S T A T E O F N E W Y O R K

10480

I N A S S E M B L Y

April 2, 2010

Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the election law, in relation to absentee voting by inmates convicted of non-violent felonies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The correction law is amended by adding a new section 510 to read as follows:

S 510. ABSENTEE VOTING BY QUALIFIED INMATES; NON-VIOLENT FELONY OFFENDERS. 1. THE SUPERINTENDENT OF THE CORRECTIONAL FACILITY, OR HIS OR HER DESIGNEE, SHALL INFORM EACH INMATE CONVICTED OF A NON-VIOLENT FELONY OFFENSE, AT SUCH FACILITY OF THEIR RIGHT TO REGISTER TO VOTE. IN ADDITION, SUCH NOTICE SHALL BE POSTED IN A PROMINENT PLACE WHERE INMATES CONGREGATE AND PRINTED IN BLOCK LETTERS. SUCH POSTED NOTICE SHALL INCLUDE QUALIFICATIONS REQUIRED TO EXERCISE THE RIGHT TO VOTE, AND OF THE AVAILABILITY AT THE LOCAL CORRECTIONAL FACILITY OF ASSISTANCE TO REGISTER TO VOTE, REQUEST AN ABSENTEE BALLOT APPLICATION, AND TO VOTE VIA ABSENTEE BALLOT. SUCH SUPERINTENDENT, OR HIS OR HER DESIGNEE, SHALL ASSIST ANY OTHERWISE ELIGIBLE INMATES IN REGISTERING TO VOTE IN THE SAME MANNER AND EXTENT AS THE AGENCIES LISTED IN SECTION 5-211 OF THE ELECTION LAW, ASSIST ANY OTHERWISE ELIGIBLE INMATES IN REQUESTING AN ABSENTEE BALLOT APPLICATION PURSUANT TO SECTION 8-400 OF THE ELECTION LAW, AND ASSIST ANY OTHERWISE ELIGIBLE INMATES IN VOTING BY ABSENTEE BALLOT PURSUANT TO SECTION 8-407 OF THE ELECTION LAW.

2. FOR PURPOSES OF THIS SECTION, NON-VIOLENT FELONY OFFENSE SHALL MEAN AND INCLUDE ANY FELONY NOT DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW.

S 2. Section 8-406 of the election law, as amended by chapter 296 of the laws of 1988, is amended to read as follows:

S 8-406. Absentee ballots, delivery of. If the board shall find that the applicant is a qualified voter of the election district containing his residence as stated in his statement and that his statement is sufficient, it shall, as soon as practicable after it shall have determined his right thereto, mail to him at an address designated by him, or

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

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deliver to him, or to any person designated for such purpose in writing by him, at the office of the board, such an absentee voter's ballot or set of ballots and an envelope therefor. If the ballot or ballots are to be sent outside of the United States to a country other than Canada or Mexico, such ballot or ballots shall be sent by air mail. However, if an applicant who is eligible for an absentee ballot is a resident of a facility operated or licensed by, or under the jurisdiction of, the department of mental hygiene, or a resident of a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law, or a resident of a hospital or other facility operated by the Veteran's Administration of the United States, OR A CORRECTIONAL FACILITY, such absentee ballot need not be so mailed or delivered to any such applicant but, may be delivered to the voter in the manner prescribed by section 8-407 of this [chapter] TITLE if such facility is located in the county or city in which such voter is eligible to vote.

S 3. The section heading and subdivision 1 of section 8-407 of the election law, the section heading as added by chapter 296 of the laws of 1988 and subdivision 1 as amended by chapter 195 of the laws of 2001, are amended to read as follows:

Voting by residents of nursing homes, residential health care facilities, facilities operated or licensed, or under the jurisdiction of, the department of mental hygiene or hospitals or facilities operated by the Veteran's Administration of the United States, OR A CORRECTIONAL FACILITY. 1. The board of elections of a county or city in which there is located at least one facility operated or licensed, or under the jurisdiction of, the department of mental hygiene, or a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law or an adult care facility subject to the provisions of title two of article seven of the social services law, or a hospital or other facility operated by the Veteran's Administration of the United States, OR A CORRECTIONAL FACILITY AS DEFINED BY SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION LAW shall provide that residents of each such facility for which such board has received twenty-five or more applications for absentee ballots from voters who are eligible to vote by absentee ballot in such city or county at such election, may vote by absentee ballot only in the manner provided for in this section. Such board may, in its discretion, provide that the procedure described in this subdivision shall be applicable to all such facilities in such county or city without regard to the number of absentee ballot applications received from the residents of any such facility.

S 4. The opening paragraph of section 5-211 of the election law, as amended by chapter 200 of the laws of 1996, is amended to read as follows:

Each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of voter registration forms pursuant to the provisions of this section. The following offices which provide public assistance and/or provide state funded programs primarily engaged in providing services to persons with disabilities are hereby designated as voter registration agencies: designated as the state agencies which provide public assistance are the department of [social services] FAMILY ASSISTANCE and the department of health. Also designated as public assistance agencies are all agencies of local government that provide such assistance. Designated as state agencies that provide programs primarily engaged in providing services

to people with disabilities are the department of labor, office for the aging, division of veterans' affairs, office of mental health, office of vocational and educational services for individuals with disabilities, commission on quality of care for the mentally disabled, office of mental retardation and developmental disabilities, commission for the blind and visually handicapped, office of alcoholism and substance abuse services, the office of the advocate for the disabled and all offices which administer programs established or funded by such agencies. Additional state agencies designated as voter registration offices are the department of state [and], the division of workers' compensation, THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES, THE DEPARTMENT OF CORRECTIONAL SERVICES AND THE DIVISION OF PAROLE. Such agencies shall be required to offer voter registration forms to persons upon initial application for services, renewal or recertification for services and change of address relating to such services. Such agencies shall also be responsible for providing assistance to applicants in completing voter registration forms, receiving and transmitting the completed application form from all applicants who wish to have such form transmitted to the appropriate board of elections. The state board of elections shall, together with representatives of the department of defense, develop and implement procedures for including recruitment offices of the armed forces of the United States as voter registration offices when such offices are so designated by federal law. The state board shall also make request of the United States Immigration and Naturalization Service to include applications for registration by mail with any materials which are given to new citizens. All institutions of the state university of New York and the city university of New York, shall, at the beginning of the school year, and again in January of a year in which the president of the United States is to be elected, provide an application for registration to each student in each such institution. The state board of elections may, by regulation, grant a waiver from any or all of the requirements of this section to any office or program of an agency, if it determines that it is not feasible for such office or program to administer such requirement.

S 5. Subdivisions 2, 3 and 4 of section 5-106 of the election law, subdivision 2 as amended by chapter 373 of the laws of 1978, are amended to read as follows:

2. No person who has been convicted of a felony pursuant to the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or his maximum sentence of imprisonment has expired, [or] he has been discharged from parole, OR HE IS CONVICTED OF A NON-VIOLENT FELONY OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION LAW. The governor, however, may attach as a condition to any such pardon a provision that any such person shall not have the right of suffrage until it shall have been separately restored to him.

3. No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States, or his maximum sentence of imprisonment has expired, [or] he has been discharged from parole, OR HE IS CONVICTED OF A CRIME THAT WOULD CONSTITUTE A NON-VIOLENT FELONY OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION LAW.

4. No person who has been convicted in another state for a crime or offense which would constitute a felony under the laws of this state shall have the right to register for or vote at any election in this state unless he shall have been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or his maximum sentence has expired, [or] he has been discharged from parole, OR HE IS CONVICTED OF A CRIME THAT WOULD CONSTITUTE A NON-VIOLENT FELONY OFFENSE AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION LAW.

S 6. Paragraph (f) of subdivision 1 of section 8-400 of the election law is amended and a new paragraph (g) is added to read as follows:

(f) absent from his voting residence because he is detained in jail awaiting action by a grand jury or awaiting trial, or confined in prison after a conviction for an offense other than a felony, provided that he is qualified to vote in the election district of his residence[.]; OR

(G) ABSENT FROM HIS VOTING RESIDENCE BECAUSE HE IS INCARCERATED IN A CORRECTIONAL FACILITY, FOR CONVICTION OF A NON-VIOLENT FELONY, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION LAW, PROVIDED HE IS QUALIFIED TO VOTE IN THE ELECTION DISTRICT OF HIS LAST KNOWN RESIDENCE OTHER THAN THE CORRECTIONAL FACILITY.

S 7. Paragraphs (a) and (c) of subdivision 3 of section 8-400 of the election law, subparagraph (i) of paragraph (c) as amended by chapter 234 of the laws of 1976, and subparagraph (iii) of paragraph (c) as amended by chapter 426 of the laws of 2009, are amended to read as follows:

(a) Applicant's full name and residence address, including the street and number, if any, rural delivery route, if any, mailing address if different from the residence address and his town or city and an address to which the ballot shall be mailed, OR IN THE EVENT OF INCARCERATION IN A CORRECTIONAL FACILITY FOR CONVICTION OF A NON-VIOLENT FELONY OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION LAW, THE RESIDENCE ADDRESS SHALL BE THE APPLICANT'S LAST KNOWN ADDRESS.

(c) A statement, as appropriate, that on the day of such election the applicant expects in good faith to be in one of the following categories:

(i) unavoidably absent from the county of his residence, or if a resident of the city of New York absent from said city, because his duties, occupation, business or studies require him to be elsewhere on such day, and where such duties, occupation, business or studies are not of such a nature as ordinarily to require such absence, a statement briefly describing the special circumstances requiring such absence and the dates when he expects to begin and end such absence; or

(ii) absent from the county of his residence, or if a resident of the city of New York absent from said city, because he will be on vacation elsewhere on such day, the dates upon which he expects to begin and end such vacation, the place or places where he expects to be on such vacation, the name and address of his employer, if any, or if self-employed or retired a statement to such effect; or

(iii) unable to appear at a polling place because of illness or physical disability or duties related to the primary care of one or more individuals who are ill or physically disabled; or

(iv) entitled to a ballot because he is a qualified voter registered as an inmate or patient of a veteran's [administraion] ADMINISTRATION hospital; or

(v) detained in jail awaiting action by a grand jury or awaiting trial or confined in prison after a conviction for an offense other than a felony and stating the place where he is so detained or confined; [or]

(vi) absent from the county of his residence, or if a resident of the city of New York absent from said city, because of his accompanying his spouse, parent or child who falls within one of the foregoing categories; a statement that the applicant resides in the same election district as such spouse, parent or child, the name and address of such spouse, parent or child, and, unless the application accompanies the application of such spouse, parent or child, the information as to the status of such spouse, parent or child required by the applicable category[.]; OR

(VII) ABSENT FROM THE COUNTY OF HIS RESIDENCE, OR IF A RESIDENT OF THE CITY OF NEW YORK ABSENT FROM SAID CITY, BECAUSE OF HIS INCARCERATION IN A CORRECTIONAL FACILITY FOR HIS CONVICTION OF A NON-VIOLENT FELONY OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION LAW.

S 8. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.