

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 24.2-101, 24.2-629, and 24.2-668 of the Code of Virginia, relating to*
 3 *voting systems; voter-verifiable paper record.*

4 [H 1053]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 24.2-101, 24.2-629, and 24.2-668 of the Code of Virginia are amended and reenacted as**
 8 **follows:**

9 **§ 24.2-101. Definitions.**

10 As used in this title, unless the context requires a different meaning:

11 "Ballot scanner machine" means the electronic counting machine in which a voter inserts a marked
 12 ballot to be scanned and the results tabulated.

13 "Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of
 14 its governmental units in a general, primary, or special election and who is qualified to have his name
 15 placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a
 16 political party or who, by reason of receiving the nomination of a political party for election to an
 17 office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945
 18 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no
 19 write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible
 20 to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of
 21 Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who
 22 raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding
 23 federal offices, or one of its governmental units in a party nomination process or general, primary, or
 24 special election; and such person shall be considered a candidate until a final report is filed pursuant to
 25 Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

26 "Central absentee voter precinct" means a precinct established by a county or city pursuant to
 27 § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts
 28 within the county or city.

29 "Constitutional office" or "constitutional officer" means a county or city office or officer referred to
 30 in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the
 31 Commonwealth, sheriff, commissioner of the revenue, and treasurer.

32 "Department of Elections" or "Department" means the state agency headed by the Commissioner of
 33 Elections.

34 "Direct recording electronic machine" or "DRE" means the electronic voting machine on which a
 35 voter touches areas of a computer screen, or uses other control features, to mark a ballot and his vote is
 36 recorded electronically.

37 "Election" means a general, primary, or special election.

38 "Election district" means the territory designated by proper authority or by law which is represented
 39 by an official elected by the people, including the Commonwealth, a congressional district, a General
 40 Assembly district, or a district for the election of an official of a county, city, town, or other
 41 governmental unit.

42 "Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to
 43 administer elections for a county or city. The electoral board of the county in which a town or the
 44 greater part of a town is located shall administer the town's elections.

45 "Entrance of polling place" or "entrance to polling place" means an opening in the wall used for
 46 ingress to a structure.

47 "General election" means an election held in the Commonwealth on the Tuesday after the first
 48 Monday in November or on the first Tuesday in May for the purpose of filling offices regularly
 49 scheduled by law to be filled at those times.

50 "General registrar" means the person appointed by the electoral board of a county or city pursuant to
 51 § 24.2-110 to be responsible for all aspects of voter registration, in addition to other duties prescribed by
 52 this title. When performing duties related to the administration of elections, the general registrar is acting
 53 in his capacity as the director of elections for the locality in which he serves.

54 "Machine-readable ballot" means a tangible ballot that is marked by a voter or by a system or device
 55 operated by a voter, *is available for verification by the voter at the time the ballot is cast*, and is then
 56 fed into and scanned by a *separate* counting machine capable of reading ballots and tabulating results.

57 "Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve
58 at a polling place for any election.

59 "Paper ballot" means a tangible ballot that is marked by a voter and then manually counted.

60 "Party" or "political party" means an organization of citizens of the Commonwealth which, at either
61 of the two preceding statewide general elections, received at least 10 percent of the total vote cast for
62 any statewide office filled in that election. The organization shall have a state central committee and an
63 office of elected state chairman which have been continually in existence for the six months preceding
64 the filing of a nominee for any office.

65 "Person with a disability" means a person with a disability as defined by the Virginians with
66 Disabilities Act (§ 51.5-1 et seq.).

67 "Polling place" means the structure that contains the one place provided for each precinct at which
68 the qualified voters who are residents of the precinct may vote.

69 "Precinct" means the territory designated by the governing body of a county, city, or town to be
70 served by one polling place.

71 "Primary" or "primary election" means an election held for the purpose of selecting a candidate to be
72 the nominee of a political party for election to office.

73 "Printed ballot" means a tangible ballot that is printed on paper and includes both machine-readable
74 ballots and paper ballots.

75 "Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and
76 who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or
77 subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers
78 to vote, and (iii) a registered voter. No person who has been convicted of a felony shall be a qualified
79 voter unless his civil rights have been restored by the Governor or other appropriate authority. No
80 person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as
81 provided by law. Whether a signature should be counted towards satisfying the signature requirement of
82 any petition shall be determined based on the signer of the petition's qualification to vote. For purposes
83 of determining if a signature on a petition shall be included in the count toward meeting the signature
84 requirements of any petition, "qualified voter" shall include only persons maintained on the Virginia
85 voter registration system (a) with active status and (b) with inactive status who are qualified to vote for
86 the office for which the petition was circulated.

87 "Qualified voter in a town" means a person who is a resident within the corporate boundaries of the
88 town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified
89 voter.

90 "Referendum" means any election held pursuant to law to submit a question to the voters for
91 approval or rejection.

92 "Registered voter" means any person who is maintained on the Virginia voter registration system. All
93 registered voters shall be maintained on the Virginia voter registration system with active status unless
94 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For
95 purposes of applying the precinct size requirements of § 24.2-307, calculating election machine
96 requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election
97 district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306,
98 and determining the number of signatures required for candidate and voter petitions, "registered voter"
99 shall include only persons maintained on the Virginia voter registration system with active status. For
100 purposes of determining if a signature on a petition shall be included in the count toward meeting the
101 signature requirements of any petition, "registered voter" shall include only persons maintained on the
102 Virginia voter registration system (i) with active status and (ii) on inactive status who are qualified to
103 vote for the office for which the petition was circulated.

104 "Registration records" means all official records concerning the registration of qualified voters and
105 shall include all records, lists, applications, and files, whether maintained in books, on cards, on
106 automated data bases, or by any other legally permitted record-keeping method.

107 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires
108 both domicile and a place of abode. To establish domicile, a person must live in a particular locality
109 with the intention to remain. A place of abode is the physical place where a person dwells.

110 "Special election" means any election that is held pursuant to law to fill a vacancy in office or to
111 hold a referendum.

112 "State Board" or "Board" means the State Board of Elections.

113 "Virginia voter registration system" or "voter registration system" means the automated central
114 record-keeping system for all voters registered within the Commonwealth that is maintained as provided
115 in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

116 "Voting system" means the electronic voting and counting machines used at elections. This term
117 includes direct recording electronic machines (DRE) and ballot scanner machines.

118 § 24.2-629. State Board approval process of electronic voting systems.

119 A. Any person, firm, or corporation, referred to in this article as the "vendor," manufacturing,
120 owning, or offering for sale any electronic voting or counting machine and ballots designed to be used
121 with such equipment may apply to the State Board, in the manner prescribed by the Board, to have
122 examined a production model of such equipment and the ballots used with it. The Board may require
123 the vendor to pay a reasonable application fee when he files his request for testing or certification of
124 new or upgraded voting equipment. Receipts from such fees shall be credited to the Board for
125 reimbursement of testing and certification expenses. In addition to any other materials that may be
126 required, a current statement of the financial status of the vendor, including any assets and liabilities,
127 shall be filed with the Board; if the vendor is not the manufacturer of the equipment for which
128 application is made, such a statement shall also be filed for the manufacturer. These statements shall be
129 exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The Board
130 shall require, at a site of its choosing, a demonstration of such equipment and ballots and may require
131 that a production model of the equipment and a supply of ballots be provided to the Board for testing
132 purposes. The Board shall also require the vendor to provide documentation of the practices
133 recommended by the vendor to ensure the optimum security and functionality of the system.

134 B. The Board may approve any kind of electronic voting system that meets the following
135 requirements:

136 1. It shall provide clear instructions for voters on how to mark or select their choice and cast that
137 vote.

138 2. It shall provide facilities for voting for all offices at any election and on as many questions as
139 may be submitted at any election.

140 3. It shall be capable of processing ballots for all parties holding a primary election on the same day,
141 but programmable in such a way that an individual ballot cast by a voter is limited to the party primary
142 election in which the voter chooses to participate.

143 4. It shall require votes for presidential and vice presidential electors to be cast for the presidential
144 and vice presidential electors of one party by one operation. The ballot shall contain the words "Electors
145 for" preceded by the name of the party or other authorized designation and followed by the names of
146 the candidates for the offices of President and Vice President.

147 5. It shall enable the voter to cast votes for as many persons for an office as lawfully permitted, but
148 no more. It shall prevent the voter from casting a vote for the same person more than once for the same
149 office. However, ballot scanner machines shall not be required to prevent a voter from voting for a
150 greater number of candidates than he is lawfully entitled to.

151 6. It shall enable the voter to cast a vote on any question on which he is lawfully permitted to vote,
152 but no other.

153 7. It shall provide the voter with an opportunity to correct any error before a ballot is cast.

154 8. It shall correctly register or record and accurately count all votes cast for candidates and on
155 questions.

156 9. It shall be provided with a "protective counter," whereby any operation of the machine before or
157 after the election will be detected.

158 10. It shall be provided with a counter that at all times during an election shall show how many
159 persons have voted.

160 11. It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy
161 of the ballot and a method to conceal the voted ballot.

162 12. It shall be programmable to allow ballots to be separated when necessary.

163 13. *It shall retain each printed ballot cast.*

164 14. Ballot scanner machines shall report, if possible, the number of ballots on which a voter
165 undervoted or overvoted.

166 C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the
167 Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such
168 equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently
169 used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether
170 the system can be safely used without undue potential for fraud; (v) the ease of its operation and
171 transportation by voting equipment custodians and officers of election; (vi) the financial stability of the
172 vendor and manufacturer; (vii) whether the system meets the requirements of this title; (viii) whether the
173 system meets federal requirements; (ix) whether issues of reliability and security identified with the
174 system by other state governments have been adequately addressed by the vendor; and (x) whether, in
175 the opinion of the Board, the potential for approval of such system is such as to justify further
176 examination and testing.

177 D. If the Board determines that there is such potential and prior to its final determination as to
178 approval or disapproval of such system, the Board shall obtain a report by an independent electronics or

179 engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii)
180 whether it is capable of storing and retaining existing votes in a permanent memory in the event of
181 power failure during and after the election; (iii) the number of separate memory capabilities for the
182 storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit
183 trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the
184 anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with
185 disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment
186 custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure
187 by an applicant to cooperate with the consultant by furnishing information and production equipment
188 and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall
189 require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper
190 analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject
191 to the penalty for perjury that he will neither disclose nor make use of such information except as
192 necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.

193 E. In preparing the reports cited in subsections C and D, the Board shall require, as a condition of
194 certification, that the system is comprehensively examined by individuals including at least one expert in
195 election management and one in computer system security. The Board shall develop, in conjunction with
196 the above listed individuals, a specific set of items to be examined and tested as part of the certification
197 process to further elaborate on the requirements identified in this section.

198 F. If the Board determines that there is potential for approval of the system and prior to its final
199 determination, the Board shall also require that the system be tested in an actual election in one or more
200 counties or cities. Its use at such election shall be as valid for all purposes as if it had been legally
201 approved by the Board and adopted by the counties or cities.

202 G. If, following testing, the Board approves any voting system and its ballots for use, the Board shall
203 so notify the electoral boards of each county and city. Systems so approved may be adopted for use at
204 elections as herein provided. No form of voting system and ballots not so approved shall be adopted by
205 any county or city. Any voting system and ballots approved for use by the Board shall be deemed to
206 meet the requirements of this title and any applicable federal laws, and their use in any election shall be
207 valid.

208 H. A vendor whose voting system is approved for use shall provide updates concerning its
209 recommended practices for optimum security and functionality of the system, as may be requested by
210 the Board. Any product for which requested updates are not provided shall be deemed non-compliant
211 and may be decertified at the discretion of the Board.

212 I. The Board shall have the authority to investigate, at its discretion, any voting system certified in
213 Virginia to ensure that it continues to meet the standards outlined in subsections C and D. The Board
214 may, at its discretion, decertify any voting system based on significant problems detected with the
215 voting system in Virginia or on reports provided by federal authorities or other state election officials.

216 **§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or**
217 **general registrar.**

218 A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the
219 duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by
220 the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for
221 the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted
222 ballots envelope or container, and the unused, defaced, spoiled and set aside ballots properly accounted
223 for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they
224 cannot otherwise agree, to the clerk of court by noon on the day following the election.

225 The clerk shall retain custody of the pollbooks, ~~paper~~ printed ballots, and other elections materials
226 until the time has expired for initiating a recount, contest, or other proceeding in which the pollbooks,
227 ~~paper~~ printed ballots, and other elections materials may be needed as evidence and there is no
228 proceeding pending. The clerk shall (i) secure all pollbooks, ~~paper~~ printed ballots and other election
229 materials in sealed boxes; (ii) place all of the sealed boxes in a vault or room not open to the public or
230 to anyone other than the clerk and his staff; (iii) cause such vault or room to be securely locked except
231 when access is necessary for the clerk and his staff; and (iv) upon the initiation of a recount, certify that
232 these security measures have been taken in whatever form is deemed appropriate by the chief judge.

233 After that time the clerk shall deliver the pollbooks to the general registrar who shall return the
234 pollbooks or transfer a copy of the electronic data to the State Board as directed by § 24.2-114 for
235 voting credit purposes. After the pollbooks are returned by the State Board, the general registrar shall
236 retain the pollbooks in his principal office for two years from the date of the election. The clerk shall
237 retain the statement of results and any printed inspection and return sheets for two years and may then
238 destroy them.

239 B. The local electoral board or general registrar may direct that the officers of election, in lieu of

240 conveying the materials to the clerk of the circuit court as provided in subsection A, shall convey the
241 materials to the principal office of the general registrar on the night of the election or the morning
242 following the election as the board directs. The general registrar shall secure and retain the materials in
243 his office and shall convey to the clerk of the court, by noon of the day following the ascertainment of
244 the results of the election by the electoral board, all of the election materials. The general registrar shall
245 retain for public inspection one copy of the statement of results.

246 C. If an electronic pollbook is used, the data disc or cartridge containing the electronic records of the
247 election, or, alternately, a printed copy of the pollbook records of those who voted, shall be transmitted,
248 sealed and retained as required by this section, and otherwise treated as the pollbook for that election for
249 all purposes subsequent to the election. Nothing in this title shall be construed to require that the
250 equipment or software used to produce the electronic pollbook be sealed or retained along with the
251 pollbook, provided that the records for the election have been transferred or printed according to the
252 instructions of the State Board.