

Act No. 109
Public Acts of 1990
Approved by the Governor
June 18, 1990
Filed with the Secretary of State
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**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Ciaramitaro

ENROLLED HOUSE BILL No. 4442

AN ACT to amend sections 591, 794, 794a, 794b, 794c, 795, 795a, 795b, 795c, 796, 796a, 797, 797a, 797b, 797c, 798, 798a, 798b, 798c, and 799 of Act No. 116 of the Public Acts of 1954, entitled "An act to reorganize, consolidate and add to the election laws; to provide for election officials and prescribe their powers and duties; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to prescribe the penalties therefor; and to repeal certain acts and all other acts inconsistent herewith," section 591 as amended by Act No. 116 of the Public Acts of 1988 and section 796a as amended by Act No. 21 of the Public Acts of 1987, being sections 168.591, 168.794, 168.794a, 168.794b, 168.794c, 168.795, 168.795a, 168.795b, 168.795c, 168.796, 168.796a, 168.797, 168.797a, 168.797b, 168.797c, 168.798, 168.798a, 168.798b, 168.798c, and 168.799 of the Michigan Compiled Laws; to add section 799a; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 591, 794, 794a, 794b, 794c, 795, 795a, 795b, 795c, 796, 796a, 797, 797a, 797b, 797c, 798, 798a, 798b, 798c, and 799 of Act No. 116 of the Public Acts of 1954, section 591 as amended by Act No. 116 of the Public Acts of 1988 and section 796a as amended by Act No. 21 of the Public Acts of 1987, being sections 168.591, 168.794, 168.794a, 168.794b, 168.794c, 168.795, 168.795a, 168.795b, 168.795c, 168.796, 168.796a, 168.797, 168.797a, 168.797b, 168.797c, 168.798, 168.798a, 168.798b, 168.798c, and 168.799 of the Michigan Compiled Laws, are amended and section 799a is added to read as follows:

Sec. 591. Except as provided in section 532, the state convention of all political parties for the nomination of candidates for state offices in the even numbered years shall commence not less than 60 days before the general November election. The date, time, and location of the state convention shall be designated by the state central committees of the various political parties in their call for a state convention. The calls shall be issued at least 60 days before the August primaries.

Sec. 794. As used in sections 794 to 799a:

(a) "Audit trail" means a record of the votes cast by each voter that can be printed, recorded, or visually reviewed after the polls are closed. The record shall not allow for the identification of the voter.

(b) "Ballot" means a card, ballot label, paper ballot, envelope, or any medium through which votes are recorded.

(c) "Ballot label" means the display or material containing the names of offices and candidates or the questions to be voted on.

(d) "Counting center" means 1 or more locations selected by the board of election commissioners of the city, county, township, village, or school district at which ballots are counted by means of electronic tabulating equipment or vote totals are electronically received from electronic tabulating equipment and electronically compiled.

(e) "Electronic tabulating equipment" means an apparatus that electronically examines and counts votes recorded on ballots and tabulates the results.

(f) "Electronic voting system" means a system in which votes are recorded and counted by electronic tabulating equipment.

(g) "Escrow account" means a third party approved by the secretary of state for the purpose of taking custody of all source codes, including all revisions or modifications of source codes.

(h) "Source code" means the assembly language or high level language used to program the electronic voting system.

(i) "Voting device" means an apparatus that contains the ballot label and allows the voter to record his or her vote.

(j) "Voting station" means an enclosure provided to ensure ballot secrecy during the voting of the ballot.

Sec. 794a. The board of commissioners of a county, the legislative body of a city or village, the township board of a township, or the school board of a school district, by a majority vote, may authorize, acquire by purchase, lease or otherwise, adopt, experiment with, or abandon an electronic voting system approved for use in this state, in an election, and may use the system in all or a part of the precincts within its boundaries, or in combination with other approved voting systems.

Sec. 794b. The board of commissioners of a county, the legislative body of a city or village, the township board of a township, or the school board of a school district, on the adoption and acquisition of an electronic voting system, shall provide for payment for the system in the same manner as is provided for the payment for voting machines in section 774.

Sec. 794c. The provisions of sections 794 to 799a control with respect to elections where electronic voting systems are used, and shall be liberally construed so as to carry out the purpose of the provisions. A provision of law relating to the conduct of elections that conflicts with sections 794 to 799a does not apply to the conduct of elections with an approved electronic voting system. The secretary of state shall promulgate rules to implement the provisions of sections 794 to 799a, in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 795. (1) An electronic voting system acquired or used in accordance with sections 794 to 799a shall meet all of the following requirements:

(a) Provide for voting in secrecy, except in the case of voters who have received assistance as provided by this act.

(b) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. The electronic tabulating equipment shall reject all choices recorded on the elector's ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question.

(c) Permit an elector, at a presidential election, by a single selection to vote for the candidates of a party for president, vice-president, and presidential electors.

(d) Permit an elector at other than a primary election to vote for all of the candidates of a political party by a single selection or to vote a split or mixed ticket.

(e) Permit an elector in a primary election to vote for the candidates in the party primary of the elector's choice. The electronic tabulating equipment shall reject each ballot on which votes are cast for candidates of more than 1 political party.

(f) Prevent an elector from voting for the same person more than once for the same office.

(g) Be suitably designed for the purpose used; be durably constructed; and be designed to provide for safety, accuracy, and efficiency.

(h) Beginning on the effective date of the amendatory act that added this subdivision, be designed to accommodate the needs of an elderly or handicapped voter.

(i) Record correctly and count accurately each vote properly cast.

(j) Provide an audit trail.

(k) Provide an acceptable method for an elector to vote for a person whose name does not appear on the ballot.

(2) Electronic tabulating equipment that counts votes at the precinct before the close of the polls shall provide a method for rendering the equipment inoperable if vote totals are revealed before the close of the polls.

Sec. 795a. An electronic voting system shall not be used in an election unless it is approved by the board of state canvassers as meeting the requirements of sections 794 and 795. After an electronic voting system is approved, an improvement or change in the electronic voting system shall be submitted to the board of state canvassers for approval pursuant to this section.

Sec. 795b. (1) Ballot labels shall be printed or displayed in plain, clear, black type on white surface. Questions may be printed or displayed on red tinted surface and the names of candidates for nonpartisan offices on blue tinted surface. County questions may be printed or displayed on green tinted surface and local questions may be printed or displayed on buff surface. In a primary election to identify each political party, the titles of offices and the names of candidates may be arranged in vertical columns or in a series of separate pages or displays. The office title with a statement of the number of candidates to be voted for shall be printed or displayed above or at the side of the names of the candidates for that office. The offices and candidates shall be printed or displayed in the order provided by law, or if no such provision is made, in the order prescribed by the board of election commissioners of the county, city, village, township, or school district. If there are more candidates for an office than can be printed or displayed in 1 column or on 1 page or display, the ballot label shall be clearly marked that the list of candidates is continued on the following column, page, or display, and so far as possible, the same number of names shall be printed or displayed on each column, page, or display. Arrows or other directional signs may be used to indicate the place to vote for each candidate or question.

(2) Ballots that are processed through electronic tabulating equipment after the elector has voted shall have an attached, numbered, perforated stub.

Sec. 795c. The different parts of the ballot, such as partisan, nonpartisan, and questions, shall be prominently indicated on the ballot label, and, if practicable, each part may be placed on a separate page, column, or display. If 2 or more elections are held on the same day, the ballot label shall be clearly marked to indicate the ballot for each election. In partisan elections the ballot label shall include a position by which the voter may by a single selection record a straight party ticket vote for all the candidates of 1 party. The voter may vote a split or mixed ticket.

Sec. 796. Sample ballots, which shall be facsimile copies of the official ballot or ballot labels, shall be provided as required by law. At least 2 copies shall be posted in each polling place on election day. Sample ballots may be printed on a single page or on a number of pages stapled together.

Sec. 796a. (1) Before an election at which an electronic voting system is used, the board of election commissioners of the county, city, village, township, or school district shall have the system prepared for the election. The board shall provide the election board of each voting precinct with the necessary equipment and supplies.

(2) Before an election a sufficient number of voting stations shall be provided as needed to ensure the orderly conduct of the election, but in no case shall less than 1 voting station be provided for each 400 registered voters in each precinct. If counting centers are used, the board of election commissioners of the county, city, village, township, or school district shall establish 1 or more counting centers as needed before the election.

Sec. 797. Not less than 30 minutes before the opening of the polls, the inspectors of election shall arrive at the polling place and prepare the polling place for voting. The inspectors of election shall determine that the correct ballot has been provided to the precinct by comparing the ballot provided with the sample ballot and any other documents provided to the precinct. The inspectors of election shall complete required tests of the equipment of the electronic voting system.

Sec. 797a. (1) Before entering the voting station, each elector shall be offered instruction in the proper method of voting on the system. If the elector needs additional instruction after entering the voting station, 2 election inspectors may, if necessary, enter the voting station and provide the additional instructions.

(2) If the system provides for the use of a ballot that is processed through electronic tabulating equipment after the elector votes, the elector shall transport the ballot to the ballot box, or other approved ballot container, without exposing any votes. An election inspector shall ascertain, by comparing the number appearing on the ballot stub with the number recorded on the poll list, that the ballot delivered by the voter is the same ballot that was issued to the elector. If the numbers do not agree, the ballot shall be marked as "rejected", and the elector shall not be allowed to vote. If the numbers agree, an election inspector shall remove the stub. Except as otherwise provided in this subsection, the election inspector shall deposit the ballot in the ballot box or other approved ballot container. If electronic tabulating equipment that deposits the voted ballot into the ballot box or other approved ballot container is used at the precinct, the election inspector shall return the ballot to the elector, and the elector shall then deposit the ballot into the electronic tabulating equipment.

(3) A ballot from which the stub is detached shall not be accepted by the election inspector in charge of the ballot box or other approved ballot container. An elector who spoils his or her ballot may return it and secure another ballot. The word "spoiled" shall be written across the face of the ballot, and the ballot shall be marked and secured for later return.

Sec. 797b. The secretary of state shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, governing the tabulation of ballots, certification of results, delivery of ballots and certified results, and sealing of devices and ballot boxes after the polls are closed.

Sec. 797c. A person or company providing a computer program that examines, counts, tabulates, and prints results of the votes cast by a voter on an electronic voting system shall place in an escrow account a copy of the source code of the program and any subsequent revisions or modifications of the source code. The secretary of state or an authorized agent of the secretary of state shall agree to use the information contained in the source code solely for the purpose of analyzing and testing the software and shall not disclose proprietary information to any other person or agency without the prior written consent of the vendor.

Sec. 798. Before beginning the count of ballots, the board of election commissioners shall have the electronic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be given at least 48 hours before the test by publication in a newspaper published in the county, city, village, township, or school district where the equipment is used. If a newspaper is not published in that county, city, village, township, or school district, the notice shall be given by publication in a newspaper of general circulation in that county, city, village, township, or school district. The test shall be conducted in the manner prescribed by rules promulgated by the secretary of state pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. In the test, a different number of valid votes shall be assigned to each candidate for an office, and for and against each question. If an error is detected, its cause shall be ascertained and the error corrected, and an errorless count shall be made and certified to by the board before the count is started. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved as official. On completion of the count, the programs, test materials, and ballots arranged by precincts shall be sealed and retained as provided by rules promulgated by the secretary of state pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 798a. If a separate counting center is used, all proceedings shall be under the direction of the clerk or authorized assistants. The proceedings shall be conducted under observation by the public, but no persons except those authorized shall touch a ballot or return. Persons who engage in processing and counting of the ballots shall be deputized and take an oath that they will faithfully perform their assigned duties. If a ballot is damaged or defective so that it cannot properly be counted by the electronic tabulating equipment, a true duplicate copy shall be made and substituted for the damaged or defective ballot. Each duplicate ballot shall be clearly labeled "duplicate", and shall bear a serial number, which shall be recorded on the damaged or defective ballot.

Sec. 798b. Before the conduct of the official count, the clerk may conduct an unofficial count in order to provide early unofficial returns to the public. Upon completion of the count, the official returns shall be open to the public. The return of the electronic tabulating equipment, to which have been added the write-in and absentee votes if necessary, shall constitute, after being duly certified, the official return of each precinct or election district. If it becomes impracticable to count all or a part of the ballots with tabulating equipment, the clerk may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

Sec. 798c. (1) Absentee votes may be cast on paper ballots or ballot cards or both. Absent voter ballots may be counted in the various voting precincts or may be counted by absent voter counting boards. Absentee votes cast on paper ballots may be recorded by election inspections on ballot cards for counting by tabulating equipment.

(2) In an election held under this act, absent voters' ballots may be voted and processed in the manner provided by this chapter.

Sec. 799. A person shall not willfully injure any voting device, ballot, or other record or equipment or interfere or attempt to interfere with its correct operation. The inspectors of the election shall enforce the provisions of this section. The inspectors of election, at such intervals as they consider proper, shall examine any voting device, ballot, or other equipment used in the election to ascertain whether it has been injured, altered, or defaced, to detect the wrongdoer, and to repair the injury.

Sec. 799a. (1) This section governs the recounting of a ballot on which a voter has made a selection by means of a punch, mark, or stamp.

(2) If the voting system requires that the elector cast a vote by punching out a hole in a ballot, the vote shall not be considered valid unless the portion of the ballot designated as a voting position is completely removed or is hanging by 1 or 2 corners or the equivalent.

(3) If the voting system requires that the elector cast a vote by marking or stamping a predefined area on the ballot, the vote shall not be considered valid unless it is clearly evident that the intent of the voter was to cast a vote. In determining intent of the voter, the board of canvassers shall compare the mark or stamp subject to recount with other marks or stamps appearing on the ballot.

Section 2. Section 796b of Act No. 116 of the Public Acts of 1954, being section 168.796b of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.