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HOUSE BILL NO. 439

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 24.2-706, 30-19.9, and 30-19.10 of the Code of Virginia, relating to absentee ballots; materials included; information on proposed constitutional amendments and referenda.

Patrons—VanValkenburg and Carr

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-706, 30-19.9, and 30-19.10 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 _____ "

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

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

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

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

70 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of
71 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
72 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
73 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
74 statement, government check, paycheck or other government document that shows the name and address
75 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
76 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as
77 a provisional ballot under the provisions of § 24.2-653.01. The Department of Elections shall provide
78 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to
79 § 24.2-653.01 and this section.

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

84 6. *Whenever there is a proposed constitutional amendment or statewide referendum to be voted on*
85 *by the voters, a copy of the explanation of the proposed amendment provided for in § 30-19.9 or a copy*
86 *of the information about the referendum provided for in § 30-19.10.*

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

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

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

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

112 G. The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this
113 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole
114 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur,
115 or (iii) the campaign committee or the appropriate district political party chairman of such candidate.
116 Any person who fails to discharge his duty as provided in this section through willful neglect of duty
117 and with malicious intent ~~shall be~~ *is* guilty of a Class 1 misdemeanor as provided in subsection A of
118 § 24.2-1001.

119 **§ 30-19.9. Distribution of information on proposed constitutional amendments to voters.**

120 When a proposed amendment is to be submitted to the people for their approval and ratification

pursuant to Article XII, Section 1 of the Constitution of Virginia and § 30-19, the State Board of Elections shall cause to be printed and distributed to the general registrar of each county and city, not less than ~~ninety~~ 90 days prior to the election, copies of an explanation of such amendment ~~to be~~. *This explanation shall be included with the items provided to absentee voters pursuant to subsection C of § 24.2-706*, placed at each registration site in sufficient number to provide a copy to any interested person, and ~~to election officials to be~~ posted at the polling places on the day of the election. The State Board shall post the explanation on its site on the Internet. It also shall cause such explanation to be published by paid advertisement in each daily newspaper with an average daily circulation of more than 50,000 in Virginia, and published in Virginia or in a contiguous state or district, once during the week preceding the final day for registration and once during the week preceding the election at which the proposed amendment is to be presented to the people.

The explanation shall contain the ballot question, the full text of the proposed constitutional amendment, and a statement of not more than 500 words on the proposed amendment. The explanation shall be presented in plain English, shall be limited to a neutral explanation, which may include a brief statement on the effect of a "yes" and "no" vote on the question but shall not include arguments submitted by either proponents or opponents of the proposal. The Division of Legislative Services, in consultation with such agencies of state government as may be appropriate, including the Office of Attorney General, shall prepare an explanation for any such proposal ~~which~~ *that* is approved by the General Assembly on first reference and referred to the next regular session of the General Assembly following the general election of members of the House of Delegates. The explanation shall be approved for distribution as to form and content by the Committee on Privileges and Elections of the first house of introduction of the resolution proposing the amendment as soon as practicable after enactment of the ballot question.

Any failure to comply with the provisions of this section shall not affect the validity of the constitutional amendment.

§ 30-19.10. Distribution of information on proposed questions to be submitted to voters.

Whenever a statewide referendum on a matter other than a constitutional amendment is submitted to the voters by the General Assembly, the State Board of Elections shall cause to be printed and distributed to the general registrar of each county and city, not less than ~~ninety~~ 90 days prior to the election, copies of information about the referendum ~~to be~~. *This information shall be included with the items provided to absentee voters pursuant to subsection C of § 24.2-706*, placed at each registration site in sufficient number to provide a copy to any interested person, and ~~to election officials to be~~ posted at the polling places on the day of the election. The State Board of Elections also shall cause the information to be published by paid advertisement in each daily newspaper with an average daily circulation of more than 50,000 in Virginia, and published in Virginia or in a contiguous state or district, once during the week preceding the final day for registration and once during the week preceding the referendum.

The information shall contain the ballot question and either (i) a neutral explanation of not more than 500 words on the proposed question; or (ii) for any bond referendum, a fiscal impact statement. The neutral explanation or the fiscal impact statement shall be presented in plain English, shall be limited to a neutral explanation, and shall not present arguments by either proponents or opponents of the proposal. The fiscal impact statement shall include descriptions of the need for and anticipated uses of the bond proceeds. The Division of Legislative Services, in consultation with such agencies of state government as may be appropriate, including the Office of the Attorney General, shall prepare the neutral explanation as part of the legislation authorizing the referendum. The staff of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations shall each prepare a fiscal impact statement for any bond referendum and assist the Division of Legislative Services in preparing the explanation as part of the legislation authorizing the referendum.

For purposes of this section and § 30-19.9, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession.

Any failure to comply with the provisions of this section shall not affect the validity of the statewide referendum.