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HOUSE BILL NO. 237

Offered January 13, 2016

Prefiled December 29, 2015

A BILL to amend and reenact §§ 24.2-700, 24.2-701, 24.2-706, 24.2-707, and 24.2-709 of the Code of Virginia, relating to absentee voting by electronic means; overseas military voters.

Patrons—Lingamfelter and Freitas

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-700, 24.2-701, 24.2-706, 24.2-707, and 24.2-709 of the Code of Virginia are amended and reenacted as follows:

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

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

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

2. Any person who is (i) a member of a uniformed service, as defined in § 24.2-452, on active duty, (ii) temporarily residing outside of the United States, or (iii) the spouse or dependent residing with any person listed in clause (i) or (ii), and who will be absent on the day of the election from the county or city in which he is entitled to vote. *A person qualifying to vote absentee under clause (i) shall be entitled to receive and return his absentee ballot by electronic means as authorized by the State Board;*

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

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

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

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

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

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

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

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

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

§ 24.2-701. Application for absentee ballot.

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

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.

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

63 Any application received before the ballots are printed shall be held and processed as soon as the
64 printed ballots for the election are available.

65 For the purposes of this chapter, the general registrar's office shall be open a minimum of eight
66 hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately
67 preceding all general elections, except May general elections, and on the Saturday immediately
68 preceding any primary election, May general election, or special election.

69 Unless the applicant is disabled, all applications for absentee ballots shall be signed by the applicant
70 who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that to
71 the best of his knowledge and belief the facts contained in the application are true and correct and that
72 he has not and will not vote in the election at any other place in Virginia or in any other state. If the
73 applicant is unable to sign the application, a person assisting the applicant will note this fact on the
74 applicant signature line and provide his signature, name, and address.

75 B. Applications for absentee ballots shall be completed in the following manner:

76 1. An application completed in person shall be made not less than three days prior to the election in
77 which the applicant offers to vote and completed only in the office of the general registrar. The
78 applicant shall sign the application in the presence of a registrar. The applicant shall provide one of the
79 forms of identification specified in subsection B of § 24.2-643. Any applicant who does not show one of
80 the forms of identification specified in subsection B of § 24.2-643 shall be offered a provisional ballot
81 under the provisions of § 24.2-653. The State Board of Elections shall provide instructions to the general
82 registrar for the handling and counting of such provisional ballots pursuant to subsection B of
83 § 24.2-653 and this section.

84 2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile
85 device if one is available to the office of the general registrar or the office of the State Board if a
86 device is not available locally, or other means. The application shall be on a form furnished by the
87 registrar or, if made under subdivision 2 of § 24.2-700, may be on a federal postcard application
88 prescribed pursuant to 52 U.S.C. § 20301(b)(2). The federal postcard application may be accepted the
89 later of (i) 12 months before an election or (ii) the day following any election held in the twelfth month
90 prior to the election in which the applicant is applying to vote. The application shall be made to the
91 appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the
92 applicant offers to vote.

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

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

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

101 3. The complete address to which the ballot is to be sent directly to the applicant, unless the
102 application is made in person at a time when the printed ballots for the election are available and the
103 applicant chooses to vote in person at the time of completing his application. The address given shall be
104 (i) the address of the applicant on file in the registration records; (ii) the address at which he will be
105 located while absent from his county or city; or (iii) the address at which he will be located while
106 temporarily confined due to a disability or illness. No ballot shall be sent to, or in care of, any other
107 person;

108 4. *For an applicant who is on active duty as a member of a uniformed service as defined in*
109 *§ 24.2-452 and is making his application under subdivision 2 of § 24.2-700, whether he chooses to*
110 *receive and return the ballot by electronic means as authorized by the State Board. A person who*
111 *selects to receive and return the ballot by electronic means shall provide his military email address to*
112 *which the ballot is to be sent and shall not be required to provide the information prescribed by*
113 *subdivision 3; and*

114 5. In the case of a person, or the spouse or dependent of a person, who is on active duty as a
115 member of ~~the a~~ uniformed ~~services~~ service as defined in § 24.2-452, the branch of service to which he
116 or the spouse belongs; or

117 6. In the case of a student, or the spouse of a student, who is attending a school or institution of
118 learning, the name of the school or institution of learning; or

119 7. In the case of any duly registered person with a disability, as defined in § 24.2-101, who is
120 unable to go in person to the polls on the day of the election because of his disability, illness, or

pregnancy, that he is a person with a disability, illness, or pregnancy; or

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

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

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

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

11. 12. In the case of a person who is unable to go to the polls on the day of election because of an obligation occasioned by his religion, that he has an obligation occasioned by his religion; or

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

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

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

§ 24.2-706. Duty of general registrar 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 Department 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 Department of Elections shall prescribe procedures for 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. In reviewing the application for an absentee ballot, the general registrar 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 general registrar 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 or other evidence 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 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

182 RESIDENCE IN VIRGINIA including the house number, street name or rural route address, city, zip
183 code); that I received the enclosed ballot(s) upon application to the registrar of such county or city; that
184 I opened the envelope marked 'ballot within' and marked the ballot(s) in the presence of the witness,
185 without assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am
186 returning the form required to report how I was assisted); that I then sealed the ballot(s) in this
187 envelope; and that I have not voted and will not vote in this election at any other time or place.

188 Signature of Voter _____

189 Date _____

190 Signature of witness _____"

191 For elections held after January 1, 2004, instead of the envelope containing the above oath, an
192 envelope containing the standard oath prescribed by the presidential designee under § 101(b)(7) of the
193 Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20301 et seq.) shall be sent to
194 voters who are qualified to vote absentee under that Act.

195 3. A properly addressed envelope for the return of the ballot to the general registrar by mail or by
196 the applicant in person.

197 4. Printed instructions for completing the ballot and statement on the envelope and returning the
198 ballot.

199 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
200 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
201 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
202 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
203 statement, government check, paycheck or other government document that shows the name and address
204 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
205 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
206 a provisional ballot under the provisions of § 24.2-653. The Department of Elections shall provide
207 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
208 subsection B of § 24.2-653 and this section.

209 5. For any voter entitled to vote absentee under the Uniformed and Overseas Citizens Absentee
210 Voting Act (52 U.S.C. § 20301 et seq.), information provided by the Department of Elections specific to
211 the voting rights and responsibilities for such citizens, or information provided by the registrar specific
212 to the status of the voter registration and absentee ballot application of such voter, may be included.

213 The envelopes and instructions shall be in the form prescribed by the Department of Elections.

214 If the applicant makes his application to vote in person under § 24.2-701 at a time when the printed
215 ballots for the election are available, the general registrar, on the determination of the qualifications of
216 the applicant to vote, shall provide to the applicant the items set forth in subdivisions 1 through 4, and
217 no item shall be removed by the applicant from the office of the general registrar. On the request of the
218 applicant, made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant
219 offers to vote, the general registrar may send the items set forth in subdivisions 1 through 4 to the
220 applicant by mail, obtaining a certificate or other evidence of mailing.

221 If the applicant states as the reason for his absence on election day any of the reasons set forth in
222 *makes his application under* subdivision 2 of § 24.2-700, the general registrar *shall*, at the time when the
223 printed ballots for the election are available, ~~shall mail and~~ by the deadline set forth in § 24.2-612 ~~or~~
224 ~~deliver in person to the applicant in the office of the general registrar, mail~~ the items as set forth in
225 subdivisions 1 through 4 and; ~~if necessary~~, an application for registration, *if necessary*. A certificate or
226 other evidence of mailing shall not be required. The general registrar, ~~at the time when the printed~~
227 ~~ballots for the election are available, shall send by the deadline set forth in § 24.2-612 the blank ballot,~~
228 ~~the form for the envelope for returning the marked ballot, and instructions to the voter by electronic~~
229 ~~transmission if the voter so requests. The voted ballot may deliver such items to the applicant in person~~
230 ~~in the office of the general registrar. If the applicant is a member of a uniformed service on active duty~~
231 ~~and selected on his application to receive his ballot by electronic means, the general registrar shall~~
232 ~~provide the items set forth in subdivisions 1 through 4 by electronic means as authorized by the State~~
233 ~~Board. The State Board may modify the items in subdivisions 1 through 4, including the Statement of~~
234 ~~Voter, to make the items compatible with electronic transmission and submission. The State Board shall~~
235 ~~prescribe the procedures for the secure transmission of absentee ballots by electronic means. All voted~~
236 ~~ballots shall be returned to the general registrar as otherwise required by this chapter.~~

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

239 The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this
240 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole
241 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur,
242 or (iii) the campaign committee or the appropriate district political party chairman of such candidate.
243 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.

§ 24.2-707. How ballots marked and returned.

A. On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the general registrar, and (e) seal that envelope and mail it to the office of the general registrar or deliver it personally to the general registrar. A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name. A voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope shall not be considered a material omission and shall not render his ballot void. For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

Failure to follow the procedures set forth in this subsection shall render the applicant's ballot void.

B. A voter who is a member of a uniformed service on active duty and selected on his application to receive his ballot by electronic means shall mark his ballot and return the voted ballot by electronic means as authorized by the State Board. The State Board shall prescribe the procedures for the secure submission of voted ballots by electronic means.

C. An applicant who makes his application to vote in person at a time when the printed ballots for the election are available shall follow the same procedure set forth ~~above~~ in subsection A except that he may complete the procedure in person in the office of the general registrar, or at another location or locations in the county or city approved by the electoral board, before a registrar, or, if a ballot is cast at that time, before the officers of election appointed by the electoral board. Any such location shall be in a public building owned or leased by the city, the county, or a town within the county, with adequate facilities for the protection of all records concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar for the purpose of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. 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 may send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a certificate or other evidence of mailing.

Failure to follow the procedures set forth ~~above~~ in this subsection shall render the applicant's ballot void.

D. The general registrar of any county or city using a central absentee voting precinct may provide for the casting of absentee ballots on voting equipment prior to election day by applicants who are voting in person. The Department of Elections shall prescribe procedures for the use of voting equipment. The procedures shall provide for the casting of absentee ballots prior to election day by in-person applicants on voting equipment which has been certified, and is currently approved, by the Department of Elections. The procedures shall be applicable and uniformly applied by the Department of Elections to all jurisdictions using comparable voting equipment. At least two officers of election, one representing each political party, shall be present during all hours that absentee voting is available at any location at which absentee ballots are cast prior to election day.

The requirement that officers of election shall be present if ballots are cast on voting equipment prior to election day shall not be applicable when the voting equipment is located in the office of the general registrar and the general registrar or an assistant registrar is present.

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

A. Any ballot returned to the office of the general registrar in any manner except as prescribed by law shall be void. Absentee ballots shall be returned to the general registrar before the closing of the polls. The registrar receiving the ballot shall (i) seal the ballot in an envelope with the statement or declaration of the voter, or both, attached to the outside and (ii) mark on each envelope the date, time, and manner of delivery. No returned absentee ballot shall be deemed void because the inner envelope containing the voted ballot is imperfectly sealed so long as the outside envelope containing the ballot

305 envelope is sealed. *The registrar receiving a ballot by electronic means as authorized by the State*
306 *Board shall process the ballot in accordance with the procedures approved by the State Board. Such*
307 *procedures shall ensure, to the extent feasible, ballot anonymity.*

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

318 C. Notwithstanding the provisions of clause (i) of subsection B of § 24.2-427, an absentee ballot
319 returned by a voter in compliance with § 24.2-707 and this section who dies prior to the counting of
320 absentee ballots on election day shall be counted pursuant to the procedures set forth in this chapter if
321 the voter is found to have been entitled to vote at the time that he returned the ballot.

322 **2. That the State Board of Elections shall prescribe the standards for the secure transmission and**
323 **return, storage, and processing of ballots by electronic means pursuant to this act, including**
324 **methods for authentication and the encryption of ballots. The State Board of Elections shall work**
325 **with the U.S. Department of Defense to facilitate the use of personal identity determination cards,**
326 **such as Common Access Cards, issued by the Department of Defense as part of ensuring the**
327 **security and integrity of absentee voting by electronic means pursuant to the provisions of this act.**

328 **3. That the provisions of this act shall become effective on January 1, 2017.**