

STATE OF NEW YORK

9089

IN SENATE

November 9, 2020

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the election law, in relation to validating absentee ballots

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 9-209 of
2 the election law, as amended by chapter 104 of the laws of 2010, are
3 amended to read as follows:

4 (a) The board of elections shall designate itself or such of its
5 employees as it shall deem appropriate as a set of poll clerks to exam-
6 ine, cast and canvass such ballots, and fix a time and place for their
7 meeting for such [~~purpose, provided that such meeting shall be no more~~
8 ~~than fourteen days after a general or special election and no more than~~
9 ~~eight days after a primary election at which such ballots are voted]~~
10 purposes. Starting forty days prior to the day of the election, such
11 poll clerks shall examine and determine the validity of absentee ballot
12 envelopes as they are received by the board of elections. Such examina-
13 tion shall occur every business day prior to the day of the election,
14 or, upon bipartisan agreement, on such other schedule as determined by
15 the board, provided that the board post when such examinations shall
16 occur on its website.

17 Boards shall begin to canvass eligible absentee ballots three hours
18 before the scheduled close of polls on election day. In canvassing such
19 ballots, the board shall take all measures necessary to ensure the
20 privacy of voters and non-public release of election results prior to
21 the close of polls on election day. Such tabulations shall be added into
22 the daily canvass of results and updated no less than once a day. The
23 state board of elections shall promulgate rules or regulations necessary
24 to ensure privacy in canvassing absentee ballots. The board may desig-
25 nate additional sets of poll clerks and if it designates more than one
26 such set shall apportion among all such sets the election districts from
27 which such ballots have been received, provided that all such ballots
28 from a single election district shall be assigned to a single set of

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

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1 clerks, and that each such set shall be divided equally between repre-
2 sentatives of the two major political parties. Each such set of clerks
3 shall be deemed a central board of inspectors for purposes of this
4 section.

5 (b) Watchers are entitled to be present at meetings related to examin-
6 ing absentee ballot envelopes prior to the day of the election;
7 provided, however, that any objection to a board determination that a
8 ballot envelope is eligible to be canvassed must be made at the meeting
9 such determination is made; an objection subsequent to such meeting
10 shall be invalid. At least five days prior to the time fixed for [~~such~~]
11 a meeting to examine or cast and canvass absentee ballots subsequent to
12 the day of the election, the board shall send notice by first class mail
13 to each candidate, political party, and independent body entitled to
14 have had watchers present at the polls in any election district in the
15 board's jurisdiction. Such notice shall state the time and place fixed
16 by the board for such canvass.

17 § 2. Section 9-209 of the election law is amended by adding two new
18 subdivisions 4 and 5 to read as follows:

19 4. If the board of elections manually canvasses ballots, it shall
20 review the ballot to determine its validity consistent with section
21 9-112 of this article. In cases where the express intent of the voter
22 is unambiguous, any stray marks or writing shall not be a basis for
23 voiding an absentee ballot. If the absentee ballots are tabulated by an
24 optical scan voting system, then a review of the absentee ballot shall
25 not occur.

26 5. If an affidavit ballot was cast by a voter on any day of early
27 voting or on the day of election who submitted an absentee ballot, such
28 affidavit shall be left aside, unopened.

29 § 3. Clause (A) of subparagraph (i) of paragraph (a) of subdivision 2
30 of section 9-209 of the election law, as amended by chapter 308 of the
31 laws of 2011, is amended to read as follows:

32 (A) If a person whose name is on an envelope as a voter has already
33 voted in person at such election, or if his or her name and residence as
34 stated on the envelope are not on a registration poll record, or the
35 computer generated list of registered voters or the list of special
36 presidential voters, or if there is no name on the envelope, or if the
37 envelope is not sealed, such envelope shall be laid aside unopened;
38 provided, however, that if the envelope is not sealed, such voter shall
39 receive notice pursuant to paragraph (a) of subdivision three of this
40 section.

41 § 4. Clause (B) of subparagraph (i) of paragraph (a) of subdivision 2
42 of section 9-209 of the election law, as amended by chapter 308 of the
43 laws of 2011, is amended to read as follows:

44 (B) If there is more than one ballot envelope executed by the same
45 voter, the one bearing the [~~later~~] earlier date of execution shall be
46 accepted and the other rejected. If it cannot be determined which envel-
47 ope [~~bears the later date, then all such envelopes shall be rejected~~]
48 was executed earlier, the envelope bearing the earlier time stamp from
49 the board of elections from which it was received shall be accepted and
50 the other rejected.

51 § 5. Paragraph c of subdivision 3 of section 5-506 of the election
52 law, as amended by section 6 of part XX of chapter 55 of the laws of
53 2019, is amended to read as follows:

54 c. The computer generated registration list prepared for each election
55 in each election district shall be prepared in a manner which meets or
56 exceeds standards for clarity and speed of production established by the

1 state board of elections, shall be in a form approved by such board,
2 shall include the names of all voters eligible to vote in such election
3 and shall be in alphabetical order, except that, at a primary election,
4 the names of the voters enrolled in each political party may be placed
5 in a separate part of the list or in a separate list, as the board of
6 elections in its discretion, may determine. Such list shall contain,
7 adjacent to each voter's name, or in a space so designated, at least the
8 following: street address, date of birth, party enrollment, year of
9 registration, a computer reproduced facsimile of the voter's signature
10 or an indication that the voter is unable to sign his name, a place for
11 the voter to sign his name at such election and a place for the inspec-
12 tors to mark the voting machine number, the public counter number if
13 any, or the number of any paper ballots given the voter. Such list
14 shall also include a notation indicating if such voter was mailed an
15 absentee ballot for the applicable election. The format for such nota-
16 tion shall be promulgated by the state board of elections and used
17 uniformly in computer generated registration lists.

18 § 6. Subdivision 1 of section 4-128 of the election law, as amended by
19 section 2 of part XX of chapter 55 of the laws of 2019, is amended to
20 read as follows:

21 1. The board of elections of each county shall provide the requisite
22 number of official and facsimile ballots, two cards of instruction to
23 voters in the form prescribed by the state board of elections, at least
24 one copy of the instruction booklet for inspectors, a sufficient number
25 of maps, street finders or other descriptions of all of the polling
26 places and election districts within the political subdivision in which
27 the polling place is located to enable the election inspectors and poll
28 clerks to determine the correct election district and polling place for
29 each street address within the political subdivision in which the poll-
30 ing place is located, distance markers, tally sheets and return blanks,
31 pens, pencils, or other appropriate marking devices, envelopes for the
32 ballots of voters whose registration poll records are not in the ledger
33 or whose names are not in the computer generated registration list,
34 envelopes for the absentee ballots of voters who have elected to vote by
35 machine to be voided, envelopes for returns, identification buttons,
36 badges or emblems for the inspectors and clerks in the form prescribed
37 by the state board of elections and such other articles of stationery as
38 may be necessary for the proper conduct of elections, except that when a
39 town, city or village holds an election not conducted by the board of
40 elections, the clerk of such town, city or village, shall provide such
41 official and facsimile ballots and the necessary blanks, supplies and
42 stationery for such election.

43 § 7. Section 8-302 of the election law is amended by adding two new
44 subdivisions 2-b and 3-d to read as follows:

45 2-b. If a voter's name appears in the ledger or computer generated
46 registration list with a notation indicating that the voter was mailed
47 an absentee ballot, such voter shall be permitted to cast his or her
48 vote on the voting machine if the voter surrenders his or her absentee
49 ballot to the inspector and such absentee ballot is marked "VOID" and
50 placed by the inspector in an envelope designated for this purpose.

51 3-d. If a voter's name appears in the ledger or computer generated
52 registration list with a notation indicating that the voter was mailed
53 an absentee ballot and such voter is unable to surrender his or her
54 ballot pursuant to subdivision two-b of this section, such voter shall
55 only be entitled to vote by affidavit ballot unless a court order
56 provides otherwise.

1 § 8. Section 16-106 of the election law is amended by adding a new
2 subdivision 4-a to read as follows:

3 4-a. In order to obtain any order for temporary or preliminary injunc-
4 tive relief or an impound order halting or altering the canvassing of
5 absentee or affidavit ballots as provided for in section 9-209 of this
6 chapter, in addition to the criteria in article sixty-three of the civil
7 practice law and rules, the petitioner must show, by clear and convinc-
8 ing evidence, that, because of procedural irregularities or other facts
9 arising during the election, the petitioner will be irreparably harmed
10 absent such relief. For purposes of this section, allegations that
11 opinion polls show that an election is close is insufficient to show
12 irreparable harm to a petitioner by clear and convincing evidence.

13 § 9. Section 16-102 of the election law is amended by adding a new
14 subdivision 3-a to read as follows:

15 3-a. In order to obtain any order for temporary or preliminary injunc-
16 tive relief or an impound order halting or altering the canvassing of
17 absentee or affidavit ballots as provided for in section 9-209 of this
18 chapter, in addition to the criteria in article sixty-three of the civil
19 practice law and rules, the petitioner must show, by clear and convinc-
20 ing evidence, that, because of procedural irregularities or other facts
21 arising during the election, the petitioner will be irreparably harmed
22 absent such relief. For purposes of this section, allegations that
23 opinion polls show that an election is close is insufficient to show
24 irreparable harm to a petitioner by clear and convincing evidence.

25 § 10. Subdivision 5 of section 16-106 of the election law, as amended
26 by chapter 359 of the laws of 1989, is amended to read as follows:

27 5. A proceeding under subdivisions one and three of this section must
28 be instituted within twenty days and under subdivision two of this
29 section, within thirty days after the election or alleged erroneous
30 statement or determination was made, or the time when the board shall
31 have acted in the particulars as to which it is claimed to have failed
32 to perform its duty, except that such a proceeding with respect to a
33 village election must be instituted within ten days after such election,
34 statement, determination or action; provided, however, that any proceed-
35 ing seeking to reverse a determination of a board of elections that
36 results in validating an absentee ballot application shall be instituted
37 within two days of such determination, with the voter in question being
38 named as a necessary party; provided further that any proceeding chal-
39 lenging the canvassing of an absentee ballot due to an alleged defect on
40 the affirmation envelope must name the voter as a necessary party.

41 § 11. Subdivision 20 of section 17-130 of the election law is amended
42 to read as follows:

43 20. Intentionally opens an absentee voter's envelope or examines the
44 contents thereof after the receipt of the envelope by the board of
45 elections and before the close of the polls at the election except as
46 provided for in section 9-209 of this chapter; or,

47 § 12. This act shall take effect on the ninetieth day after it shall
48 have become a law.