

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

224--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. MAZIARZ, ALESI, GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the election law and the education 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-

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

LBD01349-02-2

1 RILY USED FOR THE CARE OR TREATMENT OF PERSONS UNDER THE AGE OF EIGHTEEN
2 WHILE ONE OR MORE OF SUCH PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT.
3 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN
4 FOR THE PURPOSES OF VOTING IN THE SECOND DEGREE IS A CLASS A MISDEMEA-
5 NOR.

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

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

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

16 S 2. Paragraph (d) of subdivision 1 of section 8-400 of the election
17 law, as amended by chapter 63 of the laws of 2010, is amended and a new
18 paragraph (e) is added to read as follows:

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

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

30 S 3. Subparagraph (iv) of paragraph (c) of subdivision 3 of section
31 8-400 of the election law, as amended by chapter 63 of the laws of 2010,
32 is amended and a new subparagraph (v) is added to read as follows:

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

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

43 S 4. Section 8-400 of the election law is amended by adding a new
44 subdivision 11 to read as follows:

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

53 S 5. Subdivision 2 of section 2018-a of the education law, as added by
54 chapter 219 of the laws of 1978, paragraphs a and b as amended by chap-
55 ter 136 of the laws of 1991, paragraph c as amended by chapter 26 of the
56 laws of 1994, paragraph d as amended by chapter 72 of the laws of 1988

1 and paragraph g as amended by chapter 825 of the laws of 1984, is
2 amended to read as follows:

3 2. a. An applicant for such an absentee ballot shall submit an appli-
4 cation setting forth (1) his OR HER name and residence address, includ-
5 ing the street and number, if any, or town and rural delivery route, if
6 any; (2) that he OR SHE is or will be, on the day of the school district
7 election, a qualified voter of the school district in which he OR SHE
8 resides in that he OR SHE is or will be, on such date, over eighteen
9 years of age, a citizen of the United States and has or will have
10 resided in the district for thirty days next preceding such date; (3)
11 whether he OR SHE is registered in the district; AND (4) that he OR SHE
12 will be unable to appear to vote in person on the day of the school
13 district election for which the absentee ballot is requested because he
14 OR SHE is, or will be on such day (a) a patient in a hospital, or unable
15 to appear personally at the polling place on such day because of illness
16 or physical disability [or]; (b) because his OR HER duties, occupation,
17 business, or studies will require him OR HER to be outside of the county
18 or city of his OR HER residence on such day[,]; (c) because he OR SHE
19 will be on vacation outside the county or city of his OR HER residence
20 on such day; [or,] (d) absent from his voting residence because he OR
21 SHE is detained in jail awaiting action by a grand jury or awaiting
22 trial or is confined in prison after conviction for an offense other
23 than a felony; OR (E) PROHIBITED FROM APPEARING PERSONALLY AT THE POLL-
24 ING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED
25 VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND
26 SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR
27 CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND
28 "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE
29 PENAL LAW.

30 Such application must be received by the district clerk at least seven
31 days before the election if the ballot is to be mailed to the voter, or
32 the day before the election, if the ballot is to be delivered personally
33 to the voter.

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

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

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

52 e. WHERE THE APPLICANT INDICATES HE OR SHE IS PROHIBITED FROM APPEAR-
53 ING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE
54 OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL
55 THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A
56 SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE

1 SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN
2 SECTION 145.75 OF THE PENAL LAW SUCH APPLICATION SHALL STATE WHETHER OR
3 NOT THE VOTER IS CURRENTLY UNDER A SENTENCE OF IMPRISONMENT FOR A FELONY
4 OR ON PAROLE.

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

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

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

24 Date.....Signature of Voter

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Date.....Signature of Voter

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

37 S 7. The election law is amended by adding a new section 17-172 to
38 read as follows:

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

50 2. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CHARGE OF VIOLATING THE
51 ELECTIVE FRANCHISE OF A VOTER BASED UPON THE REFUSING OF ADMITTANCE OF A
52 LEVEL TWO OR LEVEL THREE SEX OFFENDER TO A POLLING PLACE WHICH IS OR IS
53 WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THOSE TERMS ARE DEFINED IN

1 SECTION 145.75 OF THE PENAL LAW, THAT THE NAME AND ADDRESS OR NAME AND
2 APPROXIMATE ADDRESS BASED ON ZIP CODE OF THE VOTER REFUSED ADMISSION
3 APPEARS ON A LIST OF LEVEL TWO OR LEVEL THREE SEX OFFENDERS PROVIDED BY
4 A BOARD OF ELECTIONS OR THE DIVISION OF CRIMINAL JUSTICE SERVICES.
5 S 8. This act shall take effect immediately and shall apply to
6 elections held on and after January 1, 2012, provided that the state
7 board of elections shall be authorized to promulgate any rules, regu-
8 lations, forms, or notices required to carry out the provisions of this
9 act prior to such effective date.