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**SENATE BILL NO. 844**

Offered January 11, 2017

Prefiled November 23, 2016

*A BILL to amend and reenact §§ 24.2-612, 24.2-700, 24.2-701, 24.2-706, and 24.2-707 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-701.1, relating to absentee voting; no-excuse in-person available 21 days prior to elections.*

Patrons—Howell, Favola and McClellan; Delegates: Kory and Tyler

Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-612, 24.2-700, 24.2-701, 24.2-706, and 24.2-707 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-701.1 as follows:**

**§ 24.2-612. List of offices and candidates filed with Department of Elections and checked for accuracy; when ballots printed; number required.**

Immediately after the expiration of the time provided by law for a candidate for any office to qualify to have his name printed on the official ballot and prior to printing the ballots for an election, each general registrar shall forward to the Department of Elections a list of the county, city, or town offices to be filled at the election and the names of all candidates who have filed for each office. In addition, each general registrar shall forward the name of any candidate who failed to qualify with the reason for his disqualification. On that same day, the general registrar shall also provide a copy of the notice to each disqualified candidate. The notice shall be sent by email or regular mail to the address on the candidate's certificate of candidate qualification, and such notice shall be deemed sufficient. The Department of Elections shall promptly advise the general registrar of the accuracy of the list. The failure of any general registrar to send the list to the Department of Elections for verification shall not invalidate any election.

Each general registrar shall have printed the number of ballots he determines will be sufficient to conduct the election. Such determination shall be subject to the approval by the electoral board.

Notwithstanding any other provisions of this title, the Department of Elections may print or otherwise provide one statewide paper ballot style for each paper ballot style in use for presidential and vice-presidential electors for use only by persons eligible to vote for those offices only under § 24.2-402 or only for federal elections under § 24.2-453. The Department of Elections may apportion or authorize the printer or vendor to apportion the costs for these ballots among the localities based on the number of ballots ordered. Any printer employed by the Department of Elections shall execute the statement required by § 24.2-616. The Department of Elections shall designate a representative to be present at the printing of such ballots and deliver them to the appropriate general registrars pursuant to § 24.2-617. Upon receipt of such paper ballots, the electoral board or the general registrar shall affix the seal of the electoral board. Thereafter, such ballots shall be handled and accounted for, and the votes counted as the Department of Elections shall specifically direct.

The general registrar shall make printed ballots available for absentee voting *by mail* not later than 45 days prior to any election or within three business days of the receipt of a properly completed absentee ballot application, whichever is later. *The electoral board shall make printed ballots available for absentee voting in person not later than 21 days prior to any election.* In the case of a special election, excluding for federal offices, if time is insufficient to meet the applicable deadline established herein, then the general registrar shall make printed ballots available as soon after the deadline as possible. For the purposes of this chapter, making printed ballots available includes mailing of such ballots or electronic transmission of such ballots pursuant to § 24.2-706 to a qualified absentee voter who is eligible for an absentee ballot under subdivision 2 of § 24.2-700. Not later than five days after absentee ballots are made available, each general registrar shall report to the Department of Elections, in writing on a form approved by the Department of Elections, whether he has complied with the applicable deadline.

Only the names of candidates for offices to be voted on in a particular election district shall be printed on the ballots for that election district.

The general registrar shall send to the Department of Elections a statement of the number of ballots ordered to be printed, proofs of each printed ballot for verification, and copies of each final ballot. If the Department of Elections finds that, in its opinion, the number of ballots ordered to be printed by any general registrar is not sufficient, it may direct the general registrar to order the printing of a reasonable

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59 number of additional ballots.

60 **§ 24.2-700. Persons entitled to vote by mailed absentee ballot.**

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

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

66 2. Any person who is (i) a member of a uniformed service, as defined in § 24.2-452, on active duty,  
67 (ii) temporarily residing outside of the United States, or (iii) the spouse or dependent residing with any  
68 person listed in clause (i) or (ii), and who will be absent on the day of the election from the county or  
69 city in which he is entitled to vote;

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

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

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

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

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

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

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

89 10. Any person who is a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in  
90 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in  
91 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1; or

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

95 **§ 24.2-701. Application for mailed absentee ballot.**

96 A. The ~~State Board~~ *Department of Elections* shall furnish each general registrar with a sufficient  
97 number of applications for official absentee ballots. The registrars shall furnish applications to persons  
98 requesting them.

99 The ~~State Board~~ *Department of Elections* shall implement a system that enables eligible persons to  
100 request and receive an absentee ballot application electronically through the Internet. Electronic absentee  
101 ballot applications shall be in a form approved by the State Board.

102 Except as provided in § 24.2-703, a separate application shall be completed for each election in  
103 which the applicant offers to vote. An application for an absentee ballot may be accepted the later of (i)  
104 12 months before an election or (ii) the day following any election held in the twelfth month prior to  
105 the election in which the applicant is applying to vote.

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

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

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

116 Unless the applicant is disabled, all applications for absentee ballots shall be signed by the applicant  
117 who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that to  
118 the best of his knowledge and belief the facts contained in the application are true and correct and that  
119 he has not and will not vote in the election at any other place in Virginia or in any other state. If the  
120 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 An application for a mailed absentee ballot 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 Department of Elections 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 application shall be made to the appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote.

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

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

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

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

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

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

6. In the case of 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 the election because of his disability, illness, or pregnancy, that he is a person with a disability, illness, or pregnancy; or

7. 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. 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. 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. 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. 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. 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. 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. 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.

**§ 24.2-701.1. Absentee voting in person.**

A. Any registered voter may vote by absentee ballot in person in accordance with the provisions of this section in any election in which he is qualified to vote without providing a reason or making prior application for an absentee ballot. A registered voter voting by absentee ballot in person shall provide one of the forms of identification specified in subsection B of § 24.2-643. If he does not show one of the forms of identification specified in subsection B of § 24.2-643, he shall be offered a provisional ballot under the provisions of § 24.2-653. The Department shall provide information to the electoral boards on the handling and counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.

B. Absentee voting in person shall be available on the twenty-first day prior to any election and shall continue until 5:00 p.m. on the Saturday immediately preceding the election. Absentee voting in person shall be available during regular business hours. The electoral boards shall provide for absentee voting in person in the office of the general registrar or the secretary of the electoral board. For purposes of this chapter, such office shall be open a minimum of eight hours between the hours of 8:00 a.m. and 5 p.m. on the first and second Saturday immediately preceding a November general election and on the Saturday immediately preceding any primary election, May general election, or special election. At least two officers of election shall be present during all hours that absentee voting in person is available and shall represent the two major political parties, except in the case of a party primary, when they may represent the party conducting the primary.

C. Additional locations in the county or city approved by the electoral boards may be available for absentee voting in person. Any such location shall be in a public building owned or leased by the county, city, or town within the county and may be in a facility that is owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities or as an office of the general registrar. Any such location shall have adequate facilities for the protection of all records concerning the process of absentee voting in person, the voted and unvoted absentee ballots, and any voting systems in use at the location.

D. Absentee ballots cast in person may be cast on voting systems. The Department shall prescribe the procedures for use of voting systems. The procedures shall provide for absentee voting in person on voting systems that have been certified and are currently approved by the State Board. The procedures shall be applicable and uniformly applied by the Department to all localities using comparable voting systems. The requirement that two officers of election be present during the hours that absentee voting in person is available shall be not applicable when (i) the voting systems being used are located in the office of the general registrar or the secretary of the electoral board and (ii) an officer of election and the general registrar, an assistant registrar, or the secretary of the electoral board are present.

E. The Department shall include absentee ballots voted in person in its instructions for the preparation, maintenance, and reporting of ballots, pollbooks, records, and returns.

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

On receipt of an application for an absentee ballot or when processing a voter pursuant to § 24.2-701.1, 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 received. The list shall be available for inspection and copying and the applications for mailed ballots 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 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 a provisional ballot under the provisions of § 24.2-653. The Department of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.

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

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

If the applicant makes his application to vote in person under § 24.2-701 at a time when the printed ballots for the election are available, the general registrar, on the determination of the qualifications of the applicant to vote, shall provide to the applicant the items set forth in subdivisions 1 through 4, and no item shall be removed by the applicant from the office of the general registrar. 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 to the applicant by mail, obtaining a certificate or other evidence of mailing.

If the applicant states as the reason for his absence on election day any of the reasons set forth in subdivision 2 of § 24.2-700, the general registrar, at the time when the printed ballots for the election are available, shall mail by the deadline set forth in § 24.2-612 or deliver in person to the applicant in the office of the general registrar the items as set forth in subdivisions 1 through 4 and, if necessary, an application for registration. A certificate or other evidence of mailing shall not be required. If the applicant requests that such items be sent by electronic transmission, the general registrar, at the time

when the printed ballots for the election are available but not later than the deadline set forth in § 24.2-612, shall send by electronic transmission the blank ballot, the form for the envelope for returning the marked ballot, and instructions to the voter. Such materials shall be sent using the official email address or fax number of the office of the general registrar published on the Department of Elections website. The State Board of Elections may prescribe by regulation the format of the email address used for transmitting ballots to eligible voters. A general registrar may also use electronic transmission facilities provided by the Federal Voting Assistance Program. The voted ballot shall be returned to the general registrar as otherwise required by this chapter.

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

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.

#### **§ 24.2-707. How ballots marked and returned by mail.**

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.

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 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 shall render the applicant's ballot void.

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

367 registrar and the general registrar or an assistant registrar is present.