

1069

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed 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.

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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 MISDEMEANOR.
3

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.