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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 24.2-653.01, 24.2-706, 24.2-709.1, and 24.2-711.1 of the Code of Virginia, relating to elections; absentee and provisional ballots; process and timing for rejected absentee ballot applications, returned absentee ballots, and rejected provisional ballots.

[S 582]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 24.2-653.01, 24.2-706, 24.2-709.1, and 24.2-711.1 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 electoral 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 electoral 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

57 transmitted by the Department of Motor Vehicles to the Department of Elections pursuant to § 24.2-411.3
 58 prior to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was
 59 qualified for registration based upon the application for registration submitted by the person pursuant to
 60 subsection B of § 24.2-652.

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

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

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

73 **§ 24.2-706. Duty of general registrar on receipt of application; statement of voter.**

74 A. On receipt of an application for an absentee ballot, the general registrar shall enroll the name and
 75 address of each registered applicant on an absentee voter applicant list that shall be maintained in the office
 76 of the general registrar with a file of the applications received. *The list shall include whether the application*
 77 *has been accepted or rejected and, if it has been rejected, the reason for rejection or, if it has been accepted,*
 78 *the status of the absentee ballot. The list shall be updated daily.* The list shall be available for inspection and
 79 copying and the applications shall be available for inspection only by any registered voter during regular
 80 office hours. Upon request and for a reasonable fee, the Department of Elections shall provide an electronic
 81 copy of the absentee voter applicant list to any political party or candidate. Such list shall be used only for
 82 campaign and political purposes. Any list made available for inspection and copying under this section shall
 83 contain the post office box address in lieu of the residence street address for any individual who has furnished
 84 at the time of registration or subsequently, in addition to his street address, a post office box address pursuant
 85 to subsection B of § 24.2-418.

86 No list or application containing an individual's social security number, or any part thereof, or the
 87 individual's day and month of birth, shall be made available for inspection or copying by anyone. The
 88 Department of Elections shall prescribe procedures for general registrars to make the information in the lists
 89 and applications available in a manner that does not reveal social security numbers or parts thereof, or an
 90 individual's day and month of birth.

91 B. The completion and timely delivery of an application for an absentee ballot shall be construed to be an
 92 offer by the applicant to vote in the election.

93 The general registrar shall note on each application received whether the applicant is or is not a registered
 94 voter. In reviewing the application for an absentee ballot, the general registrar shall not reject the application
 95 of any individual because of an error or omission on any record or paper relating to the application, if such
 96 error or omission is not material in determining whether such individual is qualified to vote absentee. *For any*
 97 *registered voter whose absentee ballot application is rejected, the general registrar shall enter into the*
 98 *voter's record in the voter registration system that such absentee ballot application has been rejected and the*
 99 *reason for rejection.*

100 C. If the application has been properly completed and signed and the applicant is a registered voter of the
 101 precinct in which he offers to vote, the general registrar shall, at the time when the printed ballots for the
 102 election are available, send by the deadline set out in § 24.2-612, obtaining a certificate or other evidence of
 103 either first-class or expedited mailing or delivery from the United States Postal Service or other commercial
 104 delivery provider, or deliver to him in person in the office of the registrar, the following items and nothing
 105 else:

- 106 1. An envelope containing the folded ballot, sealed and marked "Ballot within."
- 107 2. An envelope for resealing the marked ballot, on which envelope is printed the following:
- 108 "Statement of Voter."

109 "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that my
 110 FULL NAME is (last, first, middle); that I am now or have been at some time since last November's general
 111 election a legal resident of (STATE YOUR LEGAL RESIDENCE IN VIRGINIA including the house
 112 number, street name or rural route address, city, zip code); that I received the enclosed ballot(s) upon
 113 application to the registrar of such county or city; that I opened the envelope marked 'ballot within' and
 114 marked the ballot(s), without assistance or knowledge on the part of anyone as to the manner in which I
 115 marked it (or I am returning the form required to report how I was assisted); that I then sealed the ballot(s) in
 116 this envelope; and that I have not voted and will not vote in this election at any other time or place.

117 Signature of Voter _____

118 Last four digits of voter's social security number _____

119 Voter's birth year _____
120 Date _____"

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

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

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

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

133 4. Printed instructions for completing the ballot and statement on the envelope and returning the ballot.
134 Such instructions shall include information on the sites of all drop-off locations in the county or city.
135 Whenever there is a proposed constitutional amendment or a statewide referendum to be voted on by the
136 voters, these instructions shall also include the website address where the explanation of the proposed
137 amendment prepared pursuant to § 30-19.9 or the information about the referendum prepared pursuant to
138 § 30-19.10 is posted on the Department's website.

139 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b) of 52
140 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter votes in
141 a federal election in the state, the printed instructions shall direct the voter to submit with his ballot (i) a copy
142 of a current and valid photo identification or (ii) a copy of a current utility bill, bank statement, government
143 check, paycheck or other government document that shows the name and address of the voter. Such
144 individual who desires to vote by mail but who does not submit one of the forms of identification specified in
145 this paragraph may cast such ballot by mail and the ballot shall be counted as a provisional ballot under the
146 provisions of § 24.2-653.01. The Department of Elections shall provide instructions to the electoral boards
147 for the handling and counting of such provisional ballots pursuant to § 24.2-653.01 and this section.

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

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

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

158 E. If the applicant completes his application in person under § 24.2-701 at a time when the printed ballots
159 for the election are available, he may request that the general registrar send to him by mail the items set forth
160 in subdivisions C 1 through 4, instead of casting the ballot in person. Such request shall be made no later than
161 5:00 p.m. on the eleventh day prior to the election in which the applicant offers to vote, and the general
162 registrar shall send those items to the applicant by mail, obtaining a certificate or other evidence of mailing.

163 F. If the applicant is a covered voter, as defined in § 24.2-452, the general registrar, at the time when the
164 printed ballots for the election are available, shall mail by the deadline set forth in § 24.2-612 or deliver in
165 person to the applicant in the office of the general registrar the items as set forth in subdivisions C 1 through
166 4 and, if necessary, an application for registration. A certificate or other evidence of mailing shall not be
167 required. If the applicant requests that such items be sent by electronic transmission, the general registrar, at
168 the time when the printed ballots for the election are available but not later than the deadline set forth in
169 § 24.2-612, shall send by electronic transmission the blank ballot, the form for the envelope for returning the
170 marked ballot, and instructions to the voter. Such materials shall be sent using the official email address or
171 fax number of the office of the general registrar published on the Department of Elections website. The State
172 Board of Elections may prescribe by regulation the format of the email address used for transmitting ballots
173 to eligible voters. A general registrar may also use electronic transmission facilities provided by the Federal
174 Voting Assistance Program. The voted ballot shall be returned to the general registrar as otherwise required
175 by this chapter.

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

181 shall be guilty of a Class 1 misdemeanor as provided in subsection A of § 24.2-1001.

182 **§ 24.2-709.1. Processing returned absentee ballots before election day; cure process.**

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

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

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

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

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

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

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

221 **§ 24.2-711.1. Absentee ballots; confirmation of receipt; notice of reason for rejection.**

222 A. The ~~Secretary~~ Department, in coordination with local election officials, shall implement a free-access
223 system by which a voter may determine:

- 224 1. Whether the voter's application for an absentee ballot has been received and accepted; ~~and~~
- 225 2. If the voter's application has been rejected, that it has been rejected and the reason for rejection; and
- 226 3. Whether the voter's absentee ballot has been received and the current status of the absentee ballot.

227 *Such system shall be updated daily.*

228 B. The electoral board of each county and city shall send a written explanation of the reason for rejection
229 of an absentee ballot to the voter whose absentee ballot is rejected within 90 days of the date on which the
230 ballot is rejected. The State Board of Elections shall promulgate instructions to implement the provisions of
231 this section.

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

238 **3. That the Department of Elections shall issue guidance to local election officials on the uniform**
239 **processing and counting of provisional ballots, including any provisional ballot cast by a person**
240 **submitting a registration application on the same day as the election pursuant to § 24.2-420.1 of the**
241 **Code of Virginia. The guidance shall include direction to treat all provisional ballots the same for the**
242 **purposes of reviewing, curing, and adjudicating the validity of such provisional ballots.**

- 243 4. That the Secretary of Administration (the Secretary) shall convene a work group for the purpose of
244 studying potential changes to the same day registration provisional vote process. The work group shall
245 consist of representatives from the Department of Elections and the Office of the Attorney General,
246 members of the House and Senate Committees on Privileges and Elections, general registrars, and
247 other local governmental officials, in addition to any other persons deemed necessary by the Secretary.
248 5. That the provisions of this act shall become effective on January 1, 2027.