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

8770

I N A S S E M B L Y

February 12, 2014

Introduced by M. of A. CAMARA -- (at request of the Department of Law) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to completing and filing watcher certificates and the form and manner of challenges of voter qualifications

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

Section 1. Section 4-117 of the election law is amended by adding a new subdivision 4 to read as follows:

4. ANY PERSON, OTHER THAN AN ELECTION OFFICER, WHO MAILS OR CAUSES TO BE MAILED, BETWEEN AUGUST FIRST AND DECEMBER THIRTY-FIRST OF ANY CALENDAR YEAR, ANY FIRST CLASS NONFORWARDABLE MAIL, WHERE SUCH PERSON KNOWS OR REASONABLY SHOULD KNOW THAT SUCH NONFORWARDABLE MAIL: (A) IS INTENDED TO BE DELIVERED TO A REGISTERED VOTER OR VOTER REGISTRATION APPLICANT; AND (B) MAY BE USED BY A CHALLENGER, OTHER THAN AN ELECTION OFFICER, ON ELECTION DAY TO CHALLENGE THE QUALIFICATIONS OF A VOTER, SHALL FILE WITHIN TWO BUSINESS DAYS OF SUCH MAILING, A DUPLICATE COPY OF SUCH NONFORWARDABLE MAIL, A DUPLICATE COPY OF NAMES AND ADDRESSES TO WHICH SUCH NONFORWARDABLE MAIL WAS SENT, AND A COMPLETED FORM PRESCRIBED BY THE STATE BOARD OF ELECTIONS. THE FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL BE PUNISHABLE AS A MISDEMEANOR.

S 2. Subdivision 1-a of section 8-104 of the election law, as amended by chapter 164 of the laws of 2010, is amended to read as follows:

1-a. The election inspectors shall conspicuously post in the polling place before the opening of the polls, a voter information posting, which shall include: (a) the sample ballot and instructions for the use of ballot scanners and ballot marking devices required pursuant to section 7-118 of this chapter; (b) a statement that "today is election day" and the hours during which polling places will be open; (c) instructions on how to cast an affidavit ballot and a concise statement of a voter's right to such a ballot; (d) instructions relating to requirements for voting on ballot scanners by those registrants who must provide identification pursuant to the federal Help America Vote Act of 2002; (e) instructions for first-time voters; (f) a voter's bill of

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

LBD08789-09-3

rights describing voter's rights under applicable federal and state law, including the right of accessibility and alternate language accessibility; (g) information pertaining to voting by election day paper ballot, including information about the consequence of casting an overvote, steps to prevent unintentional undervoting and spoiled ballots; (h) instructions on how to contact the appropriate officials if a voter's right to vote or right to otherwise participate in the electoral process has been violated; [and] (i) general information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation; AND (J) INFORMATION ABOUT THE REQUIREMENTS OF A CHALLENGE ON ELECTION DAY AS PROVIDED IN SUBDIVISION THREE OF SECTION 8-502 OF THIS ARTICLE. The state board of elections shall prescribe the form and content of the voter information posting, which may be comprised of one or more pages, provided each page shall be posted separately. The state board of elections shall prescribe an official version of such voter information posting for every language which appears on any general, primary or special election ballot in any election district in the state and for such other languages as such board, in its opinion, determines is appropriate. Such posting shall be used in all jurisdictions, and a separate posting shall be made by election inspectors for each language appearing on the ballot and for such additional languages as the board of elections may require. A board of elections may modify or supplement the voter information posting used in its jurisdiction to provide additional or local information; provided, however, any such modification or supplementation shall be submitted to the state board of elections for prior approval.

S 3. Section 8-500 of the election law, as amended by chapter 9 of the laws of 1978, subdivisions 1 and 3 as amended by chapter 373 of the laws of 1978, is amended to read as follows:

S 8-500. Watchers; provision for. 1. At any general, special, town or village election, any party committee or independent body whose candidates are upon the ballot, and at any primary election, any two or more candidates and any political committee may have for each election district three watchers at any one time, not more than one of whom may be within the guard rail at any one time. Watchers shall be appointed by the [chairman] CHAIRPERSON OR SECRETARY of any such party, committee or independent body or by the candidates.

2. Watchers may be present at the polling place at least fifteen minutes before the unlocking and examination of any voting machine or ballot box at the opening of the polls, until after the signing of the inspectors' returns and proclamation of the result; PROVIDED, HOWEVER, THAT UPON ENTERING ANY POLLING PLACE, EACH WATCHER SHALL DELIVER A COMPLETED CERTIFICATE, ISSUED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, TO THE APPOINTED OR DESIGNATED CHAIRPERSON OF THE ELECTION INSPECTORS, AS PROVIDED FOR IN SECTION 3-400 OF THIS CHAPTER, AT EACH ELECTION DISTRICT WHERE SUCH WATCHER IS PERMITTED TO SERVE BY SUCH CERTIFICATE.

2-A. THE APPOINTED OR DESIGNATED CHAIRPERSON OF THE ELECTION INSPECTORS, AS PROVIDED FOR IN SECTION 3-400 OF THIS CHAPTER, SHALL INITIAL EACH WATCHER CERTIFICATE UPON DELIVERY. AT THE CLOSE OF AN ELECTION, THE INSPECTORS SHALL PLACE EACH WATCHER CERTIFICATE INSIDE THE LEDGER OF REGISTRATION RECORDS OR COMPUTER GENERATED REGISTRATION LIST, AS PROVIDED FOR IN SECTION 8-510 OF THIS TITLE.

3. The appointment of watchers for any election shall be by a certificate in writing issued by the [chairman] CHAIRPERSON or secretary of the political party, PARTY COMMITTEE or independent body, or the candi-

dates. [Such certificate shall be delivered to an inspector at the election district.] THE STATE BOARD OF ELECTIONS SHALL PRESCRIBE THE CONTENT AND FORM OF WATCHER CERTIFICATES FOR USE AT ANY GENERAL, SPECIAL, TOWN OR VILLAGE ELECTION AND AT ANY PRIMARY ELECTION. THE INFORMATION PROVIDED ON SUCH CERTIFICATE SHALL INCLUDE, BUT NOT BE LIMITED TO, THE WATCHER'S FIRST AND LAST NAME, THE WATCHER'S RESIDENTIAL ADDRESS, THE FIRST AND LAST NAME OF THE CHAIRPERSON OR SECRETARY OF THE POLITICAL PARTY, COMMITTEE OR INDEPENDENT BODY, OR THE CANDIDATES THAT ISSUED SUCH CERTIFICATE, THE SIGNATURE OF SUCH CHAIRPERSON OR SECRETARY OF THE POLITICAL PARTY, COMMITTEE OR INDEPENDENT BODY, AND THE TOWN OR CITY, WARD (IF APPLICABLE) AND ELECTION DISTRICT FOR WHICH THE WATCHER CERTIFICATE WAS ISSUED.

4. Each watcher must be a qualified voter of the city or county in which he OR SHE is to serve.

S 4. Section 8-502 of the election law, as amended by chapter 373 of the laws of 1978, is amended to read as follows:

S 8-502. Challenges; generally. 1. Before his OR HER vote is cast at an election any person may, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, be challenged as to his OR HER right to vote, or his OR HER right to vote by absentee, military, special federal or special presidential ballot. Such challenge may be made by an inspector or clerk, by any duly appointed watcher, or by any registered voter properly in the polling place.

2. An inspector shall challenge every person offering to vote, whom he OR SHE shall know or suspect is not entitled to vote in the district, and every person whose name appears on the list of persons to be challenged on election day which is furnished by the board of elections.

3. ANY PERSON, OTHER THAN AN INSPECTOR OR CLERK, MAY CHALLENGE THE QUALIFICATIONS OF A VOTER ONLY BY COMPLETING, EXECUTING AND DELIVERING TO THE BOARD OF INSPECTORS A CHALLENGE AFFIDAVIT THAT SATISFIES THE REQUIREMENTS OF SECTION 8-503 OF THIS TITLE.

S 5. The election law is amended by adding a new section 8-503 to read as follows:

S 8-503. CHALLENGE AFFIDAVIT. 1. THE STATE BOARD OF ELECTIONS SHALL PRESCRIBE THE CONTENT AND FORM OF A CHALLENGE AFFIDAVIT FOR USE AT ANY GENERAL, SPECIAL, TOWN OR VILLAGE ELECTION AND AT ANY PRIMARY ELECTION. SUCH AFFIDAVIT SHALL CONTAIN THE AFFIANT'S FULL NAME, RESIDENCE, AND BUSINESS ADDRESS, THE NAME OF HIS OR HER EMPLOYER, THE REGISTRATION SERIAL NUMBER OF THE PERSON CHALLENGED AND A RECITAL OF THE REASONS AND THE FACTS SUPPORTING THE AFFIANT'S BELIEF THAT THE PERSON CHALLENGED LACKS ONE OR MORE OF THE QUALIFICATIONS FOR VOTING PRESCRIBED IN SECTION 5-102 OR 5-106 OF THIS CHAPTER AND SPECIFIED IN SUCH AFFIDAVIT. THE AFFIDAVIT SHALL STATE IF THE REASONS FOR CHALLENGE ARE BASED UPON THE AFFIANT'S PERSONAL KNOWLEDGE, OR UPON INFORMATION RECEIVED FROM ANOTHER PERSON. IF THE AFFIANT'S BELIEF IS BASED UPON INFORMATION FURNISHED BY ANOTHER, THE AFFIDAVIT SHALL RECITE THE NAME OF THE PERSON FURNISHING THE INFORMATION AND THE BASIS FOR HIS OR HER INFORMATION. AFTER THE AFFIANT HAS SIGNED SUCH AFFIDAVIT, AN INSPECTOR SHALL READ TO HIM OR HER AND REQUEST HIM OR HER TO SIGN THE FOLLOWING OATH, WHICH SHALL BE SUBSCRIBED BY SUCH AFFIANT: "I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I AM A QUALIFIED VOTER OF THE CITY OR COUNTY IN WHICH THIS AFFIDAVIT IS SIGNED AND THAT THE FOREGOING STATEMENT MADE BY ME ON (INSERT DAY, MONTH AND YEAR) IS A TRUTHFUL DISCLOSURE OF THE REASONS FOR MY BELIEF THAT THE REGISTERED VOTER THEREIN NAMED IS NOT QUALIFIED TO CONTINUE TO VOTE IN THE ELECTION DISTRICT IN WHICH HE OR SHE IS NOW REGISTERED." IF THE AFFIANT SHALL TAKE AND SIGN SUCH OATH, AN INSPECTOR SHALL SIGN HIS OR

HER NAME AS A WITNESS BELOW THE AFFIANT'S SUBSCRIPTION TO SUCH OATH. EACH CHALLENGE AFFIDAVIT MAY ONLY CHALLENGE THE QUALIFICATIONS OF ONE VOTER.

2. THE BOARD OF ELECTIONS SHALL MAKE CHALLENGE AFFIDAVIT FORMS AVAILABLE TO ALL QUALIFIED VOTERS.

S 6. Paragraphs (b) and (e) of subdivision 2 of section 8-508 of the election law, as amended by chapter 200 of the laws of 1996, are amended to read as follows:

(b) The second section of such report shall be reserved for the board of inspectors to enter the name, address and registration serial number of each person who is challenged on the day of election, together with the reason for the challenge, THE NAME AND ADDRESS OF THE PERSON CHALLENGING THE QUALIFICATIONS OF SUCH VOTER, IF SUCH PERSON CHALLENGING THE QUALIFICATIONS IS NOT AN INSPECTOR OR CLERK, AND THE WORDS "PERMITTED TO VOTE" OR "REFUSED TO TAKE OATH". If no voters are challenged, the board of inspectors shall enter the words "No Challenges" across the space reserved for such names. In lieu of preparing section two of the challenge report, the board of elections may provide, next to the name of each voter on the computer generated registration list, a place for the inspectors of election to record the information required to be entered in such section two, or provide at the end of such computer generated registration list, a place for the inspectors of election to enter such information.

(e) At the foot of such report and at the end of any such computer generated registration list shall be printed a certificate that such report contains the names of all persons who were challenged on the day of election, and [that each voter so reported as having been challenged took the oaths as required] THE REASON FOR SUCH CHALLENGE AND THE NAMES AND ADDRESSES OF ALL CHALLENGERS WHO ARE NOT INSPECTORS OR CLERKS, that such report contains the names of all voters to whom such board gave or allowed assistance and lists the nature of the disability which required such assistance to be given and the names and family relationship, if any, to the voter of the persons by whom such assistance was rendered; that each such assisted voter informed such board under oath that he OR SHE required such assistance and that each person rendering such assistance took the required oath; that such report contains the names of all voters who were permitted to vote although their registration poll records were missing; that the entries made by such board are a true and accurate record of its proceedings with respect to the persons named in such report.

S 7. Subdivision 3 of section 8-510 of the election law, as amended by chapter 43 of the laws of 1988, is amended to read as follows:

3. The inspectors shall place such completed report, EACH CHALLENGE AFFIDAVIT, EACH WATCHER CERTIFICATE and each court order, if any, directing that a person be permitted to vote, inside a ledger of registration records or computer generated registration lists between the front cover, and the first registration record and then shall close and seal each ledger of registration records or computer generated registration lists, affix their signature to the seal, lock such ledger in the carrying case furnished for that purpose and enclose the keys in a sealed package or seal such list in the envelope provided for that purpose.

S 8. Subdivisions 1 and 2 of section 17-108 of the election law, as amended by chapter 373 of the laws of 1978, are amended to read as follows:

1. Any person who wilfully loses, alters, destroys or mutilates A WATCHER CERTIFICATE, the list of voters or registration poll ledgers , A CHALLENGE AFFIDAVIT, OR A CHALLENGE REPORT in any election district, or a certified copy thereof, is guilty of a misdemeanor.

2. An applicant for registration who shall make, incorporate or cause to be incorporated a material false statement in an application for registration, or in any challenge or other affidavit required for or made or filed in connection with registration or voting, and any person who knowingly takes a false oath before a board of inspectors of election, and any person who makes a material false statement in a medical certificate, CHALLENGE AFFIDAVIT or an affidavit filed in connection with an application for registration, is guilty of a misdemeanor.

S 9. Section 17-150 of the election law is amended to read as follows:

S 17-150. Duress and intimidation of voters. 1. Any person or corporation who directly or indirectly:

[1.] (A) Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his OR HER name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

[2.] (B) By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his OR HER vote for or against any particular person at any election; or,

[3.] (C) Being an employer pays his [employess] OR HER EMPLOYEES the salary or wages due in "pay envelopes," in which there is enclosed or upon which there is written or printed political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his OR HER employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his OR HER place or establishment will cease, in whole or in part, his OR HER establishment will be closed up, or the wages of his OR HER employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his OR HER employees, is guilty of a misdemeanor, and, if a corporation, shall in addition forfeit its charter.

2. IT SHALL BE PRESUMPTIVE EVIDENCE THAT A PERSON HAS PRACTICED INTIMIDATION UPON OR AGAINST ANOTHER PERSON IN ORDER TO INDUCE SUCH OTHER PERSON TO REFRAIN FROM VOTING FOR OR AGAINST ANY PARTICULAR PERSON OR FOR OR AGAINST ANY PROPOSITION, WITHIN THE MEANING OF PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, WHERE HE OR SHE:

(A) BEING OTHER THAN AN INSPECTOR OR CLERK, CHALLENGES THE QUALIFICATIONS OF MORE THAN TEN VOTERS DURING AN ELECTION, AND WHERE THE BOARD OF ELECTIONS, FOLLOWING AN INVESTIGATION PURSUANT TO PARAGRAPH (F) OF

SUBDIVISION TWO OF SECTION 8-508 OF THIS CHAPTER, FINDS AT LEAST TEN OF SUCH CHALLENGED VOTERS TO BE QUALIFIED VOTERS; OR

(B) BEING OTHER THAN AN INSPECTOR OR CLERK, CHALLENGES THE QUALIFICATIONS OF A VOTER AT ANY GENERAL, PRIMARY, SPECIAL, TOWN OR VILLAGE ELECTION AND THEREAFTER, WITHOUT GOOD CAUSE, FAILS TO COMPLY WITH THE REQUIREMENTS OF SECTION 8-503 OF THIS CHAPTER.

S 10. Subdivision 1 of section 17-154 of the election law is amended to read as follows:

1. (A) Intimidate, threaten or coerce, or to attempt to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or for the purpose of causing such other person to vote for, or not to vote for, any candidate for the office of governor, lieutenant-governor, attorney-general, comptroller, judge of any court, member of the senate, or member of the assembly at any election held solely or in part for the purpose of selecting a governor, lieutenant-governor, attorney-general, comptroller, any judge or any member of the senate or any member of the assembly; [or,]

(B) IT SHALL BE PRESUMPTIVE EVIDENCE THAT A PERSON HAS VIOLATED PARAGRAPH (A) OF THIS SUBDIVISION WHEN, DURING ANY ELECTION ENUMERATED IN SUCH SUBDIVISION, HE OR SHE:

(I) BEING OTHER THAN AN INSPECTOR OR CLERK, CHALLENGES THE QUALIFICATIONS OF MORE THAN TEN VOTERS DURING SUCH ELECTION, AND WHERE THE BOARD OF ELECTIONS, FOLLOWING AN INVESTIGATION PURSUANT TO PARAGRAPH (F) OF SUBDIVISION TWO OF SECTION 8-508 OF THIS CHAPTER, FINDS AT LEAST TEN OF SUCH CHALLENGED VOTERS TO BE QUALIFIED VOTERS; OR

(II) BEING OTHER THAN AN INSPECTOR OR CLERK, CHALLENGES THE QUALIFICATIONS OF A VOTER AT ANY SUCH ELECTION AND FAILS TO COMPLY WITH THE REQUIREMENTS OF SECTION 8-503 OF THIS CHAPTER; OR

S 11. This act shall take effect one year after it shall have become a law.