

3212

2009-2010 Regular Sessions

I N S E N A T E

March 12, 2009

Introduced by Sens. MAZIARZ, ALESI, GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the election law, the education law and the correction law, in relation to voting by level two or level three sex offenders

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

1 Section 1. The penal law is amended by adding two new sections 145.75
2 and 145.80 to read as follows:
3 S 145.75 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR
4 CHILDREN FOR THE PURPOSES OF VOTING IN THE SECOND DEGREE.
5 1. A PERSON IS GUILTY OF UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL
6 OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE SECOND
7 DEGREE, WHEN BEING A LEVEL TWO OR LEVEL THREE SEX OFFENDER, HE OR SHE
8 ENTERS OR REMAINS IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES
9 OF CASTING A BALLOT OR OTHERWISE VOTING DURING ANY PRIMARY, GENERAL,
10 SPECIAL, SCHOOL DISTRICT OR OTHER ELECTION IN WHICH RESIDENTS, REGIS-
11 TERED OR QUALIFIED VOTERS ARE ENTITLED TO CAST BALLOTS.
12 2. FOR THE PURPOSES OF THIS SECTION: (A) "LEVEL TWO OR LEVEL THREE SEX
13 OFFENDER" SHALL MEAN A PERSON REGISTERED OR REQUIRED TO REGISTER UNDER
14 SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW WHO HAS RECEIVED
15 A LEVEL TWO OR LEVEL THREE DESIGNATION PURSUANT TO SECTION ONE HUNDRED
16 SIXTY-EIGHT-L OF THE CORRECTION LAW; AND (B) "SCHOOL OR FACILITY FOR
17 CHILDREN" SHALL MEAN A BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD,
18 PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A
19 PUBLIC OR PRIVATE ELEMENTARY, PAROCHIAL, INTERMEDIATE, JUNIOR HIGH,
20 VOCATIONAL, OR HIGH SCHOOL, OR ANY OTHER FACILITY OR INSTITUTION PRIMA-
21 RILY USED FOR THE CARE OR TREATMENT OF PERSONS UNDER THE AGE OF EIGHTEEN
22 WHILE ONE OR MORE OF SUCH PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT.

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

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1 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN
2 FOR THE PURPOSES OF VOTING IN THE SECOND DEGREE IS A CLASS A MISDEMEA-
3 NOR.

4 S 145.80 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR
5 CHILDREN FOR THE PURPOSES OF VOTING IN THE FIRST DEGREE.

6 A PERSON IS GUILTY OF UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR
7 FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE FIRST DEGREE
8 WHEN HE OR SHE COMMITS THE CRIME OF UNLAWFULLY ENTERING OR REMAINING IN
9 A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE
10 SECOND DEGREE, HAVING PREVIOUSLY BEEN CONVICTED OF SUCH CRIME WITHIN THE
11 PRECEDING TEN YEARS.

12 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN
13 FOR THE PURPOSES OF VOTING IN THE FIRST DEGREE IS A CLASS E FELONY.

14 S 2. Paragraph (f) of subdivision 1 of section 8-400 of the election
15 law is amended and a new paragraph (g) is added to read as follows:

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

20 (G) PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING PLACE OF THE
21 ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR
22 SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS
23 LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS
24 "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR
25 CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW.

26 S 3. Subparagraph (vi) of paragraph (c) of subdivision 3 of section
27 8-400 of the election law is amended and a new subparagraph (vii) is
28 added to read as follows:

29 (vi) absent from the county of his residence, or if a resident of the
30 city of New York absent from said city, because of his accompanying his
31 spouse, parent or child who falls within one of the foregoing catego-
32 ries; a statement that the applicant resides in the same election
33 district as such spouse, parent or child, the name and address of such
34 spouse, parent or child, and, unless the application accompanies the
35 application of such spouse, parent or child, the information as to the
36 status of such spouse, parent or child required by the applicable cate-
37 gory[.]; OR

38 (VII) PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING PLACE OF THE
39 ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR
40 SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS
41 LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS
42 "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR
43 CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW.

44 S 4. Section 8-400 of the election law is amended by adding a new
45 subdivision 10 to read as follows:

46 10. SIXTY DAYS BEFORE EACH ELECTION THE BOARD OF ELECTIONS SHALL
47 COMPILE A LIST OF ALL LEVEL TWO AND LEVEL THREE REGISTERED SEX OFFENDERS
48 ENTITLED TO RECEIVE ABSENTEE BALLOTS PURSUANT TO THE PROVISIONS OF THIS
49 SECTION. THE BOARD OF ELECTIONS SHALL, BY MAIL ADDRESSED TO SUCH SEX
50 OFFENDER AT HIS OR HER REGISTERED ADDRESS, SEND AN ABSENTEE BALLOT FOR
51 THE ENSUING ELECTION TO SUCH PERSON IN THE SAME MANNER AS PROVIDED IN
52 THIS SECTION FOR A QUALIFIED VOTER ENTITLED TO AN ABSENTEE BALLOT
53 BECAUSE OF ILLNESS OR DISABILITY.

54 S 5. Subdivision 2 of section 2018-a of the education law, as added by
55 chapter 219 of the laws of 1978, paragraphs a and b as amended by chap-
56 ter 136 of the laws of 1991, paragraph c as amended by chapter 26 of the

laws of 1994, paragraph d as amended by chapter 72 of the laws of 1988 and paragraph g as amended by chapter 825 of the laws of 1984, is amended to read as follows:

2. a. An applicant for such an absentee ballot shall submit an application setting forth (1) his OR HER name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that he OR SHE is or will be, on the day of the school district election, a qualified voter of the school district in which he OR SHE resides in that he OR SHE is or will be, on such date, over eighteen years of age, a citizen of the United States and has or will have resided in the district for thirty days next preceding such date; (3) whether he OR SHE is registered in the district; AND (4) that he OR SHE will be unable to appear to vote in person on the day of the school district election for which the absentee ballot is requested because he OR SHE is, or will be on such day (a) a patient in a hospital, or unable to appear personally at the polling place on such day because of illness or physical disability [or]; (b) because his OR HER duties, occupation, business, or studies will require him OR HER to be outside of the county or city of his residence on such day[,]; (c) because he OR SHE will be on vacation outside the county or city of his OR HER residence on such day; [or,] (d) absent from his voting residence because he OR SHE is detained in jail awaiting action by a grand jury or awaiting trial or is confined in prison after conviction for an offense other than a felony. Such application must be received by the district clerk at least seven days before the election if the ballot is to be mailed to the voter, or the day before the election, if the ballot is to be delivered personally to the voter; OR (E) PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW.

b. (1) Where such duties, occupation, business, or studies are of such a nature as ordinarily to require such absence, a brief description of such duties, occupation, business, or studies shall be set forth in such application. (2) Where such duties, occupation, business, or studies are not of such a nature as ordinarily to require such absence, such application shall contain a statement of the special circumstances on account of which such absence is required.

c. Where the applicant expects in good faith to be absent on the day of the election because he OR SHE will be on vacation elsewhere on such day, such application shall also contain the dates upon which he OR SHE expects to begin and end such vacation, the place or places where he OR SHE expects to be on such vacation, the name and address of his OR HER employer, if any, and if self-employed or retired, a statement to that effect.

d. Where the absence is because of detention or confinement to jail, such application shall state whether the voter is detained awaiting action of the grand jury or is confined after conviction for an offense other than a felony.

e. WHERE THE APPLICANT INDICATES HE OR SHE IS PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN

1 SECTION 145.75 OF THE PENAL LAW SUCH APPLICATION SHALL STATE WHETHER OR
2 NOT THE VOTER IS CURRENTLY UNDER A SENTENCE OF IMPRISONMENT FOR A FELONY
3 OR ON PAROLE.

4 F. Where a person is or would be, if he OR SHE were a qualified voter,
5 entitled to apply for the right to vote by absentee ballot under the
6 provisions of this section, his OR HER spouse, parent or child, if a
7 qualified voter and a resident of the same school district, shall be
8 entitled to vote as an absentee voter upon personally making and signing
9 an application in accordance with the preceding provisions of this
10 subdivision and showing that he OR SHE expects to be absent from the
11 school district on the day of the school district election by reason of
12 accompanying or being with the spouse, child or parent who is or would
13 be, if he OR SHE were a qualified voter, so entitled to apply for the
14 right to vote by absentee ballot, and, in the event no application is
15 made by such spouse, child or parent, such further information as the
16 board of registration shall require.

17 [f.] G. Such application shall include the following statement to be
18 signed by the voter.

19 I hereby declare that the foregoing is a true statement to the best of
20 my knowledge and belief, and I understand that if I make any material
21 false statement in the foregoing statement of application for absentee
22 ballots, I shall be guilty of a misdemeanor.

23 Date.....Signature of Voter

24 [g.] H. An applicant whose ability to appear personally at the polling
25 place of the school district of which he OR SHE is a qualified voter is
26 substantially impaired by reason of permanent illness or physical disa-
27 bility and whose registration record has been marked "permanently disa-
28 bled" by the board of elections pursuant to the provisions of the
29 election law shall be entitled to receive an absentee ballot pursuant to
30 the provisions of this section without making separate application for
31 such absentee ballot, and the board of registration upon being advised
32 by the board of elections on or with the list of registered voters that
33 the registration record of a voter is marked "permanently disabled"
34 shall send an absentee ballot to such voter at his OR HER last known
35 address with a request to the postal authorities not to forward same but
36 to return same in five days in the event that it cannot be delivered to
37 the addressee. The board of education shall determine whether such
38 ballot shall be sent by first class or by certified mail. All such
39 ballots shall be mailed in the same manner as determined by the board of
40 education. The board of registration shall make an appropriate entry on
41 the registration indicating the fact that an absentee ballot has been
42 sent and the date of mailing.

43 S 6. Subdivision 2 of section 2018-b of the education law, as amended
44 by chapter 46 of the laws of 1992 and paragraph c as amended by chapter
45 26 of the laws of 1994, is amended to read as follows:

46 2. a. An applicant for such an absentee ballot shall submit an appli-
47 cation setting forth (1) his OR HER name and residence address, includ-
48 ing the street and number, if any, or town and rural delivery route, if
49 any; (2) that he OR SHE is or will be, on the day of the school district
50 election, a qualified voter of the school district in which he OR SHE
51 resides in that he OR SHE is or will be, on such date, over eighteen
52 years of age, a citizen of the United States and has or will have
53 resided in the district for thirty days next preceding such date; AND
54 (3) that he OR SHE will be unable to appear to vote in person on the day

1 of the school district election for which the absentee ballot is
2 requested because he OR SHE is, or will be on such day (a) a patient in
3 a hospital, or unable to appear personally at the polling place on such
4 day because of illness or physical disability [or]; (b) because his OR
5 HER duties, occupation, business, or studies will require him OR HER to
6 be outside of the county or city of his residence on such day[,]; (c)
7 because he OR SHE will be on vacation outside the county or city of his
8 OR HER residence on such day; [or,] (d) absent from his OR HER voting
9 residence because he OR SHE is detained in jail awaiting action by a
10 grand jury or awaiting trial or is confined in prison after conviction
11 for an offense other than a felony; OR (E) PROHIBITED FROM APPEARING
12 PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR
13 SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE
14 SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR
15 FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFEN-
16 DER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75
17 OF THE PENAL LAW. Such application must be received by the district
18 clerk or designee of the trustees or school board at least seven days
19 before the election if the ballot is to be mailed to the voter, or the
20 day before the election, if the ballot is to be delivered personally to
21 the voter.

22 b. (1) Where such duties, occupation, business, or studies are of such
23 a nature as ordinarily to require such absence, a brief description of
24 such duties, occupation, business, or studies shall be set forth in such
25 application.

26 (2) Where such duties, occupation, business, or studies are not of
27 such a nature as ordinarily to require such absence, such application
28 shall contain a statement of the special circumstances on account of
29 which such absence is required.

30 c. Where the applicant expects in good faith to be absent on the day
31 of the election because he OR SHE will be on vacation elsewhere on such
32 day, such application shall also contain the dates upon which he OR SHE
33 expects to begin and end such vacation, the place or places where he OR
34 SHE expects to be on such vacation, the name and address of his OR HER
35 employer, if any, and if self-employed or retired, a statement to that
36 effect.

37 d. Where the absence is because of detention or confinement to jail,
38 such application shall state whether the voter is detained awaiting
39 action of the grand jury or is confined after conviction for an offense
40 other than a felony.

41 e. WHERE THE APPLICANT INDICATES THAT HE OR SHE IS PROHIBITED FROM
42 APPEARING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN
43 WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR
44 LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN
45 A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL
46 THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN
47 SECTION 145.75 OF THE PENAL LAW SUCH APPLICATION SHALL STATE WHETHER OR
48 NOT THE VOTER IS CURRENTLY UNDER A SENTENCE OF IMPRISONMENT FOR A FELONY
49 OR ON PAROLE.

50 f. Where a person is or would be, if he OR SHE were a qualified voter,
51 entitled to apply for the right to vote by absentee ballot under the
52 provisions of this section, his OR HER spouse, parent or child, if a
53 qualified voter and a resident of the same school district, shall be
54 entitled to vote as an absentee voter upon personally making and signing
55 an application in accordance with the preceding provisions of this
56 subdivision and showing that he OR SHE expects to be absent from the

1 school district on the day of the school district election by reason of
2 accompanying or being with the spouse, child or parent who is or would
3 be, if he OR SHE were a qualified voter, so entitled to apply for the
4 right to vote by absentee ballot, and, in the event no application is
5 made by such spouse, child or parent, such further information as the
6 clerk of the school district or designee of the trustees or school board
7 shall require.

8 [f.] G. Such application shall include the following statement to be
9 signed by the voter.

10 I hereby declare that the foregoing is a true statement to the best of
11 my knowledge and belief, and I understand that if I make any material
12 false statement in the foregoing statement of application for absentee
13 ballots, I shall be guilty of a misdemeanor.

14 Date.....Signature of Voter

15 [g.] H. The clerk of the school district or a designee of the trustees
16 or school board shall request registration lists from the board of
17 elections pursuant to subdivision three of section 5-612 of the election
18 law for those voters whose registration record has been marked "perma-
19 nently disabled". An applicant whose ability to appear personally at the
20 polling place of the school district of which he OR SHE is a qualified
21 voter is substantially impaired by reason of permanent illness or phys-
22 ical disability and whose registration record has been marked "perma-
23 nently disabled" as determined by the board of elections pursuant to the
24 provisions of this chapter and who has previously applied for an absen-
25 tee ballot shall be entitled to receive subsequent absentee ballots
26 pursuant to the provisions of this section without making separate
27 application for such absentee ballot, and the clerk of the school
28 district or a designee of the trustees or school board shall send an
29 absentee ballot to such voter at his OR HER last known address with a
30 request to the postal authorities not to forward same but to return same
31 in five days in the event that it cannot be delivered to the addressee.
32 The clerk of the school district or a designee of the trustees or school
33 board shall determine whether such ballot shall be sent by first class
34 or by certified mail. All such ballots shall be mailed in the same
35 manner as determined by the trustees or the board of education.

36 S 7. Subdivision 1 of section 168-q of the correction law, as amended
37 by chapter 106 of the laws of 2006, is amended to read as follows:

38 1. The division shall maintain a subdirectory of level two and three
39 sex offenders. The subdirectory shall include the exact address, address
40 of the offender's place of employment and photograph of the sex offender
41 along with the following information, if available: name, physical
42 description, age and distinctive markings. Background information
43 including the sex offender's crime of conviction, modus of operation,
44 type of victim targeted, the name and address of any institution of
45 higher education at which the sex offender is enrolled, attends, is
46 employed or resides and a description of special conditions imposed on
47 the sex offender shall also be included. The subdirectory shall have sex
48 offender listings categorized by county and zip code. A copy of the
49 subdirectory shall annually be distributed to the offices of local
50 village, town, city, county or state law enforcement agencies for
51 purposes of public access AND TO EACH COUNTY BOARD OF ELECTIONS AND THE
52 BOARD OF ELECTIONS OF THE CITY OF NEW YORK. The division shall distrib-
53 ute monthly updates to the offices of local village, town, city, county

1 or state law enforcement agencies for purposes of public access. Such
2 departments shall require that a person in writing provide their name
3 and address prior to viewing the subdirectory. Any information identify-
4 ing the victim by name, birth date, address or relation to the sex
5 offender shall be excluded from the subdirectory distributed for
6 purposes of public access. The subdirectory provided for herein shall be
7 updated monthly to maintain its efficiency and usefulness and shall be
8 computer accessible. Such subdirectory shall be made available at all
9 times on the internet via the division homepage.

10 S 8. The election law is amended by adding a new section 17-172 to
11 read as follows:

12 S 17-172. IMMUNITY AND DEFENSE FOR POLL WORKERS AND OTHERS RELATED TO
13 ADMITTANCE OF SEX OFFENDERS TO POLLING PLACES. 1. NO PERSON SHALL BE
14 CIVILLY LIABLE FOR REFUSING ADMITTANCE OF A LEVEL TWO OR LEVEL THREE SEX
15 OFFENDER TO A POLLING PLACE WHICH IS OR IS WITHIN A SCHOOL OR FACILITY
16 FOR CHILDREN AS THOSE TERMS ARE DEFINED IN SECTION 145.75 OF THE PENAL
17 LAW, WHEN SUCH PERSON IS ACTING IN GOOD FAITH AND IN THE PERFORMANCE OF
18 THEIR DUTIES. FOR THE PURPOSES OF THIS SECTION, A PERSON SHALL BE DEEMED
19 TO BE ACTING IN GOOD FAITH IF THE NAME AND ADDRESS OR NAME AND APPROXI-
20 MATE ADDRESS BASED ON ZIP CODE OF THE VOTER REFUSED ADMISSION APPEARS ON
21 A LIST OF LEVEL TWO OR LEVEL THREE SEX OFFENDERS PROVIDED BY A BOARD OF
22 ELECTIONS OR THE DIVISION OF CRIMINAL JUSTICE SERVICES.

23 2. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CHARGE OF VIOLATING THE
24 ELECTIVE FRANCHISE OF A VOTER BASED UPON THE REFUSING OF ADMITTANCE OF A
25 LEVEL TWO OR LEVEL THREE SEX OFFENDER TO A POLLING PLACE WHICH IS OR IS
26 WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THOSE TERMS ARE DEFINED IN
27 SECTION 145.75 OF THE PENAL LAW, THAT THE NAME AND ADDRESS OR NAME AND
28 APPROXIMATE ADDRESS BASED ON ZIP CODE OF THE VOTER REFUSED ADMISSION
29 APPEARS ON A LIST OF LEVEL TWO OR LEVEL THREE SEX OFFENDERS PROVIDED BY
30 A BOARD OF ELECTIONS OR THE DIVISION OF CRIMINAL JUSTICE SERVICES.

31 S 9. This act shall take effect immediately and shall apply to
32 elections held on and after January 1, 2010, provided that the state
33 board of elections shall be authorized to promulgate any rules, regu-
34 lations, forms, or notices required to carry out the provisions of this
35 act prior to such effective date.