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

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2009-2010 Regular Sessions

I N A S S E M B L Y

May 21, 2009

Introduced by M. of A. WEINSTEIN, McENENY -- Multi-Sponsored by -- M. of A. BRODSKY, CLARK, CYMBROWITZ, DINOWITZ, JACOBS, JOHN, MOLINARO -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to absentee ballots in nursing homes, absentee ballots picked up by designees of the voters and clarifying the prohibitions on casting the absentee ballots of another person; and to repeal subdivision 1 of section 8-407 of such law relating to boards of elections providing that nursing home residents may vote by absentee ballot

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

Section 1. 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. 1. If the board shall find that the applicant is a qualified voter of the election district containing his OR HER residence as stated in his OR HER statement and that his OR HER statement is sufficient, it shall, as soon as practicable after it shall have determined his OR HER right thereto, mail to him OR HER at an address designated by him OR HER, or deliver to him OR HER, or to any person designated for such purpose in writing by him OR HER, at the office of the board, such an absentee voter's ballot or set of ballots and an envelope therefor. NO PERSON MAY BE DESIGNATED TO RECEIVE MORE THAN THREE ABSENTEE BALLOTS IN ADDITION TO HIS OR HER OWN BALLOT AND THE BALLOTS OF HIS OR HER SPOUSE, CHILD, PARENT, GRANDPARENT, BROTHER OR SISTER, OR THE SPOUSE OF ANY SUCH PERSON. 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

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

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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, such absentee ballot [need not] SHALL 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 if such facility is located in the county [or city] in which such voter is eligible to vote.

2. BEFORE DELIVERING AN ABSENTEE BALLOT TO A PERSON DESIGNATED BY A VOTER TO RECEIVE SUCH BALLOT, THE BOARD OF ELECTIONS SHALL REQUIRE SUCH PERSON TO SIGN A CERTIFICATE IN WHICH SUCH PERSON SETS FORTH HIS OR HER NAME AND ADDRESS AND CERTIFIES THAT HE OR SHE HAS NOT RECEIVED THE BALLOTS OF MORE THAN THREE VOTERS FOR SUCH ELECTION OTHER THAN HIS OR HER OWN BALLOT AND THE BALLOTS OF HIS OR HER SPOUSE, CHILD, PARENT, GRANDPARENT, BROTHER OR SISTER, OR THE SPOUSE OF ANY SUCH PERSON. SUCH CERTIFICATE SHALL BE A FORM PRESCRIBED BY THE STATE BOARD OF ELECTIONS AND SHALL CONTAIN THE FOLLOWING LANGUAGE PRINTED IN BOLD FACE DIRECTLY ABOVE THE SIGNATURE LINE: "I CERTIFY THAT THE INFORMATION IN THIS CERTIFICATE IS TRUE AND CORRECT AND UNDERSTAND THAT THIS CERTIFICATE WILL BE ACCEPTED FOR ALL PURPOSES AS THE EQUIVALENT OF AN AFFIDAVIT AND, IF IT CONTAINS A MATERIAL FALSE STATEMENT, SHALL SUBJECT ME TO THE SAME PENALTIES AS IF I HAD BEEN DULY SWORN." SUCH CERTIFICATE SHALL BE ACCEPTED FOR ALL PURPOSES AS THE EQUIVALENT OF AN AFFIDAVIT AND IF IT CONTAINS A MATERIAL FALSE STATEMENT SHALL SUBJECT THE PERSON SIGNING IT TO THE SAME PENALTIES AS IF HE OR SHE HAD BEEN DULY SWORN.

S 2. Subdivision 1 of section 8-407 of the election law is REPEALED and a new subdivision 1 is added to read as follows:

1. IF THE BOARD OF ELECTIONS OF A COUNTY RECEIVES FIVE OR MORE APPLICATIONS FOR ABSENTEE BALLOTS FOR ANY ELECTION FROM VOTERS WHO ARE RESIDENTS OF A FACILITY OPERATED OR LICENSED BY, OR UNDER THE JURISDICTION OF, THE DEPARTMENT OF MENTAL HYGIENE OR WHO ARE RESIDENTS 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 WHO ARE RESIDENTS OF A HOSPITAL OR OTHER FACILITY OPERATED BY THE VETERAN'S ADMINISTRATION OF THE UNITED STATES AND WHO ARE ELIGIBLE TO VOTE BY ABSENTEE BALLOT IN SUCH COUNTY AT SUCH ELECTION, SUCH VOTERS MAY VOTE BY ABSENTEE BALLOT ONLY IN THE MANNER PROVIDED FOR IN THIS SECTION. THE BOARD OF ELECTIONS OF A COUNTY OR CITY IN WHICH THERE IS LOCATED AT LEAST ONE SUCH FACILITY MAY, BY RESOLUTION ADOPTED AT LEAST SIXTY DAYS BEFORE AN ELECTION, PROVIDE THAT ABSENTEE BALLOTS FOR THE RESIDENTS OF EVERY SUCH FACILITY IN SUCH COUNTY OR CITY, INCLUDING THOSE FACILITIES FROM WHICH LESS THAN FIVE APPLICATIONS FOR ABSENTEE BALLOTS FOR SUCH ELECTION WERE RECEIVED BY SUCH BOARD, SHALL ALSO BE DELIVERED IN THE MANNER PRESCRIBED BY THIS SECTION.

S 3. Subdivision 8 of section 8-407 of the election law, as added by chapter 296 of the laws of 1988, is amended to read as follows:

8. The board of inspectors shall deliver each absentee ballot addressed to a resident of each such facility to such resident. If such resident is physically disabled the inspectors shall, if necessary, deliver the ballot to such voter at his bedside. IF SUCH RESIDENT IS ABSENT FROM SUCH FACILITY DURING THE TIME THAT THE BOARD OF INSPECTORS IS ATTENDING AT SUCH FACILITY, THE INSPECTORS SHALL EITHER RETURN TO SUCH FACILITY AT A TIME WHEN SUCH RESIDENT WILL BE PRESENT OR SHALL DELIVER SUCH RESIDENT'S ABSENTEE BALLOT TO THE SUPERINTENDENT, ADMINISTRATOR OR DIRECTOR OF SUCH FACILITY OR TO SUCH PERSON'S DESIGNEE AND SUCH SUPERINTENDENT, ADMINISTRATOR, DIRECTOR OR DESIGNEE SHALL DELIVER

SUCH BALLOT TO SUCH RESIDENT FORTHWITH UPON HIS OR HER RETURN TO SUCH FACILITY.

S 4. Section 8-410 of the election law, as amended by chapter 352 of the laws of 1986, is amended to read as follows:

S 8-410. Absentee voting; method of. The absentee voter shall mark an absentee ballot as provided for paper ballots or ballots prepared for counting by ballot counting machines. [He] NO OTHER PERSON SHALL CAST A VOTE FOR ANY CANDIDATE OR FOR OR AGAINST ANY BALLOT PROPOSAL UPON SUCH BALLOT WITHOUT THE SPECIFIC DIRECTION OF SUCH VOTER. SUCH VOTER shall make no mark or writing whatsoever upon the ballot, except as above prescribed, and shall see that it bears no such mark or writing. He OR SHE shall make no mark or writing whatsoever on the outside of the ballot. After marking the ballot or ballots he OR SHE shall fold each such ballot and enclose them in the envelope and seal the envelope. He OR SHE shall then take and subscribe the oath on the envelope, with blanks properly filled in. The envelope, containing the ballot or ballots, shall then be mailed or delivered to the board of elections of the county or city of his OR HER residence.

S 5. Subdivision 2 of section 8-412 of the election law, as amended by chapter 155 of the laws of 1994, is amended to read as follows:

2. Absentee ballots received by the board of elections before the close of the polls on election day from voters whose applications were received by such board at least seven days before election day, EXCEPT THOSE BALLOTS WHICH WERE DELIVERED TO PERSONS OTHER THAN THE VOTERS, may be delivered to the inspectors of election in the manner prescribed by this chapter or retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter as such board shall, in its discretion, determine by resolution adopted at least thirty days before election day. All ballots received by the board of elections from voters whose applications were received by such board later than seven days before election day, ALL BALLOTS RECEIVED FROM VOTERS WHOSE BALLOTS WERE DELIVERED TO PERSONS OTHER THAN SUCH VOTERS, all ballots received by such board between election day and the seventh day after election day, and all federal write-in ballots received from absentee voters, shall be retained at the board and shall be cast and canvassed in the same manner as other ballots retained by such board.

S 6. Section 17-130 of the election law is amended by adding a new subdivision 9-a to read as follows:

9-A. CASTS A VOTE FOR ANY CANDIDATE OR FOR OR AGAINST ANY BALLOT PROPOSAL UPON ANY ABSENTEE BALLOT OTHER THAN HIS OR HER OWN WITHOUT THE SPECIFIC DIRECTION OF THE VOTER WHOSE BALLOT IT IS; OR,

S 7. This act shall take effect on the first of December next succeeding the date on which it shall have become a law.

REPEAL NOTE.--Subdivision 1 of section 8-407 of the election law, proposed to be repealed by section two of this act, authorizes local boards of elections to provide that residents of certain nursing homes may vote by absentee ballot. It is replaced by the provisions of a new subdivision 1, as added by section two of this act.