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SENATE BILL NO. 1097

Offered January 13, 2021

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A BILL to amend and reenact §§ 24.2-702.1, 24.2-704, 24.2-706, and 24.2-707 of the Code of Virginia, relating to absentee voting; witness signature not required.

Patrons—Favola, McClellan and Surovell; Delegates: Hope, Kory and Willett

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-702.1, 24.2-704, 24.2-706, and 24.2-707 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-702.1. Federal write-in absentee ballots.

A. Notwithstanding any other provision of this title, a covered voter, as defined in § 24.2-452, may use a federal write-in absentee ballot in any election. Such ballot shall be submitted and processed in the manner provided by the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20301 et seq.) and this article.

B. Notwithstanding any other provision of this title, a federal write-in absentee ballot submitted pursuant to subsection A shall be considered valid for purposes of simultaneously satisfying both an absentee ballot application and a completed absentee ballot, provided that the ballot is received no later than the deadline for the return of absentee ballots as provided in § 24.2-709 for the election in which the voter offers to vote, and the application contains the following information: (i) the voter's signature; however, if the voter is unable to sign, the person assisting the voter will note this fact in the voter signature box; (ii) the voter's printed name; (iii) the county or city in which he is registered and offers to vote; (iv) the residence address at which he is registered to vote; and (v) his current military or overseas address; and (vi) the signature of a witness who shall sign the same application.

C. This section shall not be construed to require that an absentee ballot be sent to the absentee voter on receipt of a federal write-in absentee ballot unless the voter has also submitted an absentee ballot application pursuant to § 24.2-701.

§ 24.2-704. Applications and ballots for persons requiring assistance in voting; penalty.

The application for an absentee ballot shall provide space for the applicant to indicate that he will require assistance to vote his absentee ballot by reason of blindness, disability, or inability to read or write. On receipt of an application from an applicant marked to indicate he will require assistance, the general registrar shall deliver, with the items required by § 24.2-706, the voter assistance form furnished by the State Board pursuant to § 24.2-649. The voter and any person assisting him shall complete the form by signing the request for assistance and statement required of the assistant. If the voter is unable to sign the request, the witness person assisting him will note this fact on the line for signature of voter. The provisions of § 24.2-649 shall apply to absentee voting and assistance for absentee voters. Any person who willfully violates the provisions of this section or § 24.2-649 in providing assistance to a person who is voting absentee shall be guilty of a Class 5 felony.

§ 24.2-706. 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.

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

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

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

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

74 "Statement of Voter."

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

84 Signature of Voter _____

85 Date _____

86 Signature of witness _____ "

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

91 When this statement has been properly completed and signed by the registered voter ~~and witnessed~~,
92 his ballot shall not be subject to challenge pursuant to § 24.2-651.

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

95 4. Printed instructions for completing the ballot and statement on the envelope and returning the
96 ballot.

97 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
98 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
99 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
100 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
101 statement, government check, paycheck or other government document that shows the name and address
102 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
103 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
104 a provisional ballot under the provisions of § 24.2-653.01. The Department of Elections shall provide
105 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
106 § 24.2-653.01 and this section.

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

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

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

118 D. If the applicant is a covered voter, as defined in § 24.2-452, the general registrar, at the time
119 when the printed ballots for the election are available, shall mail by the deadline set forth in § 24.2-612
120 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.

§ 24.2-707. 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.

Failure to follow the procedures set forth in this section shall render the applicant's ballot void.