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HOUSE BILL NO. 1141

Offered January 13, 2022

A BILL to amend and reenact §§ 24.2-706, 24.2-707, 24.2-709, and 24.2-709.1 of the Code of Virginia, and to repeal § 24.2-707.1 of the Code of Virginia, relating to absentee voting; return of absentee ballots; drop-off locations.

Patron—Walker

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-706, 24.2-707, 24.2-709, and 24.2-709.1 of the Code of Virginia are amended and reenacted as follows:

§ 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.

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.

C. 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 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

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59 envelope containing the standard oath prescribed by the presidential designee under § 101(b)(7) of the
60 Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20301 et seq.) shall be sent to
61 voters who are qualified to vote absentee under that Act.

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

64 3. An envelope, properly addressed and postage prepaid, for the return of the ballot to the general
65 registrar by mail or by the applicant in person, ~~or to a drop-off location.~~

66 4. Printed instructions for completing the ballot and statement on the envelope and returning the
67 ballot. ~~Such instructions shall include information on the sites of all drop-off locations in the county or~~
68 ~~city.~~

69 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
70 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
71 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
72 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
73 statement, government check, paycheck or other government document that shows the name and address
74 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
75 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
76 a provisional ballot under the provisions of § 24.2-653.01. The Department of Elections shall provide
77 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
78 § 24.2-653.01 and this section.

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

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

84 D. The general registrar may contract with a third party for the printing, assembly, and mailing of
85 the items set forth in subsection C. The general registrar shall provide to the contractor in a timely
86 manner the names, addresses, precincts, and ballot styles of voters requesting an absentee ballot by mail.
87 The vendor shall provide to the general registrar a report of the voters to whom the absentee ballot
88 materials have been sent.

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

95 F. If the applicant is a covered voter, as defined in § 24.2-452, the general registrar, at the time
96 when the printed ballots for the election are available, shall mail by the deadline set forth in § 24.2-612
97 or deliver in person to the applicant in the office of the general registrar the items as set forth in
98 subdivisions C 1 through 4 and, if necessary, an application for registration. A certificate or other
99 evidence of mailing shall not be required. If the applicant requests that such items be sent by electronic
100 transmission, the general registrar, at the time when the printed ballots for the election are available but
101 not later than the deadline set forth in § 24.2-612, shall send by electronic transmission the blank ballot,
102 the form for the envelope for returning the marked ballot, and instructions to the voter. Such materials
103 shall be sent using the official email address or fax number of the office of the general registrar
104 published on the Department of Elections website. The State Board of Elections may prescribe by
105 regulation the format of the email address used for transmitting ballots to eligible voters. A general
106 registrar may also use electronic transmission facilities provided by the Federal Voting Assistance
107 Program. The voted ballot shall be returned to the general registrar as otherwise required by this chapter.

108 G. The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this
109 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole
110 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur,
111 or (iii) the campaign committee or the appropriate district political party chairman of such candidate.
112 Any person who fails to discharge his duty as provided in this section through willful neglect of duty
113 and with malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of
114 § 24.2-1001.

115 § 24.2-707. How ballots marked and returned.

116 A. On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the
117 sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644
118 and 24.2-646 without assistance and without making known how he marked the ballot, except as
119 provided by § 24.2-704.

120 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. 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. A voter's failure to have a witness sign the absentee ballot return envelope for any election held during a declared state of emergency related to a communicable disease of public health threat shall not be considered a material omission and shall not render his ballot void.

B. A mailed absentee ballot shall be returned ~~(i)~~ by mail to the office of the general registrar, ~~(ii) or~~ by the voter in person to the general registrar, ~~or (iii) to a drop-off location established pursuant to § 24.2-707.1.~~ For purposes of this subsection, "mail" includes a delivery by a commercial delivery service but does not include delivery by a personal courier service or other individual except as provided by §§ 24.2-703.2 and 24.2-705.

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

§ 24.2-709. Ballot to be returned in manner prescribed by law.

A. Any ballot returned to the office of the general registrar ~~or to a drop-off location~~ in any manner except as prescribed by law shall be void. Absentee ballots shall be returned to the general registrar ~~or to a drop-off location~~ before the closing of the polls. ~~Any voter who is in line to return an absentee ballot at a drop-off location by 7:00 p.m. on the day of the election shall be permitted to deposit his absentee ballot.~~ The registrar receiving the ballot shall (i) seal the ballot in an envelope with the statement or declaration of the voter, or both, attached to the outside and (ii) mark on each envelope the date, time, and manner of delivery. No returned absentee ballot shall be deemed void because (a) the inner envelope containing the voted ballot is imperfectly sealed so long as the outside envelope containing the ballot envelope is sealed or (b) it is not returned sealed in the outside envelope so long as it is returned sealed in the inner envelope.

B. Notwithstanding the provisions of subsection A, any absentee ballot (i) returned to the general registrar after the closing of the polls on election day but before noon on the third day after the election and (ii) postmarked on or before the date of the election shall be counted pursuant to the procedures set forth in this chapter if the voter is found entitled to vote. For purposes of this subsection, a postmark shall include any other official indicia of confirmation of mailing by the United States Postal Service or other postal or delivery service.

C. Notwithstanding the provisions of subsection A, any absentee ballot (i) received after the close of the polls on any election day, (ii) received before 5:00 p.m. on the second business day before the State Board meets to ascertain the results of the election pursuant to this title, (iii) requested on or before but not sent by the deadline for making absentee ballots available under § 24.2-612, and (iv) cast by a covered voter, as defined in § 24.2-452, shall be counted pursuant to the procedures set forth in this chapter if the voter is found entitled to vote. The electoral board shall prepare an amended certified abstract, which shall include the results of such ballots, and shall deliver such abstract to the State Board by the business day prior to its meeting pursuant to this title, and shall deliver a copy of such abstract to the general registrar to be available for inspection when his office is open for business.

D. Notwithstanding the provisions of clause (i) of subsection B of § 24.2-427, an absentee ballot returned by a voter in compliance with § 24.2-707 and this section who dies prior to the counting of absentee ballots on election day shall be counted pursuant to the procedures set forth in this chapter if the voter is found to have been entitled to vote at the time that he returned the ballot.

§ 24.2-709.1. Processing returned absentee ballots before election day; cure process.

A. On receipt of an absentee ballot returned in person or by mail to the office of the general registrar ~~or to a drop-off location~~ before election day, the general registrar shall mark the date of receipt in the voter's record and shall examine the ballot envelope to verify completion of the required voter affirmation. A voter affirmation statement shall not be deemed to be incomplete on the sole basis of the voter's failure to provide (i) his full name or his middle initial, as long as the voter provided his full first and last name, or (ii) the date, or any part of the date, including the year, on which he signed the statement.

B. If the voter affirmation has been completed as required, the general registrar may open the sealed ballot envelope and insert the ballot in optical scan counting equipment or other secure ballot container without initiating any ballot count totals. If a general registrar does not choose to do so, the sealed ballot envelope shall be deposited into a secure container provided for such purpose, in which it shall remain until the general registrar initiates the process of opening the sealed ballot envelopes deposited into the secure container and inserting such ballots into optical scan counting equipment without

182 initiating any ballot count totals. Such process shall be at the general registrar's discretion at any time
183 prior to the seventh day immediately preceding the election but shall be mandatory beginning on the
184 seventh day immediately preceding the election.

185 At least two officers of election, one representing each political party, shall be present during all
186 hours when sealed ballot envelopes are opened as authorized in or required by this subsection. No
187 person present while sealed ballot envelopes are opened and ballots are inserted into counting equipment
188 shall disclose any information concerning the ballots.

189 In the event that circumstances prevent a general registrar from complying with the provisions of this
190 subsection, such failure shall not be grounds for contesting the election pursuant to Article 2 (§ 24.2-803
191 et seq.) of Chapter 8 and shall not invalidate the absentee ballots.

192 C. For any absentee ballot received by the Friday immediately preceding the day of the election, if
193 the general registrar finds during the examination of the ballot envelope that the required voter
194 affirmation was not correctly or completely filled out or that a procedure required by § 24.2-707 was not
195 properly followed, and such error or failure would render the ballot void by law, the general registrar
196 shall enter into the voter's record in the voter registration system that the absentee ballot has an issue
197 requiring correction in order for it to be counted. This information shall be included on any absentee
198 voter applicant list provided pursuant to subsection C of § 24.2-710.

199 Within three days of such finding, the registrar shall notify the voter in writing or by email of the
200 error or failure and shall provide information to the voter on how to correct the issue so his ballot may
201 be counted. The voter shall be entitled to make such necessary corrections before noon on the third day
202 after the election, and his ballot shall then be counted pursuant to the procedures set forth in this chapter
203 if he is found to be entitled to vote. No absentee ballot needing correction shall be delivered to the
204 officers of election at the appropriate precinct until the voter is provided the opportunity to make the
205 necessary corrections pursuant to this subsection.

206 The general registrar may issue a new absentee ballot to the voter if necessary and shall preserve the
207 first ballot with other spoiled ballots.

208 **2. That § 24.2-707.1 of the Code of Virginia is repealed.**