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**SENATE BILL NO. 1091**

Offered January 14, 2009

Prefiled January 13, 2009

*A BILL to amend and reenact §§ 24.2-638, 24.2-649, 24.2-700, and 24.2-701 of the Code of Virginia, relating to elections; assistance for certain voters; curbside voting; and persons entitled to vote absentee.*

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Patron—Miller, J.C.

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Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-638, 24.2-649, 24.2-700, and 24.2-701 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-638. Voting equipment to be in plain view; officers and others not permitted to see actual voting; unlocking counter compartment of equipment, etc.

During the election, the exterior of the voting and counting equipment and every part of the polling place shall be in plain view of the officers of election.

No voting or counting equipment shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657. However, an electronic voting device that is so constructed as to be easily portable may be taken outside the polling place pursuant to subsection A of § 24.2-649 and to assist a voter age 65 or older or physically disabled so long as: (i) the voting device remains in the plain view of two officers of election representing two political parties or, in a primary election, two officers of election representing the party conducting the primary, provided that if the use of two officers for this purpose would result in too few officers remaining in the polling place to meet legal requirements, the equipment shall remain in plain view of one officer who shall be either the chief officer or the assistant chief officer; (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to § 24.2-649; and (iii) there remain sufficient officers of election in the polling place to meet legal requirements. After the voter has completed voting his ballot, the officer or officers shall immediately return the voting device to its assigned location inside the polling place. The machine number, the time that the machine was removed and the time that it was returned, the number on the machine's public counter before the machine was removed and the number on the same counter when it was returned, and the name or names of the officer or officers who accompanied the machine shall be recorded on the statement of results. In the case of an emergency that makes a polling place unusable or inaccessible, voting or counting equipment may be removed to an alternative polling place pursuant to the provisions of subsection D of § 24.2-310.

The equipment shall be placed at least four feet from any table where an officer of election is working or seated. The officers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to observe how a voter votes or has voted.

One of the officers shall inspect the face of the voting device after each voter has cast his vote and verify that the ballots on the face of the device are in their proper places and that the device has not been damaged. During an election the door or other covering of the counter compartment of the voting or counting device shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the officers of election and attached to the statement of results. No person shall be permitted in or about the polling place except the voting equipment custodian, vendor or contractor technicians, and other persons authorized by this title.

§ 24.2-649. Assistance for certain voters.

A. Any voter age 65 or older or physically disabled may request and then shall be handed a paper ballot or a mark sense ballot by an officer of election outside the polling place but within 150 feet of the entrance to the polling place. The voter shall mark the paper ballot in the officer's presence but in a secret manner and fold and return the ballot to the officer. The officer shall immediately return to the polling place and deposit the ballot in the ballot container in accordance with § 24.2-646. The voter shall mark the mark sense ballot in the officer's presence but in a secret manner and cover and return the ballot to the officer who shall immediately return to the polling place and deposit the ballot in the ballot counter in accordance with the instructions of the State Board.

Any county or city that has acquired an electronic voting device that is so constructed as to be easily portable may use the voting device in lieu of a paper or mark sense ballot for the voter requiring assistance pursuant to this subsection. However, the electronic voting device may be used in lieu of a

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59 paper ballot only so long as: (i) the voting device remains in the plain view of two officers of election  
60 representing two political parties or, in a primary election, two officers of election representing the party  
61 conducting the primary, provided that if the use of two officers for this purpose would result in too few  
62 officers remaining in the polling place to meet legal requirements, the equipment shall remain in plain  
63 view of one officer who shall be either the chief officer or the assistant chief officer; and (ii) the voter  
64 casts his ballot in a secret manner unless the voter requests assistance pursuant to this section. After the  
65 voter has completed voting his ballot, the officer or officers shall immediately return the voting device  
66 to its assigned location inside the polling place. The machine number, the time that the machine was  
67 removed and the time that it was returned, the number on the machine's public counter before the  
68 machine was removed and the number on the same counter when it was returned, and the name or  
69 names of the officer or officers who accompanied the machine shall be recorded on the statement of  
70 results.

71 B. Any qualified voter, who requires assistance to vote by reason of physical disability or inability to  
72 read or write, may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of  
73 election or any other person to assist him. If he is unable to read and write or disabled for any cause  
74 other than blindness, he may designate an officer of election or some other person to assist him other  
75 than the voter's employer or agent of that employer, or officer or agent of the voter's union.

76 The officer of election or other person so designated shall not enter the booth with the voter unless  
77 (i) the voter signs a request stating that he requires assistance by reason of physical disability or  
78 inability to read or write and (ii) the officer of election or other person signs a statement that he is not  
79 the voter's employer or an agent of that employer, or an officer or agent of the voter's union, and that he  
80 will act in accordance with the requirements of this section. The request and statement shall be on a  
81 single form furnished by the State Board. If the voter is unable to sign the request, his own mark  
82 acknowledged by him before an officer of election shall be sufficient signature, provided no mark shall  
83 be required of a voter who is blind. An officer of election shall advise the voter and person assisting the  
84 voter of the requirements of this section and record the name of the voter and the name and address of  
85 the person assisting him.

86 The officer of election or other person so designated shall assist the qualified voter in the preparation  
87 of his ballot in accordance with his instructions and without soliciting his vote or in any manner  
88 attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise,  
89 how the voter voted on any office or question.

90 A person who willfully violates this subsection shall be guilty of a Class 1 misdemeanor. In addition,  
91 the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to any  
92 request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and 24.2-1012  
93 and the felony penalties for violations of the law related to providing assistance to absentee voters shall  
94 be applicable in such cases.

95 In any precinct in which an electronic voting device is available that provides an audio ballot, the  
96 officers of election shall notify a voter requiring assistance pursuant to this subsection that such  
97 equipment is available for him to use to vote in privacy without assistance and the officers of election  
98 shall instruct the voter on the use of the voting equipment. Nothing in this subsection shall be construed  
99 to require a voter to use the equipment unassisted.

100 § 24.2-700. Persons entitled to vote by absentee ballot.

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

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

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

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

113 4. Any duly registered person with a disability, as defined in § 24.2-101, who is unable to go in  
114 person to the polls on the day of election because of his disability, illness, or pregnancy;

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

120 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~~ 11 or more hours of the ~~thirteen~~ 13 hours that the polls are open pursuant to § 24.2-603; or

10. Any person who will be age 65 or older on the day of the election for which an absentee ballot is requested.

§ 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 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 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

182 prescribed pursuant to 42 U.S.C. § 1973ff (b) (2). The Federal Post Card Application may be accepted  
183 the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth  
184 month prior to the election in which the applicant is applying to vote. The application shall be made to  
185 the appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the  
186 applicant offers to vote.

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

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

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

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

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

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

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

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

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

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

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

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

222 12. In the case of a person who, in the regular and orderly course of his business, profession, or  
223 occupation, will be at his place of work and commuting to and from his home to his place of work for  
224 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his  
225 business or employer, address of his place of work, and hours he will be at the workplace and  
226 commuting on election day; or

227 13. *In the case of a person who will be age 65 or older on the day of the election for which an*  
228 *absentee ballot is requested, the person's date of birth.*