

# STATE OF NEW YORK

5984--A

Cal. No. 782

2023-2024 Regular Sessions

## IN SENATE

March 24, 2023

Introduced by Sens. KAVANAGH, BROUK, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- reported favorably from said committee, ordered to first and second report, ordered to a 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 registration of voters during early voting

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

1 Section 1. Subparagraph (ii) of paragraph (e) of subdivision 3 of  
2 section 8-302 of the election law, as amended by chapter 113 of the laws  
3 of 2023, is amended to read as follows:  
4 (ii) They may swear to and subscribe an affidavit stating that they  
5 have duly registered to vote, the address in such election district from  
6 which they registered, that they remain a duly qualified voter in such  
7 election district, that their registration poll record appears to be  
8 lost or misplaced or that their name and/or their signature was omitted  
9 from the computer generated registration list or such record indicates  
10 the voter already voted when they did not do so or that they have moved  
11 within New York state since they last registered, the address from which  
12 they were previously registered and the address at which they currently  
13 reside, and at a primary election, the party in which they are enrolled,  
14 or that such voter is eligible to vote pursuant to section 8-604 of this  
15 article. The inspectors of election shall offer such an affidavit to  
16 each such voter whose residence address is in such election district.  
17 Each such affidavit shall be in a form prescribed by the state board of  
18 elections, shall be printed on an envelope of the size and quality used  
19 for an absentee ballot envelope, and shall contain an acknowledgment  
20 that the affiant understands that any false statement made therein is  
21 perjury punishable according to law. Such form prescribed by the state  
22 board of elections shall request information required to register such

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

LBD08649-03-3

1 voter should the county board determine that such voter is not yet  
2 registered and shall constitute an application to register to vote. The  
3 voter's name and the entries required shall then be entered without  
4 delay and without further inquiry in the fourth section of the challenge  
5 report or in the place provided in the computer generated registration  
6 list, with the notation that the voter has executed the affidavit  
7 hereinabove prescribed, or, if such person's name appears in such regis-  
8 tration list, the board of elections may provide a place to make such  
9 entry next to their name in such list. The voter shall then, without  
10 further inquiry, be permitted to vote an affidavit ballot provided for  
11 by this chapter. Such ballot shall thereupon be placed in the envelope  
12 containing their affidavit, and the envelope sealed and returned to the  
13 board of elections in the manner provided by this chapter for protested  
14 official ballots, including a statement of the number of such ballots.

15 If a voter registration application for a voter who casts an affidavit  
16 ballot pursuant to this subparagraph was received by a board of  
17 elections by the tenth day prior to the election, the board shall cast  
18 and count an affidavit ballot from such voter, if otherwise valid,  
19 notwithstanding the fact that the voter's name was omitted from a regis-  
20 tration poll record or list of registered voters.

21 § 2. The election law is amended by adding a new section 8-604 to read  
22 as follows:

23 § 8-604. Registration during early voting. 1. In addition to other  
24 methods of voter registration provided under this chapter, a person who  
25 is not registered to vote in the state but is otherwise qualified to  
26 register to vote and to cast a ballot may register to vote and enroll in  
27 a political party at an early voting polling location, provided such  
28 registration is in accordance with the voter registration deadline set  
29 forth in subdivision three of section 5-210 of this chapter.

30 2. A qualified person who is not registered to vote in the state who  
31 appears at an early voting polling place shall be offered the opportu-  
32 nity to register to vote and enroll in a political party and shall be  
33 given an affidavit ballot, provided such registration is in accordance  
34 with the voter registration deadline set forth in subdivision three of  
35 section 5-210 of this chapter.

36 3. If such registration is deemed effective, the board of elections  
37 shall add the person's voter registration information to the statewide  
38 electronic voter file and include the corresponding affidavit ballot in  
39 the official canvass, if otherwise valid.

40 4. The board of elections shall conduct the receipt and handling of  
41 each voter registration and corresponding ballot in a manner that  
42 protects the secrecy of the ballot and allows the elections official to  
43 process the registration and include the corresponding ballot in the  
44 official canvass, if otherwise valid.

45 5. The board of elections shall advise a person completing such voter  
46 registration of the procedures for determining the validity of such  
47 voter registration.

48 6. The state board of elections shall promulgate rules and regulations  
49 to implement this section.

50 § 3. The opening paragraph of section 9-209 of the election law, as  
51 added by chapter 763 of the laws of 2021, is amended to read as follows:

52 Before completing the canvass of votes cast in any primary, general,  
53 special, or other election at which voters are required to sign their  
54 registration poll records before voting, the board of elections shall  
55 proceed in the manner hereinafter prescribed to review, cast and canvass  
56 any absentee, military, special presidential, special federal or other

1 special ballots and any ballots cast in affidavit envelopes, including  
2 ballots cast by voters pursuant to section 8-604 of this chapter. Each  
3 such ballot shall be retained in the original envelope containing the  
4 voter's affidavit and signature, in which it is delivered to the board  
5 of elections until such time as it is to be reviewed, in order to be  
6 cast and canvassed.

7 § 4. Subdivision 7 of section 9-209 of the election law, as added by  
8 chapter 763 of the laws of 2021, paragraph (d) as amended by chapter 661  
9 of the laws of 2022, and paragraph (h) as amended by chapter 113 of the  
10 laws of 2023, is amended to read as follows:

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

24 (b) Affidavit ballots are valid when cast at a polling site permitted  
25 by law by qualified voters: (i) who moved within the state after regis-  
26 tering; (ii) who are in inactive status; (iii) whose registration was  
27 incorrectly transferred to another address even though they did not  
28 move; (iv) whose registration poll records were missing on the day of  
29 such election; (v) who have not had their identity previously verified;  
30 (vi) whose registration poll records did not show them to be enrolled in  
31 the party in which they are enrolled; ~~and~~ (vii) who are incorrectly  
32 identified as having already voted; and (viii) who have registered to  
33 vote pursuant to section 8-604 of this chapter.

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

37 (d) If the central board of canvassers determines that a person was  
38 entitled to vote at such election, the board shall cast and canvass such  
39 affidavit ballot if such board finds that the voter appeared at a poll-  
40 ing place, in the correct county, which is designated as a polling place  
41 for the correct assembly district, regardless of the fact that the voter  
42 may have appeared in the incorrect election district or polling place,  
43 and regardless of whether the voter's name was in the registration poll  
44 record; provided, however, that in the event such ballot includes one or  
45 more offices for which such person is not entitled to vote at such  
46 election, such ballot shall only be cast and canvassed for the offices  
47 for which such person is entitled to vote at such election.

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

54 (f) If the central board of canvassers determines that a person was  
55 entitled to vote at such election, the board shall cast and canvass such  
56 affidavit ballot if such board finds that the voter substantially

1 complied with the requirements of this chapter. For purposes of this  
2 paragraph, "substantially complied" shall mean the board can determine  
3 the voter's eligibility based on the statement of the affiant or records  
4 of the board.

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

10 (h) (i) If a voter registration application for a person was received  
11 by a board of elections by the tenth day prior to the election, an affi-  
12 davit ballot from the person shall be cast and counted if the voter is  
13 otherwise qualified to vote in such election, notwithstanding the fact  
14 that the person's name was omitted from a registration poll record or  
15 list of registered voters.

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

23 (i) A voter registration submitted by a person registering to vote at  
24 an early voting polling location pursuant to section 8-604 of this chap-  
25 ter shall be processed and an affidavit ballot from such person shall be  
26 cast and canvassed if the voter is otherwise qualified to vote in such  
27 election, notwithstanding the fact that the person's name is not on a  
28 registration poll record or list of registered voters.

29 (j) When the central board of canvassers determines that an affidavit  
30 ballot is invalid due to a missing signature on the affidavit ballot  
31 envelope, or because the signature on the affidavit ballot envelope does  
32 not correspond to the registration signature, such ballots shall be  
33 subject to the cure procedure in subdivision three of this section. The  
34 absence of a signature on a registration poll record or computer gener-  
35 ated list of registered voters shall not provide a basis for rejecting  
36 affidavit ballots submitted pursuant to section 8-604 of this chapter.

37 [~~(j)~~] (k) At the meeting required pursuant to paragraph (a) of subdi-  
38 vision eight of this section, each candidate, political party, and inde-  
39 pendent body shall be entitled to object to the board of elections'  
40 determination that an affidavit ballot is invalid. Such ballots shall  
41 not be counted absent an order of the court. In no event may a court  
42 order a ballot that has been counted to be uncounted.

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

47 § 5. This act shall take effect immediately.