STATE OF NEW YORK

5360

2021-2022 Regular Sessions

IN ASSEMBLY

February 16, 2021

Introduced by M. of A. BARRON -- read once and referred to the Committee on Election Law

AN ACT to amend the election law and the correction law, in relation to enabling persons charged with or convicted of a crime to register to vote and to vote; to repeal subdivision 5 of section 8-504 of the election law relating to voter challenges at polling places; to repeal subdivisions 10 of section 1057-a of the New York city charter relating to notice of voter rights; and to amend the New York city charter, in relation to making conforming changes

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 8-409 to read as follows:

§ 8-409. Voting by incarcerated persons. 1. Any person incarcerated in a state or local correctional facility, as defined in section two of the correction law, shall be entitled to vote by absentee ballot as provided in section seventy-five of the correction law.

2. All ballots cast pursuant to this section and section seventy-five of the correction law shall be cast in the manner provided by this chapter for the casting of absentee ballots.

3. All ballots cast pursuant to the provisions of this section and section seventy-five of the correction law which are received before the close of the polls on election day by the board of elections charged with the duty of casting and canvassing such ballots, may be delivered to the inspectors of election in the manner prescribed by this chapter or retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter.

§ 2. Section 75 of the correction law, as amended by section 18 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

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

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§ 75. [~~Notice of voting~~] Voting rights. 1. Upon the [~~discharge from~~] admission of an inmate to a state or local correctional facility [~~of any person whose maximum sentence of imprisonment has expired or upon a person's discharge from community supervision,~~] the department shall notify such [~~person~~] inmate of his or her right to vote and, upon the request of such inmate, provide such [~~person~~] inmate with a form of application for voter registration together with written information distributed by the board of elections on the importance and the mechanics of voting, or with access to the electronic voter registration transmittal system described in title five of article 8 of the election law. The superintendent of the correctional facility shall ensure that all completed voter registrations are:

(a) properly and immediately submitted electronically to the applicable board of elections if the electronic voter registration transmittal system is utilized; or

(b) deposited with the United States Post Office within three days of being filled out by an inmate if registration is submitted on paper.

2. Each inmate who is qualified to vote and registered to vote may apply to his or her county board of elections for an absentee ballot in the manner provided for by the mail provisions of section 8-400 of the election law. There shall be a presumption that inmates are qualified to vote and registered to vote. The superintendent of the correctional facility shall ensure that each such application for an absentee ballot is deposited with the United States Post Office within three days of being filled out by an inmate.

3. Each absentee ballot received at the correctional facility shall be delivered to the inmate to whom it is addressed within two days of receipt at the correctional facility. The superintendent of the correctional facility shall ensure that each absentee ballot is deposited with the United States Post Office within three days of being filled out by the inmate to whom it has been addressed.

4. Voter registrations, applications for absentee ballots and absentee ballots shall be processed by the correctional facility separately from other inmate mail. Notwithstanding any law, rule or regulation to the contrary, no person shall open any correspondence between an inmate and a board of elections, including an inmate's voter registration, application for an absentee ballot or filled out absentee ballot. Inmates shall be permitted to cast their votes privately and to seal all envelopes associated with an absentee ballot without interference.

§ 3. Section 5-106 of the election law, subdivision 2 as amended by chapter 373 of the laws of 1978, subdivision 5 as amended by chapter 234 of the laws of 1976 and subdivision 6 as amended by chapter 82 of the laws of 1982, is amended to read as follows:

§ 5-106. Qualifications of voters; reasons for exclusion.

1. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or any other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or for registering or refraining from registering as a voter, or who shall make any promise to influence the giving or withholding of any such vote or registration, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of an election, shall vote at such election.

2. [~~No person who has been convicted of a felony pursuant to the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of~~

~~citizenship by the governor, or his maximum sentence of imprisonment has expired, or he has been discharged from parole. The governor, however, may attach as a condition to any such pardon a provision that any such person shall not have the right of suffrage until it shall have been separately restored to him.~~

~~3. No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States, or his maximum sentence of imprisonment has expired, or he has been discharged from parole.~~

~~4. No person who has been convicted in another state for a crime or offense which would constitute a felony under the laws of this state shall have the right to register for or vote at any election in this state unless he shall have been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or his maximum sentence has expired, or he has been discharged from parole.~~

~~5. The provisions of subdivisions two, three and four of this section shall not apply if the person so convicted is not sentenced to either death or imprisonment, or if the execution of a sentence of imprisonment is suspended.~~

~~6.~~] No person who has been adjudged incompetent by order of a court of competent judicial authority shall have the right to register for or vote at any election in this state unless thereafter he shall have been adjudged competent pursuant to law.

§ 4. Subdivision 3 of section 5-210 of the election law, as amended by chapter 255 of the laws of 2015, is amended to read as follows:

3. Completed application forms, when received by any board of elections and, with respect to application forms promulgated by the federal election commission, when received by the state board of elections, or showing a dated cancellation mark of the United States Postal Service or contained in an envelope showing such a dated cancellation mark which is not later than the twenty-fifth day before the next ensuing primary, general or special election, and received no later than the twentieth day before such election, or delivered in person to such board of elections not later than the tenth day before a special election, shall entitle the applicant to vote in such election, if he or she is otherwise qualified, provided, however, such applicant shall not vote on a voting machine until his or her identity is verified. Any board of elections receiving an application form from a person who does not reside in its jurisdiction but who does reside elsewhere in the state of New York, shall forthwith forward such application form to the proper board of elections**; provided, however, that the residence of a person incarcerated in a correctional facility, as defined in section two of the correction law, or in a county jail, is not included in the jurisdiction where a person is incarcerated unless such person had resided in that jurisdiction prior to incarceration, and any such person may apply to register to vote in the jurisdiction where that person has previously established a fixed and principal home to which the person intends to return**. Each board of elections shall make an entry on each such form of the date it is received by such board.

§ 5. Subdivision 1 of section 5-400 of the election law, as amended by chapter 659 of the laws of 1994, paragraph (a) as amended by chapter 3 of the laws of 2019, is amended to read as follows:

1. A voter's registration, including the registration of a voter in inactive status, shall be cancelled if, since the time of his **or her** last registration, he **or she**:

(a) Moved his or her residence outside the state.

(b) [~~Was convicted of a felony disqualifying him from voting pursuant to the provisions of section 5-106 of this article.~~

~~(c)~~] Has been adjudicated an incompetent.

[~~(d)~~] **(c)** Refused to take a challenge oath.

[~~(e)~~] **(d)** Has died.

[~~(f)~~] **(e)** Did not vote in any election conducted by the board of elections during the period ending with the second general election at which candidates for federal office are on the ballot after his **or her** name was placed in inactive status and for whom the board of elections did not, during such period, in any other way, receive any information that such voter still resides in the same county or city.

[~~(g)~~] **(f)** Personally requested to have his **or her** name removed from the list of registered voters.

[~~(h)~~] **(g)** For any other reason, is no longer qualified to vote as provided in this chapter.

§ 6. Paragraph b of subdivision 4 of section 5-708 of the election law, as added by chapter 659 of the laws of 1994, is amended to read as follows:

b. The state board shall arrange such notices and the names received pursuant to the other provisions of this section by county of residence and transmit such notices [~~and any notices of conviction for a felony received from a United States attorney~~] to the appropriate board of elections.

§ 7. Subdivision 3 of section 7-123 of the election law, as amended by chapter 104 of the laws of 2010, and the opening paragraph as amended by chapter 411 of the laws of 2019, is amended to read as follows:

3. There shall be three envelopes for each military absentee ballot issued when the military voter's preferred method of transmission is by mail: the inner affirmation envelope into which a voter places his or her voted ballot, the outer envelope which shall be addressed to the absentee voter, and the mailing envelope which is addressed to the county board of elections. The board of elections shall furnish an inner affirmation envelope with each military ballot upon which envelope shall be printed:

BALLOT FOR MILITARY VOTER
AFFIRMATION

I swear or affirm that:

(a) I am a member of the uniformed services or merchant marine on active duty or an eligible spouse, parent, child or dependent of such a member, and

(b) I am a United States citizen, at least eighteen years of age (or will be by the day of the election), eligible to vote in the requested jurisdiction, and

(c) I have [~~neither been convicted of a felony or other disqualifying offense nor~~] **not** been adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and

(d) I am not registering, requesting a ballot, or voting in any other jurisdiction in the United States, and

(e) My signature and date below indicate when I completed this document, and

(f) The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in the completion of this document may constitute grounds for conviction of a crime.

Date ..... 20....

.....
Signature or mark of voter

.....
Signature of Witness (required only if voter does not sign his or her own name)

.....
Address of Witness

§ 8. Subdivision 2 of section 7-124 of the election law, as amended by chapter 104 of the laws of 2010, and the opening and closing paragraphs as amended by chapter 411 of the laws of 2019, is amended to read as follows:

2. There shall be three envelopes for each special federal absentee ballot issued by mail: the inner affirmation envelope into which a voter places his or her voted ballot, the outer envelope which shall be addressed to the absentee voter, and the mailing envelope which is addressed to the county board of elections. The board of elections shall furnish an inner affirmation envelope with each special federal ballot upon which envelope shall be printed:

I swear or affirm that:

(a) I am a United States citizen residing outside the United States, and

(b) I am at least eighteen years of age (or will be by the day of the election), eligible to vote in the requested jurisdiction, and

(c) I have [~~neither been convicted of a felony or other disqualifying offense nor~~] **not** been adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and

(d) I am not qualified to register, request a ballot, or vote in any other jurisdiction in the United States, and

(e) My signature and date below indicate when I completed this document, and

(f) The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in the completion of this document may constitute grounds for conviction of a crime.

Date.....20..... .....
Signature or mark of voter

.....
Signature of Witness (required only if voter does not sign his or her own name)

.....
Address of Witness

§ 9. Paragraph (d) of subdivision 1 of section 8-400 of the election law, as amended by chapter 139 of the laws of 2020, is amended to read as follows:

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

§ 10. Paragraph (d) of subdivision 1 of section 8-400 of the election law, as amended by chapter 63 of the laws of 2010, is amended to read as follows:

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

§ 11. Subparagraph (iv) of paragraph (c) of subdivision 3 of section 8-400 of the election law, as amended by chapter 63 of the laws of 2010, is amended to read as follows:

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

§ 12. Subdivision 5 of section 8-504 of the election law is REPEALED.

§ 13. Paragraph (d) of subdivision 1 and subparagraph (iv) of paragraph (c) of subdivision 4 of section 15-120 of the election law, as added by chapter 289 of the laws of 2014, are amended to read as follows:

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

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

§ 14. Subdivisions 10 of section 1057-a of the New York city charter are REPEALED.

§ 15. The opening paragraph of section 1057-a of the New York city charter, as amended by local law number 80 of the city of New York for the year 2020, is amended to read as follows:

Each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of voter registration forms pursuant to the provisions of this section. The following offices are hereby designated as participating voter registration agencies: The administration for children's services, the business integrity commission, the city clerk, the civilian complaint review board, the commission on human rights, community boards, the department of small business services, the department for the aging, the department of citywide administrative services, the department of city planning, the department of consumer and worker protection, the department of correction, the department of cultural affairs, the department of environmental protection, the department of finance, the department of health and mental hygiene, the department of homeless services, the department of housing preservation and development, the department of

parks and recreation, the department of probation, the department of records and information services, the taxi and limousine commission, the department of transportation, the department of youth and community development, the fire department, and the human resources administration. Participating agencies shall include a mandate in all new or renewed agreements with those subcontractors having regular contact with the public in the daily administration of their business to follow the guidelines of this section. Such participating agencies shall be required to offer voter registration forms to all persons together with written applications for services, renewal or recertification for services and change of address relating to such services, in the same language as such application, renewal, recertification or change of address form where practicable; provided however that this section shall not apply to services that must be provided to prevent actual or potential danger to the life, health, or safety of any individual or of the public. Such agencies shall provide assistance to applicants in completing voter registration forms, including the section of the form allowing for registration to become an organ donor, and in cases in which such an agency would provide assistance with its own form, such agency shall provide the same degree of assistance with regard to the voter registration and organ donor forms as is provided with regard to the completion of its own form, if so requested. [~~As part of such assistance, such agencies shall also, upon request by an applicant who identifies himself or herself as being on parole and when practically feasible, check publicly available information to inform such applicant if a restoration of their right to vote has been granted, provided that such assistance may be provided by a person other than the person to whom the request was made and further provided that such assistance shall not be considered an endorsement of the accuracy of any publicly available information not maintained by the city.~~] Such agencies shall also receive and transmit the completed application form from any applicants who request to have such form transmitted to the board of elections for the city of New York.

§ 16. The state board of elections is directed to revise all paperwork utilized for voter registration, and for the process of applying for and voting by absentee ballot to remove all references to felonies or the limitation of the right to vote due to conviction of a felony.

§ 17. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that the amendments to paragraph (d) of subdivision 1 of section 8-400 of the election law made by section nine of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 2 of chapter 139 of the laws of 2020, as amended, when upon such date the provisions of section ten shall take effect. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.