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2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. MOLINARO, SALADINO, QUINN, BACALLES, BALL, BURLING, McDONOUGH, DUPREY, RABBITT, CORWIN -- Multi-Sponsored by -- M. of A. CROUCH, JOHN, MENG, THIELE, TOWNSEND -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to allowing application by military voters for absentee ballots by electronic means

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

1 Section 1. Paragraphs (a), (c) and (d) of subdivision 2 of section
2 8-400 of the election law, paragraph (a) as amended by chapter 263 of
3 the laws of 1991, paragraph (c) as amended by chapter 321 of the laws of
4 1988 and paragraph (d) as added by chapter 216 of the laws of 1988, are
5 amended to read as follows:
6 (a) Application forms shall be furnished by and may be obtained from
7 any board of elections at any time until the day before such election.
8 FOR ANY ELECTIONS AFTER JANUARY FIRST, TWO THOUSAND TEN, APPLICATION
9 FORMS SHALL BE MADE AVAILABLE FOR QUALIFIED MILITARY VOTERS BY ELECTRON-
10 IC MEANS WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, TELEFACSIMILE TRAN-
11 SMISSION OR ELECTRONIC MAIL. Application forms shall also be supplied by
12 the board of inspectors of the election district in which applicant is a
13 qualified voter on all of the days provided for local registration. In
14 addition, application forms shall be supplied upon the request of the
15 person authorized to vote pursuant to this section, any such person's
16 spouse, parent or child, a person residing with the applicant as a
17 member of his household, or the applicant's duly authorized agent.
18 Application forms sent outside of the United States to a country other
19 than Canada or Mexico, shall be sent airmail. Any reference to "board of
20 elections" in the remaining provisions of this section, except with
21 respect to the furnishing and obtaining of applications for absentee
22 ballots, means only the board of elections of the county or city in
23 which the applicant is a qualified voter.

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

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1 (c) All applications must be mailed OR, FOR MILITARY VOTERS, TRANSMIT-
2 TED BY ELECTRONIC MEANS to the board of elections not later than the
3 seventh day before the election for which a ballot is first requested or
4 delivered to such board not later than the day before such election.

5 (d) The board of elections shall mail an absentee ballot to every
6 qualified voter otherwise eligible for such a ballot, who requests such
7 an absentee ballot from such board of elections in a letter OR, IF A
8 MILITARY VOTER, BY ELECTRONIC TRANSMISSION, which is signed by the voter
9 and received by the board of elections not earlier than the thirtieth
10 day nor later than the seventh day before the election for which the
11 ballot is first requested and which states the address where the voter
12 is registered and the address to which the ballot is to be mailed. The
13 board of elections shall enclose with such ballot a form of application
14 for absentee ballot.

15 S 2. Subdivision 9 of section 8-400 of the election law, as amended by
16 chapter 373 of the laws of 1986, is amended to read as follows:

17 9. The state board of elections shall prescribe a standard application
18 form for use under this section. The use of any application form which
19 substantially complies with the provisions of this section shall be
20 acceptable and any application filed on such a form shall be accepted
21 for filing. THE STATE BOARD OF ELECTIONS SHALL ALSO PRESCRIBE A STAND-
22 ARD APPLICATION FORM FOR WHICH APPLICATION MAY BE MADE BY MILITARY
23 VOTERS BY ELECTRONIC TRANSMISSION INCLUDING, BUT NOT LIMITED TO, TELE-
24 FACSIMILE OR ELECTRONIC MAIL.

25 S 2-a. Subdivision 10 of section 8-400 of the election law, as amended
26 by chapter 373 of the laws of 1986 and renumbered by chapter 40 of the
27 laws of 2009, is amended to read as follows:

28 10. The state board of elections shall prescribe a standard applica-
29 tion form for use under this section. The use of any application form
30 which substantially complies with the provisions of this section shall
31 be acceptable and any application filed on such a form shall be accepted
32 for filing. THE STATE BOARD OF ELECTIONS SHALL ALSO PRESCRIBE A STAND-
33 ARD APPLICATION FORM FOR WHICH APPLICATION MAY BE MADE BY MILITARY
34 VOTERS BY ELECTRONIC TRANSMISSION INCLUDING, BUT NOT LIMITED TO, TELE-
35 FACSIMILE OR ELECTRONIC MAIL.

36 S 3. Section 8-406 of the election law, as amended by chapter 296 of
37 the laws of 1988, is amended to read as follows:

38 S 8-406. Absentee ballots, delivery of. If the board shall find that
39 the applicant is a qualified voter of the election district containing
40 his residence as stated in his statement and that his statement is
41 sufficient, it shall, as soon as practicable after it shall have deter-
42 mined his right thereto, mail to him at an address designated by him, or
43 deliver to him, or to any person designated for such purpose in writing
44 by him, at the office of the board, such an absentee voter's ballot or
45 set of ballots and an envelope therefor. If the ballot or ballots are to
46 be [sent] MAILED outside of the United States to a country other than
47 Canada or Mexico, such ballot or ballots shall be sent by air mail.
48 However, if an applicant who is eligible for an absentee ballot is a
49 resident of a facility operated or licensed by, or under the jurisdic-
50 tion of, the department of mental hygiene, or a resident of a facility
51 defined as a nursing home or residential health care facility pursuant
52 to subdivisions two and three of section two thousand eight hundred one
53 of the public health law, or a resident of a hospital or other facility
54 operated by the Veteran's Administration of the United States, such
55 absentee ballot need not be so mailed or delivered to any such applicant
56 but, may be delivered to the voter in the manner prescribed by section

1 8-407 of this [chapter] TITLE if such facility is located in the county
2 or city in which such voter is eligible to vote.

3 S 4. Subdivision 1 of section 8-412 of the election law, as amended by
4 chapter 155 of the laws of 1994, is amended to read as follows:

5 1. The board of elections shall cause all absentee ballots received by
6 it before the close of the polls on election day and all ballots
7 contained in envelopes showing a cancellation mark of the United States
8 postal service or a foreign country's postal service, or showing a dated
9 endorsement of receipt by another agency of the United States govern-
10 ment, OR, IF ELECTRONICALLY TRANSMITTED, SHOWING A COMPUTER-GENERATED
11 TIME AND DATE STAMP with a date which is ascertained to be not later
12 than the day before election and received by such board of elections not
13 later than seven days OR, IN THE CASE OF A MILITARY VOTER UTILIZING AN
14 ABSENTEE BALLOT, THIRTY DAYS, following the day of election to be cast
15 and counted except that the absentee ballot of a voter who requested
16 such ballot by letter, rather than application, shall not be counted
17 unless a valid application form, signed by such voter, is received by
18 the board of elections with such ballot.

19 S 5. Subdivisions 4, 7-a and 11 of section 10-106 of the election law,
20 subdivision 4 as amended by chapter 262 of the laws of 2003, subdivision
21 7-a as added by chapter 348 of the laws of 1991 and subdivision 11 as
22 amended by chapter 290 of the laws of 1991, are amended to read as
23 follows:

24 4. Not earlier than the ninetieth or later than the seventy-fifth day
25 before each general election, each county or city board of elections
26 shall send to each person who is registered as a military voter and to
27 every other military voter in such county or city for whom it has a
28 military address, an application for a military ballot for such general
29 election in a form prescribed by the state board of elections, which
30 shall include a place for such military voter to enroll in a party, on a
31 postcard bearing the return address of such board of elections OR BY
32 ELECTRONIC MEANS INCLUDING, BUT NOT LIMITED TO, TELEFACSIMILE TRANS-
33 MISSION OR ELECTRONIC MAIL; provided, however, the county or city board
34 of elections shall not send such an application to any person who has
35 applied for a military ballot and is entitled to receive such ballot for
36 such election.

37 7-a. If a federal post card OR ELECTRONICALLY TRANSMITTED application
38 form is received from a person who is qualified to vote as a military
39 voter but who has not previously registered pursuant to the provisions
40 of this article, such federal post card OR ELECTRONICALLY TRANSMITTED
41 application form shall be treated in all respects as an application for
42 registration and enrollment as a military voter and for a military
43 ballot pursuant to the provisions of this article. If such a federal
44 post card OR ELECTRONICALLY TRANSMITTED application form is received
45 from a person already registered as a military voter pursuant to the
46 provisions of this article, such application shall be treated in all
47 respects as an application for a military ballot pursuant to the
48 provisions of this article.

49 11. A board of elections may send to any spouse, parent, or adult
50 child, brother or sister of a military voter serving outside of the
51 continental limits of the United States, an application for a military
52 ballot, in a form prescribed by the state board of elections. Such
53 application shall be on a postcard OR TRANSMITTED BY ELECTRONIC MEANS
54 addressed to the appropriate board of elections and shall include the
55 statement "I understand that this application will be accepted for all
56 purposes as the equivalent of an affidavit and, if it contains a materi-

1 al false statement, shall subject me to the same penalties as if I had
2 been duly sworn". Such application may be signed by the spouse, parent
3 or adult child, brother or sister of such military voter. Upon receipt
4 of such an application from such a relative of a military voter, the
5 board of elections shall mail OR TRANSMIT ELECTRONICALLY a military
6 ballot to such military voter together with an application for a mili-
7 tary ballot and instructions that such application must be completed and
8 returned together with the envelope containing the military ballot
9 EITHER BY MAIL OR ELECTRONIC MEANS. No ballot sent to a military voter
10 upon the application of a relative of such military voter shall be cast
11 or canvassed unless a completed application for military ballot signed
12 by such military voter is received with such ballot.

13 S 6. Subdivision 1 of section 10-108 of the election law, as amended
14 by chapter 262 of the laws of 2003, is amended to read as follows:

15 1. Ballots for military voters shall be mailed or otherwise distrib-
16 uted by the board of elections thirty-two days before a primary or
17 general election; twenty-five days before a New York city community
18 school board district or city of Buffalo school district election; and
19 fourteen days before a village election conducted by the board of
20 elections and twelve days before a special election. A voter who submits
21 a military ballot application shall be entitled to a military ballot
22 thereafter for each subsequent election through and including the next
23 two regularly scheduled general elections held in even numbered years,
24 including any run-offs which may occur; provided, however, such applica-
25 tion shall not be valid for any election held within seven days after
26 its receipt. Ballots shall also be mailed OR TRANSMITTED ELECTRONICALLY
27 to any qualified military voter who is already registered and who
28 requests such military ballot from such board of elections in a letter
29 OR ELECTRONIC TRANSMISSION, which is signed by the voter and received by
30 the board of elections not later than the seventh day before the
31 election for which the ballot is requested and which states the address
32 where the voter is registered and the address to which the ballot is to
33 be mailed OR TRANSMITTED ELECTRONICALLY. The board of elections shall
34 enclose with such ballot a form of application for military ballot. In
35 the case of a primary election, the board shall deliver only the ballot
36 of the party with which the military voter is enrolled according to the
37 military voter's registration records. In the event a primary election
38 is uncontested in the military voter's election district for all offices
39 or positions except the party position of member of the ward, town, city
40 or county committee, no ballot shall be delivered to such military voter
41 for such election; and the military voter shall be advised of the reason
42 why he or she will not receive a ballot.

43 S 7. Subdivisions 2 and 5 of section 10-109 of the election law, as
44 amended by chapter 200 of the laws of 1996, are amended to read as
45 follows:

46 2. If any ballot, application form or other mail OR ELECTRONIC TRANS-
47 MISSION sent to a military voter at his military address by the board of
48 elections is returned by the post office OR COMPUTER SERVER as undeliv-
49 erable, the board of elections shall ascertain whether the military
50 voter is residing at the address given on his registration records as
51 his permanent address. If he is residing at such address, the board
52 shall not send him any further military ballots unless he applies for
53 them in the regular way, giving a new military OR ELECTRONIC MAIL
54 address. If such military voter is not residing at such permanent
55 address, the board of elections shall send a confirmation notice to such
56 military voter at his last military OR ELECTRONIC MAIL address pursuant

1 to the provisions of section 5-712 of this chapter and shall place the
2 registration of such voter in inactive status. However, if such a voter
3 notifies the board of elections that he has moved to a new military
4 address, OR IS USING A DIFFERENT ELECTRONIC MAIL ADDRESS, the board
5 shall restore the registration of such voter to active status in the
6 manner prescribed by section 5-213 of this chapter.

7 5. Upon cancelling the registration of a military voter pursuant to
8 the provisions of section 5-400 of this chapter, the board of elections
9 shall forthwith notify such voter at his last military address OR ELEC-
10 TRONIC MAIL ADDRESS and at his permanent residence address of the fact
11 of the cancellation, the reason therefor, and of his right to reregister
12 pursuant to this article.

13 S 8. Subdivision 1 of section 10-112 of the election law, as amended
14 by chapter 290 of the laws of 1991, is amended to read as follows:

15 [1.] The military voter shall mark the military ballot provided for in
16 this article in the same manner as an absentee ballot. [After] IF
17 UTILIZING MAIL, AFTER marking the ballot, [he] SUCH VOTER shall fold
18 such ballot and enclose it in the ballot envelope bearing the military
19 voter's statement and seal the envelope. He shall then sign the state-
20 ment, with the blanks properly filled in. The envelope containing the
21 ballot shall then be inserted in the envelope addressed to the appropri-
22 ate board of elections, which shall be mailed or otherwise delivered to
23 such board of elections of his county of residence. IF UTILIZING ELEC-
24 TRONIC MAIL, THE MILITARY VOTER SHALL FOLLOW THE INSTRUCTIONS CONTAINED
25 ON THE BALLOT FORM.

26 S 9. Subdivision 1 of section 10-114 of the election law, as amended
27 by chapter 237 of the laws of 2005, is amended to read as follows:

28 1. The board of elections shall cause all military ballots received by
29 it before the close of the polls on election day and all ballots
30 contained in envelopes showing a cancellation mark of the United States
31 postal service or a foreign country's postal service, or showing a dated
32 endorsement of receipt by another agency of the United States government
33 OR, IF ELECTRONICALLY TRANSMITTED, SHOWING A COMPUTER GENERATED TIME AND
34 DATE STAMP, or are signed and dated by the voter and one witness there-
35 to, with a date which is ascertained to be not later than the day before
36 election and received by such board of elections not later than [seven]
37 THIRTY days following the day of a primary or special election and not
38 later than thirteen days following the day of a general election to be
39 cast and counted.

40 S 10. Subdivision 1 of section 10-114 of the election law, as amended
41 by chapter 155 of the laws of 1994, is amended to read as follows:

42 1. The board of elections shall cause all military ballots received by
43 it before the close of the polls on election day and all ballots
44 contained in envelopes showing a cancellation mark of the United States
45 postal service or a foreign country's postal service, or showing a dated
46 endorsement of receipt by another agency of the United States govern-
47 ment, OR, IF ELECTRONICALLY TRANSMITTED, SHOWING A COMPUTER GENERATED
48 TIME AND DATE STAMP, with a date which is ascertained to be not later
49 than the day before election and received by such board of elections not
50 later than [seven] THIRTY days following the day of election to be cast
51 and counted.

52 S 11. This act shall take effect immediately; provided that the amend-
53 ments to subdivision 1 of section 10-114 of the election law made by
54 section nine of this act shall be subject to the expiration and rever-
55 sion of such subdivision pursuant to section 4 of chapter 237 of the
56 laws of 2005, as amended, when upon such date the provisions of section

1 ten of this act shall take effect; provided, however, that the amend-
2 ments to section 8-400 of the election law made by section two-a of this
3 act shall take effect on the same date and in the same manner as section
4 1 of chapter 40 of the laws of 2009, takes effect.