

FIRST REGULAR SESSION

HOUSE BILL NO. 249

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLONA.

0812L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 115.225, 115.237, 115.249, 115.439, 115.449, and 115.453, RSMo, and to enact in lieu thereof six new sections relating to election procedures.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 115.225, 115.237, 115.249, 115.439, 115.449, and 115.453, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 115.225, 115.237, 115.249, 115.439, 115.449, and 115.453, to read as follows:

115.225. 1. Before use by election authorities in this state, the secretary of state shall approve the marking devices and the automatic tabulating equipment used in electronic voting systems and may promulgate rules and regulations to implement the intent of sections 115.225 to 115.235.

2. No electronic voting system shall be approved unless it:

(1) Permits voting in absolute secrecy;

(2) Permits each voter to vote for as many candidates for each office as a voter is lawfully entitled to vote for;

(3) Permits each voter to vote for or against as many questions as a voter is lawfully entitled to vote on, and no more;

(4) Provides facilities for each voter to cast as many write-in votes for each office as a voter is lawfully entitled to cast;

(5) Permits each voter in a primary election to vote for the candidates of only one party announced by the voter in advance;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (6) Permits each voter at a presidential election to vote by use of a single punch or mark
16 for the candidates of one party or group of petitioners for president, vice president and their
17 presidential electors;

18 (7) Accurately counts all proper votes cast for each candidate and for and against each
19 question;

20 (8) Is set to reject all votes, except write-in votes, for any office and on any question
21 when the number of votes exceeds the number a voter is lawfully entitled to cast;

22 (9) Permits each voter, while voting, to clearly see the ballot label;

23 (10) Has been tested and is certified by an independent authority that meets the voting
24 system standards developed by the Federal Election Commission or its successor agency. The
25 provisions of this subdivision shall not be required for any system purchased prior to August 28,
26 2002;

27 **(11) Permits each voter at a general election to vote for all candidates of one party**
28 **by one punch or mark or to vote a split ticket, as a voter desires.**

29 3. The secretary of state shall promulgate rules and regulations to allow the use of a
30 computerized voting system. The procedures shall provide for the use of a computerized voting
31 system with the ability to provide a paper audit trail. Notwithstanding any provisions of this
32 chapter to the contrary, such a system may allow for the storage of processed ballot materials in
33 an electronic form.

34 4. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
35 under the authority delegated in this section shall become effective only if it complies with and
36 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section
37 and chapter 536 are nonseverable and if any of the powers vested with the general assembly
38 pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule
39 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
40 proposed or adopted after August 28, 2002, shall be invalid and void.

115.237. 1. Each ballot printed or designed for use with an electronic voting system for
2 any election pursuant to this chapter shall contain all questions and the names of all offices and
3 candidates certified or filed pursuant to this chapter and no other. As far as practicable, all
4 questions and the names of all offices and candidates for which each voter is entitled to vote shall
5 be printed on one page except for the ballot for political party committee persons in polling
6 places not utilizing an electronic voting system which may be printed separately and in
7 conformity with the requirements contained in this section. As far as practicable, ballots
8 containing only questions and the names of nonpartisan offices and candidates shall be printed
9 in accordance with the provisions of this section, except that the ballot information may be listed

10 in vertical or horizontal rows. The names of candidates for each office shall be listed in the order
11 in which they are filed.

12 2. In polling places using electronic voting systems, the ballot information may be
13 arranged in vertical or horizontal rows or on a number of separate pages or screens. In any event,
14 the name of each candidate, the candidate's party, the office for which he or she is a candidate,
15 and each question shall be indicated clearly on the ballot.

16 3. Nothing in [this subchapter] **sections 115.225 to 115.273** shall be construed as
17 prohibiting the use of a separate paper ballot for questions or for the presidential preference
18 primary in any polling place using an electronic voting system.

19 4. Where electronic voting systems are used and when write-in votes are authorized by
20 law, a write-in ballot, which may be in the form of a separate paper ballot, card, or envelope, may
21 be provided by the election authority to permit each voter to write in the names of persons whose
22 names do not appear on the ballot.

23 5. [No] **Each** ballot [printed or designed for use with an electronic voting system for any
24 partisan election held under this chapter] shall allow a person to vote a straight political party
25 ticket **by marking a circle one-half inch in diameter immediately below each party name.**
26 For purposes of this subsection, a "straight political party ticket" means voting for all of the
27 candidates for elective office who are on the ballot representing a single political party by a
28 single selection on the ballot.

29 6. The secretary of state shall promulgate rules that specify uniform standards for ballot
30 layout for each electronic or computerized ballot counting system approved under the provisions
31 of section 115.225 so that the ballot used with any counting system is, where possible, consistent
32 with the intent of this section. Nothing in this section shall be construed to require the format
33 specified in this section if it does not meet the requirements of the ballot counting system used
34 by the election authority.

35 7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
36 under the authority delegated in this section shall become effective only if it complies with and
37 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section
38 and chapter 536 are nonseverable and if any of the powers vested with the general assembly
39 pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule
40 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
41 proposed or adopted after August 28, 2002, shall be invalid and void.

115.249. No voting machine shall be used unless it:

2 (1) Permits voting in absolute secrecy;

3 (2) Permits each voter to vote for as many candidates for each office as he is lawfully
4 entitled to vote for, and no other;

5 (3) Permits each voter to vote for or against as many questions as he is lawfully entitled
6 to vote on, and no more;

7 (4) Provides facilities for each voter to cast as many write-in votes for each office as he
8 is lawfully entitled to cast;

9 (5) Permits each voter in a primary election to vote for the candidates of only one party
10 announced by the voter in advance;

11 (6) Correctly registers or records and accurately counts all votes cast for each candidate
12 and for and against each question;

13 (7) Is provided with a lock or locks which prevent any movement of the voting or
14 registering mechanism and any tampering with the mechanism;

15 (8) Is provided with a protective counter or other device whereby any operation of the
16 machine before or after an election will be detected;

17 (9) Is provided with a counter which shows at all times during the election how many
18 people have voted on the machine;

19 (10) Is provided with a proper light which enables each voter, while voting, to clearly
20 see the ballot labels;

21 **(11) Permits each voter at a general election to vote for all candidates of one party**
22 **by use of a single lever or to vote a split ticket, as the voter desires.**

115.439. 1. If paper ballots are used, the voter shall, immediately upon receiving his
2 ballot, go alone to a voting booth and vote his ballot in the following manner:

3 (1) [When] **If a voter desires to vote [for a candidate] a straight party ticket**, the voter
4 [shall] **may** place a distinguishing mark [immediately beside the name of the candidate for which
5 the voter intends to vote] **in the circle directly below the party name at the head of the**
6 **column, or may place distinguishing marks in the squares immediately beside the names**
7 **of candidates on one party ticket;**

8 (2) **If the voter desires to vote a split party ticket, the voter may place a**
9 **distinguishing mark in the circle directly below one party name at the head of the column**
10 **and distinguishing marks in the squares immediately beside the names of candidates on**
11 **other party tickets, or may place distinguishing marks immediately beside the names of**
12 **candidates on different party tickets;**

13 [(2)] (3) If a write-in line appears on the ballot, the voter may write the name of the
14 person for whom he or she wishes to vote on the line and place a distinguishing mark
15 immediately beside the name;

16 [(3)] (4) If the ballot is one which contains no candidates, the voter shall place a
17 distinguishing mark directly to the left of each "yes" or "no" he desires to vote.

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19 No voter shall vote for the same person more than once for the same office at the same election.

20 2. If the voter accidentally spoils his ballot or ballot card or makes an error, he may
21 return it to an election judge and receive another. The election judge shall mark "SPOILED"
22 across the ballot or ballot card and place it in an envelope marked "SPOILED BALLOTS". After
23 another ballot has been prepared in the manner provided in section 115.433, the ballot shall be
24 given to the voter for voting.

25 3. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
26 under the authority delegated in this section shall become effective only if it complies with and
27 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section
28 and chapter 536 are nonseverable and if any of the powers vested with the general assembly
29 pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule
30 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
31 proposed or adopted after August 28, 2002, shall be invalid and void.

 115.449. 1. As soon as the polls close in each polling place using paper ballots, the
2 election judges shall begin to count the votes. If earlier counting is begun pursuant to section
3 115.451, the election judges shall complete the count in the manner provided by this section.
4 Once begun, no count shall be adjourned or postponed until all proper votes have been counted.

5 2. One counting judge, closely observed by the other counting judge, shall take the
6 ballots out of the ballot box one at a time and, holding each ballot in such a way that the other
7 counting judge may read it, shall read the name of each candidate properly voted for and the
8 office sought by each. As each vote is called out, the recording judges shall each record the vote
9 on a tally sheet. The votes for and against all questions shall likewise be read and recorded. **In**
10 **a general election, the counting judges may separate the straight party ballots from the**
11 **split party ballots and first read one and then the other.** If more than one political
12 subdivision or special district is holding an election on the same day at the same polling place
13 and using separate ballots, the counting judges may separate the ballots of each political
14 subdivision and special district and first read one set, then the next and so on until all proper
15 votes have been counted.

16 3. After the recording of all proper votes, the recording judges shall compare their tallies.
17 When the recording judges agree on the count, they shall sign both of the tally sheets, and one
18 of the recording judges shall announce in a loud voice the total number of votes for each
19 candidate and for and against each question.

20 4. After the announcement of the vote, the election judges shall record the vote totals in
21 the appropriate places on each statement of returns. If any tally sheet or statement of returns
22 contains no heading for any question, the election judges shall write the necessary headings on
23 the tally sheet or statement of returns.

115.453. Election judges shall count votes for all candidates in the following manner:

2 (1) **If a distinguishing mark appears in the circle immediately below a party name,**
3 **each candidate of the party shall be counted as voted for. If a distinguishing mark appears**
4 **in the circle immediately below more than one party name,** no candidate shall be counted as
5 voted for, except a candidate before whose name a distinguishing mark appears preceding the
6 name and a distinguishing mark does not appear in the square preceding the name of any
7 candidate for the same office in another column. **If a distinguishing mark appears in the**
8 **circle immediately below a party name and a distinguishing mark appears in the square**
9 **next to the name of any candidate in another column, each candidate of the party whose**
10 **circle is marked shall be counted as voted for, except where a distinguishing mark appears**
11 **in the square preceding the name of any candidate in another column.** Except as provided
12 in this subdivision and subdivision (2) of this section, each candidate with a distinguishing mark
13 preceding his or her name shall be counted as voted for;

14 (2) **If no distinguishing mark appears in the circle immediately below any party**
15 **name, but a distinguishing mark does appear in the square next to any candidate's name,**
16 **the name of each candidate next to which a distinguishing mark appears shall be counted**
17 **as voted for, and no other name shall be counted as voted for.** If distinguishing marks appear
18 next to the names of more candidates for an office than are entitled to fill the office, no candidate
19 for the office shall be counted as voted for. If more than one candidate is to be nominated or
20 elected to an office, and any voter has voted for the same candidate more than once for the same
21 office at the same election, no votes cast by the voter for the candidate shall be counted;

22 (3) No vote shall be counted for any candidate that is not marked substantially in
23 accordance with the provisions of this section. The judges shall count votes marked substantially
24 in accordance with this section and section 115.456 when the intent of the voter seems clear.
25 Regulations promulgated by the secretary of state shall be used by the judges to determine voter
26 intent. No ballot containing any proper votes shall be rejected for containing fewer marks than
27 are authorized by law;

28 (4) Write-in votes shall be counted only for candidates for election to office who have
29 filed a declaration of intent to be a write-in candidate for election to office with the proper
30 election authority, who shall then notify the proper filing officer of the write-in candidate prior
31 to 5:00 p.m. on the second Friday immediately preceding the election day; except that, write-in
32 votes shall be counted only for candidates for election to state or federal office who have filed
33 a declaration of intent to be a write-in candidate for election to state or federal office with the
34 secretary of state pursuant to section 115.353 prior to 5:00 p.m. on the second Friday
35 immediately preceding the election day. No person who filed as a party or independent candidate
36 for nomination or election to an office may, without withdrawing as provided by law, file as a

37 write-in candidate for election to the same office for the same term. No candidate who files for
38 nomination to an office and is not nominated at a primary election may file a declaration of intent
39 to be a write-in candidate for the same office at the general election. When declarations are
40 properly filed with the secretary of state, the secretary of state shall promptly transmit copies of
41 all such declarations to the proper election authorities for further action pursuant to this section.
42 The election authority shall furnish a list to the election judges and counting teams prior to
43 election day of all write-in candidates who have filed such declaration. This subdivision shall
44 not apply to elections wherein candidates are being elected to an office for which no candidate
45 has filed. No person shall file a declaration of intent to be a write-in candidate for election to any
46 municipal office unless such person is qualified to be certified as a candidate under section
47 115.346;

48 (5) Write-in votes shall be cast and counted for a candidate without party designation.
49 Write-in votes for a person cast with a party designation shall not be counted. Except for
50 candidates for political party committees, no candidate shall be elected as a write-in candidate
51 unless such candidate receives a separate plurality of the votes without party designation
52 regardless of whether or not the total write-in votes for such candidate under all party and
53 without party designations totals a majority of the votes cast;

54 (6) When submitted to the election authority, each declaration of intent to be a write-in
55 candidate for the office of United States president shall include the name of a candidate for vice
56 president and the name of nominees for presidential elector equal to the number to which the
57 state is entitled. At least one qualified resident of each congressional district shall be nominated
58 as presidential elector. Each such declaration of intent to be a write-in candidate shall be
59 accompanied by a declaration of candidacy for each presidential elector in substantially the form
60 set forth in subsection 3 of section 115.399. Each declaration of candidacy for the office of
61 presidential elector shall be subscribed and sworn to by the candidate before the election official
62 receiving the declaration of intent to be a write-in, notary public or other officer authorized by
63 law to administer oaths.

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