

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2598 and 2699

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED AUGUST 20, 2020

Sponsored by:

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District 11 (Monmouth)

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SYNOPSIS

Establishes “The Ballot Cure Act” to modify and establish various voting procedures.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate State Government, Wagering, Tourism & Historic Preservation Committee.



1 **AN ACT** concerning certain voting procedures and a voter's
2 opportunity to cure their voted mail-in ballot and amending
3 various parts of the statutory law and supplementing P.L.2009,
4 c.79 (C.19:63-1 et seq.).

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 1 of P.L.2005, c.149 (C.19:12-7.1) is amended to
10 read as follows:

11 1. a. A county board of elections shall have posted a voter
12 information notice, which shall be referred to as a voter's bill of
13 rights, in a conspicuous location in each polling place before the
14 opening of the polls on the day of any election.

15 The notice shall contain:

16 the date of the election and the hours during which polling places
17 will be open;

18 a statement that sample ballots are available at the polling place
19 for review by the voter;

20 instruction for the use of the voting machine in that polling place
21 and an explanation of what instructions for voting are available at
22 the polling place for the voter;

23 instruction for a voter who is voting for the first time;

24 instruction for a voter who is required to provide identification
25 pursuant to the federal "Help America Vote Act of 2002" and
26 R.S.19:15-17 prior to casting a vote;

27 instruction on how to cast a vote if the voter cannot be present at
28 a polling place on the day of the election;

29 an explanation of the right of the voter to vote in privacy,
30 regardless of the voter's physical abilities;

31 an explanation of the right of the voter to a provisional ballot,
32 including in the event that a mail-in ballot has been applied for and
33 not received or not transmitted to the county board of elections
34 before the day of any election, and the other circumstances under
35 which a voter has a right to a provisional ballot;

36 an explanation of the right of the voter to receive a replacement
37 ballot for a ballot that has been spoiled, destroyed, lost or never
38 received;

39 an explanation of the right of the voter to ask for and receive
40 assistance in voting;

41 an explanation of the right of the voter to take a reasonable
42 amount of time in casting a vote on a voting machine;

43 an explanation of the right of the voter to bring written material
44 into the polling place for the voter's personal use in casting a vote;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 instruction on how to contact the appropriate officials if a voter's
2 right to vote or right to otherwise participate in the electoral process
3 has been challenged or violated;

4 general information on federal and State laws that prohibit acts
5 of fraud or misrepresentation and the penalties for those acts; **[and]**

6 an explanation of the right of the voter to confidentially discover
7 the status of their ballot using the "Track My Ballot" user portal;

8 an explanation that "All ballots are counted and your vote
9 remains anonymous;"

10 an explanation of the right of the voter that if their ballot was
11 rejected, they will be notified within 24 hours after a decision is
12 made to reject the ballot. The voter will have up to 14 days after
13 the close of the polls on Election Day to provide a cure for their
14 ballot;

15 an explanation giving the options for the voter to provide the
16 cure to their rejected ballot;

17 an explanation that no voters shall be intimidated or otherwise
18 unduly influenced by political insignia while voting. No person
19 shall wear, display, sell, give or provide any political or campaign
20 slogan, badge, button or other insignia associated with any political
21 party or candidate to be worn at or within one hundred feet of the
22 polls or within the polling place or room, on any primary, general or
23 special election day or on any commission government election day,
24 except the badge furnished by the county board as provided by law.
25 This includes any political gear representing the campaign slogans,
26 logos, or depictions or representations of any political party or
27 candidate such as merchandise sold directly from a political party,
28 campaign, candidate, or by third parties and vendors representing
29 any political party or campaign or candidate. A person violating any
30 of these provisions is guilty of a disorderly persons offense and will
31 not be permitted on the premises and can only return to vote after
32 the removal of prohibited political insignia; and

33 such other statement, instruction or explanation the Secretary of
34 State may deem appropriate to ensure the full and knowledgeable
35 participation of the voter in the process.

36 The requirement to post this notice in each polling place shall
37 not replace, supersede or void any other requirement set forth in law
38 for the posting of information in each polling place apart from the
39 voter information notice.

40 b. The Secretary of State shall prescribe the form and specific
41 content of the voter information notice, which may be comprised of
42 more than one page. If the notice is comprised of more than one
43 page, each page shall be posted separately. For an election district
44 in which the primary language of 10 percent or more of the
45 registered voters is a language other than English, the Secretary of
46 State shall prescribe an official version of the voter information
47 notice in that other language or languages for use in that election
48 district. The notice shall be posted in English and in the other

1 language or languages in the polling places in each such district.
2 The alternate language shall be determined based on information
3 from the latest federal decennial census.

4 c. A county board of elections may modify or supplement the
5 voter information notice used in a county or municipality to provide
6 additional information specific to that county or a municipality in
7 that county, provided, however, that any such modification or
8 supplementation shall be submitted to the Secretary of State for
9 prior approval.

10 d. The voter information notice shall be printed on each sample
11 ballot, to the extent practicable, or if not practicable, information on
12 how to view or obtain a copy of the voter information notice shall
13 be printed on each sample ballot.

14 e. The voter information notice, including one modified or
15 supplemented pursuant to subsection c. of this section, shall be
16 made accessible on the official Internet site of the State by the
17 Secretary of State and each county board of elections shall ensure
18 that the official Internet site of the county contains a link to that
19 notice.

20 f. **【The provisions of this section shall not give rise to a legal**
21 **cause of action.】 Deleted by amendment, P.L. , c. (pending**
22 **before the Legislature as this bill**)

23 g. The State shall be liable for the costs incurred by local
24 government entities for compliance with this section, and they shall
25 be reimbursed for those costs, upon application, by the State
26 Treasurer.

27 (cf: P.L.2009, c.79, s.30)

28

29 2. Section 4 of P.L.2004, c.88 (C.19:61-4) is amended to read
30 as follows:

31 4. a. The **【Attorney General】** Secretary of State shall establish
32 a free-access system, such as a toll-free telephone number, an
33 Internet website or any combination thereof, that any individual
34 who casts a provisional ballot, mail-in ballot, or overseas ballot in
35 all elections where they are qualified to vote, may access to
36 ascertain whether the ballot of that individual was accepted for
37 counting and, if the vote was not counted, the reason for the
38 rejection of the ballot. The system shall at all times preserve the
39 confidentiality of each voter, and shall ensure that no person, other
40 than the individual who cast the ballot, may discover whether or not
41 that individual's ballot was accepted or rejected, unless so informed
42 by the voter.

43 b. The free-access system shall be prominently displayed on
44 the New Jersey Division of Elections website under a “Track My
45 Ballot” user portal.

46 c. To applicable situations, the free-access system shall record
47 the date that the mail-in ballot was mailed; the date that the
48 overseas ballot was mailed or transmitted via electronic mail; the

1 date the ballot was received; the notation that the ballot was
2 “Accepted” or “Rejected;” the code for rejection; the date and
3 method that the board of elections notified the voter (mail, email, or
4 phone) and, in cases where the ballot was initially “Rejected” and
5 the voter provided a cure as provided under section 17 of P.L.2009,
6 c.79 (C.19:63-17), the date when the ballot was “Accepted.” If no
7 cure was provided successfully or at all, no other input shall be
8 required.

9 d. The free-access system shall provide a legend containing all
10 the codes used for rejection and their explanation for rejection. The
11 system shall provide voters with the methods to cure the ballot, and
12 the deadline of 14 days after the closing of the polls on Election
13 Day to provide the cure.

14 e. The free-access system shall provide a publicly viewable
15 macro-report of the total number of rejected ballots by county and
16 by code along with the totals for votes cast by mail-in ballot,
17 overseas ballots, and total ballots cast. This report shall be kept and
18 made available on the Secretary of State’s website for a period of
19 10 years.

20 (cf: P.L.2004, c.88, s.4)

21
22 3. Section 17 of P.L.2009, c.79 (C.19:63-17) is amended to
23 read as follows:

24 17. a. The county board of elections shall, promptly after
25 receiving each mail-in ballot, remove the inner envelope containing
26 the ballot from the outer envelope and shall compare the signature
27 and the information contained on the flap of the inner envelope with
28 the digitized signature image and information contained in the
29 【respective requests for mail-in ballots】 Statewide voter
30 registration system and the New Jersey Motor Vehicle
31 Commission’s database. In addition, as to mail-in ballots issued less
32 than seven days prior to an election, the county board of elections
33 shall also check to establish that the mail-in voter did not vote in
34 person. The county board shall reject such a ballot if it is not
35 satisfied, pursuant to a comparison with the Statewide voter
36 registration system, that the voter is legally entitled to vote and that
37 the ballot conforms with the requirements of this act. The county
38 board of elections shall conduct the determination of qualification
39 of each voter in accordance with the requirements of the Certificate
40 of Mail-in Voter pursuant to section 13 of P.L.2009, c.79 (C.19:63-
41 13).

42 In the case of a mail-in ballot to be voted at a primary election
43 for the general election, the ballot shall be rejected if the mail-in
44 voter has indicated in the certificate the voter's intention to vote in a
45 primary election of any political party in which the voter is not
46 entitled to vote according to the Statewide voter registration system,
47 and if it shall appear from the record that the voter is not entitled to

1 vote in a primary election of the political party which has been so
2 indicated.

3 Any mail-in ballot which is received by a county board of
4 elections shall be rejected if **both** the inner **and** outer envelopes
5 **are** envelope is unsealed or if either the inner or outer envelope has
6 a seal that has been tampered with. Mail-in ballots shall not be
7 rejected when the defect is attributable to a physical defect in the
8 inner envelope, outer envelope, certificate, or ballot outside the
9 control of the voter.

10 Disputes about the qualifications of a mail-in voter to vote or
11 about whether or not or how any mail-in ballot shall be counted in
12 such election shall be referred to the Superior Court for
13 determination, as provided under section 4 of P.L. , c. (C.)
14 (pending before the Legislature as this bill).

15 After such investigation, the county board of elections shall
16 detach or separate the certificate from the inner envelope containing
17 the mail-in ballot, unless it has been rejected by it or by the
18 Superior Court, marking the envelope so as to identify the election
19 district in which the ballot contained therein is to be voted as
20 indicated by the voter's home address appearing on the certificate
21 attached to or accompanying the inner envelope and, in the case of
22 ballots to be voted at a primary election for a general election, so as
23 to identify the political party in the primary election of which it is
24 to be voted.

25 The location at which a county board of elections determines
26 whether a mail-in ballot shall be accepted or rejected shall be
27 considered an election district for the purposes of appointment of
28 challengers.

29 b. The county board of elections shall, promptly after receiving
30 each mail-in ballot, undertake the following procedures and
31 requirements concerning the acceptance or rejection of each mail-in
32 ballot:

33 (1) record in the Statewide voter registration system and the
34 free-access system the acceptance or rejection of the voter's ballot.
35 Where the voter's ballot is rejected, a code shall be input and
36 displayed showing the reason for rejection;

37 (2) within 24 hours after the decision has been made to
38 tentatively reject or to reject a voter's mail-in or provisional ballot,
39 issue a "Cure Letter" by mail or email to the voter whose ballot was
40 tentatively rejected or rejected, which shall inform the voter of that
41 fact and provide the reasoning for rejection. The cure letter shall
42 include a "Cure Form" and the form shall include the voter's name
43 and instruct the voter on how to cure the alleged or actual
44 deficiency. Cure forms shall not be referred to as affidavits or
45 certifications and shall not be required to be sworn;

46 (3) when the alleged or actual deficiency involves the signature
47 of the voter, instruct the voter that they may cure the deficiency by
48 completing the cure form and returning it to the county board of

1 elections in person, by fax, or by email, not later than 14 days after
2 the date of the election, or by returning it to the county board of
3 elections by mail, and that the completed cure form must be
4 received by the county board of elections not later than 14 days
5 after the date of the election;

6 (4) include, with the cure letter, when sent by mail, a pre-printed
7 cure form and a postage-paid return envelope addressed to the
8 county board of elections which the voter may use to return the cure
9 form; and

10 (5) inform voters that they shall not be required to submit any
11 form of hard-copy identification document or copy thereof in order
12 to cure a signature deficiency, but may do so by declaring that they
13 submitted their provisional ballot or mail-in ballot, and verifying
14 their identity by either: (a) providing a valid New Jersey driver's
15 license number or Motor Vehicle Commission non-driver
16 identification number; (b) providing the last four digits of their
17 Social Security Number; or (c) attaching a legible copy of a New
18 Jersey State-accepted form of identification, including either a
19 sample ballot which lists the voter's name and address, an official
20 federal, State, county, or municipal document which lists the voter's
21 name and address, or a utility bill, telephone bill, or tax or rent
22 receipt which lists the voter's name and address; and (d) signing
23 and dating the cure form prior to returning it.

24 c. If a voter whose mail-in or provisional ballot was tentatively
25 rejected or rejected based solely on a signature deficiency returns a
26 completed cure form in a timely manner and the information
27 provided verifies the voter's identity, pursuant to this section, their
28 otherwise valid mail-in or provisional ballot shall be counted in the
29 final election results irrespective of any signature deficiency
30 previously identified and, under those circumstances, the cure form
31 may not be verified or authenticated using signature matching.

32 d. If a voter whose mail-in or provisional ballot was tentatively
33 rejected or rejected based solely on a signature deficiency returns a
34 completed cure form in a timely manner and provides a copy of an
35 identification document as set forth in paragraph (5) of subsection
36 b. of this section, the address listed on the identification document
37 shall not be required to match the voter registration address,
38 provided that the identification document otherwise verifies the
39 voter's identity.

40 e. In accordance with this section, variations in voter
41 signatures caused by the substitution of initials for the first name,
42 middle name, or both, shall not be grounds for the county board of
43 elections to determine that the signatures are non-conforming or do
44 not match.

45 f. In circumstances when it would be appropriate to do so, and
46 not later than the day of the election, the county board of elections
47 may provide the voter with a replacement mail-in ballot and return
48 envelope.

1 g. To prevent voter disenfranchisement, and as needed to
2 comply with this section, the county board of elections may seek an
3 order from a Judge of the Superior Court to reasonably extend any
4 deadlines established herein.

5 h. In cases of rejected ballots, the county board of elections
6 shall retain the voter's outer envelope, inner envelope, self-
7 certification certificate, and mail-in ballot in a bundle unique to
8 each voter for a period of two years in accordance with section 24
9 of P.L.2009, c.79 (C.19:63-24).

10 (cf: P.L.2011, c.134, s.55)

11
12 4. (New section) a. Following the attempt to cure any alleged
13 deficiencies in a mail-in ballot pursuant to section 17 of P.L.2009,
14 c.79 (C.19:63-17), the county board of elections shall make a final
15 determination about the qualifications of a mail-in voter and
16 whether or not the mail-in ballot alleged to be deficient shall be
17 counted. The failure or alleged failure of any voter to cure alleged
18 deficiencies in the voter's mail-in ballot shall not create a
19 presumption that the vote is improper or invalid, nor shall it be
20 considered evidence that the vote is improper or invalid.

21 b. Following final determination under subsection a. of this
22 section, disputes about the qualifications of a voter to vote, or about
23 whether or not or how any mail-in ballot shall be counted in that
24 election, shall be referred to the Superior Court for determination.

25 c. Upon referral to the Superior Court for determination, the
26 Superior Court shall set a date and time for a hearing during which
27 each of the county parties may designate an attorney to be present
28 and provide limited argument to the Superior Court as to the
29 qualifications of a mail-in voter to vote, or about whether or not or
30 how any mail-in ballot shall be counted in that election. Prior to any
31 hearing, the proofs presented to the Superior Court from the county
32 board of elections shall be provided to the designated representative
33 for each of the county parties. Any hearing shall be conducted in a
34 summary manner to which there shall be no right to additional
35 discovery or presentation of witnesses.

36
37 5. (New section) a. The Secretary of State shall prepare
38 educational materials regarding the provisions of section 17 of
39 P.L.2009, c.79 (C.19:63-17) that all county boards of elections
40 persons handling ballots shall be required to read or view prior to
41 the election. The materials shall provide clear information regarding
42 the standards for acceptance and rejection of mail-in ballots and the
43 safe holding of all materials in the case of rejection.

44 b. Prior to each election, the Secretary of State shall direct all
45 county boards of elections and their members, agents, employees,
46 and representatives, who shall be collectively known as the
47 "evaluators," and who are responsible for authenticating or
48 verifying mail-in ballots pursuant to section 17 of P.L.2009, c.79

1 (C.19:63-17), or authenticating or verifying provisional ballots
2 pursuant to section 19 of P.L.1999, c.232 (C.19:53C-13), to comply
3 with the provisions of subsection c. of this section.

4 c. The Secretary of State and each county board of elections
5 shall ensure that all evaluators receive, and are directed to comply
6 with, written guidance stating as follows:

7 (1) when verifying signatures, evaluators shall keep in mind that
8 everyone writes differently, and no one signs their name exactly the
9 same way twice;

10 (2) some variation in signatures is to be expected;

11 (3) many factors can lead to signature variance, including, but
12 not limited to, age, disability, underlying health conditions, writing
13 implement or surface, level of concentration, and educational
14 background;

15 (4) according to studies, evaluators are more likely to declare
16 genuine signatures to be non-genuine than they are to accept a non-
17 genuine signature as genuine, and the goal is to prevent these errors
18 in signature verification; and

19 (5) evaluators shall presume that the documents were signed by
20 the same person and shall accept a signature as valid unless there is
21 a clear discrepancy that cannot be reasonably explained.

22 d. The Secretary of State shall, not later than 14 days prior to
23 the election, publish the signature matching guidelines required
24 under subsection c. of this section which each evaluator shall be
25 required to follow in determining if mail-in voter signatures match.

26
27 6. Section 23 of P.L.2009, c.79 (C.19:63-23) is amended to
28 read as follows:

29 23. **【As soon as practicable after each election】** On an ongoing
30 basis as each action is completed, the county clerk and the board of
31 elections shall mark in the Statewide voter registration system and
32 all duplicate voting records to show that mail-in ballots were
33 delivered or forwarded to the respective registered voters. Pursuant
34 to section 9 of P.L.2009, c.79 (C.19:63-9), whenever the clerk mails
35 or hand-delivers a mail-in ballot, the county clerk shall input the
36 information as such in the free-access system, including the date of
37 mailing or delivery. For each mail-in ballot that has been voted,
38 received and counted, the board of elections shall also, by reference
39 to the certificates removed from the inner envelopes of such ballots,
40 place the word "Voted" in the space provided in the Statewide voter
41 registration system and duplicate voting record for recording the
42 ballot number of the voter's ballot in the election. For each mail-in
43 ballot that has been voted, received and rejected pursuant to section
44 17 of P.L.2009, c.79 (C.19:63-17), the board of elections shall mark
45 as "Rejected" in the Statewide voter registration system, the free-
46 access system, and all duplicate voting records. For each of the
47 rejected mail-in ballots where the voter provided a cure and
48 therefore were accepted, the board of elections shall provide an

1 additional input as “Accepted” in the same systems. In the case of
2 the primary election for the general election, the board shall also
3 cause to be noted in the proper space of the Statewide voter
4 registration system or other record of voting form the first three
5 letters of the name of the political party primary in which such
6 ballot was voted. The record contained in the Statewide voter
7 registration system and of voting forms in the original permanent
8 registration binders shall be conformed to the foregoing entries in
9 the duplicate forms.

10 (cf: P.L.2011, c.134, s.57)

11
12 7. Section 24 of P.L.2009, c.79 (C.19:63-24) is amended to
13 read as follows:

14 24. The county board of elections shall keep, for two years, all
15 of the requests and applications for mail-in ballots, all voted mail-in
16 ballots, and all of the certificates that have been detached or
17 separated by them from the inner envelopes. The county board of
18 elections shall also keep, for two years, all of the rejected mail-in
19 ballots, accompanying outer and inner envelopes, and the self-
20 certification certificates that have been detached or separated by
21 them from the inner envelopes. These contents shall be kept in
22 bundles unique and belonging to individual voters, and shall be
23 made available for inspection by the voter for challenges. All inner
24 envelopes together with their certificates, and the contents of those
25 envelopes not opened by order of the county board or Superior
26 Court, shall also be retained for the same period by the board. The
27 superintendent of elections in counties having a superintendent of
28 elections and the prosecutor in all other counties shall have the
29 authority to impound all mail-in ballots whenever the
30 superintendent or prosecutor, as may be appropriate, shall deem
31 such action to be necessary.

32 (cf: P.L.2009, c.79, s.24)

33
34 8. This act shall take effect immediately and shall apply to all
35 future elections occurring after the effective date of this act.