

STATE OF NEW YORK

1027

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to validating absentee ballots

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 9-209 of the election law, as
2 amended by chapter 104 of the laws of 2010, is amended to read as
3 follows:

4 1. (a) The board of elections shall designate itself or such of its
5 employees as it shall deem appropriate as a set of poll clerks to exam-
6 ine, cast and canvass such ballots, and fix a time and place for their
7 meeting for such [~~purpose, provided that such meeting shall be no more~~
8 ~~than fourteen days after a general or special election and no more than~~
9 ~~eight days after a primary election at which such ballots are voted~~]
10 purposes. Starting forty days prior to the day of the election, such
11 poll clerks shall examine and determine the validity of absentee ballot
12 envelopes as they are received by the board of elections. Such examina-
13 tion shall occur every business day prior to the day of the election,
14 or, upon bipartisan agreement, on such other schedule as determined by
15 the board, provided that the board post when such examinations shall
16 occur on its website.

17 (b) Beginning at the close of polls on the second Sunday of early
18 voting, board of elections employees shall begin to prepare and canvass
19 valid absentee ballots received prior to such date for canvassing by
20 hand or central scanner. Such preparation shall include, but not be
21 limited to, reviewing the voter history record for each voter who
22 submitted an absentee ballot to reflect any instance of early voting by
23 such voters, opening absentee ballot affirmation envelopes, removing
24 ballots from absentee ballot affirmation envelopes, stacking absentee
25 ballots, and inserting ballots into a central scanner or other vote

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 counting device. Any ballots prepared and canvassed during this period
2 shall be secured in the same manner as voted ballots cast during early
3 voting or on election day.

4 (c) No unofficial tabulations of election results shall be printed or
5 viewed in any manner until after the close of polls on election day at
6 which time such tabulations shall be added into the election night
7 canvass totals.

8 (d) Board of elections employees shall follow all relevant provisions
9 of this article for canvassing, processing, recording, and announcing
10 results of voting and securing ballots, scanners, and other election
11 materials. Such canvass may occur at the offices of the board of
12 elections, or such other location designated by the board of elections.

13 (e) In canvassing such ballots, the board shall take all measures
14 necessary to ensure the privacy of voters and non-public release of
15 election results prior to the close of polls on election day.

16 (f) The board may designate additional sets of poll clerks and if it
17 designates more than one such set shall apportion among all such sets
18 the election districts from which such ballots have been received,
19 provided that all such ballots from a single election district shall be
20 assigned to a single set of clerks, and that each such set shall be
21 divided equally between representatives of the two major political
22 parties. Each such set of clerks shall be deemed a central board of
23 inspectors for purposes of this section.

24 ~~[(b)]~~ (g) Watchers are entitled to be present at meetings related to
25 examining absentee ballot envelopes prior to the day of the election;
26 provided, however, that any objection to a board determination that a
27 ballot envelope is eligible to be canvassed must be made at the meeting
28 such determination is made; an objection subsequent to such meeting
29 shall be invalid. At least five days prior to the time fixed for ~~[such]~~
30 a meeting to examine or cast and canvass absentee ballots subsequent to
31 the day of the election, the board shall send notice by first class mail
32 to each candidate, political party, and independent body entitled to
33 have had watchers present at the polls in any election district in the
34 board's jurisdiction. Such notice shall state the time and place fixed
35 by the board for such canvass.

36 ~~[(e)]~~ (h) Each such candidate, political party, and independent body
37 shall be entitled to appoint such number of watchers to attend upon each
38 central board of inspectors as such candidate, political party, or inde-
39 pendent body was entitled to appoint at such election in any one
40 election district for which such central board of inspectors is desig-
41 nated to act.

42 § 2. Section 9-209 of the election law is amended by adding two new
43 subdivisions 4 and 5 to read as follows:

44 4. If the board of elections manually canvasses ballots, it shall
45 review the ballot to determine its validity consistent with section
46 9-112 of this article. In cases where the express intent of the voter
47 is unambiguous, any stray marks or writing shall not be a basis for
48 voiding an absentee ballot. If the absentee ballots are tabulated by an
49 optical scan voting system, then a review of the absentee ballot shall
50 not occur.

51 5. If an affidavit ballot was cast by a voter on the day of election
52 and it is determined he or she submitted an absentee ballot, such affi-
53 davit shall be left aside, unopened.

54 § 3. Clause (A) of subparagraph (i) of paragraph (a) of subdivision 2
55 of section 9-209 of the election law, as amended by chapter 308 of the
56 laws of 2011, is amended to read as follows:

1 (A) If a person whose name is on an envelope as a voter has already
2 voted in person at such election, or if his or her name and residence as
3 stated on the envelope are not on a registration poll record, or the
4 computer generated list of registered voters or the list of special
5 presidential voters, or if there is no name on the envelope, or if the
6 envelope is not sealed, such envelope shall be laid aside unopened;
7 provided, however, that if the envelope is not sealed, such voter shall
8 receive notice pursuant to paragraph (a) of subdivision three of this
9 section.

10 § 4. Paragraph c of subdivision 3 of section 5-506 of the election
11 law, as amended by section 6 of part XX of chapter 55 of the laws of
12 2019, is amended to read as follows:

13 c. The computer generated registration list prepared for each election
14 in each election district shall be prepared in a manner which meets or
15 exceeds standards for clarity and speed of production established by the
16 state board of elections, shall be in a form approved by such board,
17 shall include the names of all voters eligible to vote in such election
18 and shall be in alphabetical order, except that, at a primary election,
19 the names of the voters enrolled in each political party may be placed
20 in a separate part of the list or in a separate list, as the board of
21 elections in its discretion, may determine. Such list shall contain,
22 adjacent to each voter's name, or in a space so designated, at least the
23 following: street address, date of birth, party enrollment, year of
24 registration, a computer reproduced facsimile of the voter's signature
25 or an indication that the voter is unable to sign his name, a place for
26 the voter to sign his name at such election and a place for the inspec-
27 tors to mark the voting machine number, the public counter number if
28 any, or the number of any paper ballots given the voter. Such list
29 shall also include a notation indicating if such voter was provided an
30 absentee ballot for the applicable election; provided however such nota-
31 tion shall not be required for any list being utilized during early
32 voting. The format for such notation shall be promulgated by the state
33 board of elections and used uniformly in computer generated registration
34 lists.

35 § 5. Subdivision 1 of section 4-128 of the election law, as amended by
36 section 2 of part XX of chapter 55 of the laws of 2019, is amended to
37 read as follows:

38 1. The board of elections of each county shall provide the requisite
39 number of official and facsimile ballots, two cards of instruction to
40 voters in the form prescribed by the state board of elections, at least
41 one copy of the instruction booklet for inspectors, a sufficient number
42 of maps, street finders or other descriptions of all of the polling
43 places and election districts within the political subdivision in which
44 the polling place is located to enable the election inspectors and poll
45 clerks to determine the correct election district and polling place for
46 each street address within the political subdivision in which the poll-
47 ing place is located, distance markers, tally sheets and return blanks,
48 pens, pencils, or other appropriate marking devices, envelopes for the
49 ballots of voters whose registration poll records are not in the ledger
50 or whose names are not in the computer generated registration list,
51 envelopes for the absentee ballots of voters who have elected to vote by
52 machine to be voided, envelopes for returns, identification buttons,
53 badges or emblems for the inspectors and clerks in the form prescribed
54 by the state board of elections and such other articles of stationery as
55 may be necessary for the proper conduct of elections, except that when a
56 town, city or village holds an election not conducted by the board of

1 elections, the clerk of such town, city or village, shall provide such
2 official and facsimile ballots and the necessary blanks, supplies and
3 stationery for such election.

4 § 6. Section 8-302 of the election law is amended by adding two new
5 subdivisions 2-b and 3-d to read as follows:

6 2-b. If on election day a voter's name appears in the ledger or
7 computer generated registration list with a notation indicating that the
8 voter was provided an absentee ballot, such voter shall be permitted to
9 cast his or her vote on the voting machine if the voter surrenders his
10 or her absentee ballot and affirmation oath envelope to the inspector
11 and such absentee ballot is marked "VOTED IN PERSON" and placed by the
12 inspector in an envelope designated for this purpose.

13 3-d. If on election day a voter's name appears in the ledger or
14 computer generated registration list with a notation indicating that the
15 voter was provided an absentee ballot and such voter is unable to
16 surrender his or her ballot and affirmation oath envelope pursuant to
17 subdivision two-b of this section, such voter shall only be entitled to
18 vote by affidavit ballot unless a court order provides otherwise.

19 § 7. Section 16-106 of the election law is amended by adding a new
20 subdivision 4-a to read as follows:

21 4-a. In order to obtain any order for temporary or preliminary injunc-
22 tive relief or an impound order halting or altering the canvassing of
23 absentee or affidavit ballots as provided for in section 9-209 of this
24 chapter, in addition to the criteria in article sixty-three of the civil
25 practice law and rules, the petitioner must show, by clear and convinc-
26 ing evidence, that, because of procedural irregularities or other facts
27 arising during the election, the petitioner will be irreparably harmed
28 absent such relief. For purposes of this section, allegations that
29 opinion polls show that an election is close is insufficient to show
30 irreparable harm to a petitioner by clear and convincing evidence.

31 § 8. Section 16-102 of the election law is amended by adding a new
32 subdivision 3-a to read as follows:

33 3-a. In order to obtain any order for temporary or preliminary injunc-
34 tive relief or an impound order halting or altering the canvassing of
35 absentee or affidavit ballots as provided for in section 9-209 of this
36 chapter, in addition to the criteria in article sixty-three of the civil
37 practice law and rules, the petitioner must show, by clear and convinc-
38 ing evidence, that, because of procedural irregularities or other facts
39 arising during the election, the petitioner will be irreparably harmed
40 absent such relief. For purposes of this section, allegations that
41 opinion polls show that an election is close is insufficient to show
42 irreparable harm to a petitioner by clear and convincing evidence.

43 § 9. Subdivision 5 of section 16-106 of the election law, as amended
44 by chapter 359 of the laws of 1989, is amended to read as follows:

45 5. A proceeding under subdivisions one and three of this section must
46 be instituted within twenty days and under subdivision two of this
47 section, within thirty days after the election or alleged erroneous
48 statement or determination was made, or the time when the board shall
49 have acted in the particulars as to which it is claimed to have failed
50 to perform its duty, except that such a proceeding with respect to a
51 village election must be instituted within ten days after such election,
52 statement, determination or action; provided, however, that any proceed-
53 ing seeking to reverse a determination of a board of elections that
54 results in validating an absentee ballot application shall be instituted
55 within two days of such determination, with the voter in question being
56 named as a necessary party; provided further that any proceeding chal-

1 lenging the canvassing of an absentee ballot due to an alleged defect on
2 the affirmation envelope must name the voter as a necessary party.

3 § 10. The state board of elections shall promulgate rules or regu-
4 lations necessary for the implementation of these provisions including,
5 but not be limited to, (i) ensuring that voters who submitted an absen-
6 tee ballot and thereafter voted in person during the early voting period
7 not have their absentee ballot canvassed in the election; and (ii)
8 ballots are counted in an efficient and fair process that respects the
9 privacy of the voter.

10 § 11. Subdivision 20 of section 17-130 of the election law is amended
11 to read as follows:

12 20. Intentionally opens an absentee voter's envelope or examines the
13 contents thereof after the receipt of the envelope by the board of
14 elections and before the close of the polls at the election except as
15 provided for in section 9-209 of this chapter; or,

16 § 12. This act shall take effect on the ninetieth day after it shall
17 have become a law.