

1 SENATE BILL 205

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 John M. Sapien

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9  
10 AN ACT

11 RELATING TO PRIMARY ELECTIONS; ALLOWING VOTERS WHO HAVE NOT  
12 DESIGNATED A POLITICAL PARTY AFFILIATION ON THEIR CERTIFICATES  
13 OF REGISTRATION TO PARTICIPATE IN THE PRIMARY ELECTION PROCESS  
14 BY CHOOSING TO AFFILIATE WITH A PARTY BY REQUESTING A BALLOT.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 1-4-15 NMSA 1978 (being Laws 1969,  
18 Chapter 240, Section 71, as amended) is amended to read:

19 "1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

20 A. A voter may change the voter's designated party  
21 affiliation by executing a new certificate of registration  
22 indicating the change of party affiliation.

23 B. A voter who has previously declined to designate  
24 a party affiliation on the voter's certificate of registration  
25 but who desires to designate a party affiliation [~~shall~~] on the

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1 voter's certificate of registration may execute a new  
2 certificate of registration indicating the desired party  
3 affiliation.

4 C. A voter who does not designate on the  
5 certificate of registration a party affiliation shall be  
6 considered to have declined to designate a party affiliation.

7 D. A voter who has declined to designate on the  
8 certificate of registration a party affiliation but who chooses  
9 to affiliate with a party that is participating in a primary  
10 election may do so by requesting the ballot of one of the  
11 parties participating in that primary election. The voter's  
12 certificate of registration shall not be changed to reflect the  
13 voter's party affiliation unless the voter so requests in  
14 accordance with the provisions of Subsection B of this  
15 section."

16 SECTION 2. Section 1-6-5 NMSA 1978 (being Laws 1969,  
17 Chapter 240, Section 131, as amended) is amended to read:

18 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

19 A. The county clerk shall mark each completed  
20 absentee ballot application with the date and time of receipt  
21 in the clerk's office and enter the required information in the  
22 absentee ballot register. The county clerk shall then  
23 determine if the applicant is a voter and if the voter is a  
24 uniformed-service voter or an overseas voter. If the applicant  
25 is a uniformed-service voter or overseas voter, the application

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1 shall be processed pursuant to the Uniform Military and  
2 Overseas Voters Act.

3 B. If the applicant does not have a valid  
4 certificate of registration on file in the county, an absentee  
5 ballot shall not be issued and the county clerk shall mark the  
6 application "rejected" and file the application in a separate  
7 file from those accepted.

8 C. The county clerk shall notify in writing each  
9 applicant of the fact of acceptance or rejection of the  
10 application and, if rejected, shall explain why the application  
11 was rejected.

12 D. If the applicant has on file with the county a  
13 valid certificate of registration that indicates that the  
14 applicant is a voter who is a new registrant and who registered  
15 by mail without submitting the required voter identification,  
16 the county clerk shall notify the voter that the voter must  
17 submit with the absentee ballot the required physical form of  
18 identification. The county clerk shall note on the absentee  
19 ballot register and signature roster that the applicant's  
20 absentee ballot must be returned with the required  
21 identification.

22 E. If the applicant has on file with the county a  
23 valid certificate of registration, the county clerk shall mark  
24 the application "accepted" and, beginning twenty-eight days  
25 before the election, deliver an absentee ballot to the voter in

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1 the county clerk's office or mail to the applicant an absentee  
2 ballot and the required envelopes for use in returning the  
3 ballot. An absent voter shall not be permitted to change party  
4 affiliation during those periods when change of party  
5 affiliation is prohibited by the Election Code; provided that a  
6 voter who has declined to designate a party affiliation on the  
7 voter's certificate of registration may choose to affiliate  
8 with a party in a primary election by requesting the ballot of  
9 one of the parties participating in that election. Upon  
10 delivery of an absentee ballot to a voter in the county clerk's  
11 office or mailing of an absentee ballot to an applicant who is  
12 a voter, an appropriate designation shall be made on the  
13 signature line of the signature roster next to the name of the  
14 voter who has been provided or mailed an absentee ballot.

15 F. Absentee ballots may be marked in person at the  
16 county clerk's office during the regular hours and days of  
17 business beginning on the twenty-eighth day preceding the  
18 election and from 10:00 a.m. to 6:00 p.m. on the Saturday  
19 immediately prior to the date of the election. The act of  
20 marking the absentee ballot in the office of the county clerk  
21 shall be a convenience to the voter in the delivery of the  
22 absentee ballot and does not make the office of the county  
23 clerk a polling place subject to the requirements of a polling  
24 place in the Election Code. If the county clerk establishes an  
25 additional alternate voting location near the clerk's office,

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1 absentee ballots may be marked in person at that location  
2 during the regular hours and days of business beginning on the  
3 twenty-eighth day preceding the election and during the hours  
4 for voting at alternate voting locations commencing on the  
5 third Saturday prior to the election through the Saturday  
6 immediately prior to the election. The additional alternate  
7 voting location shall be operated by the county clerk and the  
8 county clerk's staff.

9 G. When marking an absentee ballot in person at the  
10 county clerk's office, the voter shall provide the required  
11 voter identification to the county clerk or the clerk's  
12 authorized representative. If the voter does not provide the  
13 required voter identification, the voter shall be allowed to  
14 vote on a provisional ballot. If the voter provides the  
15 required voter identification, the voter, after subscribing an  
16 application for an absentee ballot, shall be allowed to vote by  
17 inserting the ballot into an optical scan tabulator certified  
18 for in-person absentee voting at the county clerk's office.  
19 The county clerk or the clerk's authorized representative shall  
20 make an appropriate designation indicating that the voter has  
21 voted absentee. In marking the absentee ballot, the voter may  
22 be assisted pursuant to the provisions of Section 1-12-15 NMSA  
23 1978.

24 H. Absentee ballots shall be sent to applicants not  
25 later than on the Friday immediately prior to the date of the

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1 election.

2 I. An absentee ballot shall not be delivered or  
3 mailed by the county clerk to any person other than the  
4 applicant for such ballot.

5 J. The secretary of state and each county clerk  
6 shall make reasonable efforts to publicize and inform voters of  
7 the times and locations for absentee voting; provided, however,  
8 that notice is provided at least ten days before early voting  
9 begins.

10 K. The secretary of state shall establish  
11 procedures for the submittal, when required by federal law, of  
12 required voter identification with mailed-in absentee ballots.

13 L. It is unlawful to electioneer in the county  
14 clerk's office or in any alternate voting location."

15 SECTION 3. Section 1-12-7 NMSA 1978 (being Laws 1969,  
16 Chapter 240, Section 246, as amended) is amended to read:

17 "1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO  
18 VOTE--PERSONS PERMITTED TO VOTE UPON CHOOSING A PARTY--

19 A. A person shall not vote in a primary, general or  
20 statewide special election unless [he] the person is a voter of  
21 the county in which [he] the person offers to vote. A valid  
22 original certificate of registration in the county register is  
23 prima facie evidence of being a voter in the precinct.

24 [~~B. A person whose major party affiliation is not~~  
25 ~~designated on his original certificate of registration shall~~

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1 ~~not vote in a primary election.~~

2           G.] B. A person at a primary election shall not be  
3 permitted to vote for the candidate of any party other than the  
4 party designated on [~~his~~] the person's current certificate of  
5 registration; provided that a person who has declined to  
6 designate a political party affiliation on the person's  
7 certificate of registration shall be allowed to choose to  
8 affiliate with a party by requesting a ballot in a primary  
9 election and vote for the candidates on that party's primary  
10 election ballot."

11           SECTION 4. Section 1-12-7.1 NMSA 1978 (being Laws 1969,  
12 Chapter 240, Section 112, as amended) is amended to read:

13           "1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF  
14 VOTERS--USE DURING ELECTION.--

15           A. At each election day polling location, other  
16 than a consolidated precinct where any voter in the county may  
17 vote, the precinct board shall post securely at or near the  
18 entrance of the polling place one copy of an alphabetical list  
19 of voters and a map of the precincts represented in that  
20 polling place for use of the voters prior to voting. The  
21 posted copy shall not contain a listing of voter addresses,  
22 years, months or days of birth or social security numbers.

23           B. At each polling location where physical rosters  
24 are used, the presiding judge of the precinct board shall  
25 assign one judge or election clerk of the board to be in charge

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1 of one copy of the checklist of voters, which shall be used to  
2 confirm the registration and voting of each person offering to  
3 vote.

4 C. The presiding judge of the precinct board shall  
5 assign one judge or election clerk to be in charge of the  
6 signature roster.

7 D. The judge or election clerk assigned to confirm  
8 registration shall determine that each person offering to vote  
9 is registered and, in the case of a primary election, that the  
10 voter is either currently registered in a party designated on  
11 the primary election ballot or has declined to designate a  
12 party affiliation on the voter's certificate of registration  
13 and chooses to declare a party affiliation for that primary  
14 election by requesting a ballot of a party designated on the  
15 primary election ballot. If the person's registration is  
16 confirmed and the voter provides the required voter  
17 identification, the judge or election clerk shall announce to  
18 the judges or election clerks the list number and the name of  
19 the voter as shown on the checklist of voters. If the voter  
20 does not provide the required voter identification, the voter  
21 shall be allowed to vote on a provisional paper ballot and  
22 shall provide the required voter identification to the county  
23 clerk's office before 5:00 p.m. on the second day following the  
24 election, or to the precinct board before the polls close, or  
25 the voter's provisional ballot shall not be qualified. If the

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1 required voter identification is provided, the voter's  
2 provisional paper ballot shall be qualified and the voter shall  
3 not vote on any other type of ballot.

4 E. The judge or election clerk shall locate the  
5 name on the signature roster and shall require the voter to  
6 sign the voter's usual signature or, if unable to write, to  
7 make the voter's mark opposite the voter's printed name. If  
8 the voter makes the voter's mark, it shall be witnessed by one  
9 of the judges or election clerks of the precinct board.

10 F. If the signature roster indicates that the voter  
11 is required to present a physical form of identification before  
12 voting, the judge or election clerk shall ask the voter for the  
13 required physical form of identification. If the voter does  
14 not provide the required identification, the voter shall be  
15 allowed to vote on a provisional paper ballot; provided,  
16 however, that if the voter brings the required physical form of  
17 identification to the polling place after casting a provisional  
18 paper ballot, that ballot shall be qualified.

19 G. The judge or election clerk shall follow the  
20 procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA  
21 1978 if a person whose name does not appear on the signature  
22 roster requests to vote or a person is required to vote on a  
23 provisional paper ballot.

24 H. A voter shall not be permitted to vote until the  
25 voter has properly signed the voter's usual signature or made

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1 the voter's mark in the signature roster."

2 SECTION 5. Section 1-12-7.2 NMSA 1978 (being Laws 1969,  
3 Chapter 240, Section 114, as amended) is amended to read:

4 "1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

5 A. A voter whose name does not appear on the voter  
6 list and signature roster for the precinct in which the voter  
7 offers to vote shall be permitted to vote in the precinct  
8 pursuant to the federal National Voter Registration Act of 1993  
9 and Section 1-12-8 NMSA 1978.

10 B. The judges or election clerks in charge of the  
11 signature rosters shall add the voter's name and address in ink  
12 to the signature roster on the line immediately following the  
13 last entered voter's name, and the voter shall be allowed to  
14 sign an affidavit of eligibility and cast a provisional paper  
15 ballot; provided that the voter has first signed or marked both  
16 the signature roster and checklist of registered voters.

17 C. The provisional paper ballot tracking number for  
18 the voter shall be entered on the affidavit of eligibility, the  
19 signature roster and the checklist of registered voters.

20 D. In a primary election, a voter shall not be  
21 permitted to vote for a candidate of a party different from the  
22 party designation shown on the voter's certificate of  
23 registration unless the voter's certificate of registration  
24 shows the voter has declined to designate a party affiliation  
25 and the voter chooses to declare a party affiliation for that

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1 primary election by requesting the ballot of a party  
2 participating in the primary. Upon making that determination,  
3 the county clerk shall transmit the ballot to the county  
4 canvassing board to be tallied and included in the canvass of  
5 that county for the appropriate precinct."

6 SECTION 6. Section 1-12-20 NMSA 1978 (being Laws 1969,  
7 Chapter 240, Section 273, as amended) is amended to read:

8 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A  
9 challenge may be interposed by a member of the precinct board  
10 or by a party challenger for the following reasons:

11 A. the person offering to vote is not registered to  
12 vote;

13 B. the person offering to vote is listed among  
14 those persons to whom an absentee ballot was mailed;

15 C. the person offering to vote has already cast a  
16 ballot in that election;

17 D. the person offering to vote is improperly  
18 registered because the person is not a qualified elector; or

19 E. in the case of a primary election, the person  
20 desiring to vote is [~~not~~] already affiliated with a political  
21 party represented on the ballot but requests a ballot for a  
22 party other than the party with which the voter is affiliated."

23 SECTION 7. Section 1-15A-2 NMSA 1978 (being Laws 1977,  
24 Chapter 230, Section 2, as amended) is amended to read:

25 "1-15A-2. VOTING IN PRESIDENTIAL PRIMARY--DATE OF

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1 ELECTION.--

2           A. In the year in which the president and vice  
3 president of the United States are to be elected, the  
4 registered voters of this state shall be given an opportunity  
5 to express their preference for the person to be the  
6 presidential candidate of their political party in either a  
7 presidential primary election or in accordance with the  
8 selection procedure for presidential candidates of each voter's  
9 party. The presidential primary election shall be held on the  
10 same date as the primary election is held in this state.

11           B. A voter may vote in a presidential primary  
12 election on the ballot of only one of the parties participating  
13 in the primary election in accordance with the provisions of  
14 Section 1-12-7.1 NMSA 1978."

15           **SECTION 8.** Section 1-15A-8 NMSA 1978 (being Laws 1977,  
16 Chapter 230, Section 7, as amended) is amended to read:

17           "1-15A-8. VOTING IN PRESIDENTIAL PRIMARY--BALLOT  
18 POSITION.--

19           A. All candidates in the presidential primary  
20 election shall appear with the candidates for other offices of  
21 their respective parties at an appropriate place on the ballot.  
22 Candidates who are nominated by committee and by petition shall  
23 be placed first as a group on the presidential primary ballot  
24 [~~with each candidate's respective position in that group~~  
25 ~~determined by the provisions of the Ballot Positioning Act~~].

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1 The ballot position for the uncommitted category shall be  
2 placed last on the presidential primary ballot.

3 B. The voter shall be able to ~~[cast his ballot]~~  
4 vote for one of the presidential candidates on the ballot of  
5 ~~[his]~~ the party with which the voter is affiliated or, if the  
6 voter has declined to designate a party affiliation on the  
7 voter's certificate of registration, with the party that the  
8 voter chooses to affiliate with in that election in accordance  
9 with the provisions of Section 1-12-7.1 NMSA 1978, or for an  
10 uncommitted delegation. A vote of the latter kind shall  
11 express the preference for an uncommitted delegation from New  
12 Mexico to the national convention of ~~[that voter's]~~ the party  
13 with which that voter is affiliated."

14 SECTION 9. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2017.