

STATE OF NEW YORK

1027--A

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IN SENATE

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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:

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 Section 9-209 of the election law is REPEALED and a new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

3 § 9-209. Canvass of absentee, military and special ballots, and
4 ballots cast in affidavit envelopes. Before completing the canvass of
5 votes cast in any primary, general, special, or other election at which
6 voters are required to sign their registration poll records before
7 voting, the board of elections shall proceed in the manner hereinafter
8 prescribed to review, cast and canvass any absentee, military, special
9 presidential, special federal or other special ballots and any ballots
10 cast in affidavit envelopes. Each such ballot shall be retained in the
11 original envelope containing the voter's affidavit and signature, in
12 which it is delivered to the board of elections until such time as it is
13 to be reviewed, in order to be cast and canvassed.

14 1. Central board of canvassers. Within four days of the receipt of an
15 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.

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

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

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

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

37 (c) If such person is found to be registered, the central board of
38 canvassers shall compare the signature, if any, on each ballot envelope
39 with the signature, if any, on the registration poll record, the compu-
40 ter-generated list of registered voters, or the list of special presi-
41 dential voters, of the person of the same name who registered from the
42 same address. If the signatures are found to correspond, such central
43 board of canvassers shall certify thereto in a manner provided by the
44 state board of elections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (d) If such a federal write-in absentee ballot contains the name of a
15 person or persons in the space provided for a vote for any office, such
16 ballot shall be counted as a vote for such person or persons. A vote for
17 a person who is the candidate of a party or independent body either for
18 president or vice-president shall be deemed to be a vote for both the
19 candidates of such party or independent body for such offices. If such a
20 ballot contains the name of a party or independent body in the space
21 provided for a vote for any office, such ballot shall be deemed to be a
22 vote for the candidate or candidates, if any, of such party or independ-
23 ent body for such office. In the case of the offices of president and
24 vice-president a vote cast for a candidate, either directly or by writ-
25 ing in the name of a party or independent body, shall also be deemed to
26 be votes for the electors supporting such candidate. Any abbreviation,
27 misspelling or other minor variation in the form of the name of a candi-
28 date or a party or independent body shall be disregarded in determining
29 the validity of the ballot, if the voter's intention can be ascertained.

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

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

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

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

48 (ii) Upon completion of the scanning of such valid ballots, the scan-
49 ners used for such purpose shall be secured, and no tabulation of the
50 results shall occur until one hour before the close of the polls on
51 election day. Any ballots scanned during this period shall be secured
52 in the same manner as voted ballots cast during early voting or on
53 election day. The board of elections shall adopt procedures to prevent
54 the public release of election results prior to the close of polls on
55 election day and such procedures shall be consistent with the regu-
56 lations of the state board of elections and shall be filed with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 § 2. Section 9-211 of the election law, as amended by chapter 515 of
35 the laws of 2015, subdivision 1 as amended by chapter 5 of the laws of
36 2019, is amended to read as follows:

37 § 9-211. Audit of voter verifiable audit records. 1. Within fifteen
38 days after each general or special election, within thirteen days after
39 every primary election, and within seven days after every village
40 election conducted by the board of elections, the board of elections or
41 a bipartisan committee appointed by such board shall audit the voter
42 verifiable audit records from three percent of voting machines or
43 systems within the jurisdiction of such board. Such audits may be
44 performed manually or via the use of any automated tool authorized for
45 such use by the state board of elections which is independent from the
46 voting system it is being used to audit. Voting machines or systems
47 shall be selected for audit through a random, manual process. At least
48 five days prior to the time fixed for such selection process, the board
49 of elections shall send notice by first class mail to each candidate,
50 political party and independent body entitled to have had watchers pres-
51 ent at the polls in any election district in such board's jurisdiction.
52 Such notice shall state the time and place fixed for such random
53 selection process. The audit shall be conducted in the same manner, to
54 the extent applicable, as a canvass of paper ballots. Each candidate,
55 political party or independent body entitled to appoint watchers to

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

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

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

21 ~~[3-]~~ 4. The state board of elections shall, in accordance with subdi-
22 vision four of section 3-100 of this chapter, promulgate regulations
23 establishing a uniform statewide standard to be used by boards of
24 elections to determine when a discrepancy between the audit tallies and
25 the voting machine or system tallies shall require a further voter veri-
26 fiable record audit of additional voting machines or systems or a
27 complete audit of all machines or systems within the jurisdiction of a
28 board of elections. Any board of elections shall be empowered to order
29 that any such audit shall be conducted whenever any such discrepancy
30 exists.

31 ~~[4-]~~ 5. If a complete audit shall be conducted, the results of such
32 audit shall be used by the canvassing board in making the statement of
33 canvass and determinations of persons elected and propositions rejected
34 or approved. The results of a partial voter verifiable record audit
35 shall not be used in lieu of voting machine or system tallies.

36 ~~[5-]~~ 6. Notwithstanding subdivision four of this section, if a voting
37 machine or system is found to have failed to record votes in a manner
38 indicating an operational failure, the board of canvassers shall use the
39 voter verifiable audit records to determine the votes cast on such
40 machine or system, provided such records were not also impaired by the
41 operational failure of the voting machine or system.

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

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

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

53 2-a. If a voter's name appears in the ledger or computer generated
54 registration list with a notation indicating that the board of elections
55 has issued the voter an absentee, military or special ballot, such voter

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

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

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

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

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

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

1 § 6. Subdivision 4 of section 17-126 of the election law is amended to
2 read as follows:
3 4. Before the closing of the polls, unfolds a ballot that a voter has
4 prepared for voting, except as provided in section 9-209 of this chap-
5 ter, is guilty of a misdemeanor.
6 § 7. Subdivisions 18, 20 and 21 of section 17-130 of the election law
7 are amended to read as follows:
8 18. Not being lawfully authorized, makes or has in his possession a
9 key to a voting [~~maching~~] machine which has been adopted and will be
10 used in elections; or,
11 20. Intentionally opens [~~an absentee~~] a voter's ballot envelope or
12 examines the contents thereof after the receipt of the envelope by the
13 board of elections and before the close of the polls at the election
14 except as provided in section 9-209 of this chapter; or,
15 21. [~~Wilfully~~] Willfully disobeys any lawful command of the board of
16 inspectors, or any member thereof; or,
17 § 8. This act shall take effect January 1, 2022 and shall apply to
18 elections held on or after such date; provided, however, that paragraph
19 (h) of subdivision 7 of section 9-209 of the election law, as added by
20 section one of this act, shall take effect January 1, 2023.