

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 1157

An Act to amend and reenact §§ 24.2-705 and 24.2-710 of the Code of Virginia and to repeal §§ 24.2-705.1 and 24.2-705.2 of the Code of Virginia, relating to absentee voting; emergency voting.

[H 242]

Approved April 11, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-705 and 24.2-710 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-705. Emergency applications and absentee ballots for individual emergencies.

A. Any person registered and otherwise qualified to vote who becomes incapacitated on or after the seventh day preceding an election may request at any time prior to 2:00 p.m. on the day preceding the election that ~~an~~ *he be permitted to vote by emergency absentee ballot application be delivered to him with the assistance of his designated representative.* 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 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. *The Department shall prescribe a form and the instructions for submitting such a request to the general registrar that shows that the voter requesting an emergency absentee ballot was unable to apply for an absentee ballot by the deadline due to his hospitalization or illness, or the hospitalization, illness, or death of a spouse, child, or parent, or other emergency found to justify receipt of an emergency absentee ballot.*

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 *designated by a voter for purposes of this subsection* shall be age eighteen 18 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 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 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 *requesting voter* shall sign the application form 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 form are true and correct. His signature shall be witnessed by the designated representative, who shall sign and return the completed application form 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. *If the requesting voter is blind or physically unable to sign the form, his designated representative shall write on the signature line that the voter is blind or unable to sign his form.*

On receipt of the completed application form and a determination of the qualification of the applicant

requesting voter 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~~ *requesting voter*.

The ~~incapacitated~~ *requesting voter* shall vote the absentee ballot as provided by law and mark it in the presence of the designated representative. The *designated* representative shall complete a statement, subject to felony penalties for making false statements pursuant to § 24.2-1016, that (i) he is the *designated* representative of the ~~incapacitated~~ *requesting 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~~ *requesting 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.

B. A qualified voter may vote absentee in person in the office of the general registrar through 2:00 p.m. on the day immediately preceding the election by complying with the requirements of § 24.2-643 and affirming that one of the following emergency circumstances will prevent him from voting on election day:

1. After 12:00 p.m. on the Saturday before the election, an obligation arose that requires the voter be absent from his county or city on election day for (i) his business, profession, or occupation; (ii) the hospitalization of the voter or a member of his immediate family; or (iii) the death of a member of his immediate family. For purposes of this subdivision, "immediate family" means the child, grandchild, parent, grandparent, legal guardian, sibling, or spouse of the voter.

2. The voter is an officer of election who was assigned after 12:00 p.m. on the Saturday before the election to work in a precinct other than his own on election day.

C. The Commissioner of Elections may act administratively to facilitate absentee voting by qualified voters who are emergency workers or utility workers or who otherwise respond to and offer assistance to an area in which a state of emergency has been declared by an appropriate authority. These administrative actions may include central issuance and acceptance of absentee ballots for federal and state elections using the systems and procedures developed for voters who are members of a uniformed service.

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

On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of receipt in the appropriate column opposite the name and address of the voter on the absentee voter applicant list maintained in the general registrar's office. A board member or registrar shall deposit the return envelope and the unopened ballot envelope in an appropriate container provided for the purpose, in which they shall remain until the day of the election, unless the registrar opts to open sealed ballot envelopes in order to expedite the counting of absentee ballots in accordance with § 24.2-709.1.

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

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 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 container to the officers of election at each appropriate precinct. The containers shall be sealed prior to delivery to the officers and 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, 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.

2. That §§ 24.2-705.1 and 24.2-705.2 of the Code of Virginia are repealed.