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HOUSE BILL NO. 2509

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Privileges and Elections
on February 6, 2009)

(Patron Prior to Substitute—Delegate Marshall, R.G.)

A BILL to amend and reenact §§ 24.2-418, 24.2-643, 24.2-701, and 24.2-706 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-623.1, relating to elections; voter integrity and identification provisions, including posting notices of voting qualifications and penalties at polling places; voter registration applications and proof of citizenship; and in-person and absentee voting procedures and identification requirements.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-418, 24.2-643, 24.2-701, and 24.2-706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-623.1 as follows:

§ 24.2-418. Application for registration.

A. Each applicant to register shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless physically disabled, he shall sign the application. The application to register shall be only on a form or forms prescribed by the State Board.

The form of the application to register shall require the applicant to provide the following information: full name; gender; date of birth; social security number, if any; whether the applicant is presently a United States citizen, *accompanied by proof of citizenship*; address of residence in the precinct; place of last previous registration to vote; and whether the applicant has ever been adjudicated incapacitated or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored. *For the purposes of this section, "proof of citizenship" shall be provided by any one of the following documents:*

1. A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the general registrar;

2. A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the general registrar of the applicant's United States passport;

3. A legible photocopy of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be registered until the number of the certificate of naturalization is verified with the United States Immigration and Naturalization Service by the general registrar;

4. Other documents or methods of proof of citizenship that are established pursuant to the Immigration Reform and Control Act of 1986, P.L. 99-603, 100 Stat. 3359; or

5. The applicant's Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.

The form shall permit any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5 U.S.C. § 8331(20) but excluding officers whose duties relate to detention as defined in paragraphs (A) through (D) of § 8331(20), to furnish, in addition to his residence street address, a post office box address located within the Commonwealth to be included in lieu of his street address on the lists of registered voters and persons who voted, which are furnished pursuant to §§ 24.2-405 and 24.2-406, or on voter registration records made available for public inspection pursuant to § 24.2-444.

The form shall permit any party granted a protective order issued by or under the authority of any court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia, to furnish, in addition to his street address, a post office box address located within the Commonwealth to be included in lieu of his street address on the lists of registered voters and persons who voted, which are furnished pursuant to §§ 24.2-405 and 24.2-406, or on voter registration records made available for public inspection pursuant to § 24.2-444.

The form shall permit any party, who has furnished a signed written statement by the party that he is in fear for his personal safety from another person who has threatened or stalked him accompanied by evidence that he has filed a complaint with a magistrate or law-enforcement official against such other person, to furnish, in addition to his street address, a post office box address located within the Commonwealth to be included in lieu of his street address on the lists of registered voters and persons who voted, that are furnished pursuant to §§ 24.2-405 and 24.2-406, or on voter registration records made available for public inspection pursuant to § 24.2-444.

B. The general registrar shall reject any application for registration that is not accompanied by one

60 of the proofs of citizenship enumerated in subsection A.

61 C. Notwithstanding subsection B, any person who is registered in Virginia on January 1, 2010, shall
62 be deemed to have provided satisfactory proof of citizenship and shall not be required to submit proof
63 of citizenship so long as the person remains registered in Virginia.

64 D. Proof of a person's voter registration in another state shall not constitute proof of citizenship for
65 the purposes of this section.

66 E. After a person has submitted proof of citizenship, the general registrar shall indicate this
67 information on the person's voter registration record. The general registrar shall retain documents
68 submitted as proof of citizenship for two years and may then destroy such documents.

69 § 24.2-623.1. Notice of voting qualifications to be posted at polling places.

70 The governing body of each county and city shall provide notice of the constitutional qualifications
71 to vote and the penalties for voting in violation of the constitutional requirements in all polling places
72 for all elections. These notices shall be printed with the heading "ILLEGAL VOTING" in two-inch type
73 with the following text from the Constitution of Virginia and this Code in at least 24-point type.

74 "In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a
75 citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set
76 forth in this section, and shall be registered to vote pursuant to this article. No person who has been
77 convicted of a felony shall be qualified to vote unless his civil rights have been restored by the
78 Governor or other appropriate authority. As prescribed by law, no person adjudicated to be mentally
79 incompetent shall be qualified to vote until his competency has been reestablished."

80 "Under the Code of Virginia (§ 24.2-1004) it is a Class 1 misdemeanor to vote knowing that you are
81 not qualified to vote, punishable by 'confinement in jail for not more than 12 months and a fine of not
82 more than \$2,500, either or both.'"

83 The governing body shall provide for the notices to be posted in at least the two most commonly
84 spoken languages in the locality and may provide for notices in additional languages. The determination
85 of the governing body as to the languages in which to post the notices shall be determinative and not
86 subject to review.

87 § 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification.

88 A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers
89 of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the
90 voting booth and furnishing an official ballot to him.

91 B. An officer of election shall ask the voter for his full name and current residence address and
92 repeat, in a voice audible to party and candidate representatives present, the full name and address stated
93 by the voter. The officer shall ask the voter to present any one of the following forms of identification:
94 his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's
95 license, or any other identification card issued by a government agency of the Commonwealth, one of its
96 political subdivisions, or the United States; or any valid employee identification card containing a
97 photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's
98 business proof of identification. "Proof of identification" means a document that satisfies all of the
99 following:

100 1. The document shows the name of the individual to whom the document was issued, and the name
101 conforms to the name in the individual's voter registration record.

102 2. The document shows a photograph of the individual to whom the document was issued.

103 3. The document includes an expiration date, and the document:

104 a. is not expired; or

105 b. expired after the date of the most recent general election.

106 4. The document was issued by the United States or the Commonwealth of Virginia.

107 If the voter's name is found on the pollbook, if he presents one of the forms proof of identification
108 listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter,
109 opposite the voter's name on the pollbook, the first or next consecutive number from the voter count
110 form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic
111 form; an officer shall provide the voter with the official ballot; and another officer shall admit him to
112 the voting booth. Each voter whose name has been marked on the pollbooks as present to vote and
113 entitled to a ballot shall remain in the presence of the officers of election in the polling place until he
114 has voted. If a line of voters who have been marked on the pollbooks as present to vote forms to await
115 entry to the voting booths, the line shall not be permitted to extend outside of the room containing the
116 voting booths and shall remain under observation by the officers of election.

117 Except as provided in subsection E of this section, if a voter is entitled to vote except that he is
118 unable to present one of the forms proof of identification listed above, he shall be allowed to vote after
119 signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is
120 the named registered voter who he claims to be.

121 A voter who requires assistance in voting by reason of physical disability or inability to read or

write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.

A voter may be accompanied into the voting booth by his child age 15 or younger.

C. If the current residence address stated by the voter is different from the address shown on the pollbook, the officer of election shall furnish the voter with a change of address form prescribed by the State Board. Upon its completion, the voter shall sign the prescribed form, subject to felony penalties for making false statements pursuant to § 24.2-1016, which the officer of election shall then place in an envelope provided for such forms for transmission to the general registrar who shall then transfer or cancel the registration of such voter pursuant to Chapter 4 (§ 24.2-400 et seq.) of this title.

D. At the time the voter is asked his full name and current residence address, the officer of election shall ask any voter for whom the pollbook indicates that an identification number other than a social security number is recorded on the Virginia voter registration system if he presently has a social security number. If the voter is able to provide his social security number, he shall be furnished with a voter registration form prescribed by the State Board to update his registration information. Upon its completion, the form shall be placed by the officer of election in an envelope provided for such forms for transmission to the general registrar. Any social security numbers so provided shall be entered by the general registrar in the voter's record on the voter registration system.

E. For federal elections held after January 1, 2004, this subsection 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 the voter votes in a federal election in the state. At such election, 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 this section, 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.

§ 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 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~~ *proof* of identification as specified in subsection B of § 24.2-643, or if he is unable to present ~~one of the forms~~ *proof* of identification ~~listed as specified~~ 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 disability or inability to read or write may request assistance pursuant to § 24.2-649 and be assisted in preparation of this statement in

183 accordance with that section. The provisions of § 24.2-649 regarding persons who are unable to sign
184 shall be followed when assisting an applicant in completing this statement.

185 For federal elections held after January 1, 2004, this paragraph shall apply in the case of any voter
186 who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to
187 show identification the first time that voter votes in a federal election in the state. After completing an
188 application for an absentee ballot in person, such voter shall present: (i) a current and valid photo
189 identification; or (ii) a copy of a current utility bill, bank statement, government check, paycheck or
190 other document that shows the name and address of the voter. Such individual who desires to vote in
191 person but who does not show one of the forms of identification specified in this paragraph shall be
192 offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of
193 subsection B of § 24.2-643, nor the identification requirements of subsection A of § 24.2-653, shall
194 apply to such voter at that election. The State Board of Elections shall provide instructions to the
195 electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of
196 § 24.2-653 and this section.

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

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

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

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

214 3. The complete address to which the ballot is to be sent directly to the applicant, unless the
215 application is made in person at a time when the printed ballots for the election are available and the
216 applicant chooses to vote in person at the time of completing his application. The address given shall be
217 (i) the address of the applicant on file in the registration records; (ii) the address at which he will be
218 located while absent from his county or city; or (iii) the address at which he will be located while
219 temporarily confined due to a disability or illness. No ballot shall be sent to, or in care of, any other
220 person; and

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

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

227 6. In the case of any duly registered person with a disability, as defined in § 24.2-101, who is unable
228 to go in person to the polls on the day of the election because of his disability, illness, or pregnancy,
229 the nature of the disability, illness, or pregnancy; or

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

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

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

236 10. In the case of a person who is unable to go to the polls on the day of election because he is
237 primarily and personally responsible for the care of an ill or disabled family member who is confined at
238 home, the name of the family member and the nature of his illness or disability; or

239 11. In the case of a person who is unable to go to the polls on the day of election because of an
240 obligation occasioned by his religion, his religion and the nature of the obligation; or

241 12. In the case of a person who, in the regular and orderly course of his business, profession, or
242 occupation, will be at his place of work and commuting to and from his home to his place of work for
243 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his
244 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, 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 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 *and a copy of proof of identification, as specified in subsection B of § 24.2-643*, 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 *and a copy of proof of identification. Such individual who desires to vote by mail but who does not submit proof of identification 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 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.*

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 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. The electoral board shall send the blank ballot, the form for the envelope for returning the marked ballot, and instructions to the voter by electronic transmission if the voter so requests and if the applicant voter is residing or is stationed outside the continental borders of the United States. The voted ballot shall be returned to the electoral board as otherwise required by this chapter.

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

2. That the provisions of this act shall become effective on January 1, 2010.