STATE OF NEW YORK

2696

2021-2022 Regular Sessions

IN SENATE

January 22, 2021

Introduced by Sen. ORTT -- 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:

Section 1. The penal law is amended by adding two new sections 145.75 and 145.80 to read as follows:

§ 145.75 Unlawfully entering or remaining in a school or facility for children for the purposes of voting in the second degree.

1. A person is guilty of unlawfully entering or remaining in a school or facility for children for the purposes of voting in the second degree, when being a level two or level three sex offender, he or she enters or remains in a school or facility for children for the purposes of casting a ballot or otherwise voting during any primary, general, special, school district or other election in which residents, registered or qualified voters are entitled to cast ballots.

2. For the purposes of this section: (a) "level two or level three sex offender" shall mean a person registered or required to register under section one hundred sixty-eight-f of the correction law who has received a level two or level three designation pursuant to section one hundred sixty-eight-l of the correction law; and (b) "school or facility for children" shall mean a building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present.

Unlawfully entering or remaining in a school or facility for children for the purposes of voting in the second degree is a class A misdemeanor.

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

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§ 145.80 Unlawfully entering or remaining in a school or facility for children for the purposes of voting in the first degree.

A person is guilty of unlawfully entering or remaining in a school or facility for children for the purposes of voting in the first degree when he or she commits the crime of unlawfully entering or remaining in a school or facility for children for the purposes of voting in the second degree, having previously been convicted of such crime within the preceding ten years.

Unlawfully entering or remaining in a school or facility for children for the purposes of voting in the first degree is a class E felony.

§ 2. 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[~~.~~]**; or**

(e) prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law.

§ 2-a. 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 and a new paragraph (e) is added 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[~~.~~]**; or**

(e) prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law.

§ 3. 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 and a new subparagraph (v) is added 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[~~.~~]**; or**

(v) prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law.

§ 4. Section 8-400 of the election law is amended by adding a new subdivision 11 to read as follows:

11. Sixty days before each election the board of elections shall compile a list of all level two and level three registered sex offenders entitled to receive absentee ballots pursuant to the provisions of this

section. The board of elections shall, by mail addressed to such sex offender at his or her registered address, send an absentee ballot for the ensuing election to such person in the same manner as provided in this section for a qualified voter entitled to an absentee ballot because of illness or disability.

§ 5. Subdivision 2 of section 2018-a of the education law, as amended by chapter 616 of the laws of 2019, is amended to read as follows:

2. a. A qualified voter may vote as an absentee voter under this section if during all the hours of voting on the day of an election he or she will be:

(1) absent from the county of his or her residence; or

(2) unable to appear at the polling place because of illness or physical disability, or duties related to the primary care of one or more individuals who are ill or physically disabled, or because he or she will be or is a patient in a hospital; or

(3) an inmate or patient of a veteran's administration hospital; or

(4) 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[~~.~~]; or

(5) prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law.

b. Each person entitled to vote as an absentee voter pursuant to this section and desirous of obtaining an absentee ballot shall make written application therefor to the district clerk. Application forms for use pursuant to this section shall be in a form prescribed by the state board of elections. The use of any application which is on a form prescribed by the state board of elections shall be acceptable.

c. The application for an absentee ballot when filed must contain in each instance the following information:

(1) Applicant's full name, date of birth, and residence address, including the street and number, if any, rural delivery route, if any, mailing address if different from the residence address and an address to which the ballot shall be mailed.

(2) A statement that the applicant is a qualified and registered voter.

(3) A statement, as appropriate, that on the day of such election the applicant expects in good faith to be in one of the following categories:

(a) absent from the county of his or her residence; provided, however, if the applicant expects to be absent from such county for a duration covering more than one election and seeks an absentee ballot for each election, he or she shall state the dates when he or she expects to begin and end such absence; or

(b) unable to appear at a polling place because of illness or physical disability or duties related to the primary care of one or more individuals who are ill or physically disabled; or

(c) an inmate or patient of a veteran's administration hospital; or

(d) 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[~~.~~]**; or**

(e) prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law.

d. **Where the applicant indicates he or she is prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law such application shall state whether or not the voter is currently under a sentence of imprisonment for a felony or on parole.**

e. Such application shall include the following statement to be signed by the voter.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for absentee ballots, I shall be guilty of a misdemeanor.

Date.....Signature of Voter .....

[~~e.~~] **f.** An applicant whose ability to appear personally at the polling place of the school district of which he or she is a qualified voter is substantially impaired by reason of permanent illness or physical disability and whose registration record has been marked "permanently disabled" by the board of elections pursuant to the provisions of the election law shall be entitled to receive an absentee ballot pursuant to the provisions of this section without making separate application for such absentee ballot, and the board of registration upon being advised by the board of elections on or with the list of registered voters that the registration record of a voter is marked "permanently disabled" shall send an absentee ballot to such voter at his or her last known address with a request to the postal authorities not to forward same but to return same in five days in the event that it cannot be delivered to the addressee. The board of education shall determine whether such ballot shall be sent by first class or by certified mail. All such ballots shall be mailed in the same manner as determined by the board of education. The board of registration shall make an appropriate entry on the registration indicating the fact that an absentee ballot has been sent and the date of mailing.

[~~f.~~] **g.** An application must be received by the district clerk no earlier than the thirtieth day before the election for which an absentee ballot is sought. If the application requests that the absentee ballot be mailed, such application must be received not later than seven days before the election. If the applicant or his or her agent delivers the application to the district clerk in person, such application must be received not later than the day before the election. The district clerk shall examine each application and shall determine from the information contained therein whether the applicant is qualified under this section to receive an absentee ballot.

[~~g.~~] h. No later than six days before the election for which an application has been received and for which the district clerk has determined the applicant to be qualified to vote by absentee ballot the district clerk shall mail, by regular mail, an absentee ballot to each qualified applicant who has applied before such day and who has requested that such absentee ballot be mailed to him or her at the address set forth in his or her application. If the applicant or his or her agent delivers the application to the district clerk in person after the seventh day before the election and not later than the day before the election, the district clerk shall forthwith deliver such absentee ballots for those applicants whom he or she determines are qualified to make such applications and to receive such ballots to such applicants or the agents named in the applications when such applicants or agents appear in the district clerk's office.

§ 6. Subdivision 2 of section 2018-b of the education law, as amended by chapter 46 of the laws of 1992 and paragraph c as amended by chapter 26 of the laws of 1994, is amended to read as follows:

2. a. An applicant for such an absentee ballot shall submit an application setting forth (1) his or her name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that he or she is or will be, on the day of the school district election, a qualified voter of the school district in which he or she resides in that he or she is or will be, on such date, over eighteen years of age, a citizen of the United States and has or will have resided in the district for thirty days next preceding such date; and (3) that he or she will be unable to appear to vote in person on the day of the school district election for which the absentee ballot is requested because he or she is, or will be on such day (a) a patient in a hospital, or unable to appear personally at the polling place on such day because of illness or physical disability [~~or~~]; (b) because his or her duties, occupation, business, or studies will require him or her to be outside of the county or city of his residence on such day[~~,~~]; (c) because he or she will be on vacation outside the county or city of his or her residence on such day; [~~or,~~] (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 is confined in prison after conviction for an offense other than a felony; or (e) prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law.

Such application must be received by the district clerk or designee of the trustees or school board at least seven days before the election if the ballot is to be mailed to the voter, or the day before the election, if the ballot is to be delivered personally to the voter.

b. (1) Where such duties, occupation, business, or studies are of such a nature as ordinarily to require such absence, a brief description of such duties, occupation, business, or studies shall be set forth in such application.

(2) Where such duties, occupation, business, or studies are not of such a nature as ordinarily to require such absence, such application shall contain a statement of the special circumstances on account of which such absence is required.

c. Where the applicant expects in good faith to be absent on the day of the election because he **or she** will be on vacation elsewhere on such day, such application shall also contain the dates upon which he **or she** expects to begin and end such vacation, the place or places where he **or she** expects to be on such vacation, the name and address of his **or her** employer, if any, and if self-employed or retired, a statement to that effect.

d. Where the absence is because of detention or confinement to jail, such application shall state whether the voter is detained awaiting action of the grand jury or is confined after conviction for an offense other than a felony.

e. **Where the applicant indicates that he or she is prohibited from appearing personally at the polling place of the election district in which he or she is a qualified voter because he or she is a level two or level three sex offender and such polling place is located on or within a school or facility for children as the terms "level two and level three sex offender" and "school or facility for children" are defined in section 145.75 of the penal law such application shall state whether or not the voter is currently under a sentence of imprisonment for a felony or on parole.**

f. Where a person is or would be, if he **or she** were a qualified voter, entitled to apply for the right to vote by absentee ballot under the provisions of this section, his **or her** spouse, parent or child, if a qualified voter and a resident of the same school district, shall be entitled to vote as an absentee voter upon personally making and signing an application in accordance with the preceding provisions of this subdivision and showing that he **or she** expects to be absent from the school district on the day of the school district election by reason of accompanying or being with the spouse, child or parent who is or would be, if he **or she** were a qualified voter, so entitled to apply for the right to vote by absentee ballot, and, in the event no application is made by such spouse, child or parent, such further information as the clerk of the school district or designee of the trustees or school board shall require.

[~~f.~~] **g.** Such application shall include the following statement to be signed by the voter.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for absentee ballots, I shall be guilty of a misdemeanor.

Date.....Signature of Voter .....

[~~g.~~] **h.** The clerk of the school district or a designee of the trustees or school board shall request registration lists from the board of elections pursuant to subdivision three of section 5-612 of the election law for those voters whose registration record has been marked "permanently disabled". An applicant whose ability to appear personally at the polling place of the school district of which he **or she** is a qualified voter is substantially impaired by reason of permanent illness or physical disability and whose registration record has been marked "permanently disabled" as determined by the board of elections pursuant to the provisions of this chapter and who has previously applied for an absentee ballot shall be entitled to receive subsequent absentee ballots pursuant to the provisions of this section without making separate

application for such absentee ballot, and the clerk of the school district or a designee of the trustees or school board shall send an absentee ballot to such voter at his **or her** last known address with a request to the postal authorities not to forward same but to return same in five days in the event that it cannot be delivered to the addressee. The clerk of the school district or a designee of the trustees or school board shall determine whether such ballot shall be sent by first class or by certified mail. All such ballots shall be mailed in the same manner as determined by the trustees or the board of education.

§ 7. The election law is amended by adding a new section 17-172 to read as follows:

§ 17-172. Immunity and defense for poll workers and others related to admittance of sex offenders to polling places. 1. No person shall be civilly liable for refusing admittance of a level two or level three sex offender to a polling place which is or is within a school or facility for children as those terms are defined in section 145.75 of the penal law, when such person is acting in good faith and in the performance of their duties. For the purposes of this section, a person shall be deemed to be acting in good faith if the name and address or name and approximate address based on zip code of the voter refused admission appears on a list of level two or level three sex offenders provided by a board of elections or the division of criminal justice services.

2. It shall be an affirmative defense to any charge of violating the elective franchise of a voter based upon the refusing of admittance of a level two or level three sex offender to a polling place which is or is within a school or facility for children as those terms are defined in section 145.75 of the penal law, that the name and address or name and approximate address based on zip code of the voter refused admission appears on a list of level two or level three sex offenders provided by a board of elections or the division of criminal justice services.

§ 8. This act shall take effect immediately and shall apply to elections held on and after January 1, 2022, provided, however, that the amendments to subdivision 1 of section 8-400 of the election law made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 2 of chapter 139 of the laws of 2020, as amended, when upon such date the provisions of section two-a of this act shall take effect. The state board of elections shall be authorized to promulgate any rules, regulations, forms, or notices required to carry out the provisions of this act prior to such effective date.