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SENATE BILL NO. 43

Offered January 8, 2020

Prefiled November 18, 2019

A BILL to amend and reenact §§ 24.2-407, 24.2-418, 24.2-706, as it is currently effective and as it shall become effective, and 24.2-710 of the Code of Virginia, relating to absentee voting; prohibiting release of absentee voter applicant list.

Patrons—Spruill; Delegate: Kory

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-407, 24.2-418, 24.2-706, as it is currently effective and as it shall become effective, and 24.2-710 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-407. Statement for persons receiving lists of persons registered or voting; penalties.

Any person receiving lists pursuant to § 24.2-405, *or* 24.2-406, ~~24.2-706, or 24.2-710~~ shall sign the following statement:

"I understand that the lists requested are the property of the State Board of Elections of the Commonwealth of Virginia, and I hereby state or agree, subject to felony penalties for making false statements pursuant to § 24.2-1016, that (i) I am a person authorized by § 24.2-405, *or* 24.2-406, ~~24.2-706, or 24.2-710~~ of the Code of Virginia to receive a copy of the lists described; (ii) the lists will be used only for the purposes prescribed and for no other use; and (iii) I will not permit the use or copying of the lists by persons not authorized by the Code of Virginia to obtain them.

Signature of Purchaser _____."

§ 24.2-418. Application for registration.

A. Each applicant to register shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless physically disabled, he shall sign the application. The application to register shall be only on a form or forms prescribed by the State Board.

The form of the application to register shall require the applicant to provide the following information: full name; gender; date of birth; social security number, if any; whether the applicant is presently a United States citizen; address of residence in the precinct; place of last previous registration to vote; and whether the applicant has ever been adjudicated incapacitated and disqualified to vote or convicted of a felony, and if so, whether the applicant's right to vote has been restored. The form shall contain a statement that whoever votes more than once in any election in the same or different jurisdictions is guilty of a Class 6 felony. Unless directed by the applicant or as permitted in § 24.2-411.1 or 24.2-411.2, the registration application shall not be pre-populated with information the applicant is required to provide.

B. The form shall permit any individual, as follows shown in the following subdivisions, or member of his household, to furnish, in addition to his residence street address, a post office box address located within the Commonwealth to be included in lieu of his street address on the lists of registered voters and persons who voted, which are furnished pursuant to §§ 24.2-405 and 24.2-406, *or* on voter registration records made available for public inspection pursuant to § 24.2-444, ~~or on lists of absentee voter applicants furnished pursuant to § 24.2-706 or 24.2-710~~. The voter shall comply with the provisions of § 24.2-424 for any change in the post office box address provided under this subsection.

1. Any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5 U.S.C. § 8331(20), but excluding officers whose duties relate to detention as defined in 5 U.S.C. § 8331(20);

2. Any party granted a protective order issued by or under the authority of any court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia;

3. Any party who has furnished a signed written statement by the party that he is in fear for his personal safety from another person who has threatened or stalked him, accompanied by evidence that he has filed a complaint with a magistrate or law-enforcement official against such other person;

4. Any party participating in the address confidentiality program pursuant to § 2.2-515.2;

5. Any active or retired federal or Virginia justice or judge and any active or retired attorney employed by the United States Attorney General or Virginia Attorney General; and

6. Any person who has been approved to be a foster parent pursuant to Chapter 9 (§ 63.2-900 et seq.) of Title 63.2.

C. If the applicant formerly resided in another state, the general registrar shall send the information contained in the applicant's registration application to the appropriate voter registration official or other

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59 authority of another state where the applicant formerly resided, as prescribed in subdivision 15 of
60 § 24.2-114.

61 **§ 24.2-706. (Effective for elections prior to the general election on November 3, 2020) Duty of**
62 **general registrar on receipt of application; statement of voter.**

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

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

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

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

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

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

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

95 "Statement of Voter."

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

105 Signature of Voter _____

106 Date _____

107 Signature of witness _____ "

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

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

114 4. Printed instructions for completing the ballot and statement on the envelope and returning the
115 ballot.

116 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
117 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
118 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
119 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
120 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.

§ 24.2-706. (Effective for elections beginning with the general election on November 3, 2020) Duty of general registrar on receipt of application; statement of voter.

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

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

B. 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.

When this statement 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.

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.

C. If the applicant completes his application in person under § 24.2-701 at a time when the printed ballots for the election are available, he may request that the general registrar send to him by mail the items set forth in subdivisions B 1 through 4, instead of casting the ballot in person. Such request shall be made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, and the general registrar shall send those items to the applicant by mail, obtaining a certificate or other evidence of mailing.

D. If the applicant states as the reason for his absence on election day any of the reasons set forth in subdivision A 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 B 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.

E. 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.

§ 24.2-710. 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

305 thereof, (ii) any voter's day and month of birth, or (iii) the residence address of any voter who has
306 provided a post office box address to be used on public lists pursuant to §- 24.2-418.