

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:

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

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

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

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

24 S 8-406. Absentee ballots, delivery of. If the board shall find that
25 the applicant is a qualified voter of the election district containing
26 his residence as stated in his statement and that his statement is
27 sufficient, it shall, as soon as practicable after it shall have deter-
28 mined 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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1 deliver to him, or to any person designated for such purpose in writing
2 by him, at the office of the board, such an absentee voter's ballot or
3 set of ballots and an envelope therefor. If the ballot or ballots are to
4 be sent outside of the United States to a country other than Canada or
5 Mexico, such ballot or ballots shall be sent by air mail. However, if an
6 applicant who is eligible for an absentee ballot is a resident of a
7 facility operated or licensed by, or under the jurisdiction of, the
8 department of mental hygiene, or a resident of a facility defined as a
9 nursing home or residential health care facility pursuant to subdivi-
10 sions two and three of section two thousand eight hundred one of the
11 public health law, or a resident of a hospital or other facility oper-
12 ated by the Veteran's Administration of the United States, OR A CORREC-
13 TIONAL FACILITY, such absentee ballot need not be so mailed or delivered
14 to any such applicant but, may be delivered to the voter in the manner
15 prescribed by section 8-407 of this [chapter] TITLE if such facility is
16 located in the county or city in which such voter is eligible to vote.

17 S 3. The section heading and subdivision 1 of section 8-407 of the
18 election law, the section heading as added by chapter 296 of the laws of
19 1988 and subdivision 1 as amended by chapter 195 of the laws of 2001,
20 are amended to read as follows:

21 Voting by residents of nursing homes, residential health care facili-
22 ties, facilities operated or licensed, or under the jurisdiction of, the
23 department of mental hygiene or hospitals or facilities operated by the
24 Veteran's Administration of the United States, OR A CORRECTIONAL FACILI-
25 TY. 1. The board of elections of a county or city in which there is
26 located at least one facility operated or licensed, or under the juris-
27 diction of, the department of mental hygiene, or a facility defined as a
28 nursing home or residential health care facility pursuant to subdivi-
29 sions two and three of section two thousand eight hundred one of the
30 public health law or an adult care facility subject to the provisions of
31 title two of article seven of the social services law, or a hospital or
32 other facility operated by the Veteran's Administration of the United
33 States, OR A CORRECTIONAL FACILITY AS DEFINED BY SUBDIVISION FOUR OF
34 SECTION TWO OF THE CORRECTION LAW shall provide that residents of each
35 such facility for which such board has received twenty-five or more
36 applications for absentee ballots from voters who are eligible to vote
37 by absentee ballot in such city or county at such election, may vote by
38 absentee ballot only in the manner provided for in this section. Such
39 board may, in its discretion, provide that the procedure described in
40 this subdivision shall be applicable to all such facilities in such
41 county or city without regard to the number of absentee ballot applica-
42 tions received from the residents of any such facility.

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

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

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

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

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

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

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

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

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

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

21 S 7. Paragraphs (a) and (c) of subdivision 3 of section 8-400 of the
22 election law, subparagraph (i) of paragraph (c) as amended by chapter
23 234 of the laws of 1976, and subparagraph (iii) of paragraph (c) as
24 amended by chapter 426 of the laws of 2009, are amended to read as
25 follows:

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

34 (c) A statement, as appropriate, that on the day of such election the
35 applicant expects in good faith to be in one of the following catego-
36 ries:

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

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

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

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

1 (v) detained in jail awaiting action by a grand jury or awaiting trial
2 or confined in prison after a conviction for an offense other than a
3 felony and stating the place where he is so detained or confined; [or]
4 (vi) absent from the county of his residence, or if a resident of the
5 city of New York absent from said city, because of his accompanying his
6 spouse, parent or child who falls within one of the foregoing catego-
7 ries; a statement that the applicant resides in the same election
8 district as such spouse, parent or child, the name and address of such
9 spouse, parent or child, and, unless the application accompanies the
10 application of such spouse, parent or child, the information as to the
11 status of such spouse, parent or child required by the applicable cate-
12 gory[.]; OR
13 (VII) ABSENT FROM THE COUNTY OF HIS RESIDENCE, OR IF A RESIDENT OF THE
14 CITY OF NEW YORK ABSENT FROM SAID CITY, BECAUSE OF HIS INCARCERATION IN
15 A CORRECTIONAL FACILITY FOR HIS CONVICTION OF A NON-VIOLENT FELONY
16 OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF
17 THE CORRECTION LAW.
18 S 8. This act shall take effect on the one hundred eightieth day after
19 it shall have become a law; provided, however, that effective immediate-
20 ly, the addition, amendment and/or repeal of any rules or regulations
21 necessary for the implementation of this act on its effective date is
22 authorized and directed to be made and completed on or before such
23 effective date.