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SENATE BILL NO. 1

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on February 24, 2012)

(Patron Prior to Substitute—Senator Martin)

A BILL to amend and reenact §§ 24.2-643, 24.2-651, 24.2-651.1, 24.2-653, and 24.2-701 of the Code of Virginia, relating to elections; voting procedures; voter identification requirements; provisional ballots.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-643, 24.2-651, 24.2-651.1, 24.2-653, and 24.2-701 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification.

A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him.

B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

If the voter's name is found on the pollbook, if he presents one of the forms of identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Each voter whose name has been marked on the pollbooks as present to vote and entitled to a ballot shall remain in the presence of the officers of election in the polling place until he has voted. If a line of voters who have been marked on the pollbooks as present to vote forms to await entry to the voting booths, the line shall not be permitted to extend outside of the room containing the voting booths and shall remain under observation by the officers of election.

Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote a provisional ballot after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. The State Board 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.

A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.

A voter may be accompanied into the voting booth by his child age 15 or younger.

C. If the current residence address stated by the voter is different from the address shown on the pollbook, the officer of election shall furnish the voter with a change of address form prescribed by the State Board. Upon its completion, the voter shall sign the prescribed form, subject to felony penalties for making false statements pursuant to § 24.2-1016, which the officer of election shall then place in an envelope provided for such forms for transmission to the general registrar who shall then transfer or cancel the registration of such voter pursuant to Chapter 4 (§ 24.2-400 et seq.) of this title.

D. At the time the voter is asked his full name and current residence address, the officer of election shall ask any voter for whom the pollbook indicates that an identification number other than a social security number is recorded on the Virginia voter registration system if he presently has a social security number. If the voter is able to provide his social security number, he shall be furnished with a voter registration form prescribed by the State Board to update his registration information. Upon its completion, the form shall be placed by the officer of election in an envelope provided for such forms for transmission to the general registrar. Any social security numbers so provided shall be entered by the general registrar in the voter's record on the voter registration system.

E. For federal elections held after January 1, 2004, this subsection shall apply in the case of any

60 voter who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of
61 2002 to show identification the first time the voter votes in a federal election in the state. At such
62 election, such voter shall present (i) a current and valid photo identification or (ii) a copy of a current
63 utility bill, bank statement, government check, paycheck or other government document that shows the
64 name and address of the voter. Such individual who desires to vote in person but who does not show
65 one of the forms of identification specified in this paragraph shall be offered a provisional ballot under
66 the provisions of § 24.2-653. Neither the identification requirements of subsection B of this section, nor
67 the identification requirements of subsection A of § 24.2-653, shall apply to such voter at that election.
68 The State Board of Elections shall provide instructions to the electoral boards for the handling and
69 counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.

70 § 24.2-651. Voter who is challenged; how challenge tried.

71 Any qualified voter may, and the officers of election shall, challenge the vote of any person who is
72 listed on the pollbook but is known or suspected not to be a qualified voter.

73 The individual making the challenge shall complete and sign the following statement on a form
74 provided by the State Board:

75 "I do hereby state, subject to penalties for hindering, intimidating, or interfering with a qualified
76 voter pursuant to § 24.2-607, that I am a qualified voter of this Commonwealth or an officer of election
77 and that, to the best of my knowledge, information, and belief, _____ is not a qualified voter
78 of this precinct by reason of (please check each of the following reasons that is applicable):

79 1. The named person is not a citizen of the United States;

80 2. The named person is not now 18 years of age or, in the case of a primary election or a special
81 election held on a date other than a general election date, will not reach the age of 18 before the next
82 general election;

83 3. The named person is not a resident of the Commonwealth (or, if he has not been a resident of the
84 Commonwealth within the preceding 30 days, he is attempting to vote for an office or issue other than
85 electors of President and Vice President of the United States);

86 4. The named person is not a resident of this precinct (or he has not been a resident of this precinct
87 since the second preceding general federal election and has not continued to be a resident of this county
88 or city and this congressional district);

89 5. The named person is not a resident of the town in the case of a town election;

90 6. The named person has been disqualified from voting by the Constitution and laws of the
91 Commonwealth and this disqualification has not been removed by proper authority;

92 7. The named person is not the identical person he represents himself to be; or

93 8. The named person has voted in this election at this or another voting place (state when and where
94 the named person previously voted in this election: _____)."

95 Upon receipt of a signed challenge from a qualified voter or officer of election, an officer of election
96 shall explain to the challenged voter the qualifications of a voter and may examine him concerning his
97 qualifications. The officers of election are hereby authorized to administer the necessary oath or
98 affirmation to any witness brought before them to testify as to the qualifications of any person offering
99 to vote.

100 If the person being challenged insists that he is qualified and the challenge is not withdrawn, one of
101 the officers shall give him a form containing the following statement:

102 "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016,
103 that I am a citizen of the United States, that I am at least 18 years of age (or will be on the _ day of
104 _____, ____) that I am a resident of the Commonwealth of Virginia (or that I have been a
105 resident of this Commonwealth within the preceding 30 days and am voting only for electors of
106 President and Vice President of the United States), and that, according to the best of my knowledge,
107 information and belief, I am not disqualified from voting by the Constitution and laws of this
108 Commonwealth; that my full name is _____; that in such name I was duly registered as a
109 voter of this precinct; that I am now or at some time since the last November general election have been
110 an actual resident of this precinct or that I have been an actual resident of this precinct at some time
111 since the second preceding general federal election and have been and continue to be a resident of this
112 county or city and this congressional district; if I am voting in a town election today, that I am currently
113 a resident of that town; that I am the identical person I represent myself to be; and that I have not voted
114 in this election at this or any voting place and will not vote in this election at any other voting place."

115 If the person challenged refuses to sign the statement, he shall not be permitted to vote. If, however,
116 he signs the statement, he shall be permitted to vote on the voting system in use at the precinct, *unless*
117 *he is required to cast a provisional ballot pursuant to § 24.2-651.1.*

118 When the voter has signed the statement and is permitted to vote, the officers of election shall mark
119 his name on the pollbook with the first or next consecutive number from the voter count form, or shall
120 enter that the voter has voted if the pollbook is in electronic form, and shall indicate on the pollbook
121 that he has signed the required statement in accordance with the instructions of the State Board.

If the envelope containing a voted absentee ballot has been properly signed by the voter, such ballot shall not be subject to challenge pursuant to this section.

§ 24.2-651.1. Voter who is shown as having already voted; provisional voting.

The officers of election shall challenge the vote of any person who offers to vote, who is listed on the pollbook, and whose name is marked to indicate that he has already voted in person in the election, shall cast a provisional ballot as provided in § 24.2-653. The State Board 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.

When the person is challenged, an officer shall explain to him the basis for the challenge. If the person being challenged states that he has not voted and is qualified, an officer shall ask the voter to present one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

If the person presents the requested form of identification showing him to be the person listed on the pollbook, an officer of election shall give him the form set out in § 24.2-651 for the person to sign subject to felony penalties for making false statements pursuant to § 24.2-1016.

If the person challenged refuses to sign the statement, he shall not be permitted to vote. If, however, he signs the statement, he shall be permitted to vote on the voting system in use at the precinct.

When the voter has shown the requested identification, has signed the statement, and is permitted to vote, the officers of election shall mark his name on the pollbook with the first or next consecutive number from the voter count form, or shall enter that the voter has voted if the pollbook is in electronic form, and shall indicate on the pollbook that the person has signed the required statement in accordance with the instructions of the State Board of Elections.

§ 24.2-653. Voter whose name does not appear on pollbook; handling of provisional ballots; ballots cast after normal close of polls due to court order extending polling hours.

A. When a person offers to vote pursuant to § 24.2-652 and the general registrar is not available or cannot state that the person is registered to vote, then such person shall be allowed to vote by paper ballot in the manner provided in this section. *This procedure shall also apply when required by §§ 24.2-643 and 24.2-651.1.*

Such person shall be given a paper ballot and provide, subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied by the State Board, the identifying information required in § 24.2-652 *on the envelope, including his social security number, if any, full name including the maiden or any other prior legal name, date of birth, complete address, and signature.* Such person shall be asked to present one of the forms of identification specified in subsection B of § 24.2-643. If he is unable to present one of these forms of identification, he shall sign a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be, and the officers of election shall note on the green envelope that the required statement was signed in lieu of presenting one of the specified forms of identification. The officers of election shall enter the appropriate information for the person in the precinct provisional ballots log in accordance with the instructions of the State Board but shall not enter a consecutive number for the voter on the pollbook nor otherwise mark his name as having voted. The officers of election shall provide an application for registration to the person offering to vote in the manner provided in this section.

The voter shall then, in the presence of an officer of election, but in a secret manner, mark the ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the ballot shall then be placed in the ballot container by an officer of election.

An officer of election, by a written notice given to the voter, shall inform him that a determination of his right to vote shall be made by the electoral board on the following day and advise the voter of the beginning time and place for the board's meeting and of the voter's right to be present at that meeting. At the meeting, the voter may request an extension of the determination of the provisional vote to the following day 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 which it deems reasonable to determine the status of a provisional vote.

B. The provisional votes submitted pursuant to subsection A, in their unopened envelopes, shall be sealed in a special envelope marked "Provisional Votes," inscribed with the number of envelopes contained therein, and signed by the officers of election who counted them. All provisional votes envelopes shall be delivered either (i) to the clerk of the circuit court who shall deliver all such envelopes to the secretary of the electoral board or (ii) to the general registrar in localities in which the electoral board has directed delivery of election materials to the general registrar pursuant to § 24.2-668.

183 The electoral board shall meet on the day following the election and determine whether each person
184 having submitted such a provisional vote was entitled to do so as a qualified voter in the precinct in
185 which he offered the provisional vote. If the board is unable to determine the validity of all the
186 provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot
187 an extension to the following day as provided in subsection A, the meeting shall stand adjourned from
188 day to day, not to exceed seven calendar days from the date of the election, until the board has
189 determined the validity of all provisional ballots offered in the election.

190 One authorized representative of each political party or independent candidate in a general or special
191 election or one authorized representative of each candidate in a primary election shall be permitted to
192 remain in the room in which the determination is being made so long as he does not impede the orderly
193 conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction
194 of the Commonwealth. Each representative, who is not himself a candidate or party chairman, shall
195 present to the electoral board a written statement designating him to be a representative of the party or
196 candidate and signed by the county or city chairman of his political party, the independent candidate, or
197 the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original
198 signature, may be photocopied and such photocopy shall be as valid as if the copy had been signed.

199 If the electoral board determines that such person was not entitled to vote as a qualified voter in the
200 precinct in which he offered the provisional vote, or is unable to determine his right to vote, the
201 envelope containing his ballot shall not be opened and his vote shall not be counted. The provisional
202 vote shall be counted if ~~either~~ (i) such person is entitled to vote in the precinct pursuant to § 24.2-401
203 ~~or~~; (ii) the State Board or the voter presents proof that indicates the voter submitted an application for
204 registration to the Department of Motor Vehicles or other state-designated voter registration agency prior
205 to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was
206 qualified for registration based upon the application for registration submitted by the person pursuant to
207 subsection A; *or (iii) the provisional vote has been cast as required by subsection B of § 24.2-643, the*
208 *voter has completed and signed the required statement, and the majority of the electoral board members*
209 *are satisfied that the person's identity has been sufficiently determined. When a provisional ballot has*
210 *been cast as required by subsection B of § 24.2-643 and the electoral board determines that additional*
211 *verification is necessary, the electoral board may compare the signature in the applicant's voter file with*
212 *the signature on the provisional ballot envelope to determine the person's identity. The electoral board*
213 *may delegate the task of signature comparison to the general registrar and staff.* The general registrar
214 shall notify in writing pursuant to § 24.2-114 those persons found not properly registered.

215 If the electoral board determines that such person was entitled to vote, the name of the voter shall be
216 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and
217 the ballot placed in a ballot container without any inspection further than that provided for in
218 § 24.2-646.

219 On completion of its determination, the electoral board shall proceed to count such ballots and certify
220 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No
221 adjustment shall be made to the statement of results for the precinct in which the person offered to vote.

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

225 C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any
226 ballots marked after the normal polling hours by persons who were not already in line at the time the
227 polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under
228 this section. The officers of election shall mark the green envelope for each such provisional ballot to
229 indicate that it was cast after normal polling hours due to the court order, and when preparing the
230 materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any
231 provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as
232 provided in subsection B of this section; however, the counted and uncounted provisional ballots marked
233 after the normal polling hours shall be kept separate from all other ballots and recorded in a separate
234 provisional ballots pollbook. The State Board of Elections shall provide instructions to the electoral
235 boards for the handling and counting of such provisional ballots pursuant to this section.

236 § 24.2-701. Application for absentee ballot.

237 A. The State Board shall furnish each general registrar with a sufficient number of applications for
238 official absentee ballots. The registrars shall furnish applications to persons requesting them.

239 The State Board shall implement a system that enables eligible persons to request and receive an
240 absentee ballot application electronically through the Internet. Electronic absentee ballot applications
241 shall be in a form approved by the State Board.

242 Except as provided in § 24.2-703, a separate application shall be completed for each election in
243 which the applicant offers to vote. An application for an absentee ballot may be accepted the later of (i)
244 12 months before an election, or (ii) the day following any election held in the twelfth month prior to

the election in which the applicant is applying to vote.

Any application received before the ballots are printed shall be held and processed as soon as the printed ballots for the election are available.

For the purposes of this chapter, the general registrar's office shall be open a minimum of eight hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately preceding all general elections, except May general elections held in towns, and on the Saturday immediately preceding any primary election, May general election held in a town, or special election.

Unless the applicant is disabled, all applications for absentee ballots shall be signed by the applicant who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that to the best of his knowledge and belief the facts contained in the application are true and correct and that he has not and will not vote in the election at any other place in Virginia or in any other state. If the applicant is unable to sign the application, a person assisting the applicant will note this fact on the applicant signature line and provide his signature, name, and address.

B. Applications for absentee ballots shall be completed in the following manner:

1. An application completed in person shall be made not less than three days prior to the election in which the applicant offers to vote and completed only in the office of the general registrar. The applicant shall sign the application in the presence of a registrar or a member of the electoral board. The applicant shall provide one of the forms of identification specified in subsection B of § 24.2-643, or if he is unable to present one of the forms of identification listed in that section, he shall sign a statement, subject to felony penalties for making false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. *If he is unable to provide one of the specified forms of identification, he shall be offered a provisional ballot. The State Board 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.*

An applicant who requires assistance in voting by reason of disability or inability to read or write may request assistance pursuant to § 24.2-649 and be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding persons who are unable to sign shall be followed when assisting an applicant in completing this statement.

For federal elections held after January 1, 2004, this paragraph shall apply in the case of any voter who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time that voter votes in a federal election in the state. After completing an application for an absentee ballot in person, such voter shall present (i) 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 in person but who does not show one of the forms of identification specified in this paragraph shall be offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of subsection B of § 24.2-643, nor the identification requirements of subsection A of § 24.2-653, shall apply to such voter at that election. The State Board 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.

2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile device if one is available to the office of the general registrar or the office of the State Board if a device is not available locally, or other means. The application shall be on a form furnished by the registrar or, if made under subdivision 2 of § 24.2-700, may be on a Federal Post Card Application prescribed pursuant to 42 U.S.C. § 1973ff(b)(2). The Federal Post Card Application may be accepted the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth month prior to the election in which the applicant is applying to vote. The application shall be made to the appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote.

C. Applications for absentee ballots shall contain the following information:

1. The applicant's printed name, the last four digits of the applicant's social security number, and the reason the applicant will be absent or cannot vote at his polling place on the day of the election;

2. A statement that he is registered in the county or city in which he offers to vote and his residence address in such county or city. Any person temporarily residing outside the United States shall provide the last date of residency at his Virginia residence address, if that residence is no longer available to him. Any person who makes application under subdivision 2 of § 24.2-700 who is not a registered voter may file the applications to register and for a ballot simultaneously;

3. The complete address to which the ballot is to be sent directly to the applicant, unless the application is made in person at a time when the printed ballots for the election are available and the applicant chooses to vote in person at the time of completing his application. The address given shall be (i) the address of the applicant on file in the registration records; (ii) the address at which he will be

306 located while absent from his county or city; or (iii) the address at which he will be located while
307 temporarily confined due to a disability or illness. No ballot shall be sent to, or in care of, any other
308 person; and

309 4. In the case of a person, or the spouse or dependent of a person, who is on active service as a
310 member of the armed forces of the United States or a member of the merchant marine of the United
311 States, the branch of service to which he or the spouse belongs, and his or the spouse's rank, grade, or
312 rate, and service identification number; or

313 5. In the case of a student, or the spouse of a student, who is attending a school or institution of
314 learning, the name and address of the school or institution of learning; or

315 6. In the case of any duly registered person with a disability, as defined in § 24.2-101, who is unable
316 to go in person to the polls on the day of the election because of his disability, illness, or pregnancy,
317 the nature of the disability, illness, or pregnancy; or

318 7. In the case of a person who is confined awaiting trial or for having been convicted of a
319 misdemeanor, the name and address of the institution of confinement; or

320 8. In the case of a person who will be absent on election day for business reasons, the name of his
321 employer or business; or

322 9. In the case of a person who will be absent on election day for personal business or vacation
323 reasons, the name of the county or city in Virginia or the state or country to which he is traveling; or

324 10. In the case of a person who is unable to go to the polls on the day of election because he is
325 primarily and personally responsible for the care of an ill or disabled family member who is confined at
326 home, the name of the family member and the nature of his illness or disability; or

327 11. In the case of a person who is unable to go to the polls on the day of election because of an
328 obligation occasioned by his religion, his religion and the nature of the obligation; or

329 12. In the case of a person who, in the regular and orderly course of his business, profession, or
330 occupation, will be at his place of work and commuting to and from his home to his place of work for
331 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his
332 business or employer, address of his place of work, and hours he will be at the workplace and
333 commuting on election day; or

334 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in
335 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in
336 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first
337 responder; or

338 14. In the case of a person who has been designated by a political party, independent candidate, or
339 candidate in a primary election to be a representative of the party or candidate inside a polling place on
340 the day of the election pursuant to subsection C of § 24.2-604 and § 24.2-639, the fact that he is so
341 designated and the name of the party chairman or candidate who designated him.