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SENATE BILL No. 351

By Committee on Federal and State Affairs

1-19

Proposed Amendments to Senate Bill 351
Senate Committee on Federal and State Affairs
Prepared by: Jason Long
Office of Revisor of Statutes

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 to ensure such~~
7 ~~systems are not so connected; providing that post-election equipment~~
8 ~~testing must occur within five days of the county vote canvass and that~~
9 ~~notice of such testing be provided on county websites; expanding the~~
10 ~~crime of electronic or electromechanical voting system fraud to include~~
11 ~~fraudulent use of or unauthorized possession of electronic poll books;~~
12 ~~amending K.S.A. 25-4401, 25-4402, 25-4403, 25-4404, 25-4405, 25-~~
13 ~~4406, 25-4407, 25-4408, 25-4409, 25-4411, 25-4414, 25-4415, 25-4610~~
14 ~~and 25-4613 and repealing the existing sections.~~
15

Strike in lines 6 and 7

Strike in line 13

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

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

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

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

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

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

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

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

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

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

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

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

1 county commissioners in any county may purchase, lease or rent any
2 electronic or electromechanical voting system, unless such system:

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

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

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

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

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

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

1 costs associated with the approval of such system shall be paid by the
2 applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 Sec. 8. K.S.A. 25-4408 is hereby amended to read as follows: 25-
42 4408. The board of county commissioners shall provide for the storage of
43 electronic or electromechanical voting systems *and electronic poll books*.

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

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

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

23 ~~(c) Before, during and after the operation of the polling place, the~~
 24 ~~election judges shall ensure that no component of the electronic or~~
 25 ~~electromechanical voting system is connected to the internet or to any~~
 26 ~~other communications or computer network, including, but not limited to,~~
 27 ~~a local area network, wireless network, cellular network or satellite~~
 28 ~~network, or using bluetooth or any other wireless communications~~
 29 ~~technology.~~

30 ~~Sec. 10. K.S.A. 25-4411 is hereby amended to read as follows: 25-~~
 31 ~~4411. (a) The vote tabulation equipment may be located at any place~~
 32 ~~within the county approved by the county election officer.~~

33 ~~(b) Within five days prior to the date of the election, the county~~
 34 ~~election officer shall have the automatic tabulating equipment tested to~~
 35 ~~ascertain that the equipment will correctly count the votes cast for all~~
 36 ~~offices and on all questions submitted. Public notice of the time and place~~
 37 ~~of the test shall be given at least 48 hours prior thereto by publication once~~
 38 ~~in a newspaper of general circulation in the county or city where such~~
 39 ~~equipment is to be used and on the county website, if the county has a~~
 40 ~~website. The test shall be open to representatives of the political parties,~~
 41 ~~candidates, the press and the public. The test shall be conducted by~~
 42 ~~processing a preaudited group of ballots marked to record a predetermined~~
 43 ~~number of valid votes for each candidate and on each measure, and shall~~

Strike Sec. 9

Remember sections accordingly.

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

9 Sec. 11. K.S.A. 25-4414 is hereby amended to read as follows: 25-
10 4414. Electronic or electromechanical voting system *or electronic poll*
11 *book* fraud is:

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

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

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

22 Sec. 12. K.S.A. 25-4415 is hereby amended to read as follows: 25-
23 4415. The secretary of state may adopt rules and regulations:

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

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

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

29 Sec. 13. K.S.A. 25-4610 is hereby amended to read as follows: 25-
30 4610. (a) The optical scanning equipment may be located at any place
31 within the county approved by the county election officer.

32 (b) Within five days prior to the date of the election, the county
33 election officer shall have the optical scanning equipment tested to
34 ascertain that the equipment will correctly count the votes cast for all
35 offices and on all questions submitted. Public notice of the time and place
36 of the test shall be given at least 48 hours prior thereto by publication once
37 in a newspaper of general circulation in the county where such equipment
38 is to be used *and on the county website, if the county has a website*. The
39 test shall be open to representatives of the political parties, candidates, the
40 press and the public. The test shall be conducted by processing a
41 preaudited group of ballots marked as to record a predetermined number of
42 valid votes for each candidate and on each question submitted, and shall
43 include for each office one or more ballots which have votes in excess of

1 the number allowed by law in order to test the ability of the optical
2 scanning equipment to reject such votes. If any error is detected, the cause
3 therefor shall be ascertained and corrected and an errorless count shall be
4 made before the optical scanning equipment is approved. The test shall be
5 repeated *within five business days* after the completion of the canvass. The
6 programs and ballots shall be sealed, retained and disposed of in the same
7 manner as paper ballots.

8 Sec. 14. K.S.A. 25-4613 is hereby amended to read as follows: 25-
9 4613. Optical scanning equipment and systems using optical scanning
10 equipment approved by the secretary of state:

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

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

17 (c) shall be capable of tabulating votes for candidates for nomination
18 or election of all political parties officially recognized pursuant to K.S.A.
19 25-302a, and amendments thereto; ~~and~~

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

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

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

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

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

31 (i) shall meet the requirements of the help America vote act of 2002
32 and other federal statutes and regulations governing voting equipment;
33 *and*

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

40 Sec. 15. K.S.A. 25-4401, 25-4402, 25-4403, 25-4404, 25-4405, 25-
41 4406, 25-4407, 25-4408, ~~25-4409~~, 25-4411, 25-4414, 25-4415, 25-4610
42 and 25-4613 are hereby repealed.

43 Sec. 16. This act shall take effect and be in force from and after its

strike in line 41

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1 publication in the statute book.