

**SENATE BILL No. 94**

By Committee on Federal and State Affairs

1-28

1 AN ACT concerning elections; relating to voting systems and procedures;  
2 amending K.S.A. 25-1122a, 25-1138 and 25-3006 and K.S.A. 2020  
3 Supp. 25-2810, 25-4401, 25-4404, 25-4406, 25-4412, 25-4603, 25-  
4 4611 and 25-4613 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) (1) (A) All voting systems used for elections in  
8 this state shall require the use of an individual, durable, voter-verified  
9 paper ballot of the voter's vote that:

10 (i) Shall be marked by the voter, or by a person assisting the voter as  
11 otherwise permitted by law, either by hand or by use of a voting machine  
12 that is a non-tabulating paper ballot marking or printing device or system  
13 that may be electromechanical or electronic;

14 (ii) shall be made available to the voter for inspection and verification  
15 by the voter after the voter has marked the ballot but before the voter's  
16 vote is cast and counted, that may be spoiled by the voter if it fails to  
17 reflect the voter's choices and that permits the voter to cast a new paper  
18 ballot; and

19 (iii) shall be canvassed by hand or read and tabulated by vote-  
20 tabulating equipment consisting of optical scanning equipment or other  
21 counting equipment that counts and tabulates paper ballots.

22 If the paper ballots are read and tabulated by vote-tabulating equipment  
23 consisting of optical scanning equipment or other counting equipment that  
24 counts and tabulates paper ballots, a sample hand-counted audit of the  
25 paper ballots cast shall be conducted by each precinct as provided in  
26 subsection (b).

27 (B) The voting system shall provide the voter with an opportunity to  
28 correct any error on the paper ballot before the paper ballot is secured and  
29 preserved.

30 (3) The voting system shall not preserve the paper ballots in any  
31 manner that makes it possible, at any time after the ballot has been cast, to  
32 associate a voter with the record of the voter's vote without the voter's  
33 consent.

34 (4) The paper ballot shall constitute the official ballot and shall be  
35 preserved and used as the official ballot suitable for purposes of any audit  
36 or recount conducted with respect to any election in which the voting

1 system is used. Each paper ballot shall be counted by hand in any recount  
2 conducted with respect to any election, unless the requestor of a recount  
3 pursuant to K.S.A. 25-3107, and amendments thereto, elects not to have  
4 the ballots counted by hand.

5 (5) In the event of any inconsistencies or irregularities between any  
6 electronic vote tallies and the vote tallies determined by counting by hand  
7 the paper ballots cast, the paper ballots as counted by hand shall be the true  
8 and correct record of the votes cast.

9 (b) If paper ballots are read and tabulated by vote-tabulating  
10 equipment consisting of optical scanning equipment or other counting  
11 equipment that counts and tabulates paper ballots, a sample hand-counted  
12 audit of the paper ballots cast shall be conducted at the voting place or  
13 counting place by the election board. The audit shall consist of  
14 examination of voter markings on randomly selected paper ballots and  
15 comparison of the results to the voting system's tabulation as reflected in  
16 the corresponding cast vote records, in accordance with rules and  
17 regulations and audit specifications and parameters to be adopted by the  
18 secretary of state. The results shall be reported to the county election  
19 officer, the canvassing board and the secretary of state.

20 (c) The use of poll books not requiring a hand-written signature shall  
21 be prohibited.

22 (d) The secretary of state shall adopt rules and regulations to  
23 implement the provisions of this section.

24 Sec. 2. K.S.A. 25-1122a is hereby amended to read as follows: 25-  
25 1122a. The county election officer of any county in which voting machines  
26 are used may authorize persons filing applications for advance voting  
27 ballots as provided by K.S.A. 25-1122, and amendments thereto, to cast  
28 their votes upon voting machines. If the county election officer authorizes  
29 the use of voting machines by advance voting voters~~such~~, the officer shall  
30 equip the office of the county election officer with enough voting  
31 machines to enable all advance voting voters to cast their votes upon~~such~~  
32 the machines.

33 ~~Such~~ The voting machines shall be of a make certified by the secretary  
34 of state~~and~~, shall be sealed in a manner to allow tabulation of the total  
35 vote only at the time of the closing of the polls on the day of the election  
36 for which~~such~~ the machines are used *and shall be used in conformity with*  
37 *section 1, and amendments thereto.*

38 Sec. 3. K.S.A. 25-1138 is hereby amended to read as follows: 25-  
39 1138. In counties where voting machines are used, the special election  
40 board shall proceed by using voting machines *as permitted by section 1,*  
41 *and amendments thereto*, to originally canvass, count and tally the advance  
42 voting ballots in accordance with K.S.A. 25-1135~~to~~ *through* 25-1137, and  
43 amendments thereto, *and section 1, and amendments thereto.*

1       Sec. 4. K.S.A. 2020 Supp. 25-2810 is hereby amended to read as  
2 follows: 25-2810. (a) Each election board shall have control of its voting  
3 place and election procedure under the sole supervision of the secretary of  
4 state, county election officer, deputy county election officers and the  
5 supervising judge. The election board shall open the polls at the time  
6 specified by the county election officer. The judges shall have charge of  
7 the ballots and the supervising judge shall designate one of their number to  
8 furnish them to voters as provided by law.

9       (b) Any election board of five or more members may be divided by  
10 the county election officer into a receiving board and a counting board,  
11 and the receiving board shall furnish and receive ballots and record the  
12 names of voters. The receiving board shall have control of the voting place  
13 and election procedure under the sole supervision and direction of the  
14 secretary of state, county election officer, deputy county election officers,  
15 and the supervising judge. The receiving board shall open and close the  
16 polls at the time specified by the county election officer.

17       (c) The counting board or boards, if any, shall proceed to their voting  
18 place after the opening of the polls at the hour specified by the county  
19 election officer.

20       (d) At national and state elections, both primary and general, the  
21 counting board, if any, shall take charge of one of the ballot boxes  
22 containing the national and state ballots already cast in that precinct. ~~The~~  
23 *counting board* shall retire to a partitioned room or space in the voting  
24 place provided for that purpose and there proceed to count and tabulate the  
25 ballots cast as it shall find them deposited in the national and state ballot  
26 box. The receiving board shall continue to receive the votes of electors in  
27 another national and state ballot box, and in a county and township ballot  
28 box until such time as the counting board shall have finished counting and  
29 tabulating the ballots cast in the first national and state ballot box. ~~They~~  
30 *The counting board* shall then exchange the first box for the second  
31 national and state box, and so continue until they have counted and  
32 tabulated all the votes cast on that election day in the national and state  
33 ballot boxes. Counting boards may, in like manner, count the ballots in  
34 other ballot boxes when only an unsubstantial number of national and state  
35 ballots have been cast and are uncounted, and likewise at elections where  
36 there are no national and state ballots. Prior to the closing of the polls, no  
37 ballots shall be counted from any ballot box containing less than 50  
38 ballots. No result of the count shall be made known to any person not on  
39 the election board, except the county election officer or such officer's  
40 deputies, until after the time to close the polls.

41       (e) At city and school elections, both primary and general, the  
42 counting board, if any, shall take charge of a ballot box containing one  
43 kind of ballot. Such board shall then proceed, as in national and state

1 elections, to count and tabulate the ballots cast. When the ballots in such  
2 ballot box have been counted, the box shall be exchanged for another  
3 ballot box and so continue until all of the ballots of every kind are counted  
4 and tabulated.

5 (f) When the hour arrives for closing the polls, the election board,  
6 including both the receiving and counting boards if any, shall continue in  
7 the work of counting, tabulating and summarizing the votes, and making  
8 their certificates as to the result of the election.

9 (g) All of the judges and clerks at the same voting place on duty  
10 when the polls close shall unite in certifying the election results as  
11 provided in K.S.A. 25-3006, and amendments thereto.

12 (h) (1) In accordance with rules and regulations adopted by the  
13 secretary of state, the county election officer may allocate staffing  
14 resources as needed at the voting place except that two members of the  
15 election board, one of which is the supervising judge, shall be on duty for  
16 the entire time the polls are open.

17 (2) The secretary of state may adopt rules and regulations to  
18 implement the provisions of this section.

19 (i) *The secretary of state and county election officers shall ensure*  
20 *that the provisions of section 1, and amendments thereto, are enforced.*

21 Sec. 5. K.S.A. 25-3006 is hereby amended to read as follows: 25-  
22 3006. (a) When the election board completes its canvass, it shall make  
23 three abstracts of the vote cast for all candidates whose names are printed  
24 on the ballot, all write-in votes cast and all votes cast on questions  
25 submitted. Such abstracts shall be made under the direction of the  
26 supervising judge upon forms provided by the county election officer.  
27 Each of such three abstracts shall bear a certificate of the validity thereof  
28 and each certificate shall be signed by all of the clerks and judges at the  
29 voting place.

30 (b) In voting places where voting machines equipped with printed  
31 election returns mechanisms are used, the counter compartment shall not  
32 be opened and the original and duplicate originals of the printed return  
33 sheets of the votes cast on questions submitted and for candidates whose  
34 names are printed on the official ballot labels, together with the tabulation  
35 and inclusion of any write-in votes appearing on the paper roll shall  
36 constitute the official abstract for the votes cast on that machine, when  
37 coupled with the other originals and duplicate originals of other machines  
38 in the voting place and certified as abstracts of the vote cast at such voting  
39 place, upon forms and in the manner prescribed by the county election  
40 officer.

41 (c) The secretary of state may adopt rules and regulations prescribing  
42 procedures and forms to be used in carrying out the provisions of this  
43 section and K.S.A. 25-1338, ~~as amended~~ *and amendments thereto.*

1 (d) *On and after the effective date of this act, the use of voting*  
2 *machines shall be permitted only in accordance with the provisions of*  
3 *section 1, and amendments thereto.*

4 Sec. 6. K.S.A. 2020 Supp. 25-4401 is hereby amended to read as  
5 follows: 25-4401. As used in this act *and unless the context otherwise*  
6 *requires:*

7 (a) "~~Ballot~~" ~~may include an electronic display or printed document~~  
8 *means a paper ballot as defined in K.S.A. 25-4601, and amendments*  
9 *thereto, and section 1, and amendments thereto, containing the offices and*  
10 *questions on which voters in a specified voting area are eligible to vote.*

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

13 (c) "Electronic or electromechanical voting system" means a system  
14 of casting votes and tabulating ballots employing automatic tabulating  
15 equipment or data processing equipment ~~including as permitted by section~~  
16 *1, and amendments thereto, and does not include a direct recording*  
17 *electronic system.*

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

27 Sec. 7. K.S.A. 2020 Supp. 25-4404 is hereby amended to read as  
28 follows: 25-4404. The secretary of state shall examine and approve the  
29 kinds or makes of electronic or electromechanical voting systems,  
30 including operating systems, firmware and software, and no kind or make  
31 of such system shall be used at any election unless and until it receives  
32 certification by the secretary of state and a statement thereof is filed in the  
33 office of the secretary of state. *All such voting systems shall conform to the*  
34 *provisions of section 1, and amendments thereto.*

35 Sec. 8. K.S.A. 2020 Supp. 25-4406 is hereby amended to read as  
36 follows: 25-4406. Electronic or electromechanical voting systems  
37 approved by the secretary of state *shall:*

38 (a) ~~Shall~~ provide for voting for the candidates for nomination or  
39 election of all political parties officially recognized pursuant to K.S.A. 25-  
40 302a, and amendments thereto;

41 (b) ~~shall~~ permit a voter to vote for any independent candidate for any  
42 office;

43 (c) ~~shall~~ provide for voting on constitutional amendments or other

1 questions submitted;

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

6 (e) ~~shall~~ afford the voter an opportunity to vote for any or all  
7 candidates for an office for whom the voter is by law entitled to vote and  
8 no more, and at the same time shall prevent the voter from voting for the  
9 same candidate twice for the same office;

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

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

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

16 (i) ~~shall~~ reject all votes for an office or upon a question submitted  
17 when the voter has cast more votes for such office or upon such question  
18 than the voter is entitled to cast;

19 (j) ~~shall~~ provide for instruction of voters on the operation of voting  
20 machines, illustrating the manner of voting by the use of such systems.  
21 The instruction may include printed materials or demonstration by election  
22 board workers;

23 (k) ~~shall~~ provide a paper record of each vote cast, produced at the  
24 time the vote is cast;

25 (l) ~~shall~~ have the ability to be tested both before an election and prior  
26 to the date of canvass. The test shall include the ability to match the paper  
27 records of such machines to the vote totals contained in the machines *and*  
28 *otherwise meet the requirements of section 1, and amendments thereto*; and

29 (m) shall meet the requirements of the help America vote act of 2002  
30 and other federal statutes and regulations governing voting equipment.

31 Sec. 9. K.S.A. 2020 Supp. 25-4412 is hereby amended to read as  
32 follows: 25-4412. (a) In voting areas where electronic or  
33 electromechanical voting systems are used, as soon as the polls are closed,  
34 the supervising judge shall secure the voting equipment to prevent further  
35 voting. The judge shall count the number of ballots or envelopes  
36 containing ballots that have been cast to determine that the number of  
37 ballots equals the number of voters shown on the poll book. If there is a  
38 discrepancy, this fact shall be reported in writing to the county election  
39 officer with the reasons therefor if known. The write-in votes shall then be  
40 counted by the supervising judge and clerks.

41 (b) The supervising judge shall place ~~any~~ all paper ballots that have  
42 been cast in the container provided for the purpose, which shall be sealed  
43 and delivered forthwith by two election board members who shall not be

1 of the same political party, to the counting location together with the  
2 provisional, unused, void and defective ballots and returns.

3 (c) All proceedings at the counting location shall be under the  
4 direction of the county election officer and under the observation of two  
5 election board members who shall not be of the same political party and  
6 shall be open to the public, but no persons except those employed and  
7 authorized for the purpose shall touch any ballot, ballot container or return.  
8 If any paper ballot is damaged or defective so that it cannot properly be  
9 counted by the automatic tabulating equipment, such ballot shall be  
10 manually counted. The totals for all such ballots manually counted shall be  
11 added to the totals for the respective precincts or election districts.

12 (d) The return printed by the automatic tabulating equipment, to  
13 which has been added the return of write-in and advance voting votes and  
14 manually counted votes, shall constitute the official return of each precinct  
15 or election district. Upon completion of the count the returns shall be open  
16 to the public. A copy of the returns shall be posted at the central counting  
17 place or at the office of the election officer in lieu of the posting of returns  
18 at the individual precincts.

19 (e) If for any reason it becomes impracticable to count all or a part of  
20 the ballots with tabulation equipment, the county election officer may  
21 direct that they be counted manually, following as far as practicable the  
22 provisions governing the counting of paper ballots.

23 (f) *An audit shall be conducted as provided by section 1, and*  
24 *amendments thereto.*

25 Sec. 10. K.S.A. 2020 Supp. 25-4603 is hereby amended to read as  
26 follows: 25-4603. The secretary of state shall examine and approve the  
27 kinds or makes of systems using optical scanning equipment, including  
28 operating systems, firmware and software, and no kind or make of such  
29 system shall be used at any election unless and until it receives  
30 certification by the secretary of state and a statement thereof is filed in the  
31 office of the secretary of state. *Optical scanning equipment shall be used*  
32 *in accordance with section 1, and amendments thereto.*

33 Sec. 11. K.S.A. 2020 Supp. 25-4611 is hereby amended to read as  
34 follows: 25-4611. (a) As soon as the polls are closed, the supervising judge  
35 shall count the number of ballots or envelopes containing ballots that have  
36 been cast to determine that the number of ballots equals the number of  
37 voters shown on the poll book. If there is a discrepancy, this fact shall be  
38 reported in writing to the county election officer with the reasons therefor  
39 if known.

40 (b) The election judge shall place all ballots that have been cast in the  
41 container provided for the purpose, which shall be sealed and delivered by  
42 two election board members who shall not be of the same political party, to  
43 the counting location together with the provisional, unused, void and

1 defective ballots and returns.

2 (c) All proceedings at the counting location shall be under the  
3 direction of the county election officer and under the observation of two  
4 election board members who shall not be of the same political party and  
5 shall be open to the public, but no persons except those employed and  
6 authorized for the purpose shall touch any ballot, ballot container or return.  
7 If any ballot is damaged or defective so that it cannot properly be counted  
8 by the optical scanning equipment, it shall be counted manually.

9 (d) Advance voting ballots may be counted by the optical scanning  
10 equipment if they have been marked in a manner which will enable them  
11 to be properly counted by such equipment. If any advance voting ballot is  
12 damaged or defective so that it cannot properly be counted by the optical  
13 scanning equipment, it shall be counted manually.

14 (e) The return printed by the optical scanning equipment, to which  
15 has been added the return of write-in and advance voting votes and  
16 manually counted votes, shall constitute the official return of each precinct  
17 or voting area. Upon completion of the count the returns shall be open to  
18 the public. A copy of the returns shall be posted at the office of the county  
19 election officer.

20 (f) If for any reason it becomes impracticable to count all or a part of  
21 the ballots with optical scanning equipment, the county election officer  
22 may direct that they be counted manually, following as far as practicable  
23 the provisions governing the counting of paper ballots.

24 (g) *Procedures shall conform with the provisions of section 1, and*  
25 *amendments thereto.*

26 Sec. 12. K.S.A. 2020 Supp. 25-4613 is hereby amended to read as  
27 follows: 25-4613. Optical scanning equipment and systems using optical  
28 scanning equipment approved by the secretary of state *shall*:

29 (a) ~~shall~~ Be capable of being tested to ascertain that the equipment  
30 will correctly count votes cast for all offices and on all questions  
31 submitted; ~~and~~

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

35 (c) ~~shall~~ be capable of tabulating votes for candidates for nomination  
36 or election of all political parties officially recognized pursuant to K.S.A.  
37 25-302a, and amendments thereto; ~~and~~

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

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

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



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

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

6 (i) ~~shall~~ meet the requirements of the help America vote act of 2002  
7 and other federal statutes and regulations governing voting equipment;  
8 *and*

9 (j) *be used in accordance with section 1, and amendments thereto.*

10 Sec. 13. K.S.A. 25-1122a, 25-1138 and 25-3006 and K.S.A. 2020  
11 Supp. 25-2810, 25-4401, 25-4404, 25-4406, 25-4412, 25-4603, 25-4611  
12 and 25-4613 are hereby repealed.

13 Sec. 14. This act shall take effect and be in force from and after  
14 January 1, 2022, and its publication in the statute book.