

12100427D

SENATE BILL NO. 82

Offered January 11, 2012

Prefiled January 9, 2012

A *BILL to amend and reenact §§ 24.2-101 and 24.2-706 of the Code of Virginia, relating to absentee voting; duties of general registrars and electoral boards.*

Patron—McWaters

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That §§ 24.2-101 and 24.2-706 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"Entrance of polling place" or "entrance to polling place" means an opening in the wall used for ingress to a structure.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Military-overseas ballot" means (i) a federal write-in absentee ballot; (ii) a ballot specifically prepared or distributed for use by a voter eligible to vote absentee under subdivision 2 of § 24.2-700 in accordance with this title; or (iii) an absentee ballot cast by a voter voting absentee under subdivision 2 of § 24.2-700 in accordance with this title, including an early ballot authorized in § 24.2-702.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Person with a disability" means a person with a disability as defined by the Virginians with Disabilities Act (§ 51.5-1 et seq.).

INTRODUCED

SB82

59 "Polling place" means the structure that contains the one place provided for each precinct at which
60 the qualified voters who are residents of the precinct may vote.

61 "Precinct" means the territory designated by the governing body of a county, city, or town to be
62 served by one polling place.

63 "Primary" or "primary election" means an election held for the purpose of selecting a candidate to be
64 the nominee of a political party for election to office.

65 "Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and
66 who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or
67 subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers
68 to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified
69 voter unless his civil rights have been restored by the Governor or other appropriate authority. No
70 person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as
71 provided by law.

72 "Qualified voter in a town" means a person who is a resident within the corporate boundaries of the
73 town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified
74 voter.

75 "Referendum" means any election held pursuant to law to submit a question to the voters for
76 approval or rejection.

77 "Registered voter" means any person who is maintained on the Virginia voter registration system. All
78 registered voters shall be maintained on the Virginia voter registration system with active status unless
79 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For
80 purposes of applying the precinct size requirements of § 24.2-307, calculating election machine
81 requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election
82 district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306,
83 and determining the number of signatures required for candidate and voter petitions, "registered voter"
84 shall include only persons maintained on the Virginia voter registration system with active status.

85 "Registration records" means all official records concerning the registration of qualified voters and
86 shall include all records, lists, applications, and files, whether maintained in books, on cards, on
87 automated data bases, or by any other legally permitted record-keeping method.

88 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires
89 both domicile and a place of abode. To establish domicile, a person must live in a particular locality
90 with the intention to remain. A place of abode is the physical place where a person dwells.

91 "Special election" means any election that is held pursuant to law to fill a vacancy in office or to
92 hold a referendum.

93 "State Board" or "Board" means the State Board of Elections.

94 "Virginia voter registration system" or "voter registration system" means the automated central
95 record-keeping system for all voters registered within the Commonwealth that is maintained as provided
96 in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

97 § 24.2-706. Duty of general registrar and electoral board on receipt of application; statement of voter.

98 On receipt of an application for an absentee ballot, the general registrar shall enroll the name and
99 address of each registered applicant on an absentee voter applicant list that shall be maintained in the
100 office of the general registrar with a file of the applications of the listed applicants. The list shall be
101 available for inspection and copying and the applications shall be available for inspection only by any
102 registered voter during regular office hours. Upon request and for a reasonable fee, the State Board of
103 Elections shall provide an electronic copy of the absentee voter applicant list to any political party or
104 candidate. Such list shall be used only for campaign and political purposes. Any list made available for
105 inspection and copying under this section shall contain the post office box address in lieu of the
106 residence street address for any individual who has furnished at the time of registration or subsequently,
107 in addition to his street address, a post office box address pursuant to subsection B of § 24.2-418.

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

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

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

120 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, at the time when the printed ballots for the election are available, send by the deadline set out in § 24.2-612, 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 § 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. § 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 government 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 by the deadline set forth in § 24.2-612 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 by the deadline set forth in § 24.2-612 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. The voted ballot shall be returned to the electoral board as otherwise required by this chapter.

182 *The State Board of Elections shall provide instructions and procedures to enable secure submission*
183 *of voted military-overseas ballots by fax or other electronic format. In the event that a ballot is*
184 *requested on or before but not sent by the deadline for making absentee ballots available under*
185 *§ 24.2-612, the electoral board shall send the blank ballot, instructions, and return envelope form to the*
186 *voter by the most expedited delivery service available or by electronic format if the voter so requests.*

187 *The instructions for electronic transmission and submission shall be in the form prescribed by the*
188 *State Board. The State Board may modify the Statement of Voter provided in subdivision 2 to make it*
189 *compatible with electronic submission. The statement must include language to the following effect: "I*
190 *understand that an election official must view my electronic submission to determine my eligibility to*
191 *vote and place my voted ballot in a secure container."*

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

194 *The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this*
195 *section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole*
196 *or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur,*
197 *or (iii) the campaign committee or the appropriate district political party chairman of such candidate.*
198 *Any person who fails to discharge his duty as provided in this section through willful neglect of duty*
199 *and with malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of*
200 *§ 24.2-1001.*