.2-706. 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, or any part thereof, or the individual's day and month of birth, 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 or parts thereof, or an individual's day and month of birth.

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

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59 the precinct in which he offers to vote, the electoral board shall immediately send to the applicant by
60 mail, obtaining a certificate of mailing, or deliver to him in person in the office of the secretary or
61 registrar, the following items and nothing else:

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

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

66 "Statement of Voter."

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

79 Signature of Voter

80 Date

81 ~~Signature of witness~~"

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

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

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

90 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
91 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time the
92 voter votes in a federal election in the state, the printed instructions shall direct the voter to submit with
93 his ballot: (i) a copy of a current and valid photo identification; or (ii) a copy of a current utility bill,
94 bank statement, government check, paycheck or other document that shows the name and address of the
95 voter. Such individual who desires to vote by mail but who does not submit one of the forms of
96 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
97 a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall provide
98 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
99 subsection B of § 24.2-653 and this section.

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

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

105 If the applicant makes his application to vote in person under § 24.2-701 at a time when the printed
106 ballots for the election are available, the general registrar or the secretary of the electoral board, on the
107 determination of the qualifications of the applicant to vote, shall provide to the applicant the items set
108 forth in subdivisions 1 through 4, and no item shall be removed by the applicant from the office of the
109 general registrar or the secretary of the electoral board. On the request of the applicant, made no later
110 than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general
111 registrar or the secretary may send the items set forth in subdivisions 1 through 4 to the applicant by
112 mail, obtaining a certificate of mailing.

113 If the applicant states as the reason for his absence on election day any of the reasons set forth in
114 subdivision 2 of § 24.2-700, the electoral board shall mail or deliver in person to the applicant in the
115 office of the secretary or general registrar, the items as set forth in subdivisions 1 through 4 and, if
116 necessary, an application for registration. A certificate of mailing shall not be required. The electoral
117 board shall send the blank ballot, the form for the envelope for returning the marked ballot, and
118 instructions to the voter by electronic transmission if the voter so requests and if the applicant voter is

119 residing or is stationed outside the continental borders of the United States. The voted ballot shall be
120 returned to the electoral board as otherwise required by this chapter.

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

123 § 24.2-707. How ballots marked and returned by mail; cast in person; cast on voting equipment.

124 On receipt of a mailed absentee ballot, the voter shall, ~~in the presence of a witness~~, (i) open the
125 sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644
126 and 24.2-646 without assistance and without making known how he marked the ballot, except as
127 provided by § 24.2-704.

128 After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope
129 provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of
130 the envelope ~~in the presence of a witness, who shall sign the same envelope~~, (d) enclose the ballot
131 envelope and any required assistance form within the envelope directed to the electoral board, and (e)
132 seal that envelope and mail it to the office of the electoral board or deliver it personally to the electoral
133 board or the general registrar. For purposes of this chapter, "mail" shall include delivery by a
134 commercial delivery service, but shall not include delivery by a personal courier service or another
135 individual except as provided by §§ 24.2-703.2 and 24.2-705.

136 An applicant who makes his application to vote in person at a time when the printed ballots for the
137 election are available shall follow the same procedure set forth above except that he may complete the
138 procedure in person in the office of the general registrar or secretary of the electoral board, or at another
139 location or locations in the county or city approved by the electoral board, before a registrar or a
140 member of the electoral board, or, if a ballot is cast at that time, before the officers of election
141 appointed by the electoral board. Any such location shall be in a public building owned or leased by the
142 city, the county, or a town within the county, with adequate facilities for the protection of all records
143 concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment
144 in use at the location. Such location may be in a facility owned or leased by the Commonwealth and
145 used as a location for Department of Motor Vehicles facilities and for an office of the general registrar.
146 Such location shall be deemed the equivalent of the office of the general registrar or secretary of the
147 electoral board for the purpose of completing the application for an absentee ballot in person pursuant to
148 §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the seventh
149 day prior to the election in which the applicant offers to vote, the general registrar or the secretary may
150 send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a
151 certificate of mailing.

152 Failure to follow the procedures set forth above shall render the applicant's ballot void.

153 The electoral board of any county or city using a central absentee voting precinct may provide for
154 the casting of absentee ballots on voting equipment prior to election day by applicants who are voting in
155 person. The State Board shall prescribe procedures for the use of voting equipment. The procedures shall
156 provide for the casting of absentee ballots prior to election day by in-person applicants on voting
157 equipment which has been certified, and is currently approved, by the State Board. The procedures shall
158 be applicable and uniformly applied by the State Board to all jurisdictions using comparable voting
159 equipment. At least two officers of election, one representing each political party, shall be present during
160 all hours that absentee voting is available at any location at which absentee ballots are cast prior to
161 election day.

162 The requirement that officers of election shall be present if ballots are cast on voting equipment prior
163 to election day shall not be applicable when the voting equipment is located in the office of the general
164 registrar or secretary of the electoral board and the general registrar, an assistant registrar, or the
165 secretary of the electoral board is present.