WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED
SENATE BILL NO. 108

(By Mr. [Signature]

PASSED February 16, 1951

In Effect Ninety days from Passage
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;

Challenge and Absentee Ballots.—The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed and ready for use at such election two sets of ballot labels for each voting machine to be used in each precinct. Each such set shall contain the name of each candidate and each question to be voted upon. All ballot labels shall be clearly printed or typed in black ink on clear white material of such size as will fit the ballot frames. One set of ballot labels shall be inserted in the machine prior to the delivery of the machine to the polling place. One set of such ballot labels for each machine shall be retained by the clerk of the county court for use in the event the set so inserted in a machine becomes lost, mutilated or damaged.

The ballot commissioners shall also cause to be printed a supply of instruction cards, challenge and absentee
Sec. 10. Preparation of Machines.—Upon receiving the printed ballot labels, the county clerk shall place them in the ballot frames of the voting machines in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem of each candidate. Each column or row containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot in alphabetical order.

The county clerk shall then see that the counters referred to in subsection eleven of section six of this article are set at zero (000) and shall lock the operating device and mechanism and devices protecting the counters and ballot labels. The clerk shall then enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific voting machine or machines to be used in that precinct.
Sec. 13. Appointment of Election Boards; Instructions.

The provisions of section nine, article five, and section fifteen, article four of this chapter, with respect to the number of election officers in each precinct, shall not apply to precincts in counties in which voting machines have been adopted, and the county court of such county shall appoint, subject to all other provisions of section nine, article five and section fifteen, article four of this chapter, a uniform election board, to consist of three election commissioners and two poll clerks, to serve in each precinct: Provided, however, That where more than two voting machines are used in a precinct the county court may appoint two additional election commissioners of different political parties for each such machine over two.

The county court shall call the necessary meeting or meetings for the instruction of all election officials in the use of the voting machines. Such meeting or meetings shall be held and the proper instructions given not less than seven (7) days prior to any election in which voting machines are to be used. No election officer, upon
being so notified to appear for instruction, shall fail without just cause to do so. If any officer does so fail to appear, the county court may appoint some other qualified person, and such persons, after instruction, shall act in the place of the defaulting officer: Provided, however, that if such defaulting officer was appointed by the county court upon the written recommendation of a county executive committee as provided in section fifteen, article four and in section nine, article five of this chapter, the county court shall give written notice of such default to such county executive committee and appoint a person to take the place of such defaulting person upon the recommendation of such county executive committee. The election officers shall receive the per diem mileage rate prescribed by law for attending such instruction meetings.

Sec. 14-a. Sample Ballots; Mailing by Ballot Commissioners.—The ballot commissioners may, with the consent of the county court, or the county court may prepare and mail to each qualified voter at his address as shown
on the registration books a facsimile sample of the ballot for his precinct.

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

Sec. 18. Duties of Election Officers; Primary Elections; Adjustment of Machine.—(1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting machine for more than three minutes.

(2) In primary elections before a voter is permitted to use the voting machine, the election officer representing the party to which the voter belongs shall adjust the machine so that the voter will be able to vote only for the candidates who are seeking nomination on the ticket of
the party with which the voter is affiliated.

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

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

Sec. 25. How Long Machines to Remain Locked After Election; Court Orders for Examination of Machines; No Reexamination of Machine Totals on Recount.—(1) The voting machines shall remain locked against voting during the canvass of the returns of the election and for a period of seven days after the canvass is finally concluded, during which time any candidate or the chairman of any county executive committee of any political party or their appointed representatives, shall be permitted to examine
the voting machines under the supervision of the county court for the purpose of determining the number of votes cast for any candidate or for and against any question. After the expiration of the seven-day period as herein provided, the voting machines may be unlocked by the clerk of the county court and the registering counters reset at zero (000) unless the board of canvassers or a court of competent jurisdiction by appropriate court order directs otherwise.

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

(3) In canvassing the returns of the election, the board of canvassers shall examine all of the voting machines used in such election and shall determine the number of votes cast for each candidate and for and against each question and by such examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his party representative may be present at such examination.
(4) If any candidate shall demand a recount of the votes cast at an election, the voting machines shall not be reexamined during such recount for the purpose of re-ascertaining the total number of votes registered on the voting machines for any candidate.

Sec. 26. Procedure When Voting Machines do not Accurately Record and Tabulate the Votes Cast.—(1) When during a canvass or a recount of votes cast in an election it appears to the board of canvassers or if it is so alleged in a petition for a recount, that a voting machine used in any precinct has by reason of mechanical failure or improper or fraudulent preparation or tampering incorrectly recorded and tabulated the actual votes cast on such machine, the board of canvassers shall proceed to determine the error, if any, in the vote registered on such voting machine. If an error is found, the board of canvassers shall correct the election returns from such precinct so as to accurately reflect the votes cast in such precinct at such election if it is possible to accurately correct such error. If the board of canvassers are unable to accurately correct such errors made by said voting machine and
therefore cannot correct the returns from such precinct
to accurately reflect the actual votes cast at such election,
the total votes registered on such voting machine, despite
the fact that such vote may be erroneous, shall be ac-
cepted in the canvass and in the recount as the votes cast
in such precinct.

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

Sec. 27. Number of Voters in Precinct; Changing Vot-
ing Place From Precinct.—The provisions of section ten,
article one of this chapter, with respect to the number
of voters to be contained in each precinct, shall not apply
to precincts in counties in which voting machines have been adopted and the county courts of such county, subject to other provisions of this chapter with respect to the altering or changing of the boundaries of voting precincts, may change the boundaries of precincts or consolidate precincts, as practicable, to achieve the maximum advantage from the use of voting machines.

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

Sec. 33-a. Compensation of Ballot Commissioners.—In counties which have adopted voting machines the ballot commissioners shall each be paid as compensation for his services a sum to be fixed by the county court not exceeding ten dollars for each day he shall serve: Provided, That such ballot commissioners shall not receive compensation for more than ten days for services rendered for any primary, general or special election.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

A. R. Whetsel
Chairman Senate Committee

James W. Lipp
Chairman House Committee

Was originated in the Senate.

Takes effect thirty days from passage.

Herman Branyon
Clerk of the Senate

R. Clift
Clerk of the House of Delegates

W. E. Jarrett
President of the Senate

W. E. Jarrett
Speaker of the House of Delegates

The within approved this the 26th day of February, 1951.

Oley L. Pattison
Governor.

Filed in the office of the Secretary of State
of West Virginia, FEB 26, 1951
D. Pitt O'Brien,
Secretary of State