

# STATE OF NEW YORK

1493--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Subdivision 1 of section 9-209 of the election law, as  
2 amended by chapter 104 of the laws of 2010, is amended to read as  
3 follows:

4 1. (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 (b) Beginning at the close of polls on the second Sunday of early  
18 voting, board of elections employees shall begin to prepare and canvass  
19 valid absentee ballots received prior to such date for canvassing by  
20 hand or central scanner. Such preparation shall include, but not be  
21 limited to, reviewing the voter history record for each voter who  
22 submitted an absentee ballot to reflect any instance of early voting by  
23 such voters, opening absentee ballot affirmation envelopes, removing  
24 ballots from absentee ballot affirmation envelopes, stacking absentee

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

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1 ballots, and inserting ballots into a central scanner or other vote  
2 counting device. Any ballots prepared and canvassed during this period  
3 shall be secured in the same manner as voted ballots cast during early  
4 voting or on election day.

5 (c) No unofficial tabulations of election results shall be printed or  
6 viewed in any manner until after the close of polls on election day at  
7 which time such tabulations shall be added into the election night  
8 canvass totals.

9 (d) Board of elections employees shall follow all relevant provisions  
10 of this article for canvassing, processing, recording, and announcing  
11 results of voting and securing ballots, scanners, and other election  
12 materials. Such canvass may occur at the offices of the board of  
13 elections, or such other location designated by the board of elections.

14 (e) In canvassing such ballots, the board shall take all measures  
15 necessary to ensure the privacy of voters and non-public release of  
16 election results prior to the close of polls on election day.

17 (f) The board may designate additional sets of poll clerks and if it  
18 designates more than one such set shall apportion among all such sets  
19 the election districts from which such ballots have been received,  
20 provided that all such ballots from a single election district shall be  
21 assigned to a single set of clerks, and that each such set shall be  
22 divided equally between representatives of the two major political  
23 parties. Each such set of clerks shall be deemed a central board of  
24 inspectors for purposes of this section.

25 ~~[(b)]~~ (g) Watchers are entitled to be present at meetings related to  
26 examining absentee ballot envelopes prior to the day of the election;  
27 provided, however, that any objection to a board determination that a  
28 ballot envelope is eligible to be canvassed must be made at the meeting  
29 such determination is made; an objection subsequent to such meeting  
30 shall be invalid. At least five days prior to the time fixed for ~~[such]~~  
31 a meeting to examine or cast and canvass absentee ballots subsequent to  
32 the day of the election, the board shall send notice by first class mail  
33 to each candidate, political party, and independent body entitled to  
34 have had watchers present at the polls in any election district in the  
35 board's jurisdiction. Such notice shall state the time and place fixed  
36 by the board for such canvass.

37 ~~[(e)]~~ (h) Each such candidate, political party, and independent body  
38 shall be entitled to appoint such number of watchers to attend upon each  
39 central board of inspectors as such candidate, political party, or inde-  
40 pendent body was entitled to appoint at such election in any one  
41 election district for which such central board of inspectors is desig-  
42 nated to act.

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

45 4. If the board of elections manually canvasses ballots, it shall  
46 review the ballot to determine its validity consistent with section  
47 9-112 of this article. In cases where the express intent of the voter  
48 is unambiguous, any stray marks or writing shall not be a basis for  
49 voiding an absentee ballot. If the absentee ballots are tabulated by an  
50 optical scan voting system, then a review of the absentee ballot shall  
51 not occur.

52 5. If an affidavit ballot was cast by a voter on the day of election  
53 and it is determined he or she submitted an absentee ballot, such affi-  
54 davit shall be left aside, unopened.

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

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

§ 4. Paragraph c of subdivision 3 of section 5-506 of the election law, as amended by section 6 of part XX of chapter 55 of the laws of 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 provided an absentee ballot for the applicable election; provided however such notation shall not be required for any list being utilized during early voting. The format for such notation shall be promulgated by the state board of elections and used uniformly in computer generated registration lists.

§ 5. 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

1 by the state board of elections and such other articles of stationery as  
2 may be necessary for the proper conduct of elections, except that when a  
3 town, city or village holds an election not conducted by the board of  
4 elections, the clerk of such town, city or village, shall provide such  
5 official and facsimile ballots and the necessary blanks, supplies and  
6 stationery for such election.

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

9 2-b. If on election day a voter's name appears in the ledger or  
10 computer generated registration list with a notation indicating that the  
11 voter was provided an absentee ballot, such voter shall be permitted to  
12 cast his or her vote on the voting machine if the voter surrenders his  
13 or her absentee ballot and affirmation oath envelope to the inspector  
14 and such absentee ballot is marked "VOTED IN PERSON" and placed by the  
15 inspector in an envelope designated for this purpose.

16 3-d. If on election day a voter's name appears in the ledger or  
17 computer generated registration list with a notation indicating that the  
18 voter was provided an absentee ballot and such voter is unable to  
19 surrender his or her ballot and affirmation oath envelope pursuant to  
20 subdivision two-b of this section, such voter shall only be entitled to  
21 vote by affidavit ballot unless a court order provides otherwise.

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

24 4-a. In order to obtain any order for temporary or preliminary injunc-  
25 tive relief or an impound order halting or altering the canvassing of  
26 absentee or affidavit ballots as provided for in section 9-209 of this  
27 chapter, in addition to the criteria in article sixty-three of the civil  
28 practice law and rules, the petitioner must show, by clear and convinc-  
29 ing evidence, that, because of procedural irregularities or other facts  
30 arising during the election, the petitioner will be irreparably harmed  
31 absent such relief. For purposes of this section, allegations that  
32 opinion polls show that an election is close is insufficient to show  
33 irreparable harm to a petitioner by clear and convincing evidence.

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

36 3-a. In order to obtain any order for temporary or preliminary injunc-  
37 tive relief or an impound order halting or altering the canvassing of  
38 absentee or affidavit ballots as provided for in section 9-209 of this  
39 chapter, in addition to the criteria in article sixty-three of the civil  
40 practice law and rules, the petitioner must show, by clear and convinc-  
41 ing evidence, that, because of procedural irregularities or other facts  
42 arising during the election, the petitioner will be irreparably harmed  
43 absent such relief. For purposes of this section, allegations that  
44 opinion polls show that an election is close is insufficient to show  
45 irreparable harm to a petitioner by clear and convincing evidence.

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

48 5. A proceeding under subdivisions one and three of this section must  
49 be instituted within twenty days and under subdivision two of this  
50 section, within thirty days after the election or alleged erroneous  
51 statement or determination was made, or the time when the board shall  
52 have acted in the particulars as to which it is claimed to have failed  
53 to perform its duty, except that such a proceeding with respect to a  
54 village election must be instituted within ten days after such election,  
55 statement, determination or action; provided, however, that any proceed-  
56 ing seeking to reverse a determination of a board of elections that

1 results in validating an absentee ballot application shall be instituted  
2 within two days of such determination, with the voter in question being  
3 named as a necessary party; provided further that any proceeding chal-  
4 lenging the canvassing of an absentee ballot due to an alleged defect on  
5 the affirmation envelope must name the voter as a necessary party.

6 § 10. The state board of elections shall promulgate rules or regu-  
7 lations necessary for the implementation of these provisions including,  
8 but not be limited to, (i) ensuring that voters who submitted an absen-  
9 tee ballot and thereafter voted in person during the early voting period  
10 not have their absentee ballot canvassed in the election; and (ii)  
11 ballots are counted in an efficient and fair process that respects the  
12 privacy of the voter.

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

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

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