

5154

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:

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

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

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

20 S 3. The section heading and subdivision 1 of section 8-407 of the
21 election law, the section heading as added by chapter 296 of the laws of
22 1988 and subdivision 1 as amended by chapter 195 of the laws of 2001,
23 are amended to read as follows:

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

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

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

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

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

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

51 3. No person who has been convicted in a federal court, of a felony,
52 or a crime or offense which would constitute a felony under the laws of
53 this state, shall have the right to register for or vote at any election
54 unless he shall have been pardoned or restored to the rights of citizen-
55 ship by the president of the United States, or his maximum sentence of
56 imprisonment has expired, [or] he has been discharged from parole, OR HE

1 IS CONVICTED OF A CRIME THAT WOULD CONSTITUTE A NON-VIOLENT FELONY
2 OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF
3 THE CORRECTION LAW.

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

13 S 6. Paragraph (d) of subdivision 1 of section 8-400 of the election
14 law, as amended by chapter 63 of the laws of 2010, is amended and a new
15 paragraph (e) is added to read as follows:

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

21 (E) ABSENT FROM HIS VOTING RESIDENCE BECAUSE HE IS INCARCERATED IN A
22 CORRECTIONAL FACILITY, FOR CONVICTION OF A NON-VIOLENT FELONY, AS
23 DEFINED BY SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE CORRECTION
24 LAW, PROVIDED HE IS QUALIFIED TO VOTE IN THE ELECTION DISTRICT OF HIS
25 LAST KNOWN RESIDENCE OTHER THAN THE CORRECTIONAL FACILITY.

26 S 7. Paragraphs (a) and (c) of subdivision 3 of section 8-400 of the
27 election law, as amended by chapter 63 of the laws of 2010, are amended
28 to read as follows:

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

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

40 (i) absent from the county of his or her residence, or if a resident
41 of the city of New York absent from said city; provided, however, if the
42 applicant expects to be absent from such county or city for a duration
43 covering more than one election and seeks an absentee ballot for each
44 election, he or she shall state the dates when he or she expects to
45 begin and end such absence; or

46 (ii) unable to appear at a polling place because of illness or phys-
47 ical disability or duties related to the primary care of one or more
48 individuals who are ill or physically disabled; or

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

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

54 (V) ABSENT FROM THE COUNTY OF HIS OR HER RESIDENCE, OR IF A RESIDENT
55 OF THE CITY OF NEW YORK ABSENT FROM SAID CITY, BECAUSE OF HIS OR HER
56 INCARCERATION IN A CORRECTIONAL FACILITY FOR HIS OR HER CONVICTION OF A

1 NON-VIOLENT FELONY OFFENSE, AS DEFINED BY SUBDIVISION TWO OF SECTION
2 FIVE HUNDRED TEN OF THE CORRECTION LAW.

3 S 8. This act shall take effect on the one hundred eightieth day after
4 it shall have become a law. Effective immediately, the addition, amend-
5 ment and/or repeal of any rule or regulation necessary for the implemen-
6 tation of this act on its effective date is authorized to be made on or
7 before such effective date.