

# STATE OF NEW YORK

1027--A

Cal. No. 8

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## IN SENATE

January 6, 2021

Introduced by Sens. GIANARIS, BAILEY, BIAGGI, BRESLIN, BROUK, COMRIE, GAUGHRAN, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, MANNION, MAY, MAYER, PARKER, REICHLIN-MELNICK, RIVERA, SANDERS, SAVINO, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the election law, in relation to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes; and to repeal certain provisions of such law related thereto

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

1 Section 1. Section 9-209 of the election law is REPEALED and a new  
2 section 9-209 is added to read as follows:

3 § 9-209. Canvass of absentee, military and special ballots, and  
4 ballots cast in affidavit envelopes. Before completing the canvass of  
5 votes cast in any primary, general, special, or other election at which  
6 voters are required to sign their registration poll records before  
7 voting, the board of elections shall proceed in the manner hereinafter  
8 prescribed to review, cast and canvass any absentee, military, special  
9 presidential, special federal or other special ballots and any ballots  
10 cast in affidavit envelopes. Each such ballot shall be retained in the  
11 original envelope containing the voter's affidavit and signature, in  
12 which it is delivered to the board of elections until such time as it is  
13 to be reviewed, in order to be cast and canvassed.

14 1. Central board of canvassers. Within four days of the receipt of an  
15 absentee, military or special ballot, the board of elections shall

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

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1 designate itself or such of its employees as it shall deem appropriate  
2 as a set of poll clerks to review such ballot envelopes. The board may  
3 designate additional sets of poll clerks and if it designates more than  
4 one such set shall apportion among all such sets the election districts  
5 from which such ballots have been received, provided that when reviewing  
6 ballots, all ballots from a single election district shall be assigned  
7 to a single set of clerks, and that each such set shall be divided  
8 equally between representatives of the two major political parties. Each  
9 such set of clerks shall be deemed a central board of canvassers for  
10 purposes of this section.

11 2. Review of absentee, military and special ballot envelopes. Within  
12 four days of the receipt of an absentee, military or special ballot  
13 before the election, and within one day of receipt on or after the  
14 election, each central board of canvassers shall examine the ballot  
15 affirmation envelopes as nearly as practicable in the following manner:

16 (a) If a person whose name is on a ballot envelope as a voter is not  
17 on a registration poll record, the computer-generated list of registered  
18 voters or the list of special presidential voters, or if there is no  
19 name on the ballot envelope, or if the ballot envelope was not timely  
20 postmarked or received, or if the ballot envelope is completely  
21 unsealed, such ballot envelope shall be set aside unopened for review  
22 pursuant to subdivision eight of this section with a relevant notation  
23 indicated on the ballot envelope notwithstanding a split among the  
24 central board of canvassers as to the invalidity of the ballot;  
25 provided, however, if the ballot envelope is completely unsealed, such  
26 voter shall receive notice pursuant to paragraph (h) of subdivision  
27 three of this section.

28 (b) If there is more than one timely ballot envelope executed by the  
29 same voter, the one bearing the later date of execution shall be  
30 accepted and the other rejected. If it cannot be determined which ballot  
31 envelope bears the later date, then all such ballot envelopes shall be  
32 rejected. When the board of elections has issued a second ballot it  
33 shall set aside the first ballot unopened to provide the voter time to  
34 return the second ballot. Notwithstanding the foregoing, if a ballot  
35 envelope for a voter was previously reviewed and opened, then the subse-  
36 quently received ballot envelope shall be set aside unopened.

37 (c) If such person is found to be registered, the central board of  
38 canvassers shall compare the signature, if any, on each ballot envelope  
39 with the signature, if any, on the registration poll record, the compu-  
40 ter-generated list of registered voters, or the list of special presi-  
41 dential voters, of the person of the same name who registered from the  
42 same address. If the signatures are found to correspond, such central  
43 board of canvassers shall certify thereto in a manner provided by the  
44 state board of elections.

45 (d) If such person is found to be registered and has requested a  
46 ballot, the ballot envelope shall be opened, the ballot or ballots with-  
47 drawn, unfolded, stacked face down and deposited in a secure ballot box  
48 or envelope. Upon such processing of the ballot, the voter's record  
49 shall be updated with a notation that indicates that the voter has  
50 already voted in such election. The board of elections shall adopt  
51 procedures, consistent with regulations of the state board of elections,  
52 to prevent voters from voting more than once and to secure ballots and  
53 prevent public release of election results prior to election day. Such  
54 procedures shall be filed with the state board of elections at least  
55 ninety days before they shall be effective.

1 (e) In the case of a primary election, the ballot shall be deposited  
2 in the box only if the ballot is of the party with which the voter is  
3 enrolled according to the entry on the back of his or her registration  
4 poll record or in the computer-generated registration list; if not, the  
5 ballot shall be rejected without inspection or unfolding and shall be  
6 returned to the ballot envelope which shall be endorsed "not enrolled".

7 (f) If the central board of canvassers determines that a person was  
8 entitled to vote at such election it shall prepare such ballot to be  
9 stacked face down and deposited in a secure ballot box or envelope  
10 consistent with paragraph (d) of this subdivision if such board finds  
11 that ministerial error by the board of elections or any of its employees  
12 caused such ballot envelope not to be valid on its face.

13 (g) If the central board of canvassers splits as to whether a ballot  
14 is valid, it shall prepare such ballot to be cast and canvassed pursuant  
15 to this subdivision.

16 (h) As each ballot envelope is opened, if one or more of the different  
17 kinds of ballots to be voted at the election are not found therein, the  
18 central board of canvassers, shall make a memorandum showing what ballot  
19 or ballots are missing. If a ballot envelope shall contain more than one  
20 ballot for the same offices, all the ballots in such ballot envelope  
21 shall be rejected. When the review of such ballots shall have been  
22 completed, the central board of canvassers shall ascertain the number of  
23 such ballots of each kind which have been deposited in the ballot box by  
24 deducting from the number of ballot envelopes opened with the number of  
25 missing ballots, and shall make a return thereof. The number of voters'  
26 ballots deposited in the ballot box shall be added to the number of  
27 other ballots deposited in the ballot box, in order to determine the  
28 number of all ballots of each kind to be accounted for in the ballot  
29 box.

30 3. Curing ballots. (a) At the time a ballot affirmation envelope is  
31 reviewed pursuant to subdivision two of this section, the board of  
32 elections shall determine whether it has a curable defect.

33 (b) A curable defect includes instances where the ballot envelope: (i)  
34 is unsigned; (ii) has a signature that does not correspond to the regis-  
35 tration signature; (iii) has no required witness to a mark; (iv) is  
36 returned without a ballot affirmation envelope in the return envelope;  
37 (v) has a ballot affirmation envelope that is signed by the person that  
38 has provided assistance to the voter but is not signed or marked by the  
39 voter; or (vi) contains the signature of someone other than the voter  
40 and not of the voter.

41 (c) The board shall indicate the issue that must be cured on the  
42 ballot envelope and, within one day of such determination, send to the  
43 voter's address indicated in the registration records and, if different,  
44 the mailing address indicated on the ballot application, a notice  
45 explaining the reason for such rejection and the procedure to cure the  
46 rejection. The board shall also contact the voter by either electronic  
47 mail or telephone, if such information is available to the board in the  
48 voter's registration information, in order to notify the voter of the  
49 deficiency and the opportunity and the process to cure the deficiency.

50 (d) The voter may cure the aforesaid defects by filing a duly signed  
51 affirmation attesting to the same information required by the ballot  
52 affirmation envelope and attesting that the signer of the affirmation is  
53 the same person who submitted such ballot envelope. The board shall  
54 include a form of such affirmation with the notice to the voter. The  
55 affirmation shall be in a form prescribed by the state board of  
56 elections.

1 (e) Such cure affirmation shall be filed with the board no later than  
2 seven business days after the board's mailing of such curable rejection  
3 notice or the day before the election, whichever is later. Provided the  
4 board determines that such affirmation addresses the curable defect, the  
5 rejected ballot shall be reinstated and prepared for canvassing pursuant  
6 to subdivision two of this section. If the board of elections is split  
7 as to the sufficiency of the cure affirmation, such envelope shall be  
8 prepared for canvassing pursuant to paragraph (d) of subdivision two of  
9 this section.

10 (f) If the ballot envelope contains one or more curable defects that  
11 have not been timely cured, the ballot envelope shall be set aside for  
12 review pursuant to subdivision eight of this section.

13 (g) Ballot envelopes are not invalid and do not require a cure if: (i)  
14 a ballot envelope is undated or has the wrong date, provided it is post-  
15 marked on or prior to election day or is otherwise received timely by  
16 the board of elections; (ii) the voter signed or marked the ballot  
17 affirmation envelope at a place on the envelope other than the desig-  
18 nated signature line; (iii) a voter used a combination of ink (of any  
19 color) or pencil to complete the ballot envelope; (iv) papers found in  
20 the ballot envelope with the ballot are materials from the board of  
21 elections, such as instructions or an application sent by the board of  
22 elections; (v) an extrinsic mark or tear on the ballot envelope appears  
23 to be there as a result of the ordinary course of mailing or transmit-  
24 tal; or (vi) the ballot envelope is partially unsealed but there is no  
25 ability to access the ballot.

26 (h) When the board of elections invalidates a ballot affirmation  
27 envelope and the defect is not curable, the ballot envelope shall be set  
28 aside for review pursuant to subdivision eight of this section and the  
29 board shall notify the voter by mail, sent within three business days of  
30 such rejection, and by either electronic mail or telephone, if such  
31 information is available to the board in the voter's registration infor-  
32 mation, and notify the voter of other options for voting, and, if time  
33 permits, provide the voter with a new ballot.

34 (i) If a ballot affirmation envelope is received by the board of  
35 elections prior to the election and is found to be completely unsealed  
36 and thus invalid, the board shall notify the voter by mail, sent within  
37 three business days of such determination, and by either electronic mail  
38 or telephone, if such information is available to the board in the  
39 voter's registration information, and notify the voter of other options  
40 for voting, and, if time permits, provide the voter with a new ballot.

41 4. Review of federal write-in absentee ballots. (a) Such central  
42 board of canvassers shall review any federal write-in absentee ballots  
43 validly cast by an absentee voter, a military voter or a special federal  
44 voter for the offices of president and vice-president, United States  
45 senator and representative in congress. Such central board of canvas-  
46 sers shall also review any federal write-in absentee ballots validly  
47 cast by a military voter for all questions or proposals, public offices  
48 or party positions for which a military voter is otherwise eligible to  
49 vote as provided in section 10-104 of this chapter.

50 (b) Federal write-in absentee ballots shall be deemed valid only if:  
51 (i) an application for an absentee, military or special federal ballot  
52 was received from the absentee, military or special federal voter; (ii)  
53 the federal write-in absentee ballot was submitted from inside or  
54 outside the United States by a military voter or was submitted from  
55 outside the United States by a special federal voter; (iii) such ballot  
56 is received by the board of elections not later than thirteen days

1 following the day of election or seven days after a primary election;  
2 and (iv) the absentee, military or special federal ballot which was sent  
3 to the voter is not received by the board of elections by the thirteenth  
4 day following the day of a general or special election or the seventh  
5 day after a primary election.

6 (c) If such a federal write-in absentee ballot is received after  
7 election day, the envelope in which it is received must contain: (i) a  
8 cancellation mark of the United States postal service or a foreign coun-  
9 try's postal service; (ii) a dated endorsement of receipt by another  
10 agency of the United States government; or (iii) if cast by a military  
11 voter, the signature and date of the voter and one witness thereto with  
12 a date which is ascertained to be not later than the day of the  
13 election.

14 (d) If such a federal write-in absentee ballot contains the name of a  
15 person or persons in the space provided for a vote for any office, such  
16 ballot shall be counted as a vote for such person or persons. A vote for  
17 a person who is the candidate of a party or independent body either for  
18 president or vice-president shall be deemed to be a vote for both the  
19 candidates of such party or independent body for such offices. If such a  
20 ballot contains the name of a party or independent body in the space  
21 provided for a vote for any office, such ballot shall be deemed to be a  
22 vote for the candidate or candidates, if any, of such party or independ-  
23 ent body for such office. In the case of the offices of president and  
24 vice-president a vote cast for a candidate, either directly or by writ-  
25 ing in the name of a party or independent body, shall also be deemed to  
26 be votes for the electors supporting such candidate. Any abbreviation,  
27 misspelling or other minor variation in the form of the name of a candi-  
28 date or a party or independent body shall be disregarded in determining  
29 the validity of the ballot, if the voter's intention can be ascertained.

30 5. Nothing in this section prohibits a representative of a candidate,  
31 political party, or independent body entitled to have watchers present  
32 at the polls in any election district in the board's jurisdiction from  
33 observing, without objection, the review of ballot envelopes required by  
34 subdivisions two, three and four of this section.

35 6. Casting and canvassing of absentee, military and special ballots.  
36 (a) The following provisions shall apply to the casting and canvassing  
37 of all valid ballots received before, on or after election day and  
38 reviewed and prepared pursuant to subdivision two of this section, and  
39 all other provisions of this chapter with respect to casting and  
40 canvassing such ballots which are not inconsistent with this subdivision  
41 shall be applicable to such ballots.

42 (b) The day before the first day of early voting, the central board of  
43 canvassers shall scan all valid ballots previously reviewed and prepared  
44 pursuant to this section as nearly as practicable in the following  
45 manner:

46 (i) Such ballots may be separated into sections before being placed in  
47 the counting machine and scanned;

48 (ii) Upon completion of the scanning of such valid ballots, the scan-  
49 ners used for such purpose shall be secured, and no tabulation of the  
50 results shall occur until one hour before the close of the polls on  
51 election day. Any ballots scanned during this period shall be secured  
52 in the same manner as voted ballots cast during early voting or on  
53 election day. The board of elections shall adopt procedures to prevent  
54 the public release of election results prior to the close of polls on  
55 election day and such procedures shall be consistent with the regu-  
56 lations of the state board of elections and shall be filed with the

1 state board of elections at least ninety days before they shall be  
2 effective;

3 (iii) Any valid ballots that cannot be cast on a scanner shall be held  
4 inviolable and unexamined and shall be duly secured until after the close  
5 of polls on election day when such ballots shall be examined and  
6 canvassed in a manner consistent with subdivision two of section 9-110  
7 of this article.

8 (c) After the close of the polls on the last day of early voting, the  
9 central board of canvassers shall scan all valid ballots received and  
10 prepared pursuant to this section, and not previously scanned on the day  
11 before the first day of early voting, in the same manner as provided in  
12 paragraph (b) of this subdivision using the same or different scanners.

13 (d) In casting and canvassing such ballots, the board shall take all  
14 measures necessary to ensure the privacy of voters.

15 (e) The board of elections may begin to obtain tabulated results for  
16 all ballots previously scanned, as required by this subdivision, one  
17 hour before the scheduled close of polls on election day; provided,  
18 however, no unofficial tabulations of election results shall be publicly  
19 announced or released in any manner until after the close of polls on  
20 election day at which time such tabulations shall be added into the  
21 election night vote totals.

22 (f) Upon completing the casting and canvassing of any remaining valid  
23 ballots as hereinabove provided for any election district, the central  
24 board of canvassers shall thereupon, as nearly as practicable in the  
25 manner provided in this article for absentee, military and special  
26 ballots, verify the number of ballots so cast, tally the votes so cast,  
27 add such tally to the previous tally of all votes cast in such election  
28 district, and record the result.

29 (g) The record of the vote counted by each scanner and manually for  
30 each candidate and for and against each ballot proposal, printed by  
31 election district, shall be preserved in the same manner and for the  
32 same period as the returns of canvass for the election.

33 7. Post-election review and canvassing of affidavit ballots. (a)  
34 Within four business days of the election, the board of elections shall  
35 review all affidavit ballots cast in the election. If the central board  
36 of canvassers determines that a person was entitled to vote at such  
37 election it shall cast and canvass such affidavit ballot; provided,  
38 however, if the board of elections receives one or more timely absentee  
39 ballots from a voter who also cast an affidavit ballot at a poll site,  
40 the last such timely absentee ballot received shall be canvassed and the  
41 affidavit ballot shall be set aside unopened; and provided further, if a  
42 voter was issued an absentee ballot and votes in person via an affidavit  
43 ballot and the board does not receive such absentee ballot, the affida-  
44 vit ballot shall be canvassed if the voter is otherwise qualified to  
45 vote in such election.

46 (b) Affidavit ballots are valid when cast at a polling site permitted  
47 by law by qualified voters: (i) who moved within the state after regis-  
48 tering; (ii) who are in inactive status; (iii) whose registration was  
49 incorrectly transferred to another address even though they did not  
50 move; (iv) whose registration poll records were missing on the day of  
51 such election; (v) who have not had their identity previously verified;  
52 (vi) whose registration poll records did not show them to be enrolled in  
53 the party in which they are enrolled; and (vii) who are incorrectly  
54 identified as having already voted.

1 (c) Affidavit ballots are valid to the extent that ministerial error  
2 by the board of elections or any of its employees caused such ballot  
3 envelope not to be valid on its face.

4 (d) If the central board of canvassers determines that a person was  
5 entitled to vote at such election, the board shall cast and canvass such  
6 affidavit ballot if such board finds that the voter appeared at the  
7 correct polling place, regardless of the fact that the voter may have  
8 appeared in the incorrect election district and regardless of whether  
9 the voter's name was in the registration poll record.

10 (e) If the central board of canvassers finds that a voter submitted a  
11 voter registration application through the electronic voter registration  
12 transmittal system pursuant to title eight of article five of this chap-  
13 ter and signed the affidavit ballot, the board shall cast and canvass  
14 such affidavit ballot if the voter is otherwise qualified to vote in  
15 such election.

16 (f) If the central board of canvassers determines that a person was  
17 entitled to vote at such election, the board shall cast and canvass such  
18 affidavit ballot if such board finds that the voter substantially  
19 complied with the requirements of this chapter. For purposes of this  
20 paragraph, "substantially complied" shall mean the board can determine  
21 the voter's eligibility based on the statement of the affiant or records  
22 of the board.

23 (g) If the central board of canvassers finds that the statewide voter  
24 registration list supplies sufficient information to identify a voter,  
25 failure by the voter to include on the affidavit ballot envelope the  
26 address where such voter was previously registered shall not be a fatal  
27 defect and the board shall cast and canvass such affidavit ballot.

28 (h) If the central board of canvassers finds that the voter registered  
29 or pre-registered to vote for the first time pursuant to title nine of  
30 article five of this chapter at least twenty-five days before a primary,  
31 appeared at such primary election, and indicated on the affidavit ballot  
32 envelope the intent to enroll in such party, the affidavit ballot shall  
33 be cast and canvassed if the voter is otherwise qualified to vote in  
34 such election.

35 (i) When the central board of canvassers determines that an affidavit  
36 ballot is invalid due to a missing signature on the affidavit ballot  
37 envelope, or because the signature on the affidavit ballot envelope does  
38 not correspond to the registration signature, such ballots shall be  
39 subject to the cure procedure in subdivision three of this section.

40 (j) At the meeting required pursuant to paragraph (a) of subdivision  
41 eight of this section, each candidate, political party, and independent  
42 body shall be entitled to object to the board of elections' determi-  
43 nation that an affidavit ballot is invalid. Such ballots shall not be  
44 counted absent an order of the court. In no event may a court order a  
45 ballot that has been counted to be uncounted.

46 (k) The board of elections shall enter information into the ballot  
47 tracking system, as defined in section 8-414 of this chapter, to allow a  
48 voter who cast a ballot in an affidavit envelope to determine if the  
49 vote was counted.

50 8. Post-election review of invalid absentee, military and special  
51 ballots. (a) Within four business days of the election, the board of  
52 elections shall designate itself or such of its employees to act as a  
53 central board of canvassers as provided in subdivision one of this  
54 section and meet to review absentee, military and special ballots deter-  
55 mined to be invalid pursuant to paragraph (a) of subdivision two of this  
56 section, ballot envelopes that were returned to the board as undelivera-

1 ble, and ballot envelopes containing one or more curable defects that  
2 have not been timely cured.

3 (b) At least five days prior to the time fixed for such meeting, the  
4 board shall send notice by first class mail to each candidate, political  
5 party, and independent body entitled to have had watchers present at the  
6 polls in any election district in the board's jurisdiction. Such notice  
7 shall state the time and place fixed by the board for such post-election  
8 review.

9 (c) Each such candidate, political party, and independent body shall  
10 be entitled to appoint such number of watchers to attend upon each  
11 central board of canvassers as the candidate, political party, or inde-  
12 pendent body was entitled to appoint at the election in any election  
13 district for which the central board of canvassers is designated to act.

14 (d) Upon assembling at the time and place fixed for such meeting, each  
15 central board of canvassers shall review the ballot envelopes determined  
16 to be invalid and set aside in the review required by subdivision two of  
17 this section, ballot envelopes that were returned as undeliverable, and  
18 ballot envelopes containing one or more curable defects that have not  
19 been timely cured.

20 (e) Each such candidate, political party, and independent body shall  
21 be entitled to object to the board of elections' determination that a  
22 ballot is invalid. Such ballots shall not be counted absent an order of  
23 the court. In no event may a court order a ballot that has been counted  
24 to be uncounted.

25 9. State board of elections; powers and duties for canvassing of  
26 absentee, military, special and affidavit ballots. The state board of  
27 elections shall promulgate rules and regulations necessary for the  
28 implementation of the provisions of this section. Such rules and regu-  
29 lations shall include, but not be limited to, provisions to (a) ensure  
30 an efficient and fair review process that respects the privacy of the  
31 voter, (b) ensure the security of the central count scanners used before  
32 election day, and (c) ensure that ballots cast as provided in this  
33 section are canvassed and counted as if cast on election day.

34 § 2. Section 9-211 of the election law, as amended by chapter 515 of  
35 the laws of 2015, subdivision 1 as amended by chapter 5 of the laws of  
36 2019, is amended to read as follows:

37 § 9-211. Audit of voter verifiable audit records. 1. Within fifteen  
38 days after each general or special election, within thirteen days after  
39 every primary election, and within seven days after every village  
40 election conducted by the board of elections, the board of elections or  
41 a bipartisan committee appointed by such board shall audit the voter  
42 verifiable audit records from three percent of voting machines or  
43 systems within the jurisdiction of such board. Such audits may be  
44 performed manually or via the use of any automated tool authorized for  
45 such use by the state board of elections which is independent from the  
46 voting system it is being used to audit. Voting machines or systems  
47 shall be selected for audit through a random, manual process. At least  
48 five days prior to the time fixed for such selection process, the board  
49 of elections shall send notice by first class mail to each candidate,  
50 political party and independent body entitled to have had watchers pres-  
51 ent at the polls in any election district in such board's jurisdiction.  
52 Such notice shall state the time and place fixed for such random  
53 selection process. The audit shall be conducted in the same manner, to  
54 the extent applicable, as a canvass of paper ballots. Each candidate,  
55 political party or independent body entitled to appoint watchers to



1 attend at a polling place shall be entitled to appoint such number of  
2 watchers to observe the audit.

3 2. Within three days of any election, the board of elections or a  
4 bipartisan committee appointed by such board shall audit the central  
5 count ballot scanners by auditing the ballots from three percent of  
6 election districts that were tabulated by such scanners within the  
7 jurisdiction of such board by that time. All provisions of this section  
8 shall otherwise apply to such audit. To the extent additional ballots  
9 are tabulated through central count ballot scanners after the initial  
10 audit, three percent of election districts shall thereafter be audited  
11 as to the additional ballots tabulated. The certification of the canvass  
12 shall not await the completion of such additional audit; provided,  
13 however, if upon the completion of such additional audit the criteria  
14 are met for the results of the audit to replace the canvass then the  
15 board of canvassers shall forthwith reconvene and adjust the canvass as  
16 required.

17 3. The audit tallies for each voting machine or system shall be  
18 compared to the tallies recorded by such voting machine or system, and a  
19 report shall be made of such comparison which shall be filed in the  
20 office of the state board of elections.

21 ~~[3-]~~ 4. The state board of elections shall, in accordance with subdi-  
22 vision four of section 3-100 of this chapter, promulgate regulations  
23 establishing a uniform statewide standard to be used by boards of  
24 elections to determine when a discrepancy between the audit tallies and  
25 the voting machine or system tallies shall require a further voter veri-  
26 fiable record audit of additional voting machines or systems or a  
27 complete audit of all machines or systems within the jurisdiction of a  
28 board of elections. Any board of elections shall be empowered to order  
29 that any such audit shall be conducted whenever any such discrepancy  
30 exists.

31 ~~[4-]~~ 5. If a complete audit shall be conducted, the results of such  
32 audit shall be used by the canvassing board in making the statement of  
33 canvass and determinations of persons elected and propositions rejected  
34 or approved. The results of a partial voter verifiable record audit  
35 shall not be used in lieu of voting machine or system tallies.

36 ~~[5-]~~ 6. Notwithstanding subdivision four of this section, if a voting  
37 machine or system is found to have failed to record votes in a manner  
38 indicating an operational failure, the board of canvassers shall use the  
39 voter verifiable audit records to determine the votes cast on such  
40 machine or system, provided such records were not also impaired by the  
41 operational failure of the voting machine or system.

42 § 3. Subdivision 5 of section 7-122 of the election law, as amended by  
43 chapter 411 of the laws of 2019, is amended to read as follows:

44 5. There shall also be a place for two board of elections staff  
45 members or inspectors of opposite political parties to indicate, by  
46 placing their initials thereon, that they have checked and marked the  
47 voter's poll record and a box labeled "BOE use only" for notations  
48 required when the board of elections reviews affirmation ballot envel-  
49 opes pursuant to section 9-209 of this chapter.

50 § 4. Subdivision 2-a of section 8-302 of the election law is renum-  
51 bered subdivision 2-b and a new subdivision 2-a is added to read as  
52 follows:

53 2-a. If a voter's name appears in the ledger or computer generated  
54 registration list with a notation indicating that the board of elections  
55 has issued the voter an absentee, military or special ballot, such voter

1 shall not be permitted to vote on a voting machine at an early voting  
2 site or on election day but may vote by affidavit ballot.

3 § 5. Subdivisions 1, 4 and 5 of section 16-106 of the election law,  
4 subdivision 1 as amended by chapter 659 of the laws of 1994, subdivision  
5 as amended by chapter 359 of the laws of 1989, are amended to read as  
6 follows:

7 1. The [~~casting or canvassing or~~] post-election refusal to cast: (a)  
8 challenged ballots, blank ballots, or void [~~or canvass~~] ballots; (b)  
9 absentee, military, special [~~federal~~], or federal write-in [~~or~~] ballots;  
10 (c) emergency ballots; and (d) ballots voted in affidavit envelopes [by  
11 ~~persons whose registration poll records were not in the ledger or whose~~  
12 ~~names were not on the computer generated registration list on the day of~~  
13 ~~election or voters in inactive status, voters who moved to a new address~~  
14 ~~in the city or county or after they registered or voters who claimed to~~  
15 ~~be enrolled in a party other than that shown on their registration poll~~  
16 ~~record or on the computer generated registration list and the original~~  
17 ~~applications for a military, special federal, federal write-in, emergen-~~  
18 ~~cy or absentee voter's ballot] may be contested in a proceeding insti-  
19 tuted in the supreme or county court, by any candidate or the chairman  
20 of any party committee, and by any voter with respect to the refusal to  
21 cast such voter's ballot, against the board of canvassers of the returns  
22 from such district, if any, and otherwise against the board of inspec-  
23 tors of election of such district. If the court determines that the  
24 person who cast such ballot was entitled to vote at such election, it  
25 shall order such ballot to be cast and canvassed, including if the court  
26 finds that ministerial error by the board of elections or any of its  
27 employees caused such ballot envelope not to be valid on its face.~~

28 4. The court shall ensure the strict and uniform application of the  
29 election law and shall not permit or require the altering of the sched-  
30 ule or procedures in section 9-209 of this chapter but may direct a  
31 recanvass or the correction of an error, or the performance of any duty  
32 imposed by [~~law~~] this chapter on such a state, county, city, town or  
33 village board of inspectors, or canvassers.

34 5. In the event procedural irregularities or other facts arising  
35 during the election suggest a change or altering of the canvass sched-  
36 ule, as provided for in section 9-209 of this chapter, may be warranted,  
37 a candidate may seek an order for temporary or preliminary injunctive  
38 relief or an impound order halting or altering the canvassing schedule  
39 of absentee, military, special or affidavit ballots. Upon any such  
40 application, the board or boards of elections have a right to be heard.  
41 To obtain such relief, the petitioner must meet the criteria in article  
42 sixty-three of the civil practice law and rules and show by clear and  
43 convincing evidence, that, because of procedural irregularities or other  
44 facts arising during the election, the petitioner will be irreparably  
45 harmed absent such relief. For the purposes of this section, allegations  
46 that opinion polls show that an election is close is insufficient to  
47 show irreparable harm to a petitioner by clear and convincing evidence.

48 6. A proceeding under subdivisions one and three of this section must  
49 be instituted within twenty days and under subdivision two, within thir-  
50 ty days after the election or alleged erroneous statement or determi-  
51 nation was made, or the time when the board shall have acted in the  
52 particulars as to which it is claimed to have failed to perform its  
53 duty, except that such a proceeding with respect to a village election  
54 must be instituted within ten days after such election, statement,  
55 determination or action.

1 § 6. Subdivision 4 of section 17-126 of the election law is amended to  
2 read as follows:  
3 4. Before the closing of the polls, unfolds a ballot that a voter has  
4 prepared for voting, except as provided in section 9-209 of this chap-  
5 ter, is guilty of a misdemeanor.  
6 § 7. Subdivisions 18, 20 and 21 of section 17-130 of the election law  
7 are amended to read as follows:  
8 18. Not being lawfully authorized, makes or has in his possession a  
9 key to a voting [~~maching~~ machine which has been adopted and will be  
10 used in elections; or,  
11 20. Intentionally opens [~~an absentee~~] a voter's ballot envelope or  
12 examines the contents thereof after the receipt of the envelope by the  
13 board of elections and before the close of the polls at the election  
14 except as provided in section 9-209 of this chapter; or,  
15 21. [~~Wilfully~~] Willfully disobeys any lawful command of the board of  
16 inspectors, or any member thereof; or,  
17 § 8. This act shall take effect January 1, 2022 and shall apply to  
18 elections held on or after such date; provided, however, that paragraph  
19 (h) of subdivision 7 of section 9-209 of the election law, as added by  
20 section one of this act, shall take effect January 1, 2023.