STATE OF NEW YORK

1027--A

Cal. No. 8

2021-2022 Regular Sessions

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:

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 Section 9-209 of the election law is REPEALED and a new section 9-209 is added to read as follows:

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

1. Central board of canvassers. Within four days of the receipt of an 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.

LBD03358-04-1

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

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

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

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

(c) If such person is found to be registered, the central board of canvassers shall compare the signature, if any, on each ballot envelope with the signature, if any, on the registration poll record, the computer-generated list of registered voters, or the list of special presidential voters, of the person of the same name who registered from the same address. If the signatures are found to correspond, such central board of canvassers shall certify thereto in a manner provided by the state board of elections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If such a federal write-in absentee ballot contains the name of a person or persons in the space provided for a vote for any office, such ballot shall be counted as a vote for such person or persons. A vote for a person who is the candidate of a party or independent body either for president or vice-president shall be deemed to be a vote for both the candidates of such party or independent body for such offices. If such a ballot contains the name of a party or independent body in the space provided for a vote for any office, such ballot shall be deemed to be a vote for the candidate or candidates, if any, of such party or independent body for such office. In the case of the offices of president and vice-president a vote cast for a candidate, either directly or by writing in the name of a party or independent body, shall also be deemed to be votes for the electors supporting such candidate. Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a party or independent body shall be disregarded in determining the validity of the ballot, if the voter's intention can be ascertained.

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

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

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

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

(ii) Upon completion of the scanning of such valid ballots, the scanners used for such purpose shall be secured, and no tabulation of the results shall occur until one hour before the close of the polls on election day. Any ballots scanned during this period shall be secured in the same manner as voted ballots cast during early voting or on election day. The board of elections shall adopt procedures to prevent the public release of election results prior to the close of polls on election day and such procedures shall be consistent with the regulations of the state board of elections and shall be filed with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~3.~~] **4.** The state board of elections shall, in accordance with subdivision four of section 3-100 of this chapter, promulgate regulations establishing a uniform statewide standard to be used by boards of elections to determine when a discrepancy between the audit tallies and the voting machine or system tallies shall require a further voter verifiable record audit of additional voting machines or systems or a complete audit of all machines or systems within the jurisdiction of a board of elections. Any board of elections shall be empowered to order that any such audit shall be conducted whenever any such discrepancy exists.

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

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

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

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

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

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

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

§ 5. Subdivisions 1, 4 and 5 of section 16-106 of the election law, 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 follows:

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

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

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

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

§ 6. Subdivision 4 of section 17-126 of the election law is amended to read as follows:

4. Before the closing of the polls, unfolds a ballot that a voter has prepared for voting, **except as provided in section 9-209 of this chapter,** is guilty of a misdemeanor.

§ 7. Subdivisions 18, 20 and 21 of section 17-130 of the election law are amended to read as follows:

18. Not being lawfully authorized, makes or has in his possession a key to a voting [~~maching~~] **machine** which has been adopted and will be used in elections; or,

20. Intentionally opens [~~an absentee~~] **a** voter's **ballot** envelope or examines the contents thereof after the receipt of the envelope by the board of elections and before the close of the polls at the election **except as provided in section 9-209 of this chapter**; or,

21. [~~Wilfully~~] **Willfully** disobeys any lawful command of the board of inspectors, or any member thereof; or**,**

§ 8. This act shall take effect January 1, 2022 and shall apply to elections held on or after such date; provided, however, that paragraph (h) of subdivision 7 of section 9-209 of the election law, as added by section one of this act, shall take effect January 1, 2023.