

VIRGINIA ACTS OF ASSEMBLY -- 2023 RECONVENED SESSION

CHAPTER 785

An Act to amend and reenact §§ 24.2-404, 24.2-702.1, 24.2-704, 24.2-706, and 24.2-707 of the Code of Virginia, relating to absentee voting; witness requirement; required information on return ballot envelope; unique identifier.

[H 1948]

Approved April 12, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-404, 24.2-702.1, 24.2-704, 24.2-706, and 24.2-707 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-404. Duties of Department of Elections.

A. The Department of Elections shall provide for the continuing operation and maintenance of a central recordkeeping system, the Virginia voter registration system, for all voters registered in the Commonwealth.

In order to operate and maintain the system, the Department shall:

1. Maintain a complete, separate, and accurate record of all registered voters in the Commonwealth. Such system shall automatically register a person who has preregistered pursuant to § 24.2-403.1 upon that person becoming eligible for registration under § 24.2-403 or reaching 18 years of age, whichever comes first. *Such system shall also assign a unique identifier to each voter registered in the system.*

2. Require the general registrars to enter the names of all registered voters into the system and to change or correct registration records as necessary.

3. Provide to each general registrar voter confirmation documents for newly registered voters, including voters who were automatically registered pursuant to subdivision 1, and for notice to registered voters on the system of changes and corrections in their registration records and polling places.

4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated, (v) is known not to be a United States citizen by reason of reports from the Department of Motor Vehicles pursuant to § 24.2-410.1 or from the Department of Elections based on information received from the Systematic Alien Verification for Entitlements Program (SAVE Program) pursuant to subsection E, or (vi) is otherwise no longer qualified to vote as may be provided by law. Such action shall be taken no later than 30 days after notification from the Department. The Department shall promptly provide the information referred to in this subdivision, upon receiving it, to general registrars.

5. Retain on the system for four years a separate record for registered voters whose names have been deleted, with the reason for deletion.

6. Retain on the system permanently a separate record for information received regarding deaths, felony convictions, and adjudications of incapacity pursuant to §§ 24.2-408 through 24.2-410.

7. Provide to each general registrar, at least 16 days prior to a general or primary election and three days prior to a special election, an alphabetical list of all registered voters in each precinct or portion of a precinct in which the election is being held in the county, city, or town. These precinct lists shall be used as the official lists of qualified voters and shall constitute the pollbooks. The Department shall provide instructions for the division of the pollbooks and precinct lists into sections to accommodate the efficient processing of voter lines at the polls. Prior to any general, primary, or special election, the Department shall provide any general registrar, upon his request, with a separate electronic list of all registered voters in the registrar's county or city. If electronic pollbooks are used in the locality or electronic voter registration inquiry devices are used in precincts in the locality, the Department shall provide a regional or statewide list of registered voters to the general registrar of the locality. The Department shall determine whether regional or statewide data is provided. Neither the pollbook nor the regional or statewide list of registered voters shall include the day and month of birth of the voter, but shall include the voter's year of birth.

8. Acquire by purchase, lease, or contract equipment necessary to execute the duties of the Department.

9. Use any source of information that may assist in carrying out the purposes of this section. All agencies of the Commonwealth shall cooperate with the Department in procuring and exchanging identification information for the purpose of maintaining the voter registration system. The Department may share any information that it receives from another agency of the Commonwealth with any Chief Election Officer of another state for the maintenance of the voter registration system.

10. Cooperate with other states and jurisdictions to develop systems to compare voters, voter history,

and voter registration lists to ensure the accuracy of the voter registration rolls, to identify voters whose addresses have changed, to prevent duplication of registration in more than one state or jurisdiction, and to determine eligibility of individuals to vote in Virginia.

11. Reprint and impose a reasonable charge for the sale of any part of Title 24.2, lists of precincts and polling places, statements of election results by precinct, and any other items required of the Department by law. Receipts from such sales shall be credited to the Board for reimbursement of printing expenses.

B. The Department shall be authorized to provide for the production, distribution, and receipt of information and lists through the Virginia voter registration system by any appropriate means including, but not limited to, paper and electronic means. The Virginia Freedom of Information Act (§ 2.2-3700 et seq.) shall not apply to records about individuals maintained in this system.

C. The State Board shall institute procedures to ensure that each requirement of this section is fulfilled. As part of its procedures, the State Board shall provide that the general registrar shall mail notice of any cancellation pursuant to clause (v) of subdivision A 4 to the person whose registration is cancelled.

D. The State Board shall promulgate rules and regulations to ensure the uniform application of the law for determining a person's residence.

E. The Department shall apply to participate in the Systematic Alien Verification for Entitlements Program (SAVE Program) operated by U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security for the purposes of verifying that voters listed in the Virginia voter registration system are United States citizens. Upon approval of the application, the Department shall enter into any required memorandum of agreement with U.S. Citizenship and Immigration Services. The State Board shall promulgate rules and regulations governing the use of the immigration status and citizenship status information received from the SAVE Program.

F. The Department shall report annually by October 1 for the preceding 12 months ending August 31 to the Committees on Privileges and Elections on each of its activities undertaken to maintain the Virginia voter registration system and the results of those activities. The Department's report shall be governed by the provisions of § 2.2-608 and shall encompass activities undertaken pursuant to subdivisions A 9 and 10 and subsection E and pursuant to §§ 24.2-404.3, 24.2-404.4, 24.2-408, 24.2-409, 24.2-409.1, 24.2-410, 24.2-410.1, 24.2-427, and 24.2-428. This report shall contain the methodology used in gathering and analyzing the data. The Commissioner of Elections shall certify that the data included in the report is accurate and reliable.

§ 24.2-702.1. Federal write-in absentee ballots.

A. Notwithstanding any other provision of this title, a covered voter, as defined in § 24.2-452, may use a federal write-in absentee ballot in any election. Such ballot shall be submitted and processed in the manner provided by the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20301 et seq.) and this article.

B. Notwithstanding any other provision of this title, a federal write-in absentee ballot submitted pursuant to subsection A shall be considered valid for purposes of simultaneously satisfying both an absentee ballot application and a completed absentee ballot, provided that the ballot is received no later than the deadline for the return of absentee ballots as provided in § 24.2-709 for the election in which the voter offers to vote, and the application contains the following information: (i) the voter's signature; however, if the voter is unable to sign, the person assisting the voter will note this fact in the voter signature box; (ii) the voter's printed name; (iii) *the voter's birth year*; (iv) *the last four digits of the voter's social security number*; (v) the county or city in which ~~he~~ *the voter* is registered and offers to vote; ~~(iv)~~ (vi) the residence address at which ~~he~~ *the voter* is registered to vote; ~~(v)~~ *his and* (vii) *the voter's current military or overseas address; and (vi) the signature of a witness who shall sign the same application. For purposes of this section, the unique identifier assigned to the voter in the voter registration system pursuant to subdivision A 1 of § 24.2-404 shall be accepted in place of the last four digits of the voter's social security number for those voters whose registration includes a statement of affirmation that they have never been issued a social security number.*

C. This section shall not be construed to require that an absentee ballot be sent to the absentee voter on receipt of a federal write-in absentee ballot unless the voter has also submitted an absentee ballot application pursuant to § 24.2-701.

§ 24.2-704. Applications and ballots for persons requiring assistance in voting; penalty.

A. The application for an absentee ballot shall provide space for the applicant to indicate that he will require assistance to vote his absentee ballot by reason of blindness, disability, or inability to read or write.

B. On receipt of an application from an applicant who indicated that he will require assistance due to a visual impairment or print disability, the general registrar shall offer to provide to the applicant a ballot marking tool with screen reader assistive technology made available pursuant to § 24.2-103.2. If the applicant opts to use such tool, the general registrar shall send by mail to him a ballot return envelope and accessible instructions provided by the Department for using such tool and returning the marked ballot. The general registrar shall cause the outer envelope containing the ballot return envelope

and accessible instructions to have a tactile marking that identifies the outer envelope as the outer envelope to the voter. For purposes of this section, "tactile marking" includes a hole punch, a cut corner, or a tactile sticker.

An absentee voter using such tool shall return the marked absentee ballot in accordance with the instructions provided by the Department.

No ballot marked with the electronic ballot marking tool shall be rejected because the ballot was printed on regular paper. No ballot marked with the electronic ballot marking tool shall be rejected on the basis of the position of the voter's signature or address on the ballot return envelope as long as the voter's signature or address is anywhere on the ballot return envelope.

C. On receipt of an application from an applicant marked to indicate that he will require assistance due to any other disability or if an applicant offered the ballot marking tool pursuant to subsection B declines to use such tool, the general registrar shall deliver, with the items required by § 24.2-706, the voter assistance form furnished by the State Board pursuant to § 24.2-649. The voter and any person assisting him shall complete the form by signing the request for assistance and statement required of the assistant. If the voter is unable to sign the request, the ~~witness person assisting him~~ will note this fact on the line for signature of voter. The provisions of § 24.2-649 shall apply to absentee voting and assistance for absentee voters. Any person who willfully violates the provisions of this section or § 24.2-649 in providing assistance to a person who is voting absentee shall be guilty of a Class 5 felony.

§ 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 _____

Last four digits of voter's social security number _____

Voter's birth year _____

Date _____

Signature of witness _____ "

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

For purposes of properly completing this statement, the unique identifier assigned to the voter in the voter registration system pursuant to subdivision A 1 of § 24.2-404 shall be accepted in place of the last four digits of the voter's social security number for those voters whose registration includes a statement of affirmation that they have never been issued a social security number.

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

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

4. Printed instructions for completing the ballot and statement on the envelope and returning the ballot. Such instructions shall include information on the sites of all drop-off locations in the county or city. Whenever there is a proposed constitutional amendment or a statewide referendum to be voted on by the voters, these instructions shall also include the website address where the explanation of the proposed amendment prepared pursuant to § 30-19.9 or the information about the referendum prepared pursuant to § 30-19.10 is posted on the Department's website.

For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter votes in a federal election in the state, the printed instructions shall direct the voter to submit with his ballot (i) a copy of 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 by mail but who does not submit one of the forms of identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as a provisional ballot under the provisions of § 24.2-653.01. The Department of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to § 24.2-653.01 and this section.

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

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

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

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

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

G. The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur, or (iii) the campaign committee or the appropriate district political party chairman of such candidate. Any person who fails to discharge his duty as provided in this section through willful neglect of duty

and with malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of § 24.2-1001.

§ 24.2-707. How ballots marked and returned.

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

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope ~~in the presence of a witness, who shall sign the same envelope,~~ (d) enclose the ballot envelope and any required assistance form within the envelope directed to the general registrar, and (e) seal that envelope. A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name. A voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope shall not be considered a material omission and shall not render his ballot void. ~~A voter's failure to have a witness sign the absentee ballot return envelope for any election held during a declared state of emergency related to a communicable disease of public health threat shall not be considered a material omission and shall not render his ballot void.~~

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

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