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## HOUSE BILL NO. 2143

Offered January 9, 2013

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*A BILL to amend and reenact §§ 24.2-652, 24.2-653, and 24.2-701 of the Code of Virginia, relating to voting; provisional ballots; absentee ballot applications.*

Patron—Keam

Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-652, 24.2-653, and 24.2-701 of the Code of Virginia are amended and reenacted as follows:**

**§ 24.2-652. Voter whose name erroneously omitted from pollbook.**

When a person offers to vote and his name does not appear on the pollbook, the officers of election shall permit him to vote only if all of the following conditions are met:

1. An officer of election is informed by the general registrar that the voter is registered to vote, that his registration has not been cancelled, and that his name is erroneously omitted from the pollbook.

2. The voter signs a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is a qualified and registered voter of that precinct, a resident of that precinct, and his registration is not subject to cancellation pursuant to §§ 24.2-430, 24.2-431, and 24.2-432; and he provides, subject to such penalties, all the information required to identify himself, including the last four digits *only* of his social security number, if any, full name including the maiden or any other prior legal name, birthdate, and complete address.

3. The officer of election enters the identifying information for the voter on the pollbook.

When the voter has signed the statement and is permitted to vote, the officers of election shall mark his name on the pollbook with the 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 he has signed the required statement in accordance with the instructions of the State Board.

**§ 24.2-653. Voter whose name does not appear on pollbook or who is marked as having voted; 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 or 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 on the envelope, including *the last four digits only* of 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. The officers of election shall note on the green envelope whether or not the voter has presented 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 *promptly* be placed in the ballot container by an officer of election.

An officer of election, by a written notice given to the voter, shall (i) inform him that a determination of his right to vote shall be made by the electoral board, (ii) 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, and (iii) inform a voter voting provisionally when required by § 24.2-643 that he may submit a copy of one of the forms of identification specified in subsection B of § 24.2-643 to the electoral board by facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial mail delivery, to be received by the electoral board no later than noon on the third day after the election. 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

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59 precinct pursuant to § 24.2-401. The electoral board shall have the authority to grant such extensions  
60 which it deems reasonable to determine the status of a provisional vote.

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

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

74 One authorized representative of each political party or independent candidate in a general or special  
75 election or one authorized representative of each candidate in a primary election shall be permitted to  
76 remain in the room in which the determination is being made as an observer so long as he does not  
77 participate in the proceedings and does not impede the orderly conduct of the determination. Each  
78 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each  
79 representative, who is not himself a candidate or party chairman, shall present to the electoral board a  
80 written statement designating him to be a representative of the party or candidate and signed by the  
81 county or city chairman of his political party, the independent candidate, or the primary candidate, as  
82 appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied  
83 and such photocopy shall be as valid as if the copy had been signed.

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

89 If the electoral board determines that such person was not entitled to vote as a qualified voter in the  
90 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not  
91 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope  
92 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be  
93 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the State  
94 Board or the voter presents proof that indicates the voter submitted an application for registration to the  
95 Department of Motor Vehicles or other state-designated voter registration agency prior to the close of  
96 registration pursuant to § 24.2-416 and the registrar determines that the person was qualified for  
97 registration based upon the application for registration submitted by the person pursuant to subsection A.  
98 The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly  
99 registered or whose provisional vote was not counted.

100 If the electoral board determines that such person was entitled to vote, the name of the voter shall be  
101 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and  
102 the ballot placed in a ballot container without any inspection further than that provided for in  
103 § 24.2-646.

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

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

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

**§ 24.2-701. Application for absentee ballot.**

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

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

Except as provided in § 24.2-703, a separate application shall be completed for each election in which the applicant offers to vote. An application for an absentee ballot 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.

An application that is completed in person at the same time that the applicant registers to vote shall be held and processed no sooner than the fifth day after the date that the applicant registered to vote; however, this requirement shall not be applicable to any person who is qualified to vote absentee under subdivision 2 of § 24.2-700.

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. Any applicant who does not show one of the forms of identification specified in subsection B of § 24.2-643 shall be offered a provisional ballot under the provisions of § 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.

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 subdivision 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 postcard application prescribed pursuant to 42 U.S.C. § 1973ff(b)(2). The federal postcard 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 *only* 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

182 the last date of residency at his Virginia residence address, if that residence is no longer available to  
183 him. Any person who makes application under subdivision 2 of § 24.2-700 who is not a registered voter  
184 may file the applications to register and for a ballot simultaneously;

185 3. The complete address to which the ballot is to be sent directly to the applicant, unless the  
186 application is made in person at a time when the printed ballots for the election are available and the  
187 applicant chooses to vote in person at the time of completing his application. The address given shall be  
188 (i) the address of the applicant on file in the registration records; (ii) the address at which he will be  
189 located while absent from his county or city; or (iii) the address at which he will be located while  
190 temporarily confined due to a disability or illness. No ballot shall be sent to, or in care of, any other  
191 person; and

192 4. In the case of a person, or the spouse or dependent of a person, who is on active duty as a  
193 member of the uniformed services as defined in § 24.2-452, the branch of service to which he or the  
194 spouse belongs, and his or the spouse's rank, grade, or rate, and service identification number; or

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

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

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

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

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

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

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

211 12. In the case of a person who, in the regular and orderly course of his business, profession, or  
212 occupation, will be at his place of work and commuting to and from his home to his place of work for  
213 11 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his  
214 business or employer, address of his place of work, and hours he will be at the workplace and  
215 commuting on election day; or

216 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in  
217 § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in  
218 § 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first  
219 responder; or

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