

# STATE OF NEW YORK

1493

2021-2022 Regular Sessions

## IN ASSEMBLY

January 11, 2021

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

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

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

LBD03358-01-1

1 such set shall apportion among all such sets the election districts from  
2 which such ballots have been received, provided that all such ballots  
3 from a single election district shall be assigned to a single set of  
4 clerks, and that each such set shall be divided equally between repre-  
5 sentatives of the two major political parties. Each such set of clerks  
6 shall be deemed a central board of inspectors for purposes of this  
7 section.

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

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

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

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

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

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

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

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

54 § 5. Paragraph c of subdivision 3 of section 5-506 of the election  
55 law, as amended by section 6 of part XX of chapter 55 of the laws of  
56 2019, is amended to read as follows:

c. The computer generated registration list prepared for each election in each election district shall be prepared in a manner which meets or exceeds standards for clarity and speed of production established by the state board of elections, shall be in a form approved by such board, shall include the names of all voters eligible to vote in such election and shall be in alphabetical order, except that, at a primary election, the names of the voters enrolled in each political party may be placed in a separate part of the list or in a separate list, as the board of elections in its discretion, may determine. Such list shall contain, adjacent to each voter's name, or in a space so designated, at least the following: street address, date of birth, party enrollment, year of registration, a computer reproduced facsimile of the voter's signature or an indication that the voter is unable to sign his name, a place for the voter to sign his name at such election and a place for the inspectors to mark the voting machine number, the public counter number if any, or the number of any paper ballots given the voter. Such list shall also include a notation indicating if such voter was mailed an absentee ballot for the applicable election. The format for such notation shall be promulgated by the state board of elections and used uniformly in computer generated registration lists.

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

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

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

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

3-d. If a voter's name appears in the ledger or computer generated registration list with a notation indicating that the voter was mailed an absentee ballot and such voter is unable to surrender his or her

1 ballot pursuant to subdivision two-b of this section, such voter shall  
2 only be entitled to vote by affidavit ballot unless a court order  
3 provides otherwise.

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

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

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

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

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

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

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

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

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