

SENATE BILL No. 351

By Committee on Federal and State Affairs

1-19

1 AN ACT concerning elections; relating to defining and using electronic
2 poll books; approval of electronic poll books by the secretary of state;
3 granting the secretary of state authority to adopt rules and regulations
4 governing their use; prohibiting election systems from having the
5 capability of being connected to the internet or other computer or
6 communications networks; requiring ~~election judges~~ ***that candidates be***
7 ***allowed to review such systems*** to ensure such systems are not so
8 connected; providing that post-election equipment testing must occur
9 within five days of the county vote canvass and that notice of such
10 testing be provided on county websites; expanding the crime of
11 electronic or electromechanical voting system fraud to include
12 fraudulent use of or unauthorized possession of electronic poll books;
13 ***{transfer of ballots by election workers; requiring the secretary of***
14 ***state and county election officers to develop an affidavit to be signed***
15 ***by such workers listing certain information;}*** amending K.S.A. 25-
16 4401, 25-4402, 25-4403, 25-4404, 25-4405, 25-4406, 25-4407, 25-
17 4408, 25-4409, 25-4411, 25-4414, 25-4415, 25-4610 and 25-4613 and
18 repealing the existing sections.

19

20 *Be it enacted by the Legislature of the State of Kansas:*

21 ***{New Section 1. (a) The secretary of state, in consultation with***
22 ***county election officers, shall develop an affidavit system to be utilized***
23 ***for the transfer of ballots. Each person who transfers ballots for a***
24 ***county election office shall be required to sign an affidavit listing, if***
25 ***applicable, the:***

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(1) Number of blank ballots;

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(2) number of spoiled ballots;

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(3) number of provisional ballots;

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(4) number of counted ballots;

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(5) number of advanced ballots in envelopes;

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(6) name of the person to whom such ballots were delivered; and

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(7) location of where the ballots were delivered.

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(b) The affidavit system developed under this section shall apply to

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all ballots delivered, collected and transferred by county election offices

1 *prior to, on and after the date of an election and shall operate in*
2 *conjunction with the provisions of K.S.A. 25-2707, 25-2708 and 25-*
3 *2709, and amendments thereto, regarding transporting, preserving and*
4 *destroying ballots and election records.*

5 *(c) (1) It shall be a violation of this section to alter any information*
6 *provided in an affidavit or provide false information in an affidavit with*
7 *the intent to hinder, prevent or defeat a fair election.*

8 *(2) A violation of this section is a severity level 9, nonperson*
9 *felony.*

10 ~~Section 1. {Sec. 2.}~~ K.S.A. 25-4401 is hereby amended to read as
11 follows: 25-4401. As used in this act unless the context otherwise requires:

12 (a) "Ballot" may include an electronic display or printed document
13 containing the offices and questions on which voters in a specified voting
14 area are eligible to vote.

15 (b) "Counting location" means the location in the county selected by
16 the county election officer for the counting of ballots.

17 (c) "Electronic or electromechanical voting system" means a system
18 of casting votes and tabulating ballots employing automatic tabulating
19 equipment or data processing equipment including a direct recording
20 electronic system.

21 (d) "Direct recording electronic system" means a system that records
22 votes by means of a ballot display provided with mechanical or electro-
23 optical components that can be activated by the voter, that processes data
24 by means of a computer program, that records voting data and ballot
25 images in memory components, that produces a tabulation of the voting
26 data stored in a removable memory component and as printed copy, and
27 that may also provide a means for transmitting individual ballots or vote
28 totals to a central location for consolidating and reporting results from
29 precincts at the central location.

30 (e) "Electronic poll book" means an electronic list of registered
31 voters for a particular precinct or polling location that may be transported
32 to a polling location and on which each voter may sign the voter's
33 signature. "Electronic poll book" includes both the hardware and software
34 necessary for operation. An "electronic poll book" is a type of "poll book"
35 as provided in K.S.A. 25-2507, and amendments thereto. "Electronic poll
36 book" does not include automatic tabulating equipment or data processing
37 equipment, including a direct recording electronic system, that are
38 components of an electronic or electromechanical voting system.

39 ~~Sec. 2. {3.}~~ K.S.A. 25-4402 is hereby amended to read as follows: 25-
40 4402. Subject to the limitations of article 44 of chapter 25 of Kansas
41 Statutes Annotated, and amendments thereto, the board of county
42 commissioners and the county election officer of any county are
43 authorized to purchase, lease or rent and use electronic or

1 electromechanical voting systems *or electronic poll books* as provided by
2 K.S.A. 25-4403, and amendments thereto.

3 ~~Sec. 3.~~ ~~{4.}~~ K.S.A. 25-4403 is hereby amended to read as follows: 25-
4 4403. (a) The board of county commissioners and the county election
5 officer of any county may provide an electronic or electromechanical
6 voting system *or electronic poll books* to be used at voting places, or for
7 advance voting in the county at national, state, county, township, city and
8 school primary and general elections and in question submitted elections.

9 (b) The board of county commissioners of any county in which the
10 board of county commissioners and county election officer have
11 determined that an electronic or electromechanical voting system *or*
12 *electronic poll books* shall be used may issue bonds to finance and pay for
13 purchase, lease or rental of such a system.

14 (c) The board of county commissioners and the county election
15 officer of any county may adopt, experiment with or abandon any
16 electronic or electromechanical system *or electronic poll books* herein
17 authorized and approved for use in the state and may use such a system in
18 all or any part of the voting areas within the county or in combination with
19 an optical scanning voting system or with regular paper ballots. Whenever
20 the secretary of state rescinds approval of any voting system *or electronic*
21 *poll books*, the board of county commissioners and the county election
22 officer shall abandon the system *or electronic poll books* until changes
23 therein required by the secretary of state have been made, or if the
24 secretary of state advises that acceptable changes cannot be made therein,
25 the abandonment shall be permanent.

26 (d) On and after the effective date of this act, no board of county
27 commissioners in any county may purchase, lease or rent any direct
28 recording electronic system, as defined in K.S.A. 25-4401(d), and
29 amendments thereto. On and after the effective date of this act, no board of
30 county commissioners in any county may purchase, lease or rent any
31 electronic or electromechanical voting system, unless such system:

32 (1) Provides a paper record of each vote cast, produced at the time the
33 vote is cast; and

34 (2) has the ability to be tested both before an election and prior to the
35 date of canvass. Such test shall include the ability to match the paper
36 record of the machine to the vote total contained in the machine.

37 (e) *No component of an electronic or electromechanical voting*
38 *system shall have the capability to be connected to the internet or to any*
39 *other communications or computer network, including, but not limited to,*
40 *a local area network, wireless network, cellular network or satellite*
41 *network, or to use bluetooth or any other wireless communications*
42 *technology.*

43 (f) *On and after July 1, 2022, no board of county commissioners or*

1 *the county election officer of any county may purchase, lease or rent any*
2 *electronic poll books unless the kind or make of such poll books have been*
3 *certified by the secretary of state. No electronic poll book may be operated*
4 *unless its network connectivity meets the security standards established by*
5 *the secretary of state.*

6 Sec.-4- {5.} K.S.A. 25-4404 is hereby amended to read as follows: 25-
7 4404. The secretary of state shall examine and approve the kinds or makes
8 of electronic or electromechanical voting systems, including operating
9 systems, firmware and software, *and electronic poll books*, and no kind or
10 make of such system *or electronic poll book* shall be used at any election
11 unless and until it receives certification by the secretary of state and a
12 statement thereof is filed in the office of the secretary of state.

13 Sec.-5- {6.} K.S.A. 25-4405 is hereby amended to read as follows: 25-
14 4405. (a) Any person, firm or corporation desiring to sell any kind or make
15 of electronic or electromechanical voting system *or electronic poll book* to
16 political subdivisions in Kansas may in writing request the secretary of
17 state to examine the kind or make of the system which it desires to sell and
18 shall accompany the request with a certified check in the sum of \$250
19 payable to the secretary of state to be used to defray a portion of the costs
20 of such examination, and shall furnish at its own expense such system to
21 the secretary of state for use in examining such system. The secretary of
22 state may require such person, firm or corporation to furnish a competent
23 person to explain the system *or electronic poll book* and demonstrate by
24 the operation of such system *or electronic poll book* that it complies with
25 *any applicable* state and federal laws *and regulations*. The secretary of
26 state may employ a competent person or persons to assist in the
27 examination and to advise the secretary as to the sufficiency of such
28 ~~machine~~ *voting system or electronic poll book* and to pay such persons
29 reasonable compensation therefor. The costs of employment and any other
30 costs associated with the approval of such system shall be paid by the
31 applicant.

32 (b) The secretary of state may require a review of any theretofore
33 approved electronic or electromechanical voting system *or electronic poll*
34 *book* and the equipment and operation thereof. Such review shall be
35 commenced by the secretary of state giving written notice thereof to the
36 person, firm or corporation which sought approval of the *voting system or*
37 *electronic poll book* and to each county election officer and county
38 commissioner of counties known to have purchased, leased or rented any
39 such *voting system or electronic poll book* or equipment thereof. Such
40 notice shall fix a time and place of hearing at which those persons wishing
41 to be heard may appear and give oral or written testimony and explanation
42 of the *voting system or electronic poll book*, its equipment and operation
43 and experience had therewith. After such hearing date and after such

1 review as the secretary of state deems appropriate, the secretary of state
2 may renew approval of the *voting system or electronic poll book*, require
3 changes therein for continued approval thereof or rescind approval
4 previously given on either a conditioned or permanent basis.

5 (c) The secretary of state may appoint persons to assist county
6 election officers or county commissioners in the testing of any electronic
7 or electromechanical voting system *or electronic poll book* and its
8 equipment or the programs of such system *or electronic poll book*.

9 ~~Sec. 6: {7,}~~ K.S.A. 25-4406 is hereby amended to read as follows: 25-
10 4406. Electronic or electromechanical voting systems approved by the
11 secretary of state:

12 (a) Shall provide for voting for the candidates for nomination or
13 election of all political parties officially recognized pursuant to K.S.A. 25-
14 302a, and amendments thereto;

15 (b) shall permit a voter to vote for any independent candidate for any
16 office;

17 (c) shall provide for voting on constitutional amendments or other
18 questions submitted;

19 (d) shall be so constructed that, as to primaries where candidates are
20 nominated by political parties, the voter can vote only for the candidates
21 for whom the voter is qualified to vote according to articles 2 and 33 of
22 chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

23 (e) shall afford the voter an opportunity to vote for any or all
24 candidates for an office for whom the voter is by law entitled to vote and
25 no more, and at the same time shall prevent the voter from voting for the
26 same candidate twice for the same office;

27 (f) shall be so constructed that in presidential elections the
28 presidential electors of any political party may be voted for by one action;

29 (g) shall provide for "write-in" votes;

30 (h) shall provide for voting in absolute secrecy, except as to persons
31 who request assistance due to temporary illness or disability or a lack of
32 proficiency in reading the English language;

33 (i) shall reject all votes for an office or upon a question submitted
34 when the voter has cast more votes for such office or upon such question
35 than the voter is entitled to cast;

36 (j) shall provide for instruction of voters on the operation of voting
37 machines, illustrating the manner of voting by the use of such systems.
38 The instruction may include printed materials or demonstration by election
39 board workers;

40 (k) shall provide a paper record of each vote cast, produced at the
41 time the vote is cast;

42 (l) shall have the ability to be tested both before an election and prior
43 to the date of canvass. The test shall include the ability to match the paper

1 records of such machines to the vote totals contained in the machines; ~~and~~

2 (m) shall meet the requirements of the help America vote act of 2002
3 and other federal statutes and regulations governing voting equipment;
4 *and*

5 (n) *shall not have the capability nor shall any component of an*
6 *electronic or electromechanical voting system have the capability to be*
7 *connected to the internet or to any other communications or computer*
8 *network, including, but not limited to, a local area network, wireless*
9 *network, cellular network or satellite network, or to use bluetooth or any*
10 *other wireless communications technology.*

11 ~~Sec. 7. {8.}~~ K.S.A. 25-4407 is hereby amended to read as follows: 25-
12 4407. (a) When a board of commissioners and county election officer have
13 determined that such ~~a kind or make of electronic or electromechanical~~
14 *voting system or electronic poll book* shall be used in a county, the board
15 of county commissioners and the county election officer shall provide such
16 number of units as shall be necessary to equip voting places for the use of
17 voters.

18 (b) No tax shall be levied under this section, nor shall any moneys be
19 paid from any fund under authority of this section for any contract to
20 purchase, lease or rent any electronic or electromechanical voting system
21 or equipment thereof *or electronic poll books*, if approval of such *voting*
22 *system or equipment or kind or make of electronic poll book* has been
23 rescinded by the secretary of state.

24 (c) The secretary of state may purchase, rent or lease voting
25 equipment only for the purpose of providing such equipment to counties
26 pursuant to the provisions of the help America vote act of 2002.

27 ~~Sec. 8. {9.}~~ K.S.A. 25-4408 is hereby amended to read as follows: 25-
28 4408. The board of county commissioners shall provide for the storage of
29 electronic or electromechanical voting systems *and electronic poll books*.
30 The county election officer shall be in complete charge of the *voting*
31 *systems and electronic poll books*, their safekeeping when not in use and
32 keeping them in repair and working order and shall see that they are
33 delivered to the voting places in time for all arrangements to be made and
34 for the *voting systems and electronic poll books* to be ready for use at the
35 hour of opening the polls. After the election the county election officer
36 shall see that the *voting systems and electronic poll books* are returned to
37 the place of storage, or are secured for on-site storage.

38 ~~Sec. 9. {10.}~~ K.S.A. 25-4409 is hereby amended to read as follows:
39 25-4409. (a) The ballot information, shall, as far as practicable, be in the
40 order of arrangement provided for paper ballots except that such
41 information may be in vertical or horizontal rows, or in a number of
42 separate pages. Voting squares or ovals may be before or after the names
43 of candidates and statements of questions, and shall be of such size as is

1 compatible with the type of system used. Ballot information shall be
2 displayed in as plain clear type and size as the ballot spaces will
3 reasonably permit. Where candidate rotation is used, the voting equipment
4 shall be capable of meeting the requirements otherwise provided in law.

5 (b) Before the opening of the polls the election judges shall compare
6 the ballots with the sample ballots furnished, and see that the ballot
7 information thereon agrees and shall certify thereto on forms provided for
8 this purpose. The certification shall be filed with the election returns.

9 (c) *Before, during and after the operation of the polling place, the*
10 *election judges shall ~~ensure that no component of the~~ **make all** electronic*
11 *or electromechanical voting ~~system is connected~~ **systems and vote***
12 ***tabulating equipment available to any candidate or any authorized poll***
13 ***agent for review to ensure there is no connectivity to the internet or to***
14 ***any other communications or computer network, including, but not limited***
15 ***to, a local area network, wireless network, cellular network or satellite***
16 ***network, or using bluetooth or any other wireless communications***
17 ***technology.***

18 Sec. ~~10.~~ **{11.}** K.S.A. 25-4411 is hereby amended to read as follows:
19 25-4411. (a) The vote tabulation equipment may be located at any place
20 within the county approved by the county election officer.

21 (b) Within five days prior to the date of the election, the county
22 election officer shall have the automatic tabulating equipment tested to
23 ascertain that the equipment will correctly count the votes cast for all
24 offices and on all questions submitted. Public notice of the time and place
25 of the test shall be given at least 48 hours prior thereto by publication once
26 in a newspaper of general circulation in the county or city where such
27 equipment is to be used *and on the county website, if the county has a*
28 *website.* The test shall be open to representatives of the political parties,
29 candidates, the press and the public. The test shall be conducted by
30 processing a preaudited group of ballots marked to record a predetermined
31 number of valid votes for each candidate and on each measure, and shall
32 include for each office one or more ballots which have votes in excess of
33 the number allowed by law in order to test the ability of the automatic
34 tabulating equipment to reject such votes. If any error is detected, the
35 cause therefor shall be ascertained and corrected and an errorless count
36 shall be made before the automatic tabulating equipment is approved. The
37 test shall be repeated *within five business days* after the completion of the
38 canvass. The equipment, programs and ballots shall be secured and
39 retained by the county election officer.

40 Sec. ~~11.~~ **{12.}** K.S.A. 25-4414 is hereby amended to read as follows:
41 25-4414. Electronic or electromechanical voting system *or electronic poll*
42 *book* fraud is:

43 (a) Being in unlawful or unauthorized possession of *electronic or*

1 *electromechanical* voting system equipment, *electronic poll book*
2 *equipment*, computer programs, operating systems, firmware, software or
3 ballots; or

4 (b) intentionally tampering with, altering, disarranging, defacing,
5 impairing or destroying any electronic or electromechanical *voting* system,
6 *electronic poll book* or component part thereof, or any ballot used by such
7 *electronic or electromechanical voting* systems.

8 Electronic or electromechanical voting system *or electronic poll book*
9 fraud is a severity level 9, nonperson felony.

10 Sec. ~~12.~~ **{13.}** K.S.A. 25-4415 is hereby amended to read as follows:
11 25-4415. The secretary of state may adopt rules and regulations:

12 (a) For the use of electronic and electromechanical voting systems to
13 count votes under the election laws of this state; ~~and~~

14 (b) *for the use of electronic poll books to process voters at polling*
15 *places; and*

16 (c) necessary for the administration of this act.

17 Sec. ~~13.~~ **{14.}** K.S.A. 25-4610 is hereby amended to read as follows:
18 25-4610. (a) The optical scanning equipment may be located at any place
19 within the county approved by the county election officer.

20 (b) Within five days prior to the date of the election, the county
21 election officer shall have the optical scanning equipment tested to
22 ascertain that the equipment will correctly count the votes cast for all
23 offices and on all questions submitted. Public notice of the time and place
24 of the test shall be given at least 48 hours prior thereto by publication once
25 in a newspaper of general circulation in the county where such equipment
26 is to be used *and on the county website, if the county has a website*. The
27 test shall be open to representatives of the political parties, candidates, the
28 press and the public. The test shall be conducted by processing a
29 preaudited group of ballots marked as to record a predetermined number of
30 valid votes for each candidate and on each question submitted, and shall
31 include for each office one or more ballots which have votes in excess of
32 the number allowed by law in order to test the ability of the optical
33 scanning equipment to reject such votes. If any error is detected, the cause
34 therefor shall be ascertained and corrected and an errorless count shall be
35 made before the optical scanning equipment is approved. The test shall be
36 repeated *within five business days* after the completion of the canvass. The
37 programs and ballots shall be sealed, retained and disposed of in the same
38 manner as paper ballots.

39 Sec. ~~14.~~ **{15.}** K.S.A. 25-4613 is hereby amended to read as follows:
40 25-4613. Optical scanning equipment and systems using optical scanning
41 equipment approved by the secretary of state:

42 (a) Shall be capable of being tested to ascertain that the equipment
43 will correctly count votes cast for all offices and on all questions

1 submitted;~~and~~

2 (b) shall be capable of printing in legible form, reports and summaries
3 of the election results as required by articles 30 and 31 of chapter 25 of
4 Kansas Statutes Annotated, *and amendments thereto*;~~and~~

5 (c) shall be capable of tabulating votes for candidates for nomination
6 or election of all political parties officially recognized pursuant to K.S.A.
7 25-302a, and amendments thereto;~~and~~

8 (d) shall be capable of tabulating votes for any independent candidate
9 of any office;~~and~~

10 (e) shall be capable of tabulating votes for constitutional amendments
11 or other questions submitted;~~and~~

12 (f) shall be capable of tabulating the number of "write-in" votes cast
13 for any office;

14 (g) shall not count any votes for an office or upon a question
15 submitted when the voter has cast more votes for such office or upon such
16 question than the voter is entitled to cast;

17 (h) shall provide notification when the voter has cast more votes for
18 such office or upon such question than the voter is entitled to cast;~~and~~

19 (i) shall meet the requirements of the help America vote act of 2002
20 and other federal statutes and regulations governing voting equipment;
21 *and*

22 *(j) shall not have the capability nor shall any component of an*
23 *optical scanning system have the capability to be connected to the internet*
24 *or to any other communications or computer network, including, but not*
25 *limited to, a local area network, wireless network, cellular network or*
26 *satellite network, or to use bluetooth or any other wireless*
27 *communications technology.*

28 ~~Sec. 15. {16.}~~ K.S.A. 25-4401, 25-4402, 25-4403, 25-4404, 25-4405,
29 25-4406, 25-4407, 25-4408, 25-4409, 25-4411, 25-4414, 25-4415, 25-
30 4610 and 25-4613 are hereby repealed.

31 ~~Sec. 16. {17.}~~ This act shall take effect and be in force from and after
32 its publication in the statute book.