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HOUSE BILL NO. 1121

Offered January 13, 2016

Prefiled January 13, 2016

A BILL to amend and reenact §§ 24.2-701, 24.2-706, 24.2-709.1, 24.2-710, and 24.2-711 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-653.2, relating to absentee voting; signature requirement; verification of signatures by officers of election.

Patron—Anderson

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-701, 24.2-706, 24.2-709.1, 24.2-710, and 24.2-711 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-653.2 as follows:

§ 24.2-653.2. Handling of absentee ballots with provisional status.

A. The provisions of this section shall apply to absentee ballots given provisional status pursuant to § 24.2-711.

B. Within 24 hours of the close of polls, the general registrar shall send notice by certified mail to any voter whose absentee ballot was given provisional status of his ballot's provisional status. Such notice shall (i) explain why his absentee ballot was given provisional status, (ii) inform him that the electoral board will make a determination of his absentee ballot's validity, and (iii) advise him of the time and place for the electoral board's meeting.

C. Notwithstanding the provisions of § 24.2-653, an electoral board shall be required to meet one week from the date of an election to determine the validity of all absentee ballots with provisional status. This meeting shall be conducted in the same manner as a meeting prescribed by § 24.2-653.

§ 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.

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, and on the Saturday immediately preceding any primary election, May general election, 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. *The applicant, if able to sign the application, shall sign the application by his own handwriting or by electronic means, if such electronic signature is created by using a cursor, stylus, or similar device moved by the applicant to capture his signature.* 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. The applicant shall provide one of the

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59 forms of identification specified in subsection B of § 24.2-643. Any applicant who does not show one of
60 the forms of identification specified in subsection B of § 24.2-643 shall be offered a provisional ballot
61 under the provisions of § 24.2-653. The State Board of Elections shall provide instructions to the general
62 registrar for the handling and counting of such provisional ballots pursuant to subsection B of
63 § 24.2-653 and this section.

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

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

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

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

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

88 4. In the case of a person, or the spouse or dependent of a person, who is on active duty as a
89 member of the uniformed services as defined in § 24.2-452, the branch of service to which he or the
90 spouse belongs; or

91 5. In the case of a student, or the spouse of a student, who is attending a school or institution of
92 learning, the name of the school or institution of learning; or

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

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

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

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

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

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

107 12. In the case of a person who, in the regular and orderly course of his business, profession, or
108 occupation, will be at his place of work and commuting to and from his home to his place of work for
109 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his
110 business or employer and hours he will be at the workplace and commuting on election day; or

111 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in
112 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in
113 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first
114 responder; or

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

119 **§ 24.2-706. Duty of general registrar on receipt of application; statement of voter.**

120 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.

The general registrar shall reject any application for an absentee ballot that was not signed by hand or by the use of a cursor, stylus, or similar device that is moved by a person to capture his signature.

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 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 (52 U.S.C. § 20301 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 general registrar 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 52 U.S.C. § 21083 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

182 a provisional ballot under the provisions of § 24.2-653. The Department of Elections shall provide
183 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
184 subsection B of § 24.2-653 and this section.

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

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

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

197 If the applicant states as the reason for his absence on election day any of the reasons set forth in
198 subdivision 2 of § 24.2-700, the general registrar, at the time when the printed ballots for the election
199 are available, shall mail by the deadline set forth in § 24.2-612 or deliver in person to the applicant in
200 the office of the general registrar the items as set forth in subdivisions 1 through 4 and, if necessary, an
201 application for registration. A certificate or other evidence of mailing shall not be required. The general
202 registrar, at the time when the printed ballots for the election are available, shall send by the deadline
203 set forth in § 24.2-612 the blank ballot, the form for the envelope for returning the marked ballot, and
204 instructions to the voter by electronic transmission if the voter so requests. The voted ballot shall be
205 returned to the general registrar as otherwise required by this chapter.

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

208 The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this
209 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole
210 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur,
211 or (iii) the campaign committee or the appropriate district political party chairman of such candidate.
212 Any person who fails to discharge his duty as provided in this section through willful neglect of duty
213 and with malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of
214 § 24.2-1001.

215 **§ 24.2-709.1. Alternative procedures for counting absentee ballots.**

216 Each general registrar shall take one or more of the following measures as needed to expedite
217 counting absentee ballots returned by mail before election day: (i) examine the ballot envelopes to verify
218 completion of the required voter affirmation; (ii) mark the pollbook, or the absentee voter applicant list
219 if the pollbook is not available, that the voter has voted; or (iii) open the sealed ballot envelopes and
220 insert the ballots in optical scan counting equipment or other secure ballot container without initiating
221 any ballot count totals. If the general registrar ~~proceeds to open sealed ballot envelopes~~ chooses to
222 ~~proceed~~ as provided in clause (ii) or (iii), ~~at least two~~ *three* officers of election, ~~at least one~~
223 representing each political party, shall be present ~~during all hours when a general registrar uses the~~
224 ~~expedited procedures authorized in this section and the ballot shall be processed in accordance with the~~
225 ~~provisions of § 24.2-711.~~ No person present while sealed ballot envelopes are opened and ballots are
226 inserted into counting equipment or other secure ballot container pursuant to clause (iii) shall disclose
227 any information concerning the ballots.

228 **§ 24.2-710. Further duties of electoral board and general registrar; absentee voter applicant**
229 **lists.**

230 On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of receipt
231 in the appropriate column opposite the name and address of the voter on the absentee voter applicant list
232 maintained in the general registrar's office. A board member or registrar shall deposit the return
233 envelope and the unopened ballot envelope in an appropriate container provided for the purpose, in
234 which they shall remain until the day of the election.

235 On the day before the election, the general registrar shall (i) make out in triplicate on a form
236 prescribed by the State Board the absentee voter applicant list containing the names of all persons who
237 applied for an absentee ballot through the third day before the election and (ii) by noon on the day
238 before the election, deliver two copies of the list to the electoral board. The general registrar shall make
239 out a supplementary list containing the names of all persons voting absentee in person pursuant to
240 §§ 24.2-705.1 and 24.2-705.2, or applying to vote absentee pursuant to § 24.2-705, for delivery by 5:00
241 p.m. on the day before the election. The supplementary list shall be deemed part of the absentee voter
242 applicant list and shall be prepared and delivered in accordance with the instructions of the State Board.
243 The general registrar shall maintain one copy of the list in his office for two years as a public record

open for inspection upon request during regular office hours.

No later than 5:00 p.m. on the day before the election, the general registrar shall deliver to the electoral board copies of the voter registration application for each voter who applied for and was mailed an absentee ballot. The copies of such applications shall be sorted by precinct and placed in separate containers.

On the day before the election, the electoral board shall deliver one copy of the list provided to it by the general registrar to the chief officer of election for each precinct. The list shall be attested by the secretary of the electoral board who shall be responsible for the delivery of the attested lists to the chief officer of election for each precinct.

Absentee ballots shall be accepted only from voters whose names appear on the attested list.

Before the polls close on the day of the election, the electoral board shall deliver the absentee ballot containers *and containers with copies of voter registration applications* to, and obtain a receipt from, the officers of election at each appropriate precinct. Any ballot returned to the electoral board or general registrar prior to the closing of the polls, but after the ballot container has been delivered, shall be delivered in an appropriate *ballot* container to the officers of election at each appropriate precinct. The *ballot* containers *and containers with copies of voter registration applications* shall be sealed prior to delivery to the officers ~~and~~. *The ballot containers* shall contain the sealed absentee ballots, the accompanying return envelopes, and a copy of the absentee voter applicant list for each precinct.

If the county or city uses a central absentee voter precinct pursuant to § 24.2-712, the lists and containers shall be delivered, as provided in this section, to the officers of election for the absentee precinct.

Before noon on the day following the election, the general registrar shall deliver all applications for absentee ballots for the election, under seal, to the clerk of the circuit court for the county or city, except that the general registrar may retain all applications for absentee ballots until the electoral board has ascertained the results of the election pursuant to § 24.2-671, and has determined the validity of and counted all provisional ballots pursuant to § 24.2-653 *and all absentee ballots with provisional status pursuant to § 24.2-653.2*, at which point all applications shall then be delivered, under seal, to the clerk of the circuit court for the county or city. The clerk shall retain the sealed applications with the counted ballots.

The secretary of the electoral board shall deliver all absentee ballots received after the election to the clerk of the circuit court.

Upon request, the State Board shall provide an electronic copy of the absentee voter applicant list to any political party or candidate. Such lists shall be used only for campaign and political purposes. In no event shall any list furnished under this section contain (i) any voter's social security number or any part thereof, (ii) any voter's day and month of birth, or (iii) the residence address of any voter who has provided a post office box address to be used on public lists pursuant to § 24.2-418.

§ 24.2-711. Duties of officers of election.

A. 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.

B. Immediately after the close of the polls, the container of absentee ballots *and container of voter registration applications* 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 and checked as if the voter were voting in person. *The signature on the ballot envelope shall be compared with the signature on the voter's voter registration application. If three officers of election, including one representing each political party, agree the signatures match, the voter shall be found to be entitled to vote. However, if less than three officers of election do not agree that the signatures match, the unopened ballot envelope and corresponding voter registration application shall be sealed in an envelope marked AB-Provisional Status, to be counted in accordance with the provisions of § 24.2-653.2.*

1. If the voter is found entitled to vote, an officer shall mark the voter's name on the pollbook with the first or next consecutive number from the voter count form, or shall enter that the voter has voted if the pollbook is in electronic form. The ballot envelope shall then be opened, and the ballot deposited in

305 the ballot container without being unfolded or examined.

306 2. If the voter is found not entitled to vote, the unopened envelope shall be rejected. An unopened
307 envelope shall not be rejected on the sole basis of a voter's failure to provide (i) in the statement on the
308 back of the unopened envelope his full middle name or his middle initial, unless the voter also failed to
309 provide his full first and last name. ~~An unopened envelope shall not be rejected on the sole basis of a~~
310 ~~voter's failure to provide, or (ii) the date, or any part of the date, including the year, on which he signed~~
311 the statement printed on the back of the envelope. A majority of the officers shall write and sign a
312 statement of the cause for rejection on the envelope or on an attachment to the envelope.

313 C. When all ballots have been accounted for and either voted ~~or~~, rejected, *or given provisional*
314 *status*, the officers shall place (i) the empty ballot envelopes, the return envelopes, and any rejected
315 ballot envelopes, in one envelope provided for the purpose *and (ii) the AB-Provisional Status envelopes*
316 *in another envelope provided for the purpose* and seal and deliver ~~it both~~ with the ballots cast at the
317 election as provided in this title.

318 D. *The chief officer of election shall notify the general registrar of any voter whose absentee ballot*
319 *was given provisional status.*