

# HOUSE BILL No. 5386

December 10, 1991, Introduced by Reps. Palamara, Profit and Willis Bullard and referred to the Committee on Elections.

A bill to amend sections 794, 795, 795a, 797, 797a, 798, and 799a of Act No. 116 of the Public Acts of 1954, entitled "Michigan election law," 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:

1       Section 1. Sections 794, 795, 795a, 797, 797a, 798, and  
2 799a of Act No. 116 of the Public Acts of 1954, sections 794,  
3 795, 795a, 797, 797a, and 798 as amended and section 799a as  
4 added by Act No. 109 of the Public Acts of 1990, being sections  
5 168.794, 168.795, 168.795a, 168.797, 168.797a, 168.798, and

1 168.799a of the Michigan Compiled Laws, are amended and section  
2 14a is added to read as follows:

3 SEC. 14A. AS USED IN THIS ACT, "METAL SEAL" MEANS A SEAL OF  
4 HIGH TENSILE STRENGTH THAT IS APPROVED BY THE SECRETARY OF STATE  
5 AND IS USED FOR PROVING AUTHENTICITY, ATTESTING TO ACCURACY, OR  
6 CLOSING TO OUTSIDE INTERFERENCE OR INFLUENCE.

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

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

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

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

17 (d) "Counting center" means 1 or more locations selected by  
18 the board of election commissioners of the city, county, town-  
19 ship, village, or school district at which ballots are counted by  
20 means of electronic tabulating equipment or vote totals are elec-  
21 tronically received from electronic tabulating equipment and  
22 electronically compiled.

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

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

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

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

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

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

11 (K) "MEMORY DEVICE" MEANS A METHOD OR DEVICE USED TO STORE  
12 ELECTRONIC DATA.

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

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

19 (b) Permit each elector to vote at an election for all per-  
20 sons and offices for whom and for which the elector is lawfully  
21 entitled to vote; to vote for as many persons for an office as  
22 the elector is entitled to vote for; and to vote for or against  
23 any question upon which the elector is entitled to vote. ~~The~~  
24 EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, THE electronic  
25 tabulating equipment shall reject all choices recorded on the  
26 elector's ballot for an office or a question if the number of  
27 choices exceeds the number that the elector is entitled to vote

1 for on that office or question. ELECTRONIC TABULATING EQUIPMENT  
2 THAT CAN DETECT AND INFORM AN ELECTOR VOTING IN PERSON THAT THE  
3 CHOICES RECORDED ON THE ELECTOR'S BALLOT FOR AN OFFICE OR A QUES-  
4 TION EXCEEDS THE NUMBER THAT THE ELECTOR IS ENTITLED TO VOTE FOR  
5 ON THAT OFFICE OR QUESTION SHALL OFFER THE ELECTOR AN OPPORTUNITY  
6 TO CORRECT THE ERROR BEFORE REJECTING THE CHOICES RECORDED ON THE  
7 ELECTOR'S BALLOT.

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

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

14 (e) Permit an elector in a primary election to vote for the  
15 candidates in the party primary of the elector's choice. ~~The~~  
16 EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, THE electronic  
17 tabulating equipment shall reject each ballot on which votes are  
18 cast for candidates of more than 1 political party. ELECTRONIC  
19 TABULATING EQUIPMENT THAT CAN DETECT AND INFORM AN ELECTOR VOTING  
20 IN PERSON THAT THE ELECTOR HAS VOTED FOR CANDIDATES OF MORE THAN  
21 1 POLITICAL PARTY SHALL OFFER THE ELECTOR AN OPPORTUNITY TO COR-  
22 RECT THE ERROR BEFORE REJECTING THE ELECTOR'S BALLOT.

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

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

1 (h) Beginning ~~on the effective date of the amendatory act~~  
2 ~~that added this subdivision~~ JUNE 18, 1990, be designed to accom-  
3 modate the needs of an elderly or handicapped voter.

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

6 (j) Provide an audit trail.

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

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

13 Sec. 795a. (1) An electronic voting system shall not be  
14 used in an election unless it is approved by the board of state  
15 canvassers as meeting the requirements of sections 794 and 795.  
16 After an electronic voting system is approved, an improvement or  
17 change in the electronic voting system shall be submitted to the  
18 board of state canvassers for approval pursuant to this section.  
19 THIS SUBSECTION DOES NOT APPLY TO THE TECHNICAL CAPABILITY OF A  
20 GENERAL PURPOSE COMPUTER, READER, OR PRINTER TO ELECTRONICALLY  
21 RECORD AND COUNT VOTES.

22 (2) THE SECRETARY OF STATE SHALL INSTRUCT LOCAL ELECTION  
23 OFFICIALS REGARDING THE OPERATION AND USE OF AN APPROVED ELEC-  
24 TRONIC VOTING SYSTEM IN ORDER TO CARRY OUT THE PURPOSES OF SEC-  
25 TIONS 794 TO 799A AND THE RULES PROMULGATED PURSUANT TO SECTIONS  
26 794 TO 799A.

1       Sec. 797. Not less than 30 minutes before the opening of  
2 the polls, the inspectors of election shall arrive at the polling  
3 place and prepare the polling place for voting. The inspectors  
4 of election shall determine that the correct ballot has been pro-  
5 vided to the precinct by comparing the ballot provided with the  
6 sample ballot and any other documents provided to the precinct.  
7 The inspectors of election shall complete required tests of the  
8 equipment of the electronic voting system AND CERTIFY IN WRITING  
9 THAT THE EQUIPMENT IS OPERATING PROPERLY. THE WRITTEN CERTIFICA-  
10 TION SHALL BE ON A FORM PRESCRIBED BY THE SECRETARY OF STATE AND  
11 SHALL INCLUDE PERTINENT INFORMATION REGARDING SEAL NUMBERS,  
12 COUNTERS, AND THE OPERATION AND USE OF THE PARTICULAR EQUIPMENT.

13       Sec. 797a. (1) Before entering the voting station, each  
14 elector shall be offered instruction in the proper method of  
15 voting on the ELECTRONIC VOTING system. If the elector needs  
16 additional instruction after entering the voting station, 2 elec-  
17 tion inspectors may, if necessary, enter the voting station and  
18 provide the additional instructions.

19       (2) If the ELECTRONIC VOTING system provides for the use of  
20 a ballot that is processed through electronic tabulating equip-  
21 ment after the elector votes, the elector shall transport the  
22 ballot to the ballot box, or other approved ballot container,  
23 without exposing any votes. An election inspector shall ascer-  
24 tain, by comparing the number appearing on the ballot stub with  
25 the number recorded on the poll list, that the ballot delivered  
26 by the voter is the same ballot that was issued to the elector.  
27 If the numbers do not agree, the ballot shall be marked as

1 "rejected", and the elector shall not be allowed to vote. If the  
2 numbers agree, an election inspector shall remove the stub.  
3 Except as otherwise provided in this subsection, the election  
4 inspector shall deposit the ballot in the ballot box or other  
5 approved ballot container. If electronic tabulating equipment  
6 that deposits the voted ballot into the ballot box or other  
7 approved ballot container is used at the precinct, the election  
8 inspector shall return the ballot to the elector, and the elector  
9 shall then deposit the ballot into the electronic tabulating  
10 equipment. THE ELECTRONIC TABULATING EQUIPMENT SHALL BE ARRANGED  
11 SO THAT THE SECRECY OF THE BALLOT IS NOT VIOLATED. IF REQUIRED  
12 FOR THE PROPER OPERATION OF THE ELECTRONIC TABULATING EQUIPMENT,  
13 2 ELECTION INSPECTORS MAY PERIODICALLY OPEN THE EQUIPMENT TO  
14 REARRANGE VOTED BALLOTS AND MAY TRANSFER VOTED BALLOTS TO ANOTHER  
15 APPROVED BALLOT CONTAINER.

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

22 (4) A BALLOT OF A CHALLENGED VOTER THAT HAS THE NAMES OF  
23 CANDIDATES AND QUESTIONS PRINTED DIRECTLY ON THE VOTED BALLOT  
24 SHALL BE PROCESSED IN THE MANNER PRESCRIBED FOR CHALLENGING A  
25 VOTE CAST BY PAPER BALLOT. A CHALLENGE TO A VOTER VOTING ON AN  
26 ELECTRONIC VOTING SYSTEM THAT DOES NOT USE AN INDIVIDUAL HARD

1 COPY BALLOT SHALL BE PROCESSED IN THE MANNER PRESCRIBED FOR  
2 CHALLENGING A VOTE CAST ON A VOTING MACHINE.

3       Sec. 798. (1) Before beginning the count of ballots, the  
4 board of election commissioners shall ~~have~~ TEST the electronic  
5 tabulating equipment ~~tested~~ to ~~ascertain that it~~ DETERMINE IF  
6 THE ELECTRONIC TABULATING EQUIPMENT will accurately count the  
7 votes cast for all offices and on all questions. Public notice  
8 of the time and place of the test shall be given at least 48  
9 hours before the test by publication in a newspaper published in  
10 the county, city, village, township, or school district where the  
11 ELECTRONIC TABULATING equipment is used. If a newspaper is not  
12 published in that county, city, village, township, or school dis-  
13 trict, the notice shall be given by publication in a newspaper of  
14 general circulation in that county, city, village, township, or  
15 school district. The test shall be conducted in the manner pre-  
16 scribed by rules promulgated by the secretary of state pursuant  
17 to the administrative procedures act of 1969, Act No. 306 of the  
18 Public Acts of 1969, being sections 24.201 to 24.328 of the  
19 Michigan Compiled Laws. In the test, a different number of valid  
20 votes shall be assigned to each candidate for an office, and for  
21 and against each question. If an error is detected, ~~its~~ THE  
22 BOARD OF ELECTION COMMISSIONERS SHALL DETERMINE THE cause ~~shall~~  
23 ~~be ascertained and~~ OF the error ~~corrected, and an~~ AND CORRECT  
24 THE ERROR. THE BOARD OF ELECTION COMMISSIONERS SHALL MAKE AN  
25 errorless count ~~shall be made and certified to by the board~~ AND  
26 SHALL CERTIFY THE ERRORLESS COUNT before the count is started.  
27 The ELECTRONIC tabulating equipment THAT CAN BE USED FOR A



1 PURPOSE OTHER THAN EXAMINING AND COUNTING VOTES shall pass the  
2 same test at the conclusion of the count before the election  
3 returns are approved as official.

4 (2) On completion of the TEST AND count, the programs, test  
5 materials, and ballots arranged by precincts shall be sealed and  
6 retained as provided by THIS SUBSECTION AND rules promulgated by  
7 the secretary of state pursuant to ~~the administrative procedures~~  
8 ~~act of 1969,~~ Act No. 306 of the Public Acts of 1969. ~~, being~~  
9 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws.~~ IF THE  
10 ELECTRONIC TABULATING EQUIPMENT THAT IS TESTED AND CERTIFIED TO  
11 BY THE BOARD OF ELECTION COMMISSIONERS WILL BE USED TO COUNT  
12 VOTES AT THE PRECINCT, A MEMORY DEVICE CONTAINING THE TESTED PRO-  
13 GRAMS, IF ANY, SHALL BE SEALED INTO THE ELECTRONIC TABULATING  
14 EQUIPMENT. UPON COMPLETION AND CERTIFICATION OF THE COUNT OF  
15 VOTES, THE MEMORY DEVICE CONTAINING THE PROGRAM AND THE VOTE  
16 TOTALS SHALL REMAIN SEALED IN THE ELECTRONIC TABULATING EQUIPMENT  
17 OR, IF REMOVED FROM THE ELECTRONIC TABULATING EQUIPMENT, SHALL  
18 REMAIN SEALED IN A CONTAINER APPROVED BY THE SECRETARY OF STATE,  
19 DELIVERED TO THE CLERK, AND RETAINED IN THE MANNER PROVIDED FOR  
20 OTHER VOTED BALLOTS.

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

24 (2) If the ELECTRONIC voting system requires that the elec-  
25 tor cast a vote by punching out a hole in a ballot, the vote  
26 shall not be considered valid unless the portion of the ballot

1 designated as a voting position is completely removed or is  
2 hanging by 1 or 2 corners or the equivalent.

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

10 (4) UNLESS A PETITION FOR RECOUNT HAS BEEN FILED AND THE  
11 RECOUNT HAS NOT BEEN COMPLETED, BALLOTS, BALLOT LABELS, PROGRAMS,  
12 TEST RESULTS, AND OTHER SEALED MATERIALS MAY BE RELEASED FROM  
13 THEIR ORIGINAL SEAL AFTER 7 DAYS FOLLOWING THE FINAL DETERMINA-  
14 TION OF THE BOARD OF CANVASSERS WITH RESPECT TO THE ELECTION AT  
15 WHICH THE BALLOTS WERE VOTED. HOWEVER, THE RELEASED MATERIALS  
16 SHALL BE SECURED AND PRESERVED FOR THE TIME PERIOD REQUIRED BY  
17 THIS ACT AND THE RULES PROMULGATED BY THE SECRETARY OF STATE.