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**HOUSE BILL NO. 1235**

Offered January 15, 2010

A *BILL to amend and reenact §§ 24.2-612, 24.2-679, 24.2-706, and 24.2-711 of the Code of Virginia, relating to the deadline for making absentee ballots available; military voters.*

Patrons—Anderson, Albo, Athey, Bell, Robert B., Crockett-Stark, Gilbert, Greason, Hugo, Lingamfelter and Rust

Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-612, 24.2-679, 24.2-706, and 24.2-711 of the Code of Virginia are amended and reenacted as follows:**

§ 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 not later than~~ (i) ~~45~~ 50 days prior to any November general election or special election held at the same time and (ii) ~~30~~ 35 days prior to any other general, special, or primary election. In the case of a special election, 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 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.

§ 24.2-679. State Board to meet and make statement as to number of votes.

A. The State Board shall meet on the fourth Monday in November to ascertain the results of the November election. If a majority of the Board is not present or if, for any other reason, the Board is

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58 unable to ascertain the results on that day, the meeting shall stand adjourned from day to day for not  
59 more than three days until a quorum is present and the Board has ascertained the results as provided in  
60 this section.

61 The Board shall examine the certified abstracts on file in its office *and amended statement of results*  
62 *filed pursuant to § 24.2-711* and make statements of the whole number of votes given at any such  
63 election for members of the General Assembly, Governor, Lieutenant Governor and Attorney General,  
64 members of the United States Congress and electors of President and Vice President of the United  
65 States, and any officer shared by more than one county or city, or any combination thereof, or for so  
66 many of such officers as have been voted for at the election.

67 The statement shall show, for each office and each county, city, and election district, the whole  
68 number of votes given to each candidate and to any other person elected to office. The Board members  
69 shall certify the statements to be correct and sign the statements. The Board shall then determine those  
70 persons who received the greatest number of votes and have been duly elected to each office. The Board  
71 members shall endorse and subscribe on such statements a certificate of their determination. The Board  
72 shall record each certified statement and determination in a suitable book to be kept by it in its office.

73 B. The State Board shall meet as soon as possible after it receives the returns for any special election  
74 held at a time other than the November general election to ascertain the results of the special election in  
75 the manner prescribed in subsection A. If the returns have not been received within seven days of the  
76 election, the Board shall meet and adjourn from day to day until it receives the returns, ascertains the  
77 results, and makes its determination.

78 § 24.2-706. Duty of general registrar and electoral board on receipt of application; statement of voter.

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

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

89 The completion and timely delivery of an application for an absentee ballot shall be construed to be  
90 an offer by the applicant to vote in the election.

91 The general registrar shall note on each application received whether the applicant is or is not a  
92 registered voter and notify the secretary of the electoral board. In reviewing the application for an  
93 absentee ballot, the general registrar and electoral board shall not reject the application of any individual  
94 because of an error or omission on any record or paper relating to the application, if such error or  
95 omission is not material in determining whether such individual is qualified to vote absentee.

96 If the application has been properly completed and signed and the applicant is a registered voter of  
97 the precinct in which he offers to vote, the electoral board shall within three business days of receiving  
98 an application for an absentee ballot, or as soon thereafter as is reasonably possible, send to the  
99 applicant by mail, obtaining a certificate of mailing, or deliver to him in person in the office of the  
100 secretary or registrar, the following items and nothing else:

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

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

105 "Statement of Voter."

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

115 Signature of Voter .....

116 Date .....

117 Signature of witness ....."

118 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.

§ 24.2-711. Duties of officers of election.

Before the polls open, the officers of election at each precinct shall mark, for each person on the absentee voter applicant list, the letters "AB" (meaning absentee ballot) in the voting record column on the pollbook. The pollbook may be so marked prior to election day by the general registrar, the secretary of the electoral board, or staff under the direction of the general registrar or the secretary, or when the pollbook is produced by the State Board pursuant to § 24.2-404. If the pollbook has been marked prior to election day, before the polls open the officers of election at each precinct shall check the marks for accuracy and make any additions or corrections required.

The chief officer of election shall keep the copy of the absentee voter applicant list in the polling place as a public record open for inspection upon request at all times while the polls are open.

If a voter, whose name appears on the absentee voter applicant list, has not returned an unused ballot and offers to vote in his precinct, the officers of election in the precinct shall determine the matter pursuant to §§ 24.2-653.1 and 24.2-708.

After the close of the polls, the container of absentee ballots shall be opened by the officers of election. As each ballot envelope is removed from the container, the name of the voter shall be called

180 and checked as if the voter were voting in person. If the voter is found entitled to vote, an officer shall  
181 mark the voter's name on the pollbook with the first or next consecutive number from the voter count  
182 form, or shall enter that the voter has voted if the pollbook is in electronic form. The ballot envelope  
183 shall then be opened, and the ballot deposited in the ballot container without being unfolded or  
184 examined. If the voter is found not entitled to vote, the unopened envelope shall be rejected. A majority  
185 of the officers shall write and sign a statement of the cause for rejection on the envelope or on an  
186 attachment to the envelope.

187 When all ballots have been accounted for and either voted or rejected, the officers shall place the  
188 empty ballot envelopes, the return envelopes, and any rejected ballot envelopes, in one envelope  
189 provided for the purpose and seal and deliver it with the ballots cast at the election as provided in this  
190 title.

191 *Notwithstanding the provisions of § 24.2-709, absentee ballots received after the close of the polls on*  
192 *election day and before the State Board meets to ascertain the results of the election pursuant to*  
193 *§ 24.2-679, and cast by an absentee voter who is eligible for an absentee ballot under subdivision 2 of*  
194 *§ 24.2-700, shall be counted pursuant to the procedures set forth in this section and, if the voter is*  
195 *found entitled to vote, included in the election returns. The electoral board shall prepare an amended*  
196 *statement of results, which shall include the results of such ballots, and shall deliver such statement to*  
197 *the State Board prior to its meeting pursuant to § 24.2-679, and shall deliver a copy of such statement*  
198 *to the general registrar to be available for inspection when his office is open for business.*