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

2436--A

2015-2016 Regular Sessions

I N S E N A T E

January 23, 2015

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- recommitted to the Committee on Elections 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 election law, in relation to voting rights

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

Section 1. The election law is amended by adding a new section 5-108 to read as follows:

S 5-108. VOTER PROTECTION. 1. THE TERMS USED IN THIS SECTION SHALL HAVE THE FOLLOWING MEANINGS:

A. THE TERM "BOARD" SHALL MEAN THE STATE BOARD OF ELECTIONS PROVIDED FOR BY SECTION 3-100 OF THIS CHAPTER;

B. THE TERM "ELECTION" SHALL MEAN ANY FEDERAL, STATE OR LOCAL ELECTION HELD IN THE STATE;

C. THE TERM "COUNTY BOARD OF ELECTIONS" SHALL HAVE THE MEANING SET FORTH IN SECTION 1-104 OF THIS CHAPTER;

D. THE TERM "ELECTION OFFICER" SHALL HAVE THE MEANING SET FORTH IN SECTION 1-104 OF THIS CHAPTER;

2. A PERSON IS GUILTY OF VOTER INTIMIDATION IF HE OR SHE USES OR THREATENS FORCE, VIOLENCE OR ANY TACTIC OF COERCION OR INTIMIDATION TO INDUCE OR COMPEL ANY OTHER PERSON TO:

A. VOTE OR REFRAIN FROM VOTING;

B. VOTE OR REFRAIN FROM VOTING FOR ANY PARTICULAR CANDIDATE OR BALLOT MEASURE; OR

C. REFRAIN FROM REGISTERING TO VOTE.

3. A PERSON IS GUILTY OF VOTER SUPPRESSION IF HE OR SHE KNOWINGLY ATTEMPTS TO PREVENT OR DETER ANOTHER PERSON FROM VOTING OR REGISTERING TO VOTE BASED ON FRAUDULENT, DECEPTIVE OR SPURIOUS GROUNDS OR INFORMATION. VOTER SUPPRESSION INCLUDES:

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

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A. CHALLENGING ANOTHER PERSON'S RIGHT TO REGISTER OR VOTE BASED ON KNOWINGLY FALSE INFORMATION;

B. ATTEMPTING TO INDUCE ANOTHER PERSON TO REFRAIN FROM REGISTERING OR VOTING BY PROVIDING THAT PERSON WITH KNOWINGLY FALSE INFORMATION; OR

C. ATTEMPTING TO INDUCE ANOTHER PERSON TO REFRAIN FROM REGISTERING OR VOTING AT THE PROPER PLACE OR TIME BY PROVIDING THAT PERSON WITH KNOWINGLY FALSE INFORMATION ABOUT THE DATE, TIME, PLACE OR MANNER OF THE ELECTION.

4. A. LOCAL ELECTION SUPERVISORS MUST POST A VOTER'S BILL OF RIGHTS AT EVERY POLLING PLACE, INCLUDE IT WITH EVERY DISTRIBUTION OF OFFICIAL SAMPLE BALLOTS, AND OFFER IT TO VOTERS AT POLLING PLACES, IN ACCORDANCE WITH PROCEDURES APPROVED BY THE BOARD. THE TEXT OF THIS DOCUMENT WILL BE:

"VOTER'S BILL OF RIGHTS

EVERY REGISTERED VOTER IN THIS STATE HAS THE RIGHT TO:

1. INSPECT A SAMPLE BALLOT BEFORE VOTING.

2. CAST A BALLOT IF HE OR SHE IS IN LINE WHEN THE POLLS ARE CLOSING.

3. ASK FOR AND RECEIVE ASSISTANCE IN VOTING, INCLUDING ASSISTANCE IN LANGUAGES OTHER THAN ENGLISH WHERE REQUIRED BY FEDERAL OR STATE LAW.

4. RECEIVE A REPLACEMENT BALLOT IF HE OR SHE MAKES A MISTAKE PRIOR TO THE BALLOT BEING CAST.

5. CAST A PROVISIONAL BALLOT IF HIS OR HER ELIGIBILITY TO VOTE IS IN QUESTION.

6. VOTE FREE FROM COERCION OR INTIMIDATION BY ELECTION OFFICERS OR ANY OTHER PERSON.

7. CAST A BALLOT USING VOTING EQUIPMENT THAT ACCURATELY COUNTS ALL VOTES."

B. IN ANY POLITICAL SUBDIVISION OR PRECINCT WHERE FEDERAL OR STATE LAW REQUIRES THE BALLOT TO BE MADE AVAILABLE IN A LANGUAGE OTHER THAN ENGLISH, THE VOTER'S BILL OF RIGHTS WILL ALSO BE MADE AVAILABLE IN SUCH LANGUAGE OR LANGUAGES.

5. THE BOARD WILL CREATE A MANUAL OF UNIFORM POLLING PLACE PROCEDURES AND ADOPT THE MANUAL BY REGULATION. LOCAL ELECTION SUPERVISORS WILL ENSURE THAT THE MANUALS ARE AVAILABLE IN HARD COPY OR ELECTRONIC FORM AT EVERY PRECINCT IN THE SUPERVISORS' JURISDICTIONS ON ELECTION DAY. THE MANUAL WILL GUIDE LOCAL ELECTION OFFICERS IN THE PROPER IMPLEMENTATION OF ELECTION LAWS AND PROCEDURES. THE MANUAL WILL BE INDEXED BY SUBJECT AND WRITTEN IN CLEAR, UNAMBIGUOUS LANGUAGE. THE MANUAL WILL PROVIDE SPECIFIC EXAMPLES OF COMMON PROBLEMS ENCOUNTERED AT THE POLLS ON ELECTION DAY, AND DETAIL SPECIFIC PROCEDURES FOR RESOLVING THOSE PROBLEMS. THE MANUAL WILL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

A. REGULATIONS GOVERNING SOLICITATION BY INDIVIDUALS AND GROUPS AT THE POLLING PLACE;

B. PROCEDURES TO BE FOLLOWED WITH RESPECT TO VOTERS WHOSE NAMES ARE NOT ON THE PRECINCT REGISTER;

C. PROPER OPERATION OF THE VOTING SYSTEM;

D. BALLOT HANDLING PROCEDURES;

E. PROCEDURES GOVERNING SPOILED BALLOTS;

F. PROCEDURES TO BE FOLLOWED AFTER THE POLLS CLOSE;

G. RIGHTS OF VOTERS AT THE POLLS;

H. PROCEDURES FOR HANDLING EMERGENCY SITUATIONS;

I. PROCEDURES FOR HANDLING AND PROCESSING PROVISIONAL BALLOTS; AND

J. SECURITY PROCEDURES.

S 2. The election law is amended by adding a new section 17-133 to read as follows:

S 17-133. ILLEGAL VOTER SUPPRESSION. ANY PERSON WHO:

1. COMMITS VOTER INTIMIDATION OR CONSPIRES TO COMMIT VOTER INTIMIDATION WILL BE GUILTY OF A FELONY, PUNISHABLE BY UP TO THREE YEARS IN PRISON AND A FINE OF UP TO ONE HUNDRED THOUSAND DOLLARS; OR

2. COMMITS VOTER SUPPRESSION OR CONSPIRES TO COMMIT VOTER SUPPRESSION WILL BE GUILTY OF A FELONY, PUNISHABLE BY UP TO TWO YEARS IN PRISON AND A FINE OF FIFTY THOUSAND DOLLARS; OR

3. WILLFULLY VIOLATES ANY OTHER PART OF SECTION 5-108 OF THIS CHAPTER WILL BE GUILTY OF A MISDEMEANOR, PUNISHABLE BY UP TO ONE YEAR IN PRISON, A FINE OF UP TO TEN THOUSAND DOLLARS, OR BOTH.

THE BOARD WILL PROMULGATE ALL REGULATIONS NECESSARY TO ENFORCE THIS SECTION. IN ADDITION TO CRIMINAL AND REGULATORY SANCTIONS, THIS SECTION MAY BE ENFORCED BY THE ATTORNEY GENERAL UNDER SECTION SEVENTY OF THE EXECUTIVE LAW.

S 3. The election law is amended by adding a new section 17-135 to read as follows:

S 17-135. VOTE DILUTION. 1. NO VOTING QUALIFICATION OR PREREQUISITE TO VOTING OR STANDARD, PRACTICE, OR PROCEDURE SHALL BE IMPOSED OR APPLIED BY THE STATE OR ANY POLITICAL SUBDIVISION IN A MANNER WHICH RESULTS IN A DENIAL OR ABRIDGEMENT OF THE RIGHT OF ANY CITIZEN TO VOTE ON ACCOUNT OF RACE OR COLOR, RELIGION, GENDER, GENDER PREFERENCE OR DISABILITY, OR IN CONTRAVENTION OF THE GUARANTEES SET FORTH IN THE CONSTITUTION OF THE STATE OF NEW YORK, OR AS OTHERWISE PROVIDED IN THIS SECTION.

2. A VIOLATION OF SUBDIVISION ONE OF THIS SECTION IS ESTABLISHED IF, BASED ON THE TOTALITY OF CIRCUMSTANCES, IT IS SHOWN THAT THE POLITICAL PROCESSES LEADING TO NOMINATION OR ELECTION IN THE STATE OR POLITICAL SUBDIVISION ARE NOT EQUALLY OPEN TO PARTICIPATION BY MEMBERS OF A CLASS OF CITIZENS PROTECTED BY SUBDIVISION ONE OF THIS SECTION IN THAT ITS MEMBERS HAVE LESS OPPORTUNITY THAN OTHER MEMBERS OF THE ELECTORATE TO PARTICIPATE IN THE POLITICAL PROCESS AND TO ELECT REPRESENTATIVES OF THEIR CHOICE. THE EXTENT TO WHICH MEMBERS OF A PROTECTED CLASS HAVE BEEN ELECTED TO OFFICE IN THE STATE OR POLITICAL SUBDIVISION IS ONE CIRCUMSTANCE WHICH MAY BE CONSIDERED; PROVIDED HOWEVER THAT NOTHING IN THIS SECTION ESTABLISHES A RIGHT TO HAVE MEMBERS OF A PROTECTED CLASS ELECTED IN NUMBERS EQUAL TO THEIR PROPORTION IN THE POPULATION.

S 4. Article 8 of the election law is amended by adding a new title 6 to read as follows:

TITLE VI
PRECLEARANCE

SECTION 8-600. PRECLEARANCE.

S 8-600. PRECLEARANCE. 1. A. WHENEVER THE STATE OR ANY POLITICAL SUBDIVISION OR MUNICIPAL CORPORATION SHALL ENACT OR SEEK TO ADMINISTER ANY VOTING QUALIFICATION OR PREREQUISITE TO VOTING, OR STANDARD, PRACTICE, OR PROCEDURE WITH RESPECT TO VOTING DIFFERENT FROM THAT IN FORCE OR EFFECT ON JANUARY FIRST, TWO THOUSAND SIXTEEN, SUCH STATE OR SUBDIVISION OR MUNICIPAL CORPORATION MAY INSTITUTE AN ACTION IN SUPREME COURT FOR A DECLARATORY JUDGMENT THAT SUCH QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE NEITHER HAS THE PURPOSE NOR WILL HAVE THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR, RELIGION, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION OR DISABILITY, OR IN CONTRAVENTION OF THE GUARANTEES SET FORTH IN THE CONSTITUTION OF THE STATE OF NEW YORK, AND UNLESS AND UNTIL THE COURT ENTERS SUCH JUDGMENT NO PERSON SHALL BE DENIED THE RIGHT TO VOTE FOR FAILURE TO COMPLY WITH SUCH QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; PROVIDED HOWEVER THAT SUCH QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE MAY BE ENFORCED IF THE QUALIFICATION,

PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE HAS BEEN SUBMITTED BY THE CHIEF LEGAL OFFICER OR OTHER APPROPRIATE OFFICIAL OF SUCH STATE OR SUBDIVISION OR MUNICIPAL CORPORATION TO THE ATTORNEY GENERAL AND THE ATTORNEY GENERAL HAS NOT INTERPOSED AN OBJECTION WITHIN SIXTY DAYS AFTER SUCH SUBMISSION, OR UPON GOOD CAUSE SHOWN, TO FACILITATE AN EXPEDITED APPROVAL WITHIN SIXTY DAYS AFTER SUCH SUBMISSION, THE ATTORNEY GENERAL HAS AFFIRMATIVELY INDICATED THAT SUCH OBJECTION WILL NOT BE MADE.

B. NEITHER AN AFFIRMATIVE INDICATION BY THE ATTORNEY GENERAL THAT NO OBJECTION WILL BE MADE, NOR THE ATTORNEY GENERAL'S FAILURE TO OBJECT, NOR A DECLARATORY JUDGMENT ENTERED UNDER THIS SECTION SHALL BAR A SUBSEQUENT ACTION TO ENJOIN ENFORCEMENT OF SUCH QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE.

C. IN THE EVENT THE ATTORNEY GENERAL AFFIRMATIVELY INDICATES THAT NO OBJECTION WILL BE MADE WITHIN THE SIXTY DAY PERIOD FOLLOWING RECEIPT OF A SUBMISSION, THE ATTORNEY GENERAL MAY RESERVE THE RIGHT TO REEXAMINE THE SUBMISSION IF ADDITIONAL INFORMATION COMES TO HIS ATTENTION DURING THE REMAINDER OF THE SIXTY DAY PERIOD WHICH WOULD OTHERWISE REQUIRE OBJECTION IN ACCORDANCE WITH THIS SECTION. ANY ACTION UNDER THIS SECTION SHALL BE HEARD AND DETERMINED BY A THREE JUDGE PANEL OF THE APPELLATE DIVISION IN THE JUDICIAL DEPARTMENT WITHIN WHICH THE SUBDIVISION OR MUNICIPAL CORPORATION IS SITUATED, AND ANY APPEAL SHALL LIE TO THE COURT OF APPEALS.

2. ANY VOTING QUALIFICATION OR PREREQUISITE TO VOTING, OR STANDARD, PRACTICE, OR PROCEDURE WITH RESPECT TO VOTING THAT HAS THE PURPOSE OF OR WILL HAVE THE EFFECT OF DIMINISHING THE ABILITY OF ANY CITIZENS OF THE UNTIED STATES ON ACCOUNT OF RACE OR COLOR, RELIGION, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION OR DISABILITY, OR IN CONTRAVENTION OF THE GUARANTEES SET FORTH IN THE CONSTITUTION OF THE STATE OF NEW YORK, TO ELECT THEIR PREFERRED CANDIDATES OF CHOICE, DENIES OR ABRIDGES THE RIGHT TO VOTE WITHIN THE MEANING OF PARAGRAPH A OF SUBDIVISION ONE OF THIS SECTION.

3. THE TERM "PURPOSE" AS USED IN THIS SECTION SHALL INCLUDE ANY DISCRIMINATORY PURPOSE.

4. THE PURPOSE OF SUBDIVISION TWO OF THIS SECTION IS TO PROTECT THE ABILITY OF SUCH CITIZENS TO ELECT THEIR PREFERRED CANDIDATES OF CHOICE.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.