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HOUSE BILL NO. 1471

Offered January 9, 2013

Prefiled December 29, 2012

A BILL to amend and reenact §§ 24.2-649, 24.2-700, and 24.2-701 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-712.1, relating to voting by assisted living facility residents.

Patrons—Watts and Krupicka

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-649, 24.2-700, and 24.2-701 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-712.1 as follows:

§ 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 paper ballot only 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; and (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to this section. 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.

B. *If, at least one week before the day of the election, the general registrar receives a request from an administrator of an assisted living facility, as that term is defined in § 63.2-100, which serves as the residence of at least 50 registered voters, for assistance for such voters in voting, at least two officers of election shall be sent on the day of the election to the assisted living facility to assist voters who are age 65 or older or physically disabled in accordance with the provisions of subsection A.*

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

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

The officer of election or other person so designated shall assist the qualified voter in the preparation

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HB1471

59 of his ballot in accordance with his instructions and without soliciting his vote or in any manner
60 attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise,
61 how the voter voted on any office or question. If a paper ballot or a mark sense ballot is used, the
62 officer or other person so designated shall deposit the ballot in the ballot container in accordance with
63 § 24.2-646.

64 ~~C.~~ D. If the voter requires assistance in a language other than English and has not designated a
65 person to assist him, an officer of election, before he assists as interpreter, shall inquire of the
66 representatives authorized to be present pursuant to § 24.2-604 whether they have a volunteer available
67 who can interpret for the voter. One representative interpreter for each party or candidate, insofar as
68 available, shall be permitted to observe the officer of election communicate with the voter. The voter
69 may designate one of the volunteer party or candidate interpreters to provide assistance. A person so
70 designated by the voter shall meet all the requirements of this section for a person providing assistance.

71 ~~D.~~ E. A person who willfully violates subsection B or C shall be guilty of a Class 1 misdemeanor.
72 In addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable
73 to any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and
74 24.2-1012 and the felony penalties for violations of the law related to providing assistance to absentee
75 voters shall be applicable in such cases.

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

81 **§ 24.2-700. Persons entitled to vote by absentee ballot.**

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

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

87 2. Any person who is (i) a member of a uniformed service, as defined in § 24.2-452, on active duty,
88 (ii) temporarily residing outside of the United States, or (iii) the spouse or dependent residing with any
89 person listed in clause (i) or (ii), and who will be absent on the day of the election from the county or
90 city in which he is entitled to vote;

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

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

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

100 6. Any person who is a member of an electoral board, registrar, officer of election, or custodian of
101 voting equipment;

102 7. Any duly registered person who is unable to go in person to the polls on the day of the election
103 because he is primarily and personally responsible for the care of an ill or disabled family member who
104 is confined at home;

105 8. Any duly registered person who is unable to go in person to the polls on the day of the election
106 because of an obligation occasioned by his religion;

107 9. Any person who, in the regular and orderly course of his business, profession, or occupation, will
108 be at his place of work and commuting to and from his home to his place of work for 11 or more hours
109 of the 13 hours that the polls are open pursuant to § 24.2-603;

110 10. Any person who is a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in
111 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in
112 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1; or

113 11. Any person who has been designated by a political party, independent candidate, or candidate in
114 a primary election to be a representative of the party or candidate inside a polling place on the day of
115 the election pursuant to subsection C of § 24.2-604 and § 24.2-639; or

116 12. Any person who is a resident of an assisted living facility as that term is defined in § 63.2-100.

117 **§ 24.2-701. Application for absentee ballot.**

118 A. The State Board shall furnish each general registrar with a sufficient number of applications for
119 official absentee ballots. The registrars shall furnish applications to persons requesting them.

120 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.

An application that is completed in person at the same time that the applicant registers to vote shall be held and processed no sooner than the fifth day after the date that the applicant registered to vote; however, this requirement shall not be applicable to any person who is qualified to vote absentee under subdivision 2 of § 24.2-700.

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. Any applicant who does not show one of the forms of identification specified in subsection B of § 24.2-643 shall be offered 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.

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 government 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 subdivision 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 postcard application prescribed pursuant to 42 U.S.C. § 1973ff(b)(2). The federal postcard application 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. The application shall be made to the appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote.

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

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

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

3. The complete address to which the ballot is to be sent directly to the applicant, unless the

182 application is made in person at a time when the printed ballots for the election are available and the
183 applicant chooses to vote in person at the time of completing his application. The address given shall be
184 (i) the address of the applicant on file in the registration records; (ii) the address at which he will be
185 located while absent from his county or city; or (iii) the address at which he will be located while
186 temporarily confined due to a disability or illness. No ballot shall be sent to, or in care of, any other
187 person; and

188 4. In the case of a person, or the spouse or dependent of a person, who is on active duty as a
189 member of the uniformed services as defined in § 24.2-452, the branch of service to which he or the
190 spouse belongs, and his or the spouse's rank, grade, or rate, and service identification number; or

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

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

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

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

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

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

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

207 12. In the case of a person who, in the regular and orderly course of his business, profession, or
208 occupation, will be at his place of work and commuting to and from his home to his place of work for
209 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his
210 business or employer, address of his place of work, and hours he will be at the workplace and
211 commuting on election day; or

212 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in
213 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in
214 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first
215 responder; or

216 14. In the case of a person who has been designated by a political party, independent candidate, or
217 candidate in a primary election to be a representative of the party or candidate inside a polling place on
218 the day of the election pursuant to subsection C of § 24.2-604 and § 24.2-639, the fact that he is so
219 designated and the name of the party chairman or candidate who designated him; or

220 15. In the case of a person who is a resident of an assisted living facility as that term is defined in
221 § 63.2-100, the fact that he resides in an assisted living facility.

222 **§ 24.2-712.1. Absentee voter precincts; assisted living facilities.**

223 A. Notwithstanding any other provision of law, the governing body of each county or city may
224 establish one or more absentee voter precincts to be located in assisted living facilities as that term is
225 defined in § 63.2-100 for the purpose of receiving, counting, and recording absentee ballots cast in the
226 county or city. The decision to establish any absentee voter precinct shall be made by the governing
227 body by ordinance; the ordinance shall state for which elections the precinct shall be used. The decision
228 to abolish any absentee voter precinct shall be made by the governing body by ordinance. Immediate
229 notification of either decision shall be sent to the State Board and the electoral board.

230 B. An absentee voter precinct established pursuant to this section shall be open for a minimum of
231 three hours between noon and 5:00 p.m. on the first and second Saturday immediately preceding all
232 general elections, except May general elections held in towns, and on the Saturday immediately
233 preceding any primary election, May general election held in a town, or special election.

234 C. Any registered voter who is eligible for an absentee ballot under subdivision 12 of § 24.2-700
235 may apply in person for an absentee ballot and vote in person such ballot at an absentee voter precinct
236 established pursuant to this section.

237 D. Except as otherwise provided for in this section, the provisions of § 24.2-712 and all provisions of
238 this chapter governing polling places shall apply to an absentee voter precinct established pursuant to
239 this section.