

Act No. 8  
Public Acts of 1992  
Approved by the Governor  
March 10, 1992  
Filed with the Secretary of State  
March 10 1992

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1992**

Introduced by Reps. Palamara, Profit and Willis Bullard

# **ENROLLED HOUSE BILL No. 5386**

AN ACT to amend sections 794, 795, 795a, 797, 797a, 798, and 799a 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," sections 794, 795, 795a, 797, 797a, and 798 as amended and section 799a as added by Act No. 109 of the Public Acts of 1990, being sections 168.794, 168.795, 168.795a, 168.797, 168.797a, 168.798, and 168.799a of the Michigan Compiled Laws; and to add section 14a.

*The People of the State of Michigan enact:*

Section 1. Sections 794, 795, 795a, 797, 797a, 798, and 799a of Act No. 116 of the Public Acts of 1954, sections 794, 795, 795a, 797, 797a, and 798 as amended and section 799a as added by Act No. 109 of the Public Acts of 1990, being sections 168.794, 168.795, 168.795a, 168.797, 168.797a, 168.798, and 168.799a of the Michigan Compiled Laws, are amended and section 14a is added to read as follows:

Sec. 14a. As used in this act, "metal seal" means a seal of high tensile strength that is approved by the secretary of state and is used for proving authenticity, attesting to accuracy, or closing to outside interference or influence.

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.

(k) "Memory device" means a method or device used to store electronic data.

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

(a) Provide for voting in secrecy, except in the case of voters who receive 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. Except as otherwise provided in this subdivision, 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. Electronic tabulating equipment that can detect and inform an elector voting in person that the choices recorded on the elector's ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question shall offer the elector an opportunity to correct the error before rejecting the choices recorded on the elector's ballot.

(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. Except as otherwise provided in this subdivision, the electronic tabulating equipment shall reject each ballot on which votes are cast for candidates of more than 1 political party. Electronic tabulating equipment that can detect and inform an elector voting in person that the elector has voted for candidates of more than 1 political party shall offer the elector an opportunity to correct the error before rejecting the elector's ballot.

(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 June 18, 1990, 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. (1) 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. This subsection does not apply to the technical capability of a general purpose computer, reader, or printer to electronically record and count votes.

(2) The secretary of state shall instruct local election officials regarding the operation and use of an approved electronic voting system in order to carry out the purposes of sections 794 to 799a and the rules promulgated pursuant to sections 794 to 799a.

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 and certify in writing that the equipment is operating properly. The written certification shall be on a form prescribed by the secretary of state and shall include pertinent information regarding seal numbers, counters, and the operation and use of the particular equipment.

Sec. 797a. (1) Before entering the voting station, each elector shall be offered instruction in the proper method of voting on the electronic voting 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 electronic voting 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. The electronic tabulating equipment shall be arranged so that the secrecy of the ballot is not violated. If required for the proper operation of the electronic tabulating equipment, 2 election inspectors may periodically open the equipment to rearrange voted ballots and may transfer voted ballots to another approved ballot container.

(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.

(4) A ballot of a challenged voter that has the names of candidates and questions printed directly on the voted ballot shall be processed in the manner prescribed for challenging a vote cast by paper ballot. A challenge to a voter voting on an electronic voting system that does not use an individual hard copy ballot shall be processed in the manner prescribed for challenging a vote cast on a voting machine.

Sec. 798. (1) Before beginning the count of ballots, the board of election commissioners shall test the electronic tabulating equipment to determine if the electronic tabulating equipment 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 electronic tabulating 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, the board of election commissioners shall determine the cause of the error and correct the error. The board of election commissioners shall make an errorless count and shall certify the errorless count before the count is started. The electronic tabulating equipment that can be used for a purpose other than examining and counting votes shall pass the same test at the conclusion of the count before the election returns are approved as official.

(2) On completion of the test and count, the programs, test materials, and ballots arranged by precincts shall be sealed and retained as provided by this subsection and rules promulgated by the secretary of state pursuant to Act No. 306 of the Public Acts of 1969. If the electronic tabulating equipment that is tested and certified to by the board of election commissioners will be used to count votes at the precinct, a memory device containing the tested programs, if any, shall be sealed into the electronic tabulating equipment. Upon completion and certification of the count of votes, the memory device containing the program and the vote totals shall remain sealed in the electronic tabulating equipment or, if removed from the electronic tabulating equipment, shall remain sealed in a container approved by the secretary of state, delivered to the clerk, and retained in the manner provided for other voted ballots.

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 electronic 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 electronic 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.

(4) Unless a petition for recount has been filed and the recount has not been completed, ballots, ballot labels, programs, test results, and other sealed materials may be released from their original seal after 7 days following the final determination of the board of canvassers with respect to the election at which the ballots were voted. However, the released materials shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state.

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.