

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 449

An Act to amend and reenact §§ 24.2-209, 24.2-216, 24.2-226, 24.2-442, 24.2-443.3, 24.2-507, 24.2-510, 24.2-516, 24.2-522, 24.2-524, 24.2-527, 24.2-536, 24.2-537, 24.2-538, 24.2-612, 24.2-702.1, 24.2-703, 24.2-706, and 24.2-709 of the Code of Virginia, relating to elections; various deadlines and ballot requirements; absentee ballot procedures; military voters; and write-in absentee ballots.

[S 55]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-209, 24.2-216, 24.2-226, 24.2-442, 24.2-443.3, 24.2-507, 24.2-510, 24.2-516, 24.2-522, 24.2-524, 24.2-527, 24.2-536, 24.2-537, 24.2-538, 24.2-612, 24.2-702.1, 24.2-703, 24.2-706, and 24.2-709 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-209. Filling vacancies in House of Representatives.

When any vacancy occurs in the representation of the Commonwealth of Virginia in the House of Representatives, or when a representative-elect dies or resigns, the Governor shall issue a writ of election to fill the vacancy. Upon receipt of written notification by a representative or representative-elect of his resignation as of a stated date, the Governor may immediately issue a writ to call the election. The representative's or representative-elect's resignation shall not be revocable after the date stated by him for his resignation or after the ~~thirtieth~~ *forty-fifth* day before the date set for the special election.

§ 24.2-216. Filling vacancies in the General Assembly.

When a vacancy occurs in the membership of the General Assembly during the recess of the General Assembly or when a member-elect to the next General Assembly dies, resigns, or becomes legally incapacitated to hold office prior to its meeting, the Governor shall issue a writ of election to fill the vacancy. If the vacancy occurs during the session of the General Assembly, the Speaker of the House of Delegates or the President pro tempore of the Senate, as the case may be, shall issue the writ unless the respective house by rule or resolution shall provide otherwise. Upon receipt of written notification by a member or member-elect of his resignation as of a stated date, the Governor, Speaker, or President Pro Tempore, as the case may be, may immediately issue the writ to call the election. The member's or member-elect's resignation shall not be revocable after the date stated by him for his resignation or after the ~~thirtieth~~ *forty-fifth* day before the date set for the special election.

The writ shall be directed to the secretaries of the electoral boards of the respective counties and cities composing the district for which the election is to be held.

Notwithstanding any provision of law to the contrary, no election to fill a vacancy shall be ordered or held if the general or special election at which it is to be called is scheduled within 75 days of the end of the term of the office to be filled.

§ 24.2-226. Election to fill vacancy.

A. A vacancy in any elected local office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election except as provided for certain towns by § 24.2-228 or for constitutional officers as provided in § 24.2-228.1, or unless provided otherwise by statute or charter. The governing body or, in the case of an elected school board, the school board of the county, city, or town in which the vacancy occurs shall, within 15 days of the occurrence of the vacancy, petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ 24.2-681 et seq.) of Chapter 6. Either upon receipt of the petition or on its own motion, the court shall issue the writ ordering the election for the next ensuing general election to be held in November in the case of county, city, or town officers regularly elected in November, or in May in the case of other city and town officers. If the vacancy occurs within 120 days prior to that election, however, the writ shall order the election to be held at the second ensuing such general election. Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body or school board, as the case may be, may immediately petition the circuit court to issue a writ of election, and the court may immediately issue the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the date stated by him for his resignation or after the ~~thirtieth~~ *forty-fifth* day before the date set for the special election. The person so elected shall hold the office for the remaining portion of the regular term of the office for which the vacancy is being filled.

B. Notwithstanding any provision of law or charter to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within 60 days of the end of the term of the office to be filled.

C. Notwithstanding any provision of law or charter to the contrary, when an interim appointment to a

vacancy in any governing body or elected school board has been made by the remaining members thereof, no election to fill the vacancy shall be ordered or held if the general election at which it is to be called is scheduled in the year in which the term expires.

§ 24.2-442. When registration permitted; lapse of registration.

Registration under this article shall be permitted until the registration records are closed pursuant to § 24.2-416 and shall be valid for all elections for which the voter is eligible through the ~~next two regularly scheduled general elections for federal office following its receipt~~ *end of the federal election cycle in which the voter submits his application or for 365 days, whichever is longer*. After ~~the second federal general election~~ *such period*, registration under this article shall no longer be valid. If an official reply to the application or an absentee ballot sent to the applicant is returned as undeliverable, no ballots for subsequent elections shall be sent under that application. No ballot shall be sent to the applicant, and no voted ballot received from the applicant shall be valid, (i) for any election held after the voter has notified the registrar that the voter no longer wishes to be registered or (ii) after the registrar has received notification that the voter has registered to vote in another state.

§ 24.2-443.3. When registration permitted.

Registration under this article shall be permitted until the registration records are closed pursuant to § 24.2-416 and shall be valid for all elections for which the voter is eligible through the ~~next two regularly scheduled general elections for federal office following its receipt~~ *end of the federal election cycle in which the voter submits his application or for 365 days, whichever is longer*. If an official reply to the application or an absentee ballot sent to the applicant is returned as undeliverable, no ballots for subsequent elections shall be sent under that application. No ballot shall be sent to the applicant, and no voted ballot received from the applicant shall be valid, (i) for any election held after the voter has notified the registrar that the voter no longer wishes to be registered or (ii) after the registrar has received notification that the voter has registered to vote in another state.

§ 24.2-507. Deadlines for filing declarations and petitions of candidacy.

For any office, declarations of candidacy and the petitions therefor shall be filed according to the following schedule:

1. For a general election in November, by 7:00 p.m. on the second Tuesday in June;
2. For a general election in May, by 7:00 p.m. on the first Tuesday in March;
3. For a special election held at the same time as a November general election, either (i) at least ~~seventy-four~~ 74 days before the election or (ii) if the special election is being held at the second November election after the vacancy occurred, by 7:00 p.m. on the second Tuesday in June before that November election;
4. For a special election held at the same time as a May general election, by 7:00 p.m. on the first Tuesday in March; or
5. For a special election held at a time other than a general election, (i) at least ~~thirty~~ 45 days before the election or (ii) within five days of any writ of election or order calling a special election to be held less than ~~thirty-five~~ 45 days after the issuance of the writ or order.

§ 24.2-510. Deadlines for parties to nominate by methods other than primary.

For any office, nominations by political parties by methods other than a primary shall be made and completed in the manner prescribed by law according to the following schedule:

1. For a general election in November, by 7:00 p.m. on the second Tuesday in June;
2. For a general election in May, by 7:00 p.m. on the first Tuesday in March;
3. For a special election held at the same time as a November general election, either (i) at least ~~seventy-four~~ 74 days before the election or (ii) if the special election is held at the second November election after the vacancy occurred, by 7:00 p.m. on the second Tuesday in June before that November election;
4. For a special election held at the same time as a May general election, by 7:00 p.m. on the first Tuesday in March; or
5. For a special election held at a time other than a general election, (i) at least ~~thirty~~ 45 days before the election or (ii) within five days of any writ of election or order calling a special election to be held less than ~~thirty-five~~ 45 days after the issuance of the writ or order.

In the case of all general elections a party shall nominate its candidate for any office by a nonprimary method only within the ~~thirty-two~~ 47 days immediately preceding the primary date established for nominating candidates for the office in question. This limitation shall have no effect, however, on nominations for special elections or pursuant to § 24.2-539.

§ 24.2-516. Party to furnish names of chairmen and notify State Board of adoption of direct primary.

Each political party within the Commonwealth shall furnish to the State Board the names and addresses of its state, county, and city party chairmen in January of each year, and during the remainder of the year it shall notify the Board of any changes in such names and addresses.

At least ~~120~~ 135 days prior to the regular date for a primary, the Board shall inquire of each state chairman and each county and city chairman whether a direct primary has been adopted. The Board shall advise each chairman that notification to the Board of the adoption of a direct primary is required and must be filed with the Board not more than ~~110~~ 125 days and not less than ~~90~~ 105 days before the

date set for the primaries.

Each chairman shall file timely written notice with the Board whether or not a primary has been adopted and identify each office for which a primary has been adopted. The requirement to notify the Board of the adoption of a direct primary shall be satisfied when the Board receives by the deadline (i) written notice from the appropriate party chairman or (ii) a copy of the written notice from an incumbent officeholder to his party chairman of the incumbent's selection, pursuant to § 24.2-509, of the primary as the method of nomination.

§ 24.2-522. When and to whom filings to be made.

A. Declarations of candidacy, petitions, and receipts indicating the payment of filing fees shall be filed not earlier than noon of the ~~seventy-seventh~~ *ninety-second* day and not later than 5:00 p.m. of the ~~sixtieth~~ *seventy-fifth* day before the primary.

B. Except as provided in subsection C, candidates for nomination shall file their declarations, petitions, and receipts with the chairman or chairmen of the several committees of the respective parties.

C. Any candidate for nomination for United States Senator, Governor, Lieutenant Governor, or Attorney General shall file with the State Board (i) his declaration of candidacy, (ii) the petitions for his candidacy, sealed in one or more containers to which is attached a written statement under oath by the candidate giving his name and the number of signatures on the petitions contained in the containers, and (iii) a receipt indicating the payment of his filing fee.

The State Board shall transmit the material so filed to the state chairman of the party of the candidate on the ~~fifty-ninth~~ *seventy-fourth* day before the primary. The sealed containers containing the petitions for a candidate may be opened only by the state chairman of the party of the candidate.

§ 24.2-524. To whom fees paid; refund of fees.

A. Candidates for United States Senators, for representatives in Congress, and for the offices of Governor, Lieutenant Governor, and Attorney General shall pay the primary fee to the State Board of Elections. The primary fees shall be credited by the Board to a fund to be known as the "state primary fee fund."

The Board shall refund the fee by warrant upon the state primary fee fund in the event the prospective candidate does not become a candidate, becomes a candidate and is not opposed, or must refile for any reason. All other primary fees paid to the Board shall be paid or placed to the credit of the fund out of which the Board pays the Commonwealth's expenses for the primary.

B. All other candidates shall pay the fee to the treasurer, or director of finance if there is no treasurer, of the city or county in which they reside. The treasurer or director of finance shall pay back the fee in the event the prospective candidate does not become a candidate, or becomes a candidate and must refile for any reason. In the event the candidate is unopposed, the State Board or the local electoral board, as appropriate, shall notify, no less than ~~45~~ *60* days before the primary, the treasurer or director of finance to whom the fee was paid that the candidate is unopposed and shall provide the name and mailing address for returning the fee to the candidate. The treasurer or director of finance promptly shall return the fee to the candidate. All other primary fees paid a county or city treasurer or director of finance shall be paid or placed to the credit of the fund of the county or city out of which the expenses of the primary were paid by the county or city.

C. A receipt for the payment of the fee must be attached to the declaration of candidacy; otherwise the declaration shall not be received or filed.

§ 24.2-527. Chairman or official to furnish State Board and local electoral boards with names of candidates.

A. It shall be the duty of the chairman or chairmen of the several committees of the respective parties to furnish the name of any candidate for nomination for any office to be elected by the qualified voters of the Commonwealth at large or of a congressional district or of a General Assembly district to the State Board, and to furnish the name of any candidate for any other office to the State Board and to the electoral boards charged with the duty of preparing and printing the primary ballots. The chairman shall also certify the order and date and time of filing for purposes of printing the ballots as prescribed in § 24.2-528, provided that the State Board shall determine the order and date and time of filing for candidates for United States Senator, Governor, Lieutenant Governor, and Attorney General for such purposes. Each chairman shall comply with the provisions of this section not less than ~~fifty-five~~ *70* days before the primary.

B. In no case shall the individual who is a candidate for an office be the person who certifies the names of candidates for a primary for that same office. In such case the party shall designate an alternate official to certify the candidates.

§ 24.2-536. Procedure when a vacancy in office occurs less than 75 days before primary date.

Whenever, by reason of the death, resignation, or removal of the incumbent, a vacancy in any office occurs less than ~~sixty~~ *75* but more than ~~thirty~~ *45* days before the regular date for the holding of a primary, the properly constituted party authorities may permit the filing of declarations and petitions of candidacy for nomination for that office in the primary. Notice of the vacancy and the right to file declarations and petitions of candidacy for nomination to fill it shall be advertised by the party committee or committees in at least one newspaper of general circulation within the Commonwealth if it

is an office filled by election by the people at large, and in the manner prescribed by the properly constituted party authorities in the case of all other offices. No declaration and petitions of candidacy shall be filed with the committee or committees until such advertisement is made, nor within ~~twenty~~ 35 days prior to the date for holding the primary. Declarations and petitions of candidacy filed pursuant to this section shall comply in every respect, except for the time of filing, with the requirements established generally for such declarations and petitions in this article.

If more than one person qualifies, the party chairman shall promptly certify their names to the State Board and the appropriate electoral boards as having qualified under the provisions of this section. The electoral boards having charge of the printing of the official ballots for the primary shall either:

1. Cause to be printed on the ballot the name of each person so certified; or
2. If the official ballots have already been printed, cause separate ballots to be printed for the office for which the persons have qualified pursuant to this section.

In the event that only one person qualifies as a candidate under the provisions of this section, the person so qualifying shall be declared the nominee of his party for that office and his name shall not be printed on the primary ballot.

In the event that no person qualifies as a candidate under the provisions of this section, or that the vacancy occurs less than ~~thirty~~ 45 days before the primary, the appropriate committee of the political party shall determine the time and method of nominating its candidate for the office.

§ 24.2-537. Procedure when nominee by default dies or withdraws or nomination is set aside prior to primary.

A. If any person who would have been nominated as the candidate of a political party for any office in any general election by reason of the fact that he was the only person who filed the required declaration of and petition for candidacy dies or withdraws as the party candidate, or his nomination is set aside for any reason, ~~thirty~~ 45 days or more before the day on which the primary would have been held if two or more candidates had qualified, the appropriate committee of the political party shall determine the time and method of nominating its candidate for the office.

B. If the party committee determines that the party's nominee shall be elected at the scheduled primary, any person desiring to become a candidate for nomination by the party at that primary who is otherwise qualified may file a declaration of and petition for his candidacy with the proper chairman of his party committee. No person whose nomination has been set aside for fraud knowingly participated in by the candidate, or other person who knowingly participated in such fraud, shall be deemed qualified. The declaration and petition shall comply in every respect with the requirements established generally for such declarations and petitions in this article, except that the declaration and petition shall be filed at least ~~twenty~~ 35 days before the day on which the primary is to be held.

If more than one person qualifies, the party chairman shall promptly certify their names to the State Board and the appropriate electoral boards as having qualified under the provisions of this section. The electoral boards having charge of the printing of the official ballots for the primary election shall either:

1. Cause to be printed thereon the name of every person so certified; or
2. If the official ballots have already been printed, cause separate ballots to be printed for the office for which two or more persons have qualified pursuant to the provisions of this section.

In the event that only one person qualifies as a candidate in accordance with the provisions of this section, the person so qualifying shall be declared the nominee of his party for that office and his name shall not be printed on the primary ballot.

In the event that no person qualifies as a candidate pursuant to the provisions of this section, or that the death or withdrawal or setting aside of candidacy of any such party nominee should occur at a time which is less than ~~thirty~~ 45 days prior to any such primary, the appropriate committee of the political party shall determine the time and method of nominating its candidate for the office.

C. No party shall nominate any person whose nomination has been set aside for fraud knowingly participated in by the candidate, or any other person who knowingly participated in such fraud.

§ 24.2-538. Procedure when opposed candidate for nomination dies prior to primary.

If any person who is a candidate for nomination by a political party at a primary election, and who, along with one or more other candidates, has qualified to have his name printed on the official ballot for the primary, dies ~~thirty~~ 45 days or more before the day on which the primary is to be held, any person otherwise qualified who desires to be a candidate at that primary may file a declaration of and petition for his candidacy with the proper chairman of his party committee. The declaration and petition shall comply in every respect with the requirements established generally for such declarations and petitions by this article, except that the declaration and petition shall be filed at least ~~twenty~~ 35 days before the day on which the primary is to be held.

The party chairman or chairmen shall promptly certify the names of every such person to the State Board and appropriate electoral boards as having qualified under the provisions of this section. Every electoral board having charge of the printing of official ballots for the primary election shall either:

1. Cause to be printed thereon the name of every person so certified; or
2. If the official ballots have already been printed, cause separate ballots to be printed for the office containing the names of those candidates other than the decedent who have theretofore qualified and the

names of those certified to it as having qualified pursuant to the provisions of this section. The board may, in its discretion, cause to be stricken from the ballots already printed the title of the office involved and the names of all candidates for nomination for the office appearing thereon.

Whenever any additional candidate shall qualify pursuant to this section, no ballots theretofore cast by absentee vote for a candidate for such office shall be counted, but any person who has so voted shall be entitled to receive a new ballot and to vote for his choice among all the candidates for such office.

§ 24.2-612. List of offices and candidates filed with State Board and checked for accuracy; when ballots printed; number required.

Immediately after the expiration of the time provided by law for a candidate for any office to qualify to have his name printed on the official ballot and prior to printing the ballots for an election, each electoral board shall forward to the State Board a list of the county, city, or town offices to be filled at the election and the names of all candidates who have filed for each office. In addition, each electoral board shall forward the name of any candidate who failed to qualify with the reason for his disqualification. The State Board shall promptly advise the electoral board of the accuracy of the list. The failure of any electoral board to send the list to the State Board for verification shall not invalidate any election.

Each electoral board shall have printed the number of ballots it determines will be sufficient to conduct the election.

Notwithstanding any other provisions of this title, the State Board may print or otherwise provide (i) one statewide paper ballot style for each paper ballot style in use for presidential and vice-presidential electors for use only by persons eligible to vote for those offices only under § 24.2-402 or clause (iii) or (v) of subsection B of § 24.2-416.1, (ii) one statewide paper ballot style for each paper ballot style in use for Governor, Lieutenant Governor or Attorney General only for use as the early absentee ballot specified in § 24.2-702, and (iii) single paper ballot styles for each ballot style in use for each congressional district for federal offices for use only by overseas voters eligible to vote in federal elections only pursuant to Article 7 (§ 24.2-440 et seq.) of Chapter 4 of this title. The State Board may apportion or authorize the printer or vendor to apportion the costs for these ballots among the localities based on the number of ballots ordered. Any printer employed by the State Board shall execute the statement required by § 24.2-616. The State Board shall designate a representative to be present at the printing of such ballots and deliver them to the appropriate electoral boards pursuant to § 24.2-617. Upon receipt of such paper ballots, the electoral board shall affix its seal. Thereafter, such ballots shall be handled and accounted for, and the votes counted as the State Board shall specifically direct.

The electoral board shall make printed ballots available for absentee voting ~~at least (i) not later than 45 days prior to any November general election or special election held at the same time and (ii) 30 days prior to any other general, special, or primary election.~~ In the case of a special election, *excluding for federal offices*, if time is insufficient to meet the applicable deadline established herein, then the electoral board shall make printed ballots available as soon after the deadline as possible. *For the purposes of this chapter, making printed ballots available includes mailing of such ballots or electronic transmission of such ballots pursuant to § 24.2-706 to a qualified absentee voter who is eligible for an absentee ballot under subdivision 2 of § 24.2-700. Not later than five days after absentee ballots are made available, each electoral board shall report to the State Board, in writing on a form approved by the State Board, whether it has complied with the applicable deadline.*

Only the names of candidates for offices to be voted on in a particular election district shall be printed on the ballots for that election district.

The electoral boards shall send to the State Board a statement of the number of paper ballots ordered to be printed, proofs of each paper and voting equipment ballot for verification, and copies of each final ballot. If the State Board finds that, in its opinion, the number of ballots ordered to be printed by any local electoral board is not sufficient, it may direct the local board to order the printing of a reasonable number of additional ballots.

§ 24.2-702.1. 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~~ *any election*. 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 no later than the deadline for the return of absentee ballots as provided in § 24.2-709 for 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; (v) his current military or overseas address; and (vi) the signature of a witness who

shall sign the same envelope. If the voter is not currently registered in Virginia and is eligible to be, such ~~federal~~ write-in absentee ballot shall also be considered valid for the purpose of serving as a voter registration application.

§ 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 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 who is eligible for an absentee ballot under subdivision 2 of § 24.2-700 that is received by the general registrar no later than 5:00 p.m. on the seventh day prior to the election shall be valid through the ~~next two regularly scheduled general elections for federal office following its receipt end of the federal election cycle in which the voter submits the application or for 365 days, whichever is longer.~~ The application from any person applying for temporary registration under Articles 7 or 7.1 of Chapter 4 of ~~this title~~ shall be accepted at any time until the registration records are closed pursuant to § 24.2-416 and shall be valid through the ~~next two regularly scheduled general elections for federal office following the receipt of the application by the general registrar end of the federal election cycle in which the voter submits the application or for 365 days, whichever is longer.~~

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

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

§ 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 within three business days of receiving an application for an absentee ballot, or as soon thereafter as is reasonably possible, 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 2 of § 24.2-700, the electoral board, *at the time when the printed ballots for the election are available*, shall mail *within three business days* 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, *at the time when the printed ballots for the election are available*, shall send *within three business days* 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 located outside of the Commonwealth~~. 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.

The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur, or (iii) the campaign committee or the appropriate district political party chairman of such candidate.

§ 24.2-709. Ballot to be returned in manner prescribed by law.

A. Any ballot returned to the office of the electoral board or general registrar in any manner except as prescribed by law, shall be void. Absentee ballots shall be returned to the electoral board or general registrar before the closing of the polls. The board member or registrar receiving the ballot shall mark on each envelope the date, time, and manner of delivery. For all ballots returned by the general registrar to the electoral board, the board shall give to the general registrar a receipt showing the time and date of the return.

B. *Notwithstanding the provisions of subsection A, absentee ballots (i) received after the close of the polls on any election day, (ii) received before 5:00 p.m. on the second business day before the State Board meets to ascertain the results of the election pursuant to this title, (iii) requested on or before but not sent by the deadline for making absentee ballots available under § 24.2-612, and (iv) cast by an absentee voter who is eligible for an absentee ballot under subdivision 2 of § 24.2-700 shall be counted pursuant to the procedures set forth in this chapter and, if the voter is found entitled to vote, included in the election returns. The electoral board shall prepare an amended certified abstract, which shall include the results of such ballots, and shall deliver such abstract to the State Board by the business day prior to its meeting pursuant to this title, and shall deliver a copy of such abstract to the general*

registrar to be available for inspection when his office is open for business.