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SENATE BILL NO. 181

Offered January 8, 2014

Prefiled January 2, 2014

A BILL to amend and reenact § 24.2-706 of the Code of Virginia, relating to absentee voting and procedures; secure return of voted military-overseas ballots.

Patron—McWaters

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-706 of the Code of Virginia is amended and reenacted as follows:

§ 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 shall be available for inspection and copying and the applications shall be available for inspection only by any registered voter during regular office hours. Upon request and for a reasonable fee, the State Board of Elections shall provide an electronic copy of the absentee voter applicant list to any political party or candidate. Such list shall be used only for campaign and political purposes. Any list made available for inspection and copying under this section shall contain the post office box address in lieu of the residence street address for any individual who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address pursuant to subsection B of § 24.2-418.

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, 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 either first-class or expedited mailing or delivery from the United States Postal Service or other commercial delivery provider, 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"

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59 For elections held after January 1, 2004, instead of the envelope containing the above oath, an
60 envelope containing the standard oath prescribed by the presidential designee under § 101(b)(7) of the
61 Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff et seq.) shall be sent to
62 voters who are qualified to vote absentee under that Act.

63 3. A properly addressed envelope for the return of the ballot to the electoral board by mail or by the
64 applicant in person.

65 4. Printed instructions for completing the ballot and statement on the envelope and returning the
66 ballot.

67 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
68 42 U.S.C. § 15483 of the Help America Vote Act of 2002 to show identification the first time the voter
69 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
70 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
71 statement, government check, paycheck or other government document that shows the name and address
72 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
73 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
74 a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall provide
75 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
76 subsection B of § 24.2-653 and this section.

77 5. For any voter entitled to vote absentee under the Uniformed and Overseas Citizens Absentee
78 Voting Act (42 U.S.C. § 1973ff et seq.), information provided by the State Board specific to the voting
79 rights and responsibilities for such citizens, or information provided by the registrar specific to the status
80 of the voter registration and absentee ballot application of such voter, may be included.

81 The envelopes and instructions shall be in the form prescribed by the State Board.

82 If the applicant makes his application to vote in person under § 24.2-701 at a time when the printed
83 ballots for the election are available, the general registrar or the secretary of the electoral board, on the
84 determination of the qualifications of the applicant to vote, shall provide to the applicant the items set
85 forth in subdivisions 1 through 4, and no item shall be removed by the applicant from the office of the
86 general registrar or the secretary of the electoral board. On the request of the applicant, made no later
87 than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general
88 registrar or the secretary may send the items set forth in subdivisions 1 through 4 to the applicant by
89 mail, obtaining a certificate of mailing.

90 If the applicant states as the reason for his absence on election day any of the reasons set forth in
91 subdivision 2 of § 24.2-700, the electoral board, at the time when the printed ballots for the election are
92 available, shall mail by the deadline set forth in § 24.2-612 or deliver in person to the applicant in the
93 office of the secretary or general registrar the items as set forth in subdivisions 1 through 4 and, if
94 necessary, an application for registration. A certificate of mailing shall not be required. The electoral
95 board, at the time when the printed ballots for the election are available, shall send by the deadline set
96 forth in § 24.2-612 the blank ballot, the form for the envelope for returning the marked ballot, and
97 instructions to the voter by electronic transmission if the voter so requests. *In the event that a ballot is*
98 *requested on or before, but not sent by, the deadline for making absentee ballots available under*
99 *§ 24.2-612, the electoral board shall send the blank ballot, instructions, and return envelope form to the*
100 *voter by the most expedited delivery service available or by electronic transmission if the voter so*
101 *requests.* The voted ballot shall be returned to the electoral board as otherwise required by this chapter.

102 *For purposes of this paragraph, a "uniformed-service voter" means an individual who is qualified to*
103 *vote and is a member of the active or reserve components of the Army, Navy, Air Force, Marine Corps,*
104 *or Coast Guard of the United States who is on active duty, or a member on activated status of the*
105 *National Guard. The State Board shall provide instructions, procedures, and services to enable*
106 *uniformed-service voters outside of the United States, as that term is defined in subdivision 10 of*
107 *§ 24.2-452, to return voted military-overseas ballots securely by electronic mail or secure facsimile for*
108 *elections occurring on or after January 1, 2015. The instructions for electronic transmission and*
109 *submission shall be in the form prescribed by the State Board. The State Board may modify the*
110 *Statement of Voter provided in subdivision 2 to make it compatible with electronic submission. The State*
111 *Board shall, in consultation with local boards of election and general registrars, develop and update*
112 *annually security measures to ensure the accuracy and integrity of absentee voting by electronic means*
113 *under this section. Such security measures shall be reviewed and approved annually by the Chief*
114 *Information Officer of the Commonwealth. Such security measures shall (a) reasonably secure the*
115 *transmission, processing, and storage of voter data from interception and unauthorized access and (b)*
116 *develop a procedure for security review after each election based on evaluation of the number or other*
117 *discrepancy in the votes received electronically.*

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

120 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. Any person who fails to discharge his duty as provided in this section through willful neglect of duty and with malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of § 24.2-1001.

2. That the State Board of Elections shall work with the Department of Defense to facilitate the use of U.S. Department of Defense smart cards issued to active-duty military personnel, commonly referred to as Common Access Cards or CAC cards, or similar personal identity determination cards issued by the U.S. Department of Defense, to authenticate and enable active-duty overseas military to return absentee ballots electronically pursuant to the provisions of this act.

3. That the State Board of Elections shall convene a working group to assist with the development of the initial security measures required by this act for the secure return of voted military-overseas ballots by electronic mail or fax. Such working group shall include the Chief Information Officer of the Commonwealth, the Chief Security Officer of the Commonwealth, representation from local boards of elections and general registrars, and anyone else deemed necessary by the State Board of Elections.