

CHAPTER 179

AN ACT to amend the election law, in relation to voter verification

Became a law July 12, 2005, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Section 3-103 of the election law, as added by chapter 353 of the laws of 1986, is amended to read as follows:

§ 3-103. [~~Standards for computerized~~] Computerized record keeping; sharing information in database. 1. The state board of elections shall promulgate rules and regulations setting minimum standards for computerized record keeping systems maintained by county boards of elections. Such standards shall include, but not be limited to system access and security, the format and content of the data to be recorded and stored on such systems, and the minimum technical specifications for computer programming. Such standards shall be for the purpose of facilitating compatibility between the systems used by the several boards of elections.

2. The state board of elections, in accordance with subdivision four of section 3-100 of this title, shall enter into an agreement with the commissioner of motor vehicles whereby the department of motor vehicles will provide the state board of elections information to assist local boards of elections to verify a voter's identity pursuant to the federal Help America Vote Act of 2002.

3. The commissioner of motor vehicles shall enter into an agreement with the federal commissioner of social security whereby the social security administration will provide the commissioner of motor vehicles information to allow local boards of elections to verify a voter's identity pursuant to the federal Help America Vote Act of 2002.

4. In addition, the state board of elections, in accordance with subdivision four of section 3-100 of this title, shall enter into an agreement with other agencies within the state that have information relevant to the verification of a voter's identity whereby such agencies will provide the state board of elections information to assist local boards of elections to verify a voter's identity pursuant to the federal Help America Vote Act of 2002.

5. The information transmitted between the statewide voter registration list and other databases, as provided for in this section, shall be limited to the information which is contained in a voter registration application and is necessary to verify a voter's identity. The information contained in the statewide voter registration list shall not be used for non-election purposes.

§ 2. Subdivision 1 of section 3-220 of the election law is amended to read as follows:

1. All registration records, certificates, lists, and inventories referred to in, or required by, this chapter shall be public records and open to public inspection under the immediate supervision of the board

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

of elections or its employees and subject to such reasonable regulations as such board may impose, provided, however, that a voter's driver's license number, department of motor vehicle non-driver photo ID number and social security number shall not be released for public inspection. No such records shall be handled at any time by any person other than a member of a registration board or board of inspectors of elections or board of elections except as provided by rules imposed by the board of elections.

§ 3. Section 5-210 of the election law, as amended by chapter 473 of the laws of 1992, subdivision 2, the opening paragraph, paragraphs (a), (i) and (k) of subdivision 5 and subdivision 9 as amended and paragraph (l) of subdivision 5 as added by chapter 659 of the laws of 1994, paragraph (b) of subdivision 2, subdivisions 3 and 4 as amended, subparagraph (vi) of paragraph (k) of subdivision 5 as added and subparagraph (vii) of paragraph (k) of subdivision 5 as renumbered by chapter 200 of the laws of 1996, subdivision 8 as separately amended by chapters 116 and 200 of the laws of 1996, and subdivision 14 as amended by chapter 85 of the laws of 1994, is amended to read as follows:

§ 5-210. Registration and enrollment and change of enrollment upon application. 1. In addition to local registration and veterans' absentee registration as provided in this chapter, any qualified person may apply personally for registration and enrollment, change of enrollment by mail or by appearing at the board of elections on any day, except a day of election, during the hours that such board of elections is open for business.

2. (a) Application forms for use pursuant to this section shall be furnished by a county board of elections to any person requesting such form. Application forms sent outside of the United States to a country other than Canada or Mexico, shall be sent airmail. Each county board of elections shall also cause such application forms to be as widely and freely distributed as possible.

(b) The board of elections shall mail an application for registration by mail and information on how the person may re-register to each person for whom it receives notice pursuant to the provisions of subdivision four of section 5-402 of this article that such person has moved into such city or county unless such person is already registered from the address listed in such notice.

3. Completed application forms, when received by any county board of elections and, with respect to application forms promulgated by the federal election commission, when received by the state board of elections, or showing a dated cancellation mark of the United States Postal Service or contained in an envelope showing such a dated cancellation mark which is not later than the twenty-fifth day before the next ensuing primary, general or special election, and received no later than the twentieth day before such election, or delivered in person to such county board of elections not later than the tenth day before a special election, shall entitle the applicant to vote in such election, if he or she is otherwise qualified, provided, however, such applicant shall not vote on a voting machine until his or her identity is verified. Any county board of elections receiving an application form from a person who does not reside in its jurisdiction but who does reside elsewhere in the state of New York, shall forthwith forward such application form to the proper county board of elections. Each board of elections shall make an entry on each such form of the date it is received by such board.

4. Any qualified person who has been honorably discharged from the military after the twenty-fifth day before a general election or who has become a naturalized citizen after the twenty-fifth day before a general election may personally register at the board of elections in the county of his or her residence and vote in the general election held at least ten days after such registration.

5. Statewide application forms shall be designed by the state board of elections, which shall conform to the requirements for the national voter registration form in the rules and regulations promulgated by the federal election commission and the federal Help America Vote Act, and shall elicit the information required for the registration poll record. The form shall include such other information as the state board of elections may reasonably require to enable the board of elections to assess the eligibility of the applicant and to administer voter registration and other parts of the election process and shall also include the following information:

(a) Notice that those voters currently registered do not need to reregister unless they have moved outside of the city or county in which they were registered.

(b) Instructions on how to fill out and submit the form and that the form must be received by any county board of elections at least twenty-five days prior to the election at which the applicant may vote.

(c) Notice that registration and enrollment is not complete until the form is received by the appropriate county board of elections.

(d) Notice of a voter's right to register locally.

(e) A warning that it is a crime to procure a false registration or to furnish false information to the board of elections.

(f) Notice that political party enrollment is optional but that, in order to vote in a primary election of a political party, a voter must enroll in that political party, unless state party rules allow otherwise.

(g) Notice that the applicant must be a citizen of the United States, is or will be at least eighteen years old not later than December thirty-first of the calendar year in which he or she registers and a resident of the county or city to which application is made.

(h) Notice that a voter notification form will be mailed to each applicant whose completed form is received.

(i) The telephone number of the county board of elections and a toll free number at the state board of elections that can be called for answers to registration questions.

(j) A space for the applicant to indicate whether or not the voter is willing to serve on election day for a board of elections as an election inspector, poll clerk, interpreter or in other capacities.

(k) The form shall also include space for the following information, which must be contained on the inside of the form after it is folded for mailing:

(i) A space for the applicant to indicate whether or not he or she has ever voted or registered to vote before and, if so, the approximate year in which ~~he~~ such applicant last voted or registered and his or her name and address at the time.

(ii) The name and residence address of the applicant including the zip code and apartment number, if any.

(iii) The date of birth of the applicant.

(iv) A space for the applicant to indicate his or her driver's license or department of motor vehicles non-driver photo ID number or the last four digits of his or her social security number or, if the applicant

does not have either such number, a space for the applicant to indicate he or she does not have either.

(v) A space for the applicant to indicate whether or not he or she is a citizen of the United States[] and the statement "If you checked "no" in response to this question, do not complete this form."

[~~(v)~~] (vi) A space for the applicant to answer the question "Will you be 18 years of age on or before election day?" and the statement "If you checked "no" in response to this question, do not complete this form unless you will be 18 by the end of the year."

(vii) A statement informing the applicant that if the form is submitted by mail and the applicant is registering for the first time, certain information or documents must be submitted with the mail-in registration form in order to avoid additional identification requirements upon voting for the first time. Such information and documents are:

(A) a driver's license or department of motor vehicles non-driver photo ID number; or

(B) the last four digits of the individual's social security number; or

(C) a copy of a current and valid photo identification; or

(D) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.

(viii) The gender of the applicant (optional).

[~~(vii)~~] (ix) A space for the applicant to indicate his or her choice of party enrollment, with a clear alternative provided for the applicant to decline to affiliate with any party.

[~~(viii)~~] (x) The telephone number of the applicant (optional).

[~~(viiii)~~] (xi) A place for the applicant to execute the form on a line which is clearly labeled "signature of applicant" preceded by the following specific form of affirmation:

AFFIDAVIT: I swear or affirm that:

- * I am a citizen of the United States.
- * I will have lived in the county, city, or village for at least 30 days before the election.
- * I meet all the requirements to register to vote in New York State.
- * This is my signature or mark on the line below.
- * All the information contained on this application is true. I understand that if it is not true I can be convicted and fined up to \$5,000 and/or jailed for up to four years.

which form of affirmation shall be followed by a space for the date and the aforementioned line for the applicant's signature.

(1) The mail voter registration application form developed by the federal election commission pursuant to the provisions of section nine of the National Voter Registration Act of 1993 42 USC 1973gg-7 shall be deemed to meet the requirements of this section. Any application for registration received on such an application form shall be accepted if the applicant is otherwise eligible to register to vote pursuant to the provisions of this article.

6. A person who willfully makes a material false statement in any application for registration and enrollment and/or transfer of registration and enrollment or special enrollment by mail, or who knowingly makes a false affirmation, or who offers or attempts to offer any application for registration and enrollment or transfer of registration and enrollment or special enrollment knowing that the applicant is not qual-

ified to register or enroll, or transfer his or her registration and enrollment or to specially enroll, shall be guilty of a class E felony.

7. Each county board of elections shall deliver a sufficient number of such uniform statewide application forms to each local post office within its county and keep such post office so supplied, with the request that the postmaster thereof make them available to the public for its use in participating in the electoral process.

8. Upon its receipt by the county board of elections, each application form shall be reviewed and examined by such board. If the application shall contain substantially all the required information indicating that the applicant is legally qualified to register and/or enroll as stated in his or her application, the county board of elections shall transfer all information on such application to the appropriate registration records. If requested by any member of the board, the application form of any voter, or group of voters, must be reviewed and examined by two such board members or two employees of the board representing different political parties. Such members or employees shall place their initials or other identifying information on the registration poll record of such voter or on a computer generated list of such registrations. Such lists shall be preserved in the same manner, and for the same time, as such registration poll records. If the application indicates that the voter does not have a driver's license or department of motor vehicles non-driver photo ID number or a social security number, the state board of elections shall, upon the transmission of voter information to the statewide voter registration list as required by section 5-614 of this article, assign such voter a unique identifier.

9. The county board of elections shall, promptly and in any event, not later than twenty-one days after receipt by it of the application, verify the identity of the applicant. In order to do so, the county board of elections shall utilize the information provided in the application and shall attempt to verify such information with the information provided by the department of motor vehicles, social security administration and any other lawful available information source. If the county board of elections is unable to verify the identity of the applicant within twenty-one days of the receipt of the application, it shall immediately take steps to confirm that the information provided by the applicant was accurately utilized by such county board of elections, was accurately verified with other information sources and that no data entry error, or other similar type of error, occurred. Following completion of the preceding steps, the county board of elections shall mail [an acknowl-
edgement] (a) a notice of its approval, (b) a notice of its approval which includes an indication that such board has not yet been able to verify the identity of the applicant and a request for more information so that such verification may be completed, or (c) a notice of its rejection of the application to the applicant in a form approved by the state board of elections. Notices of approval, notices of approval with requests for more information or notices of rejection shall be sent by nonforwardable first class or return postage guaranteed mail on which is endorsed "ADDRESS CORRECTION REQUESTED" and which contains a request that any such mail received for persons not residing at the address be dropped back in the mail. The voter's registration and enrollment shall be complete upon receipt of the application by the appropriate county board of elections. The failure of a county board of elections to verify an applicant's identity shall not be the basis for the rejection of a voter's application, provided, however, that such verification failure shall be the basis for requiring county board of elections to take the

additional verification steps provided by this chapter. The notice shall also advise the registrant of the date when his registration and enrollment is effective, of the date and the hours of the next regularly scheduled primary or general election in which he will be eligible to vote, of the location of the polling place of the election district in which he is or will be a qualified voter, whether such polling place is accessible to physically handicapped voters, an indication that physically handicapped voters or voters who are ill or voters who will be out of the city or county on the day of the primary or general election, may obtain an absentee ballot and the phone number to call for absentee ballot applications, the phone numbers to call for location of polling places, to obtain registration forms and the phone number to call to indicate that the voter is willing to serve on election day as an inspector, poll clerk or interpreter. The notice of approval, notice of approval with request for more information or notice of rejection shall also advise ~~him~~ the applicant to notify the board of elections if there is any inaccuracy. The form of such mail notification shall be prescribed by the state board of elections and shall contain such other information and instructions as it may reasonably require to carry out the purposes of this section. The request for more information shall inform the voter that "THE FAILURE TO CONTACT THE BOARD OF ELECTIONS AND CORRECT ANY INACCURACIES IN THE APPLICATION OR PROVIDE REQUESTED ADDITIONAL INFORMATION MAY RESULT IN A REQUEST FOR IDENTIFICATION AT THE POLLS IN ORDER TO CAST A VOTE ON A VOTING MACHINE." If such notice is returned undelivered without a new address, the board shall forthwith send such applicant a confirmation notice pursuant to the provisions of section 5-712 of this article and place such applicant in inactive status. The state board of elections shall prepare uniform notices by this section as provided for in subdivision eight of section 3-102 of this chapter.

10. If the board of elections has been unable to verify the identity of the applicant within forty-five days of the application, the board shall mail a second request for more information to the applicant. This notice shall inform the voter that "THE FAILURE TO CONTACT THE BOARD OF ELECTIONS AND CORRECT ANY INACCURACIES IN THE APPLICATION OR PROVIDE REQUESTED ADDITIONAL INFORMATION MAY RESULT IN A REQUEST FOR IDENTIFICATION AT THE POLLS IN ORDER TO CAST A VOTE ON A VOTING MACHINE." If the board of elections remains unable to verify the identity of the voter it shall so indicate with a notation next to the voter's name in the registration list. Such a voter may provide information to assist the county board to verify his or her identity at any time and such notation shall be removed by the board of elections upon such verification.

11. If the county board of elections suspects or believes that for any reason the applicant is not entitled to registration and enrollment, it shall make inquiry in reference thereto. If the board of elections shall find that the applicant is not qualified to register and enroll, the application shall be rejected and the applicant notified of such rejection and the reason therefor, no later than ten days before the day of the first primary or general election occurring at least twenty-five days after the filing of the application.

~~11.~~ 12. Whenever the county board of elections is not satisfied from an examination of an application for registration and enrollment, or after its initial inquiry, that the applicant is entitled to such registration or enrollment, it may order an investigation through any officer or employee of the state or county board of elections, police officer, sheriff or deputy sheriff.

~~[12.]~~ 13. An affidavit or a signed statement by any officer or employee of the state or county board of elections or any police officer, sheriff or deputy sheriff, that ~~[he]~~ such person visited the premises claimed by the applicant as his or her residence and ~~[that he]~~ interrogated an inmate, house-dweller, keeper, caretaker, owner, proprietor or landlord thereof or therein as to such applicant's residence therein or thereat, and that he or she was informed by one or more such persons, naming them, that they knew the persons residing upon such premises and that the applicant did not reside upon such premises as set forth in his or her application, shall be sufficient authority for a determination by the board that the applicant is not entitled to registration or enrollment; but this provision shall not preclude the board from making such other determination, as the result of other inquiry, as it may deem appropriate.

~~[13.]~~ 14. Notwithstanding the entry by the county board of elections on the registration poll record of the information contained on an application form prescribed by this section, such entry shall not preclude the county board of elections from subsequently rejecting the application if it is not satisfied that the applicant is entitled to register and enroll as provided by this section, provided that the applicant is notified of such rejection and reasons therefor no later than ten days before the day of the first primary or general election occurring at least twenty-five days after the filing of such application form.

~~[14.]~~ 15. a. The county board of elections shall keep a record of applications for registration as they are received and at least once each month, shall, upon request of the chairman of a political party in the county, give such chairman a complete list of the persons whose applications were approved together with their addresses and telephone numbers, and their election and assembly districts or wards, if any.

b. Not more than four times a year, on dates determined by the state board of elections, the county board of elections shall send to the chairman of each political party in the county a complete list of the persons whose applications were approved together with their addresses, their election and assembly districts or wards, if any, their party enrollments and an indication of whether such persons are eligible to vote in the primary elections to be held in that calendar year. Not more than twice a year, in even numbered years, on dates determined by the state board of elections, the county board of elections shall send a copy of such list to the state board of elections. In counties of over one hundred thousand population, each such list shall be, and in other counties each such list may be, cumulative and include the names of all such persons whose names do not appear in the annual enrollment lists last published by such board of elections, together with an indication of which such names did not appear on the previous list. Such lists may also include the names of those persons whose names do appear in the annual enrollment lists. Such lists shall be arranged in the same manner as the annual enrollment lists. Additional copies of such lists shall be available to the public at a charge not exceeding the cost of publication or reproduction.

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

2-a. (a) If a voter's name appears in the computer generated registration list with a notation indicating that the voter's identity was not yet verified as required by the federal Help America Vote Act, the inspector shall require that the voter produce one of the following

types of identification before permitting the voter to cast his or her vote on the voting machine:

(i) a driver's license or department of motor vehicles non-driver photo ID card or other current and valid photo identification;

(ii) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.

(b) If the voter produces an identification document listed in paragraph (a) of this subdivision, the inspector shall indicate so in the computer generated registration list, the voter will be deemed verified as required by the federal Help America Vote Act and the voter shall be permitted to cast his or her vote on the voting machine.

(c) If the voter does not produce an identification document listed in paragraph (a) of this subdivision, the voter shall only be entitled to vote by affidavit ballot unless a court order provides otherwise.

3-c. At the time that an individual casts an affidavit ballot, the appropriate state or local election official shall give the individual written information that states that any individual who casts an affidavit ballot will be able to ascertain under the system established under subdivision four of section 9-212 of this chapter whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

§ 5. The section heading, the opening paragraph and paragraph a of subdivision 2 of section 9-209 of the election law, as amended by chapter 659 of the laws of 1994, are amended to read as follows:

Canvass of absentee, military and special ballots and ballots cast by voters with registration poll records missing on days of election or voters who have not had their identity previously verified or who have moved after registering. 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 cast and canvass any absentee, military, special presidential, special federal or other special ballots which were not cast and canvassed at the polling place, and any ballots voted by voters who moved within the county or city after registering, voters who are in inactive status, voters whose registration was incorrectly transferred to another address even though they did not move, or voters whose registration poll records were missing on the day of such election or voters who have not had their identity previously verified or whose registration poll records did not show them to be enrolled in the party in which they claimed to be enrolled. 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 cast and canvassed.

a. [~~(1)~~] 1. Upon assembling at the time and place fixed for such meeting, each central board of inspectors shall cast and canvass the envelopes and the ballots therein contained as nearly as practicable in the manner provided by this chapter for a board of inspectors to consider, cast, and canvass absentee ballot envelopes and ballots at the polling place.

[~~(2)~~] 2. If the board of inspectors determines that a person was entitled to vote at such election it shall cast and canvass such ballot 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.

§ 6. Section 9-212 of the election law is amended by adding a new subdivision 4 to read as follows:

4. The appropriate state or local election official shall establish a free access system (such as a toll-free telephone number or an internet website) that any individual who casts an affidavit ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

§ 7. This act shall take effect January 1, 2006.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly
