

3037

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 23, 2013

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Introduced by M. of A. REILICH, KOLB -- Multi-Sponsored by -- M. of A. CROUCH, DUPREY, FINCH, GIGLIO, HAWLEY, McDONOUGH, OAKS, TENNEY -- read once and referred to the Committee on Codes

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-  
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.

LBD01598-01-3

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

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

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

28 S 3. Subparagraph (iv) of paragraph (c) of subdivision 3 of section  
29 8-400 of the election law, as amended by chapter 63 of the laws of 2010,  
30 is amended and a new subparagraph (v) is added to read as follows:

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

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

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

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

51 S 5. Subdivision 2 of section 2018-a of the education law, as added by  
52 chapter 219 of the laws of 1978, paragraphs a and b as amended by chap-  
53 ter 136 of the laws of 1991, paragraph c as amended by chapter 26 of the  
54 laws of 1994, paragraph d as amended by chapter 72 of the laws of 1988  
55 and paragraph g as amended by chapter 825 of the laws of 1984, is  
56 amended to read as follows:

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

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

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

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

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

50 e. WHERE THE APPLICANT INDICATES HE OR SHE IS PROHIBITED FROM APPEAR-  
51 ING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE  
52 OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL  
53 THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A  
54 SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE  
55 SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN  
56 SECTION 145.75 OF THE PENAL LAW SUCH APPLICATION SHALL STATE WHETHER OR

1 NOT THE VOTER IS CURRENTLY UNDER A SENTENCE OF IMPRISONMENT FOR A FELONY  
2 OR ON PAROLE.

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

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

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

22 Date.....Signature of Voter .....

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Date.....Signature of Voter .....

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

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

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

48 2. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CHARGE OF VIOLATING THE  
49 ELECTIVE FRANCHISE OF A VOTER BASED UPON THE REFUSING OF ADMITTANCE OF A  
50 LEVEL TWO OR LEVEL THREE SEX OFFENDER TO A POLLING PLACE WHICH IS OR IS  
51 WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THOSE TERMS ARE DEFINED IN  
52 SECTION 145.75 OF THE PENAL LAW, THAT THE NAME AND ADDRESS OR NAME AND  
53 APPROXIMATE ADDRESS BASED ON ZIP CODE OF THE VOTER REFUSED ADMISSION

1 APPEARS ON A LIST OF LEVEL TWO OR LEVEL THREE SEX OFFENDERS PROVIDED BY  
2 A BOARD OF ELECTIONS OR THE DIVISION OF CRIMINAL JUSTICE SERVICES.  
3 S 8. This act shall take effect immediately and shall apply to  
4 elections held on and after January 1, 2014, provided that the state  
5 board of elections shall be authorized to promulgate any rules, regu-  
6 lations, forms, or notices required to carry out the provisions of this  
7 act prior to such effective date.