

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 amending K.S.A. 25-4401, 25-4402, 25-4403, 25-4404, 25-4405, 25-
14 4406, 25-4407, 25-4408, 25-4409, 25-4411, 25-4414, 25-4415, 25-4610
15 and 25-4613 and repealing the existing sections.

16

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

18 Section 1. K.S.A. 25-4401 is hereby amended to read as follows: 25-
19 4401. As used in this act unless the context otherwise requires:

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

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

25 (c) "Electronic or electromechanical voting system" means a system
26 of casting votes and tabulating ballots employing automatic tabulating
27 equipment or data processing equipment including a direct recording
28 electronic system.

29 (d) "Direct recording electronic system" means a system that records
30 votes by means of a ballot display provided with mechanical or electro-
31 optical components that can be activated by the voter, that processes data
32 by means of a computer program, that records voting data and ballot
33 images in memory components, that produces a tabulation of the voting
34 data stored in a removable memory component and as printed copy, and
35 that may also provide a means for transmitting individual ballots or vote
36 totals to a central location for consolidating and reporting results from

1 precincts at the central location.

2 (e) *"Electronic poll book" means an electronic list of registered*
3 *voters for a particular precinct or polling location that may be transported*
4 *to a polling location and on which each voter may sign the voter's*
5 *signature. "Electronic poll book" includes both the hardware and software*
6 *necessary for operation. An "electronic poll book" is a type of "poll book"*
7 *as provided in K.S.A. 25-2507, and amendments thereto. "Electronic poll*
8 *book" does not include automatic tabulating equipment or data processing*
9 *equipment, including a direct recording electronic system, that are*
10 *components of an electronic or electromechanical voting system.*

11 Sec. 2. K.S.A. 25-4402 is hereby amended to read as follows: 25-
12 4402. Subject to the limitations of article 44 of chapter 25 of Kansas
13 Statutes Annotated, and amendments thereto, the board of county
14 commissioners and the county election officer of any county are
15 authorized to purchase, lease or rent and use electronic or
16 electromechanical voting systems *or electronic poll books* as provided by
17 K.S.A. 25-4403, and amendments thereto.

18 Sec. 3. K.S.A. 25-4403 is hereby amended to read as follows: 25-
19 4403. (a) The board of county commissioners and the county election
20 officer of any county may provide an electronic or electromechanical
21 voting system *or electronic poll books* to be used at voting places, or for
22 advance voting in the county at national, state, county, township, city and
23 school primary and general elections and in question submitted elections.

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

29 (c) The board of county commissioners and the county election
30 officer of any county may adopt, experiment with or abandon any
31 electronic or electromechanical system *or electronic poll books* herein
32 authorized and approved for use in the state and may use such a system in
33 all or any part of the voting areas within the county or in combination with
34 an optical scanning voting system or with regular paper ballots. Whenever
35 the secretary of state rescinds approval of any voting system *or electronic*
36 *poll books*, the board of county commissioners and the county election
37 officer shall abandon the system *or electronic poll books* until changes
38 therein required by the secretary of state have been made, or if the
39 secretary of state advises that acceptable changes cannot be made therein,
40 the abandonment shall be permanent.

41 (d) On and after the effective date of this act, no board of county
42 commissioners in any county may purchase, lease or rent any direct
43 recording electronic system, as defined in K.S.A. 25-4401(d), and

1 amendments thereto. On and after the effective date of this act, no board of
2 county commissioners in any county may purchase, lease or rent any
3 electronic or electromechanical voting system, unless such system:

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

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

9 (e) *No component of an electronic or electromechanical voting*
10 *system shall have the capability to be connected to the internet or to any*
11 *other communications or computer network, including, but not limited to,*
12 *a local area network, wireless network, cellular network or satellite*
13 *network, or to use bluetooth or any other wireless communications*
14 *technology.*

15 (f) *On and after July 1, 2022, no board of county commissioners or*
16 *the county election officer of any county may purchase, lease or rent any*
17 *electronic poll books unless the kind or make of such poll books have been*
18 *certified by the secretary of state. No electronic poll book may be operated*
19 *unless its network connectivity meets the security standards established by*
20 *the secretary of state.*

21 Sec. 4. K.S.A. 25-4404 is hereby amended to read as follows: 25-
22 4404. The secretary of state shall examine and approve the kinds or makes
23 of electronic or electromechanical voting systems, including operating
24 systems, firmware and software, *and electronic poll books*, and no kind or
25 make of such system *or electronic poll book* shall be used at any election
26 unless and until it receives certification by the secretary of state and a
27 statement thereof is filed in the office of the secretary of state.

28 Sec. 5. K.S.A. 25-4405 is hereby amended to read as follows: 25-
29 4405. (a) Any person, firm or corporation desiring to sell any kind or make
30 of electronic or electromechanical voting system *or electronic poll book* to
31 political subdivisions in Kansas may in writing request the secretary of
32 state to examine the kind or make of the system which it desires to sell and
33 shall accompany the request with a certified check in the sum of \$250
34 payable to the secretary of state to be used to defray a portion of the costs
35 of such examination, and shall furnish at its own expense such system to
36 the secretary of state for use in examining such system. The secretary of
37 state may require such person, firm or corporation to furnish a competent
38 person to explain the system *or electronic poll book* and demonstrate by
39 the operation of such system *or electronic poll book* that it complies with
40 *any applicable* state and federal laws *and regulations*. The secretary of
41 state may employ a competent person or persons to assist in the
42 examination and to advise the secretary as to the sufficiency of such
43 ~~machine~~ *voting system or electronic poll book* and to pay such persons

1 reasonable compensation therefor. The costs of employment and any other
2 costs associated with the approval of such system shall be paid by the
3 applicant.

4 (b) The secretary of state may require a review of any theretofore
5 approved electronic or electromechanical voting system *or electronic poll*
6 *book* and the equipment and operation thereof. Such review shall be
7 commenced by the secretary of state giving written notice thereof to the
8 person, firm or corporation which sought approval of the *voting system or*
9 *electronic poll book* and to each county election officer and county
10 commissioner of counties known to have purchased, leased or rented any
11 such *voting system or electronic poll book* or equipment thereof. Such
12 notice shall fix a time and place of hearing at which those persons wishing
13 to be heard may appear and give oral or written testimony and explanation
14 of the *voting system or electronic poll book*, its equipment and operation
15 and experience had therewith. After such hearing date and after such
16 review as the secretary of state deems appropriate, the secretary of state
17 may renew approval of the *voting system or electronic poll book*, require
18 changes therein for continued approval thereof or rescind approval
19 previously given on either a conditioned or permanent basis.

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

24 Sec. 6. K.S.A. 25-4406 is hereby amended to read as follows: 25-
25 4406. Electronic or electromechanical voting systems approved by the
26 secretary of state:

27 (a) Shall provide for voting for the candidates for nomination or
28 election of all political parties officially recognized pursuant to K.S.A. 25-
29 302a, and amendments thereto;

30 (b) shall permit a voter to vote for any independent candidate for any
31 office;

32 (c) shall provide for voting on constitutional amendments or other
33 questions submitted;

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

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

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

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

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

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

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

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

14 (l) shall have the ability to be tested both before an election and prior
15 to the date of canvass. The test shall include the ability to match the paper
16 records of such machines to the vote totals contained in the machines; ~~and~~

17 (m) shall meet the requirements of the help America vote act of 2002
18 and other federal statutes and regulations governing voting equipment;
19 *and*

20 (n) *shall not have the capability nor shall any component of an*
21 *electronic or electromechanical voting system have the capability to be*
22 *connected to the internet or to any other communications or computer*
23 *network, including, but not limited to, a local area network, wireless*
24 *network, cellular network or satellite network, or to use bluetooth or any*
25 *other wireless communications technology.*

26 Sec. 7. K.S.A. 25-4407 is hereby amended to read as follows: 25-
27 4407. (a) When a board of commissioners and county election officer have
28 determined that such—~~a kind or make of electronic or electromechanical~~
29 *voting system or electronic poll book* shall be used in a county, the board
30 of county commissioners and the county election officer shall provide such
31 number of units as shall be necessary to equip voting places for the use of
32 voters.

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

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

42 Sec. 8. K.S.A. 25-4408 is hereby amended to read as follows: 25-
43 4408. The board of county commissioners shall provide for the storage of

1 electronic or electromechanical voting systems *and electronic poll books*.
2 The county election officer shall be in complete charge of the *voting*
3 *systems and electronic poll books*, their safekeeping when not in use and
4 keeping them in repair and working order and shall see that they are
5 delivered to the voting places in time for all arrangements to be made and
6 for the *voting systems and electronic poll books* to be ready for use at the
7 hour of opening the polls. After the election the county election officer
8 shall see that the *voting systems and electronic poll books* are returned to
9 the place of storage, or are secured for on-site storage.

10 Sec. 9. K.S.A. 25-4409 is hereby amended to read as follows: 25-
11 4409. (a) The ballot information, shall, as far as practicable, be in the order
12 of arrangement provided for paper ballots except that such information
13 may be in vertical or horizontal rows, or in a number of separate pages.
14 Voting squares or ovals may be before or after the names of candidates and
15 statements of questions, and shall be of such size as is compatible with the
16 type of system used. Ballot information shall be displayed in as plain clear
17 type and size as the ballot spaces will reasonably permit. Where candidate
18 rotation is used, the voting equipment shall be capable of meeting the
19 requirements otherwise provided in law.

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

24 (c) *Before, during and after the operation of the polling place, the*
25 *election judges shall*~~ensure that no component of the~~ **make all electronic**
26 **or electromechanical voting**~~system is connected~~ **systems and vote**
27 **tabulating equipment available to any candidate or any authorized poll**
28 **agent for review to ensure there is no connectivity to the internet or to**
29 **any other communications or computer network, including, but not limited**
30 **to, a local area network, wireless network, cellular network or satellite**
31 **network, or using bluetooth or any other wireless communications**
32 **technology.**

33 Sec. 10. K.S.A. 25-4411 is hereby amended to read as follows: 25-
34 4411. (a) The vote tabulation equipment may be located at any place
35 within the county approved by the county election officer.

36 (b) Within five days prior to the date of the election, the county
37 election officer shall have the automatic tabulating equipment tested to
38 ascertain that the equipment will correctly count the votes cast for all
39 offices and on all questions submitted. Public notice of the time and place
40 of the test shall be given at least 48 hours prior thereto by publication once
41 in a newspaper of general circulation in the county or city where such
42 equipment is to be used *and on the county website, if the county has a*
43 *website*. The test shall be open to representatives of the political parties,

1 candidates, the press and the public. The test shall be conducted by
2 processing a preaudited group of ballots marked to record a predetermined
3 number of valid votes for each candidate and on each measure, and shall
4 include for each office one or more ballots which have votes in excess of
5 the number allowed by law in order to test the ability of the automatic
6 tabulating equipment to reject such votes. If any error is detected, the
7 cause therefor shall be ascertained and corrected and an errorless count
8 shall be made before the automatic tabulating equipment is approved. The
9 test shall be repeated *within five business days* after the completion of the
10 canvass. The equipment, programs and ballots shall be secured and
11 retained by the county election officer.

12 Sec. 11. K.S.A. 25-4414 is hereby amended to read as follows: 25-
13 4414. Electronic or electromechanical voting system *or electronic poll*
14 *book* fraud is:

15 (a) Being in unlawful or unauthorized possession of *electronic or*
16 *electromechanical* voting system equipment, *electronic poll book*
17 *equipment*, computer programs, operating systems, firmware, software or
18 ballots; or

19 (b) intentionally tampering with, altering, disarranging, defacing,
20 impairing or destroying any electronic or electromechanical *voting* system,
21 *electronic poll book* or component part thereof, or any ballot used by such
22 *electronic or electromechanical voting* systems.

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

25 Sec. 12. K.S.A. 25-4415 is hereby amended to read as follows: 25-
26 4415. The secretary of state may adopt rules and regulations:

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

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

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

32 Sec. 13. K.S.A. 25-4610 is hereby amended to read as follows: 25-
33 4610. (a) The optical scanning equipment may be located at any place
34 within the county approved by the county election officer.

35 (b) Within five days prior to the date of the election, the county
36 election officer shall have the optical scanning equipment tested to
37 ascertain that the equipment will correctly count the votes cast for all
38 offices and on all questions submitted. Public notice of the time and place
39 of the test shall be given at least 48 hours prior thereto by publication once
40 in a newspaper of general circulation in the county where such equipment
41 is to be used *and on the county website, if the county has a website*. The
42 test shall be open to representatives of the political parties, candidates, the
43 press and the public. The test shall be conducted by processing a

1 preaudited group of ballots marked as to record a predetermined number of
2 valid votes for each candidate and on each question submitted, and shall
3 include for each office one or more ballots which have votes in excess of
4 the number allowed by law in order to test the ability of the optical
5 scanning equipment to reject such votes. If any error is detected, the cause
6 therefor shall be ascertained and corrected and an errorless count shall be
7 made before the optical scanning equipment is approved. The test shall be
8 repeated *within five business days* after the completion of the canvass. The
9 programs and ballots shall be sealed, retained and disposed of in the same
10 manner as paper ballots.

11 Sec. 14. K.S.A. 25-4613 is hereby amended to read as follows: 25-
12 4613. Optical scanning equipment and systems using optical scanning
13 equipment approved by the secretary of state:

14 (a) Shall be capable of being tested to ascertain that the equipment
15 will correctly count votes cast for all offices and on all questions
16 submitted;~~and~~

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

20 (c) shall be capable of tabulating votes for candidates for nomination
21 or election of all political parties officially recognized pursuant to K.S.A.
22 25-302a, and amendments thereto;~~and~~

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

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

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

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

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

34 (i) shall meet the requirements of the help America vote act of 2002
35 and other federal statutes and regulations governing voting equipment;
36 *and*

37 (j) *shall not have the capability nor shall any component of an*
38 *optical scanning system have the capability to be connected to the internet*
39 *or to any other communications or computer network, including, but not*
40 *limited to, a local area network, wireless network, cellular network or*
41 *satellite network, or to use bluetooth or any other wireless*
42 *communications technology.*

43 Sec. 15. K.S.A. 25-4401, 25-4402, 25-4403, 25-4404, 25-4405, 25-

1 4406, 25-4407, 25-4408, 25-4409, 25-4411, 25-4414, 25-4415, 25-4610
2 and 25-4613 are hereby repealed.

3 Sec. 16. This act shall take effect and be in force from and after its
4 publication in the statute book.