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SENATE BILL NO. 760

Offered January 8, 2025

Prefiled December 11, 2024

A BILL to amend and reenact §§ 24.2-653, 24.2-709, and 24.2-709.1 of the Code of Virginia, relating to elections; deadline for receipt of absentee ballots and certain other information; 5:00 p.m. on the third day after the election.

Patron—Favola

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-653, 24.2-709, and 24.2-709.1 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-653. Provisional voting; procedures in polling place.

A. Any person voting provisionally pursuant to subsection B of § 24.2-643, § 24.2-651.1, subsection B of § 24.2-652, or § 24.2-653.1 or 24.2-653.2 shall be given a printed ballot and provide, subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied by the Department of Elections, the identifying information required on the envelope, including the last four digits 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. 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 he claims to be. The officers of election shall note on the green envelope whether or not the voter has presented one of the specified forms of identification or signed the required statement 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 voter shall then, in the presence of an officer of election, but in a secret manner, mark the printed 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.

B. 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 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. If the voter is voting provisionally as required by § 24.2-643, an officer of election, by written notice given to the voter, shall also inform him that he may submit a copy of one of the forms of identification specified in subsection B of § 24.2-643 or a statement, signed by him subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter he claims to be 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~~ 5:00 p.m. on the third day after the election.

C. 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.

§ 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 his 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 (a) the inner envelope containing the voted ballot is imperfectly sealed so long as the outside envelope containing the ballot envelope is sealed or (b) it is not returned sealed in the outside envelope so long as it is returned sealed in the inner envelope.

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~~ 5:00 p.m. on the third day after the election and

59 (ii) postmarked on or before the date of the election shall be counted pursuant to the procedures set forth in  
60 this chapter if the voter is found entitled to vote. For purposes of this subsection, a postmark shall include any  
61 other official indicia of confirmation of mailing by the United States Postal Service or other postal or delivery  
62 service.

63 C. Notwithstanding the provisions of subsection A, any absentee ballot (i) received after the close of the  
64 polls on any election day, (ii) received before 5:00 p.m. on the second business day before the State Board  
65 meets to ascertain the results of the election pursuant to this title, (iii) requested on or before but not sent by  
66 the deadline for making absentee ballots available under § 24.2-612, and (iv) cast by a covered voter, as  
67 defined in § 24.2-452, shall be counted pursuant to the procedures set forth in this chapter if the voter is  
68 found entitled to vote. The electoral board shall prepare an amended certified abstract, which shall include the  
69 results of such ballots, and shall deliver such abstract to the State Board by the business day prior to its  
70 meeting pursuant to this title, and shall deliver a copy of such abstract to the general registrar to be available  
71 for inspection when his office is open for business.

72 D. Notwithstanding the provisions of clause (i) of subsection B of § 24.2-427, an absentee ballot returned  
73 by a voter in compliance with § 24.2-707 and this section who dies prior to the counting of absentee ballots  
74 on election day shall be counted pursuant to the procedures set forth in this chapter if the voter is found to  
75 have been entitled to vote at the time that he returned the ballot.

76 **§ 24.2-709.1. Processing returned absentee ballots before election day; cure process.**

77 A. On receipt of an absentee ballot returned in person or by mail to the office of the general registrar or to  
78 a drop-off location before election day, the general registrar shall mark the date of receipt in the voter's record  
79 and shall examine the ballot envelope to verify completion of the required voter affirmation. A voter  
80 affirmation statement shall not be deemed to be incomplete on the sole basis of the voter's failure to provide  
81 (i) his full name or his middle initial, as long as the voter provided his full first and last name, or (ii) the date,  
82 or any part of the date, including the year, on which he signed the statement.

83 B. If the voter affirmation has been completed as required, the general registrar may open the sealed ballot  
84 envelope and insert the ballot in optical scan counting equipment or other secure ballot container without  
85 initiating any ballot count totals. If a general registrar does not choose to do so, the sealed ballot envelope  
86 shall be deposited into a secure container provided for such purpose, in which it shall remain until the general  
87 registrar initiates the process of opening the sealed ballot envelopes deposited into the secure container and  
88 inserting such ballots into optical scan counting equipment without initiating any ballot count totals. Such  
89 process shall be at the general registrar's discretion at any time prior to the seventh day immediately  
90 preceding the election but shall be mandatory beginning on the seventh day immediately preceding the  
91 election.

92 At least two officers of election, one representing each political party, shall be present during all hours  
93 when sealed ballot envelopes are opened as authorized in or required by this subsection. No person present  
94 while sealed ballot envelopes are opened and ballots are inserted into counting equipment shall disclose any  
95 information concerning the ballots.

96 In the event that circumstances prevent a general registrar from complying with the provisions of this  
97 subsection, such failure shall not be grounds for contesting the election pursuant to Article 2 (§ 24.2-803 et  
98 seq.) of Chapter 8 and shall not invalidate the absentee ballots.

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

106 Within three days of such finding, the registrar shall notify the voter in writing or by email of the error or  
107 failure and shall provide information to the voter on how to correct the issue so his ballot may be counted.  
108 The voter shall be entitled to make such necessary corrections before ~~noon~~ 5:00 p.m. on the third day after the  
109 election, and his ballot shall then be counted pursuant to the procedures set forth in this chapter if he is found  
110 to be entitled to vote. No absentee ballot needing correction shall be delivered to the officers of election at the  
111 appropriate precinct until the voter is provided the opportunity to make the necessary corrections pursuant to  
112 this subsection.

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