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SENATE BILL NO. 892

Offered January 11, 2017

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A BILL to amend and reenact §§ 24.2-701, 24.2-703, 24.2-705, 24.2-706, and 24.2-707 of the Code of Virginia, relating to absentee voting; deadline for requesting absentee ballot by means other than in person.

Patrons—Wexton; Delegates: Kory and Tyler

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-701, 24.2-703, 24.2-705, 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 application shall be made to the appropriate registrar no later than 5:00 p.m. on the ~~seventh~~ *eleventh* day prior to the election in which the applicant offers to vote.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

104 **§ 24.2-703. Application for absentee ballots for multiple elections for uniformed and overseas**
105 **voters.**

106 Any person who is eligible for a military-overseas ballot as defined in § 24.2-452 may file a single
107 application to receive ballots for all elections in which he is eligible to vote absentee. The application
108 shall be on a federal postcard application. An application from any person who is already registered or
109 who is eligible for late registration under § 24.2-419 that is received by the general registrar no later
110 than 5:00 p.m. on the ~~seventh~~ *eleventh* day prior to the election shall be considered a standing request
111 for absentee ballots through December 31 of the year following the calendar year of the date of the
112 application or another shorter period the voter specifies. In the event that a second or subsequent federal
113 postcard application is received from a voter, any previous applications shall be superseded and the
114 duration of the most recently received application shall apply.

115 The general registrar shall retain the application and process the applicant's request for an absentee
116 ballot for each election in accordance with procedures established by the State Board. The applicant
117 shall specify by party designation the primary ballots he is requesting.

118 If an official reply to the application or an absentee ballot sent to the applicant is returned as
119 undeliverable, no other ballots shall be sent. No ballot shall be sent to the applicant, and no voted ballot
120 received from the applicant shall be valid, (i) for any election held after the voter has notified the

registrar that the voter no longer wishes to be registered or (ii) after the registrar has received notification that the voter has registered to vote in another state.

§ 24.2-705. Emergency applications and absentee ballots for persons incapacitated or hospitalized.

Any person registered and otherwise qualified to vote who becomes incapacitated on or after the ~~seventh~~ *eleventh* day preceding an election may request at any time prior to 2:00 p.m. on the day preceding the election that an emergency absentee ballot application be delivered to him. A voter who becomes hospitalized on or after the fourteenth day preceding the election and who is unable, because of his condition, to request an absentee ballot earlier than the ~~seventh~~ *eleventh* day preceding the election may request at any time prior to 2:00 p.m. on the day before an election that an emergency absentee ballot be delivered to him in the hospital. For purposes of this section, "incapacitated" means hospitalized, ill and confined to his residence, bereaved by the death of a spouse, child, or parent, or otherwise incapacitated by an emergency which is found by the general registrar to justify providing an emergency ballot application; and "hospital" means a hospital as defined in § 32.1-123 or 37.2-100 and any comparable hospital in the District of Columbia or any state contiguous to Virginia.

On receipt of the request, the general registrar shall provide an emergency absentee ballot application to the incapacitated voter's designated representative who shall deliver the application to the voter. If the voter is hospitalized, the delivery shall be made to him at the hospital; and if the voter is otherwise incapacitated, the delivery shall be made to him at his current residence address as shown on the registration records. The representative shall be age eighteen or older and shall not be an elected official, a candidate for elected office, or the deputy, spouse, parent, or child of an elected official or candidate.

The application shall be on a form prescribed by the State Board and shall require the applicant (i) to state the cause of his incapacity, (ii) to state that he is unable to be present at the polls on election day, and that he was either incapacitated on or after the ~~seventh~~ *eleventh* day preceding the election or hospitalized on or after the fourteenth day preceding the election and unable to request the application earlier than the ~~seventh~~ *eleventh* day preceding the election, (iii) to designate a representative to receive, deliver and return the ballot, and (iv) to provide other information required by law for an absentee ballot application.

If the voter is hospitalized, a hospital administrative official, a licensed physician attending the applicant, or provider as defined in § 37.2-403, shall certify on the form to the hospitalization of the applicant and the applicant's inability to be present at the polls on election day. If the voter is ill and confined to his residence, a licensed physician, provider as defined in § 37.2-403, or an accredited religious practitioner attending the applicant shall certify on the form to the incapacity of the applicant and the applicant's inability to be present at the polls on election day. If the voter is bereaved, a licensed physician, an accredited religious practitioner, or a funeral service licensee (as defined in § 54.1-2800) shall certify on the form to the incapacity of the applicant and the applicant's inability to be present at the polls on election day. If the voter is otherwise incapacitated as determined by the general registrar, the general registrar shall certify on the form to the incapacity of the applicant and the applicant's inability to be present at the polls on election day. The applicant shall sign the application and 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. His signature shall be witnessed by the designated representative who shall sign and return the completed application to the office of the general registrar no later than 5:00 p.m. on the day preceding the election. For the purposes of this section, "accredited religious practitioner" means a person who has been trained in spiritual healing or the other healing arts and has been so accredited by a formal religious order.

On receipt of the completed application and a determination of the qualification of the applicant to vote, the general registrar shall provide, in accordance with the applicable provisions of this chapter, an absentee ballot to the designated representative for delivery to the incapacitated voter.

The incapacitated voter shall vote the absentee ballot as provided by law and mark it in the presence of the designated representative. The representative shall complete a statement, subject to felony penalties for making false statements pursuant to § 24.2-1016, that (i) he is the representative of the incapacitated voter; (ii) he personally delivered the ballot to the voter who applied for it; (iii) in his presence, the voter marked the ballot, the ballot was placed in the envelope provided, the envelope was sealed, and the statement on its reverse side was signed by the incapacitated voter; and (iv) the ballot was returned, under seal, to the general registrar at the registrar's office.

The ballot shall be counted only if the ballot is received by the general registrar prior to the close of polls, and the general registrar shall deliver the ballot to the officers of election at each appropriate precinct pursuant to § 24.2-710.

§ 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

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

190 No list or application containing an individual's social security number, or any part thereof, or the
191 individual's day and month of birth, shall be made available for inspection or copying by anyone. The
192 Department of Elections shall prescribe procedures for general registrars to make the information in the
193 lists and applications available in a manner that does not reveal social security numbers or parts thereof,
194 or an individual's day and month of birth.

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

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

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

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

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

212 "Statement of Voter."

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

222 Signature of Voter _____

223 Date _____

224 Signature of witness _____ "

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

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

231 4. Printed instructions for completing the ballot and statement on the envelope and returning the
232 ballot.

233 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
234 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
235 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
236 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
237 statement, government check, paycheck or other government document that shows the name and address
238 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
239 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
240 a provisional ballot under the provisions of § 24.2-653. The Department of Elections shall provide
241 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
242 subsection B of § 24.2-653 and this section.

243 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~~ *eleventh* 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; cast in person; cast on voting equipment.

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

305 leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for
306 an office of the general registrar. Such location shall be deemed the equivalent of the office of the
307 general registrar for the purpose of completing the application for an absentee ballot in person pursuant
308 to §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the
309 ~~seventh~~ *eleventh* day prior to the election in which the applicant offers to vote, the general registrar may
310 send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a
311 certificate or other evidence of mailing.

312 Failure to follow the procedures set forth above shall render the applicant's ballot void.

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

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