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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 14, 2011

Introduced by M. of A. KAVANAGH, P. RIVERA -- Multi-Sponsored by -- M. of A. LINARES -- 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

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

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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 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] FOR PEOPLE WITH 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 OFFICE 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 (d) of subdivision 1 of section 8-400 of the election law, as amended by chapter 63 of the laws of 2010, is amended and a new paragraph (e) is added to read as follows:

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

(E) 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, as amended by chapter 63 of the laws of 2010, are amended to read as follows:

(a) Applicant's full name, date of birth, 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 or her 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) absent from the county of his or her residence, or if a resident of the city of New York absent from said city; provided, however, if the applicant expects to be absent from such county or city for a duration covering more than one election and seeks an absentee ballot for each election, he or she shall state the dates when he or she expects to begin and end such absence; or

(ii) 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

(iii) an inmate or patient of a veteran's administration hospital; or

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

(V) ABSENT FROM THE COUNTY OF HIS OR HER RESIDENCE, OR IF A RESIDENT OF THE CITY OF NEW YORK ABSENT FROM SAID CITY, BECAUSE OF HIS OR HER INCARCERATION IN A CORRECTIONAL FACILITY FOR HIS OR HER 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. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such effective date.