# STATE OF NEW YORK

2076

2021-2022 Regular Sessions

# IN SENATE

January 19, 2021

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the election law, in relation to the automatic voter registration process

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

Section 1. Title 9 of article 5 of the election law, as added by a chapter of the laws of 2020 amending the election law relating to establishing an automatic voter registration process integrated within designated agency applications, as proposed in legislative bills numbers S.8806 and A.8280-C, is amended to read as follows:

TITLE IX

AUTOMATIC VOTER REGISTRATION

Section 5-900. Integrated personal voter registration application required.

5-902. Failure to receive exemplar signature not to prevent registration.

5-904. Presumption of innocent authorized error.

5-906. Forms.

§ 5-900. Integrated personal voter registration application required. 1. In addition to any other method of voter registration provided for by this chapter, state and local agencies designated in subdivisions thirteen and fourteen of this section shall provide to the state board of elections voter registration qualification information associated with each person who submits an application for services or assistance at such agency, including a renewal, recertification, or reexamination transaction at such agency, and each person who [~~notifies the agency of~~] **submits** a change of address or name **form**. For the purposes of the department of motor vehicles, "application for services or assistance at such agency" refers only to an application for a motor vehicle driver's license, a driver's license renewal or an identification card if such

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

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card is issued by the department of motor vehicles in its normal course of business. For purposes of the New York city housing authority "application for services or assistance at such agency" refers only to applications that reach an eligibility interview and reexamination transactions. Such designated agencies shall ensure agency applications substantially include all of the elements required by section 5-210 of this article, including the appropriate attestation, so that persons completing such applications shall be able to also submit an application to register to vote through the electronic voter registration transmittal system. For purposes of this section, "agency" shall mean any state or local agency, department, division, office, institution or other entity designated in subdivision thirteen of this section or designated by the governor pursuant to subdivision fourteen of this section. For purposes of this section, registration shall also include pre-registration pursuant to section 5-507 of this article.

2. For each application submitted to the agency, whether electronically or on paper, the agency shall transmit to the state board of elections through an interface with the electronic voter registration transmittal system established and maintained by the state board of elections that portion of the application that includes voter registration information. The state board of elections shall electronically forward such application to the applicable board of elections of each county or the city of New York for filing, processing and verification consistent with this chapter.

3. An integrated voter registration form submitted to an agency in paper format shall be transmitted to the state board of elections through an electronic voter registration transmittal system by converting the paper form to an image file or a portable document format file which shall thereafter be deemed the original form for voter registration and enrollment purposes. The agency shall retain the complete original paper application for no less than two years. The transmittal of the converted paper application may include or be accompanied by data elements and transmittal information as required by the rules and regulations of the state board of elections.

4. An integrated voter registration application submitted to an agency in an electronic format shall be transmitted to the state board of elections through the electronic voter registration transmittal system and shall include all of the voter registration data elements, including electronic signature, as applicable, and record of attestation of the accuracy of the voter registration information and any relevant document images.

5. Notwithstanding any other law to the contrary, no agency designated under this section shall transmit to the state board of elections any application for registration for a person that indicates on the integrated personal voter registration application that they do not meet one of the eligibility requirements.

6. The voter registration related portion of each agency's integrated application for services or assistance shall:

(a) include a statement of the eligibility requirements for voter registration and shall require the applicant to attest by [~~his or her~~] **the applicant's** signature that [~~he or she~~] **the applicant** meets those requirements under penalty of perjury **and is applying to register or pre-register to vote** unless such applicant declines such registration;

(b) inform the applicant, in print identical to that used in the attestation section of the following:

(i) voter eligibility requirements;

(ii) penalties for submission of a false registration application;

(iii) that the office where the applicant applies for registration shall remain confidential and the voter registration information shall be used only for voter registration purposes;

(iv) that if the applicant applies to register to vote electronically, such applicant thereby consents to the use of an electronic copy of the individual's manual signature that is in the custody of the department of motor vehicles, the state board of elections, or other agency designated by this section, as the individual's voter registration exemplar signature if the individual voter's exemplar signature is not provided with the voter registration application;

(v) **if the applicant signs the application and does not check the box declining to register to vote, such applicant thereby consents to the use of any information required to complete the voter registration application;**

**(vi)** if the applicant declines to register, such applicant's declination shall remain confidential and be used only for voter registration purposes; and

[~~(vi)~~] **(vii)** that applying to register or declining to register to vote will not affect the amount of assistance that the applicant will be provided by this agency;

(c) include a box for the applicant to check to indicate whether the applicant would like to decline to register to vote along with the following statement in prominent type, "IF YOU DO NOT CHECK THIS BOX, AND YOU PROVIDE YOUR SIGNATURE ON THE SPACE BELOW, YOU WILL HAVE [~~ATTESTED TO YOUR ELIGIBILITY TO REGISTER OR PRE-REGISTER TO VOTE AND YOU WILL HAVE~~] APPLIED TO REGISTER OR PRE-REGISTER TO VOTE**, AND YOU WILL HAVE ATTESTED TO YOUR ELIGIBILITY TO REGISTER OR PRE-REGISTER TO VOTE**."

(d) include the following warning statement in prominent type, "IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, YOU MUST CHECK THE BOX BELOW. NON-CITIZENS WHO REGISTER OR PRE-REGISTER TO VOTE MAY BE SUBJECT TO CRIMINAL PENALTIES AND SUCH VOTER REGISTRATION OR PRE-REGISTRATION MAY RESULT IN DEPORTATION OR REMOVAL, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION.";

(e) include a space for the applicant to indicate [~~his or her~~] **the applicant's** choice of party enrollment, with a clear alternative provided for the applicant to decline to affiliate with any party and the following statement in prominent type "[~~IF YOU DO NOT CHOOSE A PARTY YOU WILL NOT BE ABLE TO PARTICIPATE IN PRIMARY ELECTIONS FOR THAT PARTY~~] **ONLY ENROLLED MEMBERS OF A POLITICAL PARTY MAY VOTE IN THAT PARTY'S PRIMARIES**".

(f) include a statement that if an applicant is a victim of domestic violence or stalking, [~~he or she~~] **the applicant** may contact the state board of elections **before or after registering or pre-registering to vote** in order to receive information regarding the address confidentiality program for victims of domestic violence under section 5-508 of this article.

7. Information from the voter relevant to both voter registration and the agency application shall be entered by the voter only once upon an **electronic** application.

8. The agency shall redact or remove from the completed integrated application to be transmitted to the state board of elections any information solely applicable to the agency application.

9. Information concerning the citizenship status of individuals, when collected and transmitted pursuant to subdivision one of this section,

shall not be retained, used or shared for any other purpose except as may be required by law.

10. A voter shall be able to decline to register to vote using an integrated application by selecting a single check box, or equivalent, which shall include the following statement: "I DECLINE USE OF THIS FORM FOR VOTER REGISTRATION AND PRE-REGISTRATION PURPOSES. DO NOT FORWARD MY INFORMATION TO THE BOARD OF ELECTIONS."

11. The voter shall be able to sign the voter registration application and the agency application by means of a single manual or electronic signature unless the agency requires more than one signature for other agency purposes.

12. No application for voter registration shall be submitted if the applicant declines registration or fails to sign the integrated application, whether on paper or online.

13. [~~Designated~~] **Beginning January first, two thousand twenty-three, designated** agencies for purposes of this section shall include the department of motor vehicles[~~,~~]**. Beginning January first, two thousand twenty-four, designated agencies for the purposes of this section shall also include** the department of health, the office of temporary and disability assistance, the department of labor, [~~the office of vocational and educational services for individuals with disabilities,~~] **the office of adult career and continuing education services - vocational rehabilitation,** county and city departments of social services, and the New York city housing authority, as well as any other agency designated by the governor. **Beginning January first, two thousand twenty-five, designated agencies for the purposes of this section shall also include the state university of New York.** Each designated agency shall enter into an agreement with the state board of elections finalizing the format and content of electronic transmissions required by this section. The state board of elections shall prepare and distribute to designated agencies written instructions as to the implementation of the program and shall be responsible for establishing training programs for employees of designated agencies listed in this section. Such instructions and such training shall ensure usability of the integrated application for low English proficiency voters. Any such designated agency shall take all actions that are necessary and proper for the implementation of this section, including facilitating technological capabilities to allow transmission of data through an interface with the electronic voter registration transmittal system in a secure manner.

14. [~~Each~~] **Every other** year, the governor shall conduct a review of each participating agency under section 5-211 of this article not already designated as an automatic voter registration agency pursuant to this subdivision in order to determine whether designation is appropriate. The governor shall designate each participating agency that collects information or documents that would provide proof of eligibility to vote unless the governor determines that there are compelling reasons why automatic voter registration is not feasible at the agency. If the governor should determine that there are compelling reasons why automatic voter registration is not feasible at an agency, the governor shall prepare a report explaining those reasons to the legislature by the end of the calendar year in which that determination is made. Any agency designated by the governor pursuant to this subdivision shall provide automatic voter registration upon the earlier occurrence of: (a) two years after designation by the governor, or (b) five days after the date of certification by the state board of elections that the informa-

tion technology infrastructure to substantially implement the provisions of this section at the agency is functional.

15. The state board of elections shall promulgate rules and regulations for the creation and administration of an integrated electronic voter registration process as provided for by this section.

16. Each participating agency shall provide an opportunity through rulemaking for public notice and comment regarding the plans for implementation in the agency. Such opportunity must be provided sufficiently in advance of implementation to allow for adjustment of agency plans to take public comment into account. Agency plans for implementation shall provide for sufficient testing of the process in the agency prior to implementation in order to ensure the technology is functioning properly, the process is usable and understandable for applicants and agency employees, and reasonable precautions have been put in place to minimize error or the possibility of discouraging applications for services, assistance, or registration.

§ 5-902. Failure to receive exemplar signature not to prevent registration. If a voter registration exemplar signature is not received from an applicant who submits a voter registration or pre-registration application pursuant to this title and such signature exemplar is not otherwise available from the statewide voter registration database or a state or local agency, the local board of elections shall, absent another reason to reject the application, proceed to register or pre-register and, as applicable, enroll the applicant. Within ten days of such action, the board of elections shall send a standard form promulgated by the state board of elections to the voter whose record lacks an exemplar signature, requiring such voter to submit a signature for identification purposes. The voter shall submit to the board of elections a voter registration exemplar signature by any one of the following methods: in person, by mail with return postage paid provided by the board of elections, by electronic mail, or by electronic upload to the board of elections through the electronic voter registration transmittal system. If such voter does not provide the required exemplar signature, when the voter appears to vote the voter shall be entitled to vote by affidavit ballot.

§ 5-904. Presumption of innocent authorized error. 1. Notwithstanding subdivision six of section 5-210 of this article or any other law to the contrary, a person who is ineligible to vote who fails to decline to register or pre-register to vote in accordance with the provisions of this section and did not willfully and knowingly seek to register or pre-register to vote knowing that [~~he or she~~] **the person** is not eligible to do so:

(a) shall not be guilty of any crime as the result of the applicant's failure to make such declination;

(b) shall be deemed to have been registered or pre-registered with official authorization; and

(c) such act may not be considered as evidence of a claim to citizenship.

2. Notwithstanding subdivision six of section 5-210 of this article or any other law to the contrary, a person who is ineligible to vote who fails to decline to register or pre-register to vote in accordance with the provisions of this section, who then either votes or attempts to vote in an election held after the effective date of that person's registration, and who did not willfully and knowingly seek to register or pre-register to vote knowing that [~~he or she~~] **the person** is not

eligible to do so, and did not subsequently vote or attempt to vote knowing that [~~he or she~~] **the person** is not eligible to do so:

(a) shall not be guilty of any crime as the result of the applicant's failure to make such declination and subsequent vote or attempt to vote;

(b) shall be deemed to have been registered or pre-registered with official authorization; and

(c) such act may not be considered as evidence of a claim to citizenship.

§ 5-906. Forms. The state board of elections shall promulgate rules and regulations to implement this title. All agency forms and notices required by this title shall be approved by the state board of elections. All applications and notices for use by a board of elections pursuant to this title shall be promulgated by the state board of elections, and no addition or alteration to such forms by a board of elections shall be made without approval of the state board of elections.

§ 2. Section 5-308 of the election law, as added by a chapter of the laws of 2020 amending the election law relating to establishing an automatic voter registration process integrated within designated agency applications, as proposed in legislative bills numbers S.8806 and A.8280-C, is amended to read as follows:

§ 5-308. Enrollment; automatic voter registration. 1. The board of elections shall, promptly and not later than twenty-one days after receipt of a voter registration or pre-registration application submitted pursuant to title nine of this article by a voter registering or pre-registering for the first time, send any such voter who did not enroll in a party a notice and a form to indicate party enrollment[~~, with return postage paid by the board of elections~~]. Such notice shall offer the voter the opportunity to enroll with a party or to decline to enroll with a party and contain the following statement in prominent type "[~~IF YOU DO NOT CHOOSE A PARTY YOU WILL NOT BE ABLE TO PARTICIPATE IN PRIMARY ELECTIONS FOR THAT PARTY~~] **ONLY ENROLLED MEMBERS OF A POLITICAL PARTY MAY VOTE IN THAT PARTY'S PRIMARIES**." Such form shall provide a clear alternative for the applicant to decline to affiliate with any party. [~~If the board of elections has not received a response to the party enrollment notice and form within forty-five days of the application, the board shall mail a second similar notice and form to the voter.~~]

2. Notwithstanding subdivision two of section 5-304 of this title, if a voter who registered to vote for the first time (or pre-registered) pursuant to title nine of this article responds to the notice required by subdivision one of this section and elects to enroll in a party, such enrollment shall take effect immediately. However, any pre-registrant's registration shall remain classified as "pending" until [~~he or she~~] **the voter** reaches the age of eligibility.

3. If a voter appears at a primary election and votes by affidavit ballot indicating the intent to enroll in such party, such affidavit ballot shall cause the voter to be enrolled immediately in that party if the board of elections determines that the voter registered (or pre-registered) to vote for the first time pursuant to title nine of this article.

4. If a voter appears at a primary election and votes by affidavit ballot indicating the intent to enroll in such party, such affidavit ballot shall be cast and counted if the board of elections determines that the voter registered (or pre-registered) to vote at least twenty-

five days before that primary pursuant to title nine of this article and such voter is otherwise qualified to vote in such election.

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the election law relating to establishing an automatic voter registration process integrated within designated agency applications, as proposed in legislative bills numbers S.8806 and A.8280-C, takes effect.