

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

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## ENROLLED

SENATE BILL NO. 108

(By Mr. McKown and Winters)

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PASSED February 16, 1951

In Effect Ninety days from Passage



108

**ENROLLED**

**Senate Bill No. 108**

(By MESSRS. MCKOWN and WINTERS)

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AN ACT to amend and reenact sections nine, ten, thirteen, eighteen, twenty-five, twenty-six and twenty-seven, article five-a, chapter three, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article five-a by adding thereto three new sections to be designated sections fourteen-a, fourteen-b and thirty-three-a, all relating to the use of voting machines.

*Be it enacted by the Legislature of West Virginia:*

That sections nine, ten, thirteen, eighteen, twenty-five, twenty-six and twenty-seven, article five-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said

article five-a be further amended by adding thereto three new sections to be designated sections fourteen-a, fourteen-b and thirty-three-a, all to read as follows:

Section 9. *Printing of Ballot Labels; Instruction Cards;*

2 *Challenge and Absentee Ballots.*—The ballot commis-  
3 sioners of any county in which voting machines are  
4 to be used in any election shall cause to be printed and  
5 ready for use at such election two sets of ballot labels  
6 for each voting machine to be used in each precinct.  
7 Each such set shall contain the name of each candidate  
8 and each question to be voted upon. All ballot labels  
9 shall be clearly printed or typed in black ink on clear  
10 white material of such size as will fit the ballot frames.  
11 One set of ballot labels shall be inserted in the machine  
12 prior to the delivery of the machine to the polling place.  
13 One set of such ballot labels for each machine shall be  
14 retained by the clerk of the county court for use in the  
15 event the set so inserted in a machine becomes lost,  
16 mutilated or damaged.  
17 The ballot commissioners shall also cause to be printed  
18 a supply of instruction cards, challenge and absentee

19 ballots, sample ballots and facsimile diagrams to be used  
20 as is hereinafter provided.

Sec. 10. *Preparation of Machines.*—Upon receiving the  
2 printed ballot labels, the county clerk shall place them  
3 in the ballot frames of the voting machines in such man-  
4 ner as will most nearly conform to the arrangement pre-  
5 scribed for paper ballots, and as will clearly indicate  
6 the party designation or emblem of each candidate. Each  
7 column or row containing the names of the office and  
8 candidates for such office shall be so arranged as to clear-  
9 ly indicate the office for which the candidate is running.  
10 The names of the candidates for each office indicated  
11 shall be placed on the ballot in alphabetical order.

12 The county clerk shall then see that the counters re-  
13 ferred to in subsection eleven of section six of this article  
14 are set at zero (000) and shall lock the operating device  
15 and mechanism and devices protecting the counters and  
16 ballot labels. The clerk shall then enter in an appropriate  
17 book, opposite the number of each precinct, the identi-  
18 fying or distinguishing number of the specific voting  
19 machine or machines to be used in that precinct.

Sec. 13. *Appointment of Election Boards; Instructions.*

2 —The provisions of section nine, article five, and section  
3 fifteen, article four of this chapter, with respect to the  
4 number of election officers in each precinct, shall not  
5 apply to precincts in counties in which voting machines  
6 have been adopted, and the county court of such county  
7 shall appoint, subject to all other provisions of section  
8 nine, article five and section fifteen, article four of this  
9 chapter, a uniform election board, to consist of three  
10 election commissioners and two poll clerks, to serve in  
11 each precinct: *Provided, however,* That where more than  
12 two voting machines are used in a precinct the county  
13 court may appoint two additional election commission-  
14 ers of different political parties for each such machine  
15 over two.

16 The county court shall call the necessary meeting or  
17 meetings for the instruction of all election officials in  
18 the use of the voting machines. Such meeting or meetings  
19 shall be held and the proper instructions given not less  
20 than seven (7) days prior to any election in which vot-  
21 ing machines are to be used. No election officer, upon

22 being so notified to appear for instruction, shall fail with-  
23 out just cause to do so. If any officer does so fail to  
24 appear, the county court may appoint some other quali-  
25 fied person, and such persons, after instruction, shall act  
26 in the place of the defaulting officer: *Provided, however,*  
27 That if such defaulting officer was appointed by the  
28 county court upon the written recommendation of a  
29 county executive committee as provided in section fif-  
30 teen, article four and in section nine, article five of this  
31 chapter, the county court shall give written notice of  
32 such default to such county executive committee and ap-  
33 point a person to take the place of such defaulting person  
34 upon the recommendation of such county executive com-  
35 mittee. The election officers shall receive the per diem  
36 mileage rate prescribed by law for attending such in-  
37 struction meetings.

Sec. 14-a. *Sample Ballots; Mailing by Ballot Commis-*  
2 *sioners.*—The ballot commissioners may, with the con-  
3 sent of the county court, or the county court may prepare  
4 and mail to each qualified voter at his address as shown

5 on the registration books a facsimile sample of the ballot  
6 for his precinct.

Sec. 14-b. *Legal Advertisement to be Facsimile of Face*  
2 *of Voting Machines.*—In counties where voting machines  
3 have been adopted, the legal advertisements required by  
4 section nine, article four of this chapter and section eight,  
5 article five of this chapter, shall consist of a facsimile of  
6 the face of the voting machine with the names of the  
7 candidates and the offices for which they are running  
8 shown in their proper positions.

Sec. 18. *Duties of Election Officers; Primary Elections;*  
2 *Adjustment of Machine.*—(1) The election officers shall  
3 constantly and diligently maintain a watch in order to see  
4 that no person votes more than once and to prevent any  
5 voter from occupying the voting machine for more than  
6 three minutes.  
7 (2) In primary elections before a voter is permitted  
8 to use the voting machine, the election officer represent-  
9 ing the party to which the voter belongs shall adjust the  
10 machine so that the voter will be able to vote only for the  
11 candidates who are seeking nomination on the ticket of

12 the party with which the voter is affiliated.

13 (3) If the machine is so constructed as to require  
14 adjustment after one person has voted before another  
15 person can vote, the election officers shall so adjust it after  
16 each person has voted.

17 (4) The election officers shall issue to each voter  
18 when he signs the poll book a card or ticket numbered to  
19 correspond to the number on the poll book of such voter,  
20 and in the case of a primary election, indicating the  
21 party affiliation of such voter, which numbered card or  
22 ticket shall be presented to the election officer in charge of  
23 the voting machine.

*Sec. 25. How Long Machines to Remain Locked After  
2 Election; Court Orders for Examination of Machines;  
3 No Reexamination of Machine Totals on Recount.—(1)*

4 The voting machines shall remain locked against voting  
5 during the canvass of the returns of the election and for a  
6 period of seven days after the canvass is finally concluded,  
7 during which time any candidate or the chairman of any  
8 county executive committee of any political party or their  
9 appointed representatives, shall be permitted to examine



10 the voting machines under the supervision of the county  
11 court for the purpose of determining the number of votes  
12 cast for any candidate or for and against any question.  
13 After the expiration of the seven-day period as herein  
14 provided, the voting machines may be unlocked by the  
15 clerk of the county court and the registering counters  
16 reset at zero (000) unless the board of canvassers or a  
17 court of competent jurisdiction by appropriate court order  
18 directs otherwise.

19 (2) During the period when such machine is required  
20 to be kept locked, the keys thereto shall remain in the  
21 possession of the county court. After such period, it shall  
22 be the duty of the county court to return such keys to the  
23 clerk of the county court.

24 (3) In canvassing the returns of the election, the  
25 board of canvassers shall examine all of the voting ma-  
26 chines used in such election and shall determine the  
27 number of votes cast for each candidate and for and  
28 against each question and by such examination shall  
29 procure the correct returns and ascertain the true re-  
30 sults of the election. Any candidate or his party represen-  
31 tative may be present at such examination.

32 (4) If any candidate shall demand a recount of the  
33 votes cast at an election, the voting machines shall not  
34 be reexamined during such recount for the purpose of  
35 re-ascertaining the total number of votes registered on  
36 the voting machines for any candidate.

Sec. 26. *Procedure When Voting Machines do not Accurately Record and Tabulate the Votes Cast.*—(1) When  
2 during a canvass or a recount of votes cast in an election  
3 it appears to the board of canvassers or if it is so alleged  
4 in a petition for a recount, that a voting machine used in  
5 any precinct has by reason of mechanical failure or im-  
6 proper or fraudulent preparation or tampering incorrectly  
7 recorded and tabulated the actual votes cast on such ma-  
8 chine, the board of canvassers shall proceed to determine  
9 the error, if any, in the vote registered on such voting  
10 machine. If an error is found, the board of canvassers  
11 shall correct the election returns from such precinct so  
12 as to accurately reflect the votes cast in such precinct at  
13 such election if it is possible to accurately correct such  
14 error. If the board of canvassers are unable to accurately  
15 correct such errors made by said voting machine and  
16

17 therefore cannot correct the returns from such precinct  
18 to accurately reflect the actual votes cast at such election,  
19 the total votes registered on such voting machine, despite  
20 the fact that such vote may be erroneous, shall be ac-  
21 cepted in the canvass and in the recount as the votes cast  
22 in such precinct.

23 (2) If it is necessary for the board of canvassers to  
24 test any voting machine for its mechanical accuracy in  
25 recording and tabulating the votes cast at such election,  
26 such test shall be conducted by the clerk of the county  
27 court in the presence of the board of canvassers and of any  
28 candidate or his party representative. The registering  
29 counter shall be reset at zero (000) before it is tested and  
30 then the machine shall be operated at least 100 times.  
31 After the completion of such test the county clerk will  
32 then and there prepare and file a statement in writing  
33 giving in detail the result of the examination and test.

Sec. 27. *Number of Voters in Precinct; Changing Vot-*  
2 *ing Place From Precinct.*—The provisions of section ten,  
3 article one of this chapter, with respect to the number  
4 of voters to be contained in each precinct, shall not apply

5 to precincts in counties in which voting machines have  
6 been adopted and the county courts of such county, sub-  
7 ject to other provisions of this chapter with respect to the  
8 altering or changing of the boundaries of voting precincts,  
9 may change the boundaries of precincts or consolidate  
10 precincts, as practicable, to achieve the maximum advan-  
11 tage from the use of voting machines.

12 The county court may in the urban centers of any  
13 county adopting voting machines designate a voting  
14 place without the limits of a precinct, provided such  
15 voting place is in a public building, and in an adjoining  
16 precinct. In such event more than one precinct may vote  
17 in any such public building.

Sec. 33-a. *Compensation of Ballot Commissioners.*—In  
2 counties which have adopted voting machines the ballot  
3 commissioners shall each be paid as compensation for his  
4 services a sum to be fixed by the county court not ex-  
5 ceeding ten dollars for each day he shall serve: *Provided,*  
6 That such ballot commissioners shall not receive compen-  
7 sation for more than ten days for services rendered for  
8 any primary, general or special election.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*A. R. Winters*

Chairman Senate Committee

*James W. Lipp*

Chairman House Committee

Originated in the Senate.

Takes effect *thirty days from* passage.

*Howard Keyserling*

Clerk of the Senate

*J. R. Giff*

Clerk of the House of Delegates

*W. E. Harrison*

President of the Senate

*W. E. Harrison*

Speaker House of Delegates

The within *APPROVED* this the *26th*

day of *FEBRUARY*, 1951.

*Chas. L. Patton*

Governor.



Filed in the Office of the Secretary of State  
of West Virginia **FEB 26 1951**

D. PITT O'BRIEN,  
SECRETARY OF STATE