

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 24.2-653.01 and 24.2-709.1 of the Code of Virginia, relating to elections; absentee and provisional ballots; cure process.

[H 774]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 24.2-653.01 and 24.2-709.1 of the Code of Virginia are amended and reenacted as follows:
§ 24.2-653.01. Provisional ballots; electoral boards to make determination as to validity.

A. The electoral board shall meet on the day following the election and determine whether each person having submitted a provisional vote pursuant to § 24.2-653 was entitled to do so as a qualified voter in the precinct in which he offered the provisional vote. In the case of persons voting provisionally pursuant to § 24.2-653.3, the electoral board shall determine of which district the person is a qualified voter. At the meeting, the voter may request an extension of the determination of the provisional vote 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 that it deems reasonable to determine the status of a provisional vote.

If the board is unable to determine the validity of all the provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot an extension, the meeting shall stand adjourned, not to exceed 10 calendar days from the date of the election, until the board has determined the validity of all provisional ballots offered in the election.

B. The electoral board shall permit one authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election to remain in the room in which the determination is being made as an observer so long as he does not participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative, who is not himself a candidate or party chairman, shall present to the electoral board a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. If the county or city chairman is unavailable to sign such a written designation, such a designation may be made by the state or district chairman of the political party. However, no written designation made by a state or district chairman shall take precedence over a written designation made by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature, may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

C. If the electoral board determines that such a person who submitted a provisional vote pursuant to § 24.2-653 was not entitled to vote as a qualified voter in the precinct or district in which he offered the provisional vote, is unable to determine his right to vote, or has not been provided one of the forms of identification specified in subsection B of § 24.2-643; or the signed statement that the voter is the named registered voter he claims to be, the envelope containing his ballot shall not be opened and his vote shall not be counted. Prior to the determination of the validity of provisional ballots by the electoral board, the registrar shall review the provisional ballot form for any material omissions. The registrar shall promptly notify the voter by telephone or by email, if available, of any such material omissions and provide the information to the voter on how to correct such omissions so that his provisional ballot may be counted. The voter shall be entitled to make such necessary corrections before noon on the Monday after the election, and his ballot shall then be counted pursuant to the procedures set forth in this section if he is found to be entitled to vote. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional vote was not counted.

The provisional vote shall be counted if (i) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (ii) the Department of Elections or the voter presents proof that indicates the voter submitted an application for registration to a state-designated voter registration agency or the voter's information was transmitted by the Department of Motor Vehicles to the Department of Elections pursuant to § 24.2-411.3 prior to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was

57 qualified for registration based upon the application for registration submitted by the person pursuant to
58 subsection B of § 24.2-652.

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

62 D. On completion of its determination, the electoral board shall proceed to count such ballots and certify
63 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No
64 adjustment shall be made to the statement of results for the precinct in which the person offered to vote.
65 However, any voter who cast a provisional ballot and is determined by the electoral board to have been
66 entitled to vote shall have his name included on the list of persons who voted that is submitted to the
67 Department of Elections pursuant to § 24.2-406.

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

71 **§ 24.2-709.1. Processing returned absentee ballots before election day; cure process.**

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

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

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

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

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

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

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

110 **2. That the State Board of Elections shall promulgate regulations regarding the uniform review and**
111 **processing of voter registration applications that are incomplete or missing information, including**
112 **those submitted pursuant to § 24.2-420.1 of the Code of Virginia. The regulations shall provide a**
113 **uniform period during which an applicant may provide missing information. Such period shall apply**
114 **regardless of the electoral board's determination pursuant to § 24.2-653.01 of the Code of Virginia, as**
115 **amended by this act.**

116 **3. That the Department of Elections shall issue guidance to local election officials on the uniform**
117 **processing and counting of provisional ballots, including any provisional ballot cast by a person**
118 **submitting a registration application on the same day as the election pursuant to § 24.2-420.1 of the**

119 Code of Virginia. The guidance shall include direction to treat all provisional ballots the same for the
120 purposes of reviewing, curing, and adjudicating the validity of such provisional ballots.
121 4. That the Secretary of Administration (the Secretary) shall convene a work group for the purpose of
122 studying potential changes to the same day registration provisional vote process. The work group shall
123 consist of representatives from the Department of Elections and the Office of the Attorney General,
124 members of the House and Senate Committees on Privileges and Elections, general registrars, and
125 other local governmental officials, in addition to any other persons deemed necessary by the Secretary.
126 5. That the provisions of this act shall become effective on January 1, 2027.

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