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HOUSE BILL NO. 2209

Offered January 13, 2021

Prefiled January 13, 2021

A *BILL to amend and reenact §§ 24.2-653.01 and 24.2-709.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-709.2, relating to absentee voting; signature match; provisional ballot status.*

Patrons—Gilbert, Cole, M.L., Fowler, Wilt and Wyatt

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-653.01 and 24.2-709.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-709.2 as follows:

§ 24.2-653.01. Provisional ballots; electoral boards to make determination as to validity.

A. The electoral board shall meet on the day following the election and determine whether each person having submitted a provisional vote pursuant to § 24.2-653 was entitled to do so as a qualified voter in the precinct in which he offered the provisional vote. In the case of persons voting provisionally pursuant to § 24.2-653.3, the electoral board shall determine of which district the person is a qualified voter. *In the case of persons voting provisionally pursuant to § 24.2-709.2, the electoral board shall compare the signature of the voter on the absentee ballot with the signature on the voter's cure affidavit.* At the meeting, the voter may request an extension of the determination of the provisional vote in order to provide information to prove that the voter is entitled to vote in the precinct pursuant to § 24.2-401. The electoral board shall have the authority to grant such extensions that it deems reasonable to determine the status of a provisional vote.

If the board is unable to determine the validity of all the provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot an extension, the meeting shall stand adjourned, not to exceed seven calendar days from the date of the election, until the board has determined the validity of all provisional ballots offered in the election.

B. The electoral board shall permit one authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election to remain in the room in which the determination is being made as an observer so long as he does not participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative, who is not himself a candidate or party chairman, shall present to the electoral board a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. If the county or city chairman is unavailable to sign such a written designation, such a designation may be made by the state or district chairman of the political party. However, no written designation made by a state or district chairman shall take precedence over a written designation made by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature, may be photocopied and such photocopy shall be as valid as if the copy had been signed.

Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), attendance at meetings of the electoral board to determine the validity of provisional ballots shall be permitted only for the authorized representatives provided for in this subsection, for the persons whose provisional votes are being considered and their representative or legal counsel, and for appropriate staff and legal counsel for the electoral board.

C. If (i) the electoral board determines that such person was not entitled to vote as a qualified voter ~~or district~~ in the precinct or district in which he offered the provisional vote, (ii) *the electoral board* is unable to determine his right to vote, ~~or (iii) the electoral board~~ has not been provided one of the forms of identification specified in subsection B of § 24.2-643, ~~or the signed statement that the voter is the named registered voter he claims to be, or a completed cure affidavit and copy of the person's form of identification, or (iv) a majority of the electoral board finds that the signature of the voter on the absentee ballot does not match the signature on the voter's cure affidavit, the envelope containing his ballot shall not be opened and his vote shall not be counted. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional vote was not counted.~~

The provisional vote shall be counted if ~~(i)~~ (a) such person is entitled to vote in the precinct

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59 pursuant to § 24.2-401 ~~or (ii)~~, (b) the Department of Elections or the voter presents proof that indicates
60 the voter submitted an application for registration to a state-designated voter registration agency or the
61 voter's information was transmitted by the Department of Motor Vehicles to the Department of Elections
62 pursuant to § 24.2-411.3 prior to the close of registration pursuant to § 24.2-416 and the registrar
63 determines that the person was qualified for registration based upon the application for registration
64 submitted by the person pursuant to subsection B of § 24.2-652, *or (c) a majority of the electoral board*
65 *finds that the signature of the voter on the absentee ballot matches the signature on the cure affidavit.*

66 If the electoral board determines that such person was entitled to vote, the name of the voter shall be
67 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and
68 the ballot shall be placed in a ballot container without any inspection further than that provided for in
69 § 24.2-646.

70 D. On completion of its determination, the electoral board shall proceed to count such ballots and
71 certify the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671.
72 No adjustment shall be made to the statement of results for the precinct in which the person offered to
73 vote. However, any voter who cast a provisional ballot and is determined by the electoral board to have
74 been entitled to vote shall have his name included on the list of persons who voted that is submitted to
75 the Department of Elections pursuant to § 24.2-406.

76 E. The certification of the results of the count together with all ballots and envelopes, whether open
77 or unopened, and other related material shall be delivered by the electoral board to the clerk of the
78 circuit court and retained by him as provided for in §§ 24.2-668 and 24.2-669.

79 **§ 24.2-709.1. Processing of absentee ballots received before election day.**

80 ~~Each~~ *Upon receipt of an absentee ballot returned by mail before election day, each general registrar*
81 *shall take one or more of the following measures as needed to expedite counting absentee ballots*
82 *returned by mail before election day: (i) examine the ballot envelopes to verify completion of that the*
83 *required voter affirmation; (ii) has been completed and to compare the signature of the voter on the*
84 *ballot envelope with the signature on the application for the absentee ballot completed by the voter or*
85 *the signature on file in the voter's registration record. If the signature on the ballot envelope matches*
86 *the signature on the application for the absentee ballot or on file in the registration record, the general*
87 *registrar shall mark the pollbook, or the absentee voter applicant list if the pollbook is not available,*
88 *that the voter has voted; ~~or (iii) and may open the sealed ballot envelopes envelope and insert the ballots~~*
89 *ballot in optical scan counting equipment or other secure ballot container without initiating any ballot*
90 *count totals. If the general registrar proceeds to open sealed ballot envelopes as provided in clause (iii)*
91 *pursuant to this section, at least two officers of election, one representing each political party, shall be*
92 *present during all hours when a general registrar uses the expedited procedures authorized in this*
93 *section. No person present while sealed ballot envelopes are opened and ballots are inserted into*
94 *counting equipment or other secure ballot container pursuant to clause (iii) shall disclose any*
95 *information concerning the ballots.*

96 *If the signature on the ballot envelope is missing or does not match the signature on the application*
97 *for the absentee ballot or on file in the registration record, the general registrar shall proceed in*
98 *accordance with the provisions of § 24.2-709.2.*

99 **§ 24.2-709.2. Absentee ballots; missing or invalid signatures.**

100 A. A mailed absentee ballot that is missing the signature of the voter on the voter affirmation
101 statement or that has a signature that does not match the signature on the application for the absentee
102 ballot submitted by the voter or on file in the voter's registration record shall be handled and processed
103 as a provisional ballot, and the voter shall be entitled to complete and submit a cure affidavit, along
104 with a copy of a form of identification containing his name, photograph, and signature, in order for his
105 ballot to be counted.

106 B. The general registrar shall promptly notify the voter of his absentee ballot's provisional status by
107 email, text message, or telephone call and shall direct the voter to the cure affidavit on the official
108 website of the county or city. If the absentee ballot was returned on or before the seventh day
109 immediately preceding the election, the general registrar shall also notify the voter by first class mail.
110 The voter shall have until noon on the third day following the election to submit his completed cure
111 affidavit and a copy of a form of identification containing his name, photograph, and signature.

112 C. Each county or city shall make available on its official website the cure affidavit, which shall be
113 on a form prescribed by the State Board of Elections and shall provide the voter the opportunity to
114 affirm that the ballot was submitted by him, that the ballot is his ballot, and that he is registered and
115 qualified to vote in such election.

116 D. The Department of Elections shall provide instructions to the general registrars and electoral
117 boards for the handling, processing, and counting of ballots pursuant to this section.