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HOUSE BILL NO. 1428

Offered January 11, 2017

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A *BILL to amend and reenact §§ 24.2-701, 24.2-706, and 24.2-707 of the Code of Virginia, relating to absentee voting; applications and ballots; photo identification required.*

Patrons—Fowler, Adams, Cline, Cole, Edmunds, Fariss, Jones, Landes, Marshall, R.G., O'Bannon and Wright; Senator: Ruff

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

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

§ 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. 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 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 general registrar 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 52 U.S.C. § 20301(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 applicant, except any applicant eligible for an absentee ballot pursuant to subdivision 2 or 4 of § 24.2-700, shall submit with his application a copy of one of the forms of identification specified in subsection B of § 24.2-643.* The application shall be made to the appropriate registrar no later than 5:00 p.m. on the seventh day prior to

58 the election in which the applicant offers to vote.

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

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

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

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

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

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

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

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

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

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

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

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

93 12. In the case of a person who, in the regular and orderly course of his business, profession, or
94 occupation, will be at his place of work and commuting to and from his home to his place of work for
95 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his
96 business or employer and hours he will be at the workplace and commuting on election day; or

97 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in
98 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in
99 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first
100 responder; or

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

105 **§ 24.2-706. Duty of general registrar on receipt of application; list of absentee voter applicants;**
106 **statement of voter.**

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

117 No list or application containing an individual's social security number, or any part thereof, or the
118 individual's day and month of birth, shall be made available for inspection or copying by anyone. The
119 Department of Elections shall prescribe procedures for general registrars to make the information in the

120 lists and applications available in a manner that does not reveal social security numbers or parts thereof,
121 or an individual's day and month of birth.

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

124 C. The general registrar shall note on each application received whether the applicant is or is not a
125 registered voter. In reviewing the application for an absentee ballot, the general registrar shall not reject
126 the application of any individual because of an error or omission on any record or paper relating to the
127 application, if such error or omission is not material in determining whether such individual is qualified
128 to vote absentee.

129 D. If the application has been properly completed and signed and the applicant is a registered voter
130 of the precinct in which he offers to vote, the general registrar shall, at the time when the printed ballots
131 for the election are available, send by the deadline set out in § 24.2-612, obtaining a certificate or other
132 evidence of either first-class or expedited mailing or delivery from the United States Postal Service or
133 other commercial delivery provider, or deliver to him in person in the office of the registrar, the
134 following items and nothing else:

135 1. An envelope containing the folded ballot, sealed and marked "Ballot within. Do not open except
136 in presence of a witness."

137 2. An envelope, with printing only on the flap side, for resealing the marked ballot, on which
138 envelope is printed the following:

139 "Statement of Voter."

140 "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016,
141 that my FULL NAME is _____ (last, first, middle); that I am now or have been at some time
142 since last November's general election a legal resident of _____ (STATE YOUR LEGAL
143 RESIDENCE IN VIRGINIA including the house number, street name or rural route address, city, zip
144 code); that I received the enclosed ballot(s) upon application to the registrar of such county or city; that
145 I opened the envelope marked 'ballot within' and marked the ballot(s) in the presence of the witness,
146 without assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am
147 returning the form required to report how I was assisted); that I then sealed the ballot(s) in this
148 envelope; and that I have not voted and will not vote in this election at any other time or place.

149 Signature of Voter _____

150 Date _____

151 Signature of witness _____"

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

156 3. *An envelope for enclosing a copy of the identification or documentation required by this
157 subdivision, with instructions to the voters.*

158 *For federal elections held after January 1, 2004, for any voter who is required by 52 U.S.C.
159 § 21083(b) of the Help America Vote Act of 2002 to show identification the first time the voter votes in
160 a federal election in the state, the printed instructions shall direct the voter to enclose in the envelope to
161 submit with his ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current
162 utility bill, bank statement, government check, paycheck, or other government document that shows the
163 name and address of the voter.*

164 *For any other voter, except one who is entitled to vote absentee under subdivision 2 or 4 of
165 § 24.2-700, in any election, the printed instructions shall direct the voter to enclose in the envelope to
166 submit with his ballot one of the forms of identification specified in subsection B of § 24.2-643. The
167 instructions shall include a list of those acceptable forms of identification.*

168 *The absentee ballot of a voter who does not submit with his ballot one of the forms of identification
169 or documentation required by this subdivision shall be counted as a provisional ballot under the
170 provisions of § 24.2-653.*

171 4. A properly addressed envelope for the return of the ballot to the general registrar by mail or by
172 the applicant in person.

173 4. 5. Printed instructions for completing the ballot and statement on the envelope and returning the
174 ballot.

175 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
176 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
177 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
178 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
179 statement, government check, paycheck or other government document that shows the name and address
180 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of

181 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. 6. 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 E. If the applicant makes his application to vote in person under § 24.2-701 at a time when the
 191 printed ballots for the election are available, the general registrar, on the determination of the
 192 qualifications of the applicant to vote, shall provide to the applicant the items set forth in subdivisions D
 193 1 through, 2, 4, and 5, and no item shall be removed by the applicant from the office of the general
 194 registrar. On the request of the applicant, made no later than 5:00 p.m. on the seventh day prior to the
 195 election in which the applicant offers to vote, the general registrar may send the items set forth in
 196 subdivisions D 1 through 4 5 to the applicant by mail, obtaining a certificate or other evidence of
 197 mailing.

198 F. If the applicant states as the reason for his absence on election day any of the reasons set forth in
 199 subdivision 2 of § 24.2-700, the general registrar, at the time when the printed ballots for the election
 200 are available, shall mail by the deadline set forth in § 24.2-612 or deliver in person to the applicant in
 201 the office of the general registrar the items as set forth in subdivisions D 1 through, 2, 4, and 5 and, if
 202 necessary, an application for registration. A certificate or other evidence of mailing shall not be required.
 203 If the applicant requests that such items be sent by electronic transmission, the general registrar, at the
 204 time when the printed ballots for the election are available but not later than the deadline set forth in
 205 § 24.2-612, shall send by electronic transmission the blank ballot, the form for the envelope for
 206 returning the marked ballot, and instructions to the voter. Such materials shall be sent using the official
 207 email address or fax number of the office of the general registrar published on the Department of
 208 Elections website. The State Board of Elections may prescribe by regulation the format of the email
 209 address used for transmitting ballots to eligible voters. A general registrar may also use electronic
 210 transmission facilities provided by the Federal Voting Assistance Program. The voted ballot shall be
 211 returned to the general registrar as otherwise required by this chapter.

212 G. When the statement prescribed in ~~subdivision 2~~ subsection D has been properly completed and
 213 signed by the registered voter and witnessed, his ballot shall not be subject to challenge pursuant to
 214 § 24.2-651.

215 H. The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this
 216 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole
 217 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur,
 218 or (iii) the campaign committee or the appropriate district political party chairman of such candidate.
 219 Any person who fails to discharge his duty as provided in this section through willful neglect of duty
 220 and with malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of
 221 § 24.2-1001.

222 **§ 24.2-707. How ballots marked and returned by mail; cast in person; cast on voting**
 223 **equipment.**

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

228 B. After the voter has marked his absentee ballot, he shall ~~(a)~~ (i) enclose the ballot in the envelope
 229 provided for that purpose; ~~(b)~~; (ii) seal the envelope; ~~(c)~~; (iii) fill in and sign the statement printed on
 230 the back of the envelope in the presence of a witness, who shall sign the same envelope; ~~(d)~~; (iv)
 231 enclose a copy of the required identification or documentation in the envelope provided for that
 232 purpose; (v) enclose the ballot envelope, the identification envelope, and any required assistance form
 233 within the envelope directed to the general registrar; and ~~(e)~~ (vi) seal that envelope and mail it to the
 234 office of the general registrar or deliver it personally to the general registrar. A voter's failure to provide
 235 in the statement on the back of the envelope his full middle name or his middle initial shall not be a
 236 material omission, rendering his ballot void, unless the voter failed to provide in the statement on the
 237 back of the envelope his full first and last name. A voter's failure to provide the date, or any part of the
 238 date, including the year, on which he signed the statement printed on the back of the envelope shall not
 239 be considered a material omission and shall not render his ballot void. A voter's failure to submit a copy
 240 of the required identification or documentation shall not be considered a material omission and shall
 241 not render his ballot void. However, such ballot shall be counted as a provisional ballot under the
 242 provisions of § 24.2-653. For purposes of this chapter, "mail" shall include delivery by a commercial

243 delivery service, but shall not include delivery by a personal courier service or another individual except
244 as provided by §§ 24.2-703.2 and 24.2-705.

245 C. An applicant who makes his application to vote in person at a time when the printed ballots for
246 the election are available shall follow the same procedure set forth above except that he may complete
247 the procedure in person in the office of the general registrar, or at another location or locations in the
248 county or city approved by the electoral board, before a registrar, or, if a ballot is cast at that time,
249 before the officers of election appointed by the electoral board. Any such location shall be in a public
250 building owned or leased by the city, the county, or a town within the county, with adequate facilities
251 for the protection of all records concerning the absentee voters, the absentee ballots, both voted and
252 unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or
253 leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for
254 an office of the general registrar. Such location shall be deemed the equivalent of the office of the
255 general registrar for the purpose of completing the application for an absentee ballot in person pursuant
256 to §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the
257 seventh day prior to the election in which the applicant offers to vote, the general registrar may send the
258 items set forth in subdivisions D 1 through 4 5 of § 24.2-706 to the applicant by mail, obtaining a
259 certificate or other evidence of mailing.

260 D. Failure to follow the procedures set forth ~~above~~ *in subsections B and C* shall render the
261 applicant's ballot void, *unless stated otherwise*.

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

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