

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

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SENATE BILL NO. 1245

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Privileges and Elections
on January 26, 2021)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 24.2-706, 24.2-707, 24.2-709, 24.2-709.1, and 24.2-710 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-707.1, relating to absentee voting; establishment of drop-off locations; ballot defects; cure process.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-706, 24.2-707, 24.2-709, 24.2-709.1, and 24.2-710 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-707.1 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.

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, with printing only on the flap side, 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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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. A properly addressed envelope for the return of the ballot to the general registrar by mail or by
66 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 The envelopes and instructions shall be in the form prescribed by the Department of Elections.

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

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

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

111 § 24.2-707. How ballots marked and returned.

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

116 After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope
117 provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of
118 the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot
119 envelope and any required assistance form within the envelope directed to the general registrar, and (e)
120 seal that envelope and mail it to the office of the general registrar or deliver it personally to the general
121 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.

B. A mailed absentee ballot shall be returned (i) by mail to the office of the general registrar, (ii) 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 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.

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

§ 24.2-707.1. Drop-off locations for return of absentee ballots.

A. The general registrar of each county or city shall establish at the office of the general registrar and each voter satellite office in operation for an election a drop-off location for the purpose of allowing voters to deposit completed absentee ballots for such election. On the day of the election, there shall also be a drop-off location at each polling place in operation for the election. The general registrar may establish additional drop-off locations within the county or city as he deems necessary. All drop-off locations shall be accessible; on public property, unless located at a polling place; and otherwise comply with any criteria for drop-off locations set by the Department.

B. The Department shall set standards for the establishment and operation of drop-off locations, including necessary security requirements. The Department shall submit such standards annually by October 1 to the Chairmen of the House and Senate Committees on Privileges and Elections, the Senate Committee on Finance and Appropriations, and the House Committee on Appropriations.

C. Not later than 55 days prior to any election, the general registrar shall post notice of the sites of the drop-off locations in the locality in the office of the general registrar and on the official website for the county or city. Such notice shall remain in the office of the general registrar and on the official website for the county or city for the duration of the period during which absentee ballots may be returned.

D. Absentee ballots shall be collected from drop-off locations in accordance with the instructions provided by the Department. Such instructions shall include chain of custody requirements and recordkeeping requirements. Absentee ballots shall be collected at least daily by (i) two officers of election representing the two major political parties where practicable or (ii) two employees from the office of the general registrar, unless the drop-off location is in the office of the general registrar, in which case the general registrar or an assistant general registrar may collect the absentee ballots.

§ 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 the 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 the inner envelope containing the voted ballot is imperfectly sealed so long as the outside envelope containing the ballot envelope is sealed.

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 and shall examine the ballot envelope to verify completion of the required voter affirmation.*

B. Each general registrar shall take one or ~~more~~ both of the following measures as needed to expedite counting absentee ballots returned by mail before election day: (i) ~~examine the ballot envelopes to verify completion of the required voter affirmation;~~ (ii) mark the pollbook, or the absentee voter applicant list if the pollbook is not available, that the voter has voted; or (iii) (ii) open the sealed ballot envelopes and insert the ballots in optical scan counting equipment or other secure ballot container without initiating any ballot count totals. If the general registrar proceeds to open sealed ballot envelopes as provided in clause (iii) (ii), at least two officers of election, one representing each political party, shall be present during all hours when a general registrar uses the expedited procedures authorized in this section. No person present while sealed ballot envelopes are opened and ballots are inserted into counting equipment or other secure ballot container pursuant to clause (iii) (ii) shall disclose any information concerning the ballots.

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

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

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

§ 24.2-710. Absentee voter applicant lists.

On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of receipt in the appropriate column opposite the name and address of the voter on the absentee voter applicant list maintained in the general registrar's office. A board member or registrar shall deposit the return envelope and the unopened ballot envelope in an appropriate container provided for the purpose, in which they shall remain until the day of the election, unless the registrar opts to open sealed ballot envelopes in order to expedite the counting of absentee ballots in accordance with § 24.2-709.1.

A. *The provisions of this subsection shall apply only to those localities not using an electronic pollbook.* On the day before the election, the general registrar shall (i) make out in triplicate on a form prescribed by the State Board the absentee voter applicant list containing the names of all persons who applied for an absentee ballot through the third day before the election and (ii) by noon on the day before the election, deliver two copies of the list to the electoral board. The general registrar shall make out a supplementary list containing the names of all persons voting absentee in person or applying to vote absentee pursuant to § 24.2-705 for delivery by 5:00 p.m. on the day before the election. The supplementary list shall be deemed part of the absentee voter applicant list and shall be prepared and delivered in accordance with the instructions of the State Board. The general registrar shall maintain one copy of the list in his office for two years as a public record open for inspection upon request during regular office hours.

B. On the day before the election, the electoral board shall deliver one copy of the list provided to it by the general registrar to the chief officer of election for each precinct. The list shall be attested by the secretary of the electoral board who shall be responsible for the delivery of the attested lists to the chief officer of election for each precinct.

Absentee ballots shall be accepted only from voters whose names appear on the attested list.

C. Before the polls close on the day of the election, the electoral board shall deliver the absentee ballot containers to, and obtain a receipt from, the officers of election at each appropriate precinct. Any ballot returned to the electoral board or general registrar prior to the closing of the polls, but after the ballot container has been delivered, shall be delivered in an appropriate container to the officers of

245 election at each appropriate precinct. The containers shall be sealed prior to delivery to the officers and
246 shall contain the sealed absentee ballots, the accompanying return envelopes, and a copy of the absentee
247 voter applicant list for each precinct.

248 If the county or city uses a central absentee voter precinct pursuant to § 24.2-712, the lists and
249 containers shall be delivered, as provided in this section, to the officers of election for the absentee
250 precinct.

251 *D.* Before noon on the day following the election, the general registrar shall deliver all applications
252 for absentee ballots for the election, under seal, to the clerk of the circuit court for the county or city,
253 except that the general registrar may retain all applications for absentee ballots until the electoral board
254 has ascertained the results of the election pursuant to § 24.2-671, and has determined the validity of and
255 counted all provisional ballots pursuant to § 24.2-653.01, at which point all applications shall then be
256 delivered, under seal, to the clerk of the circuit court for the county or city. The clerk shall retain the
257 sealed applications with the counted ballots.

258 The secretary of the electoral board shall deliver all absentee ballots received after the election to the
259 clerk of the circuit court.

260 *E.* Upon request, the State Board shall provide an electronic copy of the absentee voter applicant list
261 to any political party or candidate. Such lists shall be used only for campaign and political purposes. In
262 no event shall any list furnished under this section contain (a) any voter's social security number or any
263 part thereof, (b) any voter's day and month of birth, or (c) the residence address of any voter who has
264 provided a post office box address to be used on public lists pursuant to § 24.2-418.