

Representatives Setzler of the 35th, Brockway of the 102nd, and Coomer of the 14th offer the following substitute to SB 403:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to
2 primaries and elections generally, so as to create a commission to study the feasibility,
3 practicality, and desirability of acquiring new voting systems for use in elections in this state
4 and the steps and changes necessary to accomplish such acquisition; to provide for
5 definitions; to provide for the certification time for election results; to provide for ballot
6 marking devices; to provide for conforming changes; to provide for related matters; to
7 provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
11 elections generally, is amended by revising paragraphs (2), (4.1), and (18) of Code
12 Section 21-2-2, relating to definitions, and adding new paragraphs to read as follows:

13 "(.3) 'Automatic tabulating equipment' means apparatus, including ballot scanning
14 machines, that are utilized to ascertain the manner by which paper ballots have been
15 marked by electors, whether by hand or by means of electronic ballot markers, and that
16 count the votes marked on such ballots."

17 "(2) 'Ballot labels marking device' means the cards, paper, or other material placed on the
18 front of a voting machine containing the names of offices and candidates and statements
19 of questions to be voted on a pen, pencil, or similar writing tool, or an electronic device
20 designed for use in marking paper ballots so that its elector readable and verifiable mark
21 may be detected as a vote so cast and then counted by automatic tabulating equipment.

22 (2.1) 'Ballot scanner' means an electronic recording device which receives an elector's
23 ballot and tabulates the votes on the ballot by its own devices; also known as a 'tabulating
24 machine.'

25 "(4.1) 'Direct recording electronic' or 'DRE' voting equipment means a computer driven
26 unit for casting and counting votes on which an elector touches a video screen or a button

27 adjacent to a video screen to cast his or her vote. Such term shall not encompass ballot
 28 marking devices or electronic ballot markers."

29 "(7.1) 'Electronic ballot marker' means an electronic device that does not compute or
 30 retain votes; may integrate components such as a ballot scanner, printer, touch screen
 31 monitor, audio output, and a navigational keypad; and uses electronic technology to
 32 independently and privately mark a paper ballot at the direction of an elector, interpret
 33 ballot selections, communicate such interpretation for elector verification, and print an
 34 elector-verifiable paper ballot."

35 "(18) 'Official ballot' means a ballot, whether paper, mechanical, or electronic, which is
 36 furnished by the superintendent or governing authority in accordance with Code
 37 Section 21-2-280, including ballots read by optical scanning tabulators human readable
 38 marks or text that may be elector verified and counted as votes so cast by ballot scanners.
 39 An electronic image of a scanning ballot shall not be considered an official ballot."

40 "(19.1) 'Optical scanning voting system' means a system employing paper ballots on
 41 which electors cast votes with a ballot marking device or electronic ballot marker after
 42 which votes are counted by automatic tabulating equipment."

43 "(28.1) 'Precinct ballot scanner' is a ballot scanner."

44 "(32.1) 'Scanning ballot' means a printed paper ballot designed to be marked by an
 45 elector with a ballot marking device or electronic ballot marker or durable blank paper
 46 designed to be used in a ballot marking device or electronic ballot marker, which is then
 47 inserted for casting into a ballot scanner."

48 **SECTION 2.**

49 Said chapter is further amended by revising paragraph (15) of subsection (a) of Code
 50 Section 21-2-50, relating to the powers and duties of the Secretary of State and prohibition
 51 against serving in a fiduciary capacity, as follows:

52 "(15) To develop, program, build, and review ballots for use by counties and
 53 municipalities on ~~direct recording electronic (DRE)~~ voting systems in use in the state."

54 **SECTION 3.**

55 Said chapter is further amended by revising subsection (a) of Code Section 21-2-267, relating
 56 to equipment, arrangement, and storage at polling places, as follows:

57 "(a) The governing authority of each county and municipality shall provide and the
 58 superintendent shall cause all rooms used as polling places to be provided with suitable
 59 heat and light and, in precincts in which ballots are used, with a sufficient number of voting
 60 compartments or booths with proper supplies in which the electors may conveniently mark
 61 their ballots, with a curtain, screen, or door in the upper part of the front of each

62 compartment or booth so that in the marking thereof they may be screened from the
 63 observation of others. A curtain, screen, or door shall not be required, however, for the
 64 self-contained units used as voting booths in which direct recording electronic (DRE)
 65 voting units or electronic ballot markers are located if such booths have been designed so
 66 as to ensure the privacy of the elector. When practicable, every polling place shall consist
 67 of a single room, every part of which is within the unobstructed view of those present
 68 therein and shall be furnished with a guardrail or barrier closing the inner portion of such
 69 room, which guardrail or barrier shall be so constructed and placed that only such persons
 70 as are inside such rail or barrier can approach within six feet of the ballot box and voting
 71 compartments, or booths, or voting machines, as the case may be. The ballot box and
 72 voting compartments or booths shall be so arranged in the voting room within the enclosed
 73 space as to be in full view of those persons in the room outside the guardrail or barrier.
 74 The voting machine or machines shall be placed in the voting rooms within the enclosed
 75 space so that, unless its construction shall otherwise require, the ballot labels on the face
 76 of the machine can be plainly seen by the poll officers when the machine is not occupied
 77 by an elector. In the case of direct recording electronic (DRE) voting units or electronic
 78 ballot markers, the ~~units~~ devices shall be arranged in such a manner as to ensure the privacy
 79 of the elector while voting on such ~~units~~ devices, to allow monitoring of the ~~units~~ devices
 80 by the poll officers while the polls are open, and to permit the public to observe the voting
 81 without affecting the privacy of the electors as they vote."

82 **SECTION 4.**

83 Said chapter is further amended by revising Code Section 21-2-293, relating to correction of
 84 mistakes and omissions on ballots, as follows:

85 "21-2-293.

86 (a) If the election superintendent discovers that a mistake or omission has occurred in the
 87 printing of official ballots or in the programming of the display of the official ballot on
 88 DRE voting equipment or electronic ballot markers for any primary or election, the
 89 superintendent is authorized on his or her own motion to take such steps as necessary to
 90 correct such mistake or omission if the superintendent determines that such correction is
 91 feasible and practicable under the circumstances; provided, however, that the
 92 superintendent gives at least 24 hours notice to the Secretary of State and any affected
 93 candidates of the mistake or omission prior to making such correction.

94 (b) When it is shown by affidavit that a mistake or omission has occurred in the printing
 95 of official ballots or in the programming of the display of the official ballot on DRE voting
 96 equipment or electronic ballot markers for any primary or election, the superior court of
 97 the proper county may, upon the application of any elector of the county or municipality,

98 require the superintendent to correct the mistake or omission or to show cause why he or
 99 she should not do so."

100 SECTION 5.

101 Said chapter is further amended by adding a new Code section to Article 8A, relating to
 102 state-wide voting equipment, to read as follows:

103 "21-2-301.

104 (a) There is created the Georgia 2020 Election Transition Commission. Such commission
 105 shall consist of the following members:

106 (1) Six members of the House of Representatives appointed by the Speaker of the House
 107 of Representatives, not more than four of whom shall be from the same political party;

108 (2) Six members of the Senate appointed by the Lieutenant Governor, not more than four
 109 of whom shall be from the same political party;

110 (3) One local elections official appointed by the Speaker of the House of Representatives
 111 who shall be a nonvoting member;

112 (4) One local elections official appointed by the Lieutenant Governor who shall be a
 113 nonvoting member;

114 (5) The chairperson of the Georgia Republican Party or his or her designee who shall be
 115 an ex officio, nonvoting member; and

116 (6) The chairperson of the Democratic Party of Georgia or his or her designee who shall
 117 be an ex officio, nonvoting member.

118 (b) All appointments to the commission shall be made not later than May 1, 2018. The
 119 Speaker of the House of Representatives and the Lieutenant Governor shall each designate
 120 one of their respective appointees to serve as cochairpersons of the commission. The
 121 commission shall meet upon the call of the cochairpersons. The commission may conduct
 122 such meetings at such places and at such times as it may deem necessary or convenient to
 123 enable it to exercise fully and effectively its powers, perform its duties, and accomplish the
 124 objectives and purposes of this Code section.

125 (c) The members of the commission shall receive the allowances provided for in Code
 126 Section 28-1-8. Funds necessary to carry out the provisions of this Code section shall
 127 come from funds appropriated to the House of Representatives and the Senate.

128 (d) The commission shall study the feasibility, practicality, and desirability of selecting
 129 a new voting system for use in elections in the State of Georgia. In so doing, the
 130 commission shall review the voting systems that are available and shall propose any
 131 necessary changes in Georgia law to accommodate new voting systems, as well as to
 132 enhance the security and reliability of elections in Georgia which may include, but shall
 133 not be limited to, the implementation of risk-limiting and other audits. The commission

134 shall also propose selection criteria for use in issuing a competitive public solicitation to
 135 select such new voting system equipment and supporting services for use in primaries and
 136 elections in each county in this state, as well as proposing a plan for such solicitation and
 137 implementation of the purchase and installation of such voting systems in the state
 138 following such purchase. The commission shall review the costs of such voting system and
 139 shall propose a manner of funding the purchase of such system and supporting services and
 140 a timeline for the solicitation, purchase, and implementation of such system.

141 (e) The commission shall conduct public meetings and technical inquiries regarding
 142 county requirements, cybersecurity considerations, and fraud prevention practices in the
 143 state in performing its study.

144 (f) The State Election Board and the office of the Secretary of State shall provide the
 145 commission with such administrative and technical support as necessary for the
 146 commission to fulfill its duties and responsibilities. In addition, the commission may
 147 request the services of the Carl Vinson Institute of Government of the University of
 148 Georgia.

149 (g) Not later than December 1, 2018, the commission shall provide a report of its findings
 150 and recommendations with regard to the matters in subsection (d) of this Code section to
 151 the Speaker of the House of Representatives and the Lieutenant Governor.

152 (h) This Code section shall be repealed by operation of law, and the commission shall be
 153 abolished on December 31, 2018."

154 **SECTION 6.**

155 Said chapter is further amended by revising paragraph (5) of Code Section 21-2-365, relating
 156 to requirements for use of optical scanning voting systems, as follows:

157 "(5) ~~An optical scanning tabulator~~ A ballot scanner shall preclude the counting of votes
 158 for any candidate or upon any question for whom or upon which an elector is not entitled
 159 to vote; shall preclude the counting of votes for more persons for any office than he or
 160 she is entitled to vote for; and shall preclude the counting of votes for any candidate for
 161 the same office or upon any question more than once;".

162 **SECTION 7.**

163 Said chapter is further amended by revising subsection (a) of Code Section 21-2-369, relating
 164 to printing of ballots and arrangement, as follows:

165 "(a) The ballots shall be printed in black ink upon clear, white, or colored material, of such
 166 size and arrangement as will suit the construction of the ~~optical~~ ballot scanner, and in plain,
 167 clear type so as to be easily readable by persons with normal vision; provided, however,

168 that red material shall not be used except that all ovals appearing on the ballot to indicate
 169 where a voter should mark to cast a vote may be printed in red ink."

170 **SECTION 8.**

171 Said chapter is further amended by revising Code Section 21-2-372, relating to ballot
 172 description, as follows:

173 "21-2-372.

174 Ballots shall be of suitable design, size, and stock to permit processing by a ~~tabulating~~
 175 ~~machine~~ ballot scanner and shall be printed in black ink on clear, white, or colored
 176 material. ~~In counties using a central count tabulating system, a serially numbered strip~~
 177 ~~shall be attached to each ballot in a manner and form similar to that prescribed in this~~
 178 ~~chapter for paper ballots."~~

179 **SECTION 9.**

180 Said chapter is further amended by revising subsections (a) and (b) of Code
 181 Section 21-2-374, relating to proper programming, proper order, testing, and supplies, as
 182 follows:

183 "(a) The superintendent of each county or municipality shall order the proper programming
 184 to be placed in each ~~tabulator~~ ballot scanner used in any precinct or central tabulating
 185 location.

186 (b) On or before the third day preceding a primary or election, including special primaries,
 187 special elections, and referendum elections, the superintendent shall have the ~~optical~~
 188 ~~scanning tabulators~~ ballot scanners tested to ascertain that they will correctly count the
 189 votes cast for all offices and on all questions. Public notice of the time and place of the test
 190 shall be made at least five days prior thereto; provided, however, that, in the case of a
 191 runoff, the public notice shall be made at least three days prior thereto. Representatives of
 192 political parties and bodies, candidates, news media, and the public shall be permitted to
 193 observe such tests. The test shall be conducted by processing a preaudited group of ballots
 194 so marked as to record a predetermined number of valid votes for each candidate and on
 195 each question and shall include for each office one or more ballots which are improperly
 196 marked and one or more ballots which have votes in excess of the number allowed by law
 197 in order to test the ability of the ~~optical scanning tabulator~~ ballot scanner to reject such
 198 votes. The ~~optical scanning tabulator~~ ballot scanner shall not be approved unless it
 199 produces an errorless count. If any error is detected, the cause therefor shall be ascertained
 200 and corrected; and an errorless count shall be made before the ~~tabulator~~ ballot scanner is
 201 approved. The superintendent shall cause the pretested ~~tabulators~~ ballot scanners to be
 202 placed at the various polling places to be used in the primary or election. The

203 superintendent shall require that each ~~optical scanning tabulator~~ ballot scanner be
 204 thoroughly tested and inspected prior to each primary and election in which it is used and
 205 shall keep such tested material as certification of an errorless count on each ~~tabulator~~ ballot
 206 scanner. In counties using central count ~~optical scanning tabulators~~ ballot scanners, the
 207 same test shall be repeated immediately before the start of the official count of the ballots
 208 and at the conclusion of such count. Precinct ~~tabulators~~ ballot scanners shall produce a
 209 zero tape prior to any ballots being inserted on the day of any primary or election."

210 SECTION 10.

211 Said chapter is further amended by revising Code Section 21-2-375, relating to delivery of
 212 equipment to polling places, protection for equipment, and required accessories, as follows:
 213 "21-2-375.

214 (a) In counties using precinct count ~~optical scanning tabulators~~ ballot scanners, the
 215 superintendent shall deliver the proper ~~optical scanning tabulator~~ ballot scanner to the
 216 polling places at least one hour before the time set for opening of the polls at each primary
 217 or election and shall cause each to be set up in the proper manner for use in voting.

218 (b) The superintendent shall provide ample protection against molestation of and injury
 219 to the ~~optical scanning tabulator~~ ballot scanner and, for that purpose, shall call upon any
 220 law enforcement officer to furnish such assistance as may be necessary; and it shall be the
 221 duty of the law enforcement officer to furnish such assistance when so requested by the
 222 superintendent.

223 (c) The superintendent shall at least one hour before the opening of the polls:

224 (1) Provide sufficient lighting to enable electors, while in the voting booth, to read the
 225 ballot, which lighting shall be suitable for the use of poll officers in examining the booth;
 226 and such lighting shall be in good working order before the opening of the polls;

227 (2) Prominently post directions for voting ~~on the optical scanning ballot~~ within the voting
 228 booth; at least two sample ballots in use for the primary or election shall be posted
 229 prominently outside the enclosed space within the polling place;

230 (3) Ensure that the precinct count ~~optical scanning tabulator~~ ballot scanner shall have a
 231 seal securing the memory pack in use throughout the election day; such seal shall not be
 232 broken unless the ~~tabulator~~ ballot scanner is replaced due to malfunction; and

233 (4) Provide such other materials and supplies as may be necessary or as may be required
 234 by law."

235 SECTION 11.

236 Said chapter is further amended by revising Code Section 21-2-377, relating to custody and
 237 storage when not in use, as follows:

238 "21-2-377.

239 (a) The superintendent shall designate a person or persons who shall have custody of the
 240 ~~optical scanning tabulators~~ ballot scanners of the county or municipality when they are not
 241 in use at a primary or election and shall provide for his or her compensation and for the
 242 safe storage and care of the ~~optical scanning tabulators~~ ballot scanners.

243 (b) All ~~optical scanning tabulators~~ ballot scanners, when not in use, shall be properly
 244 covered and stored in a suitable place or places."

245 **SECTION 12.**

246 Said chapter is further amended by revising subsection (e) of Code Section 21-2-413, relating
 247 to conduct of voters, campaigners, and others at polling places generally, as follows:

248 "(e) No person shall use photographic or other electronic monitoring or recording devices,
 249 cameras, or cellular telephones while such person is in a polling place while voting is
 250 taking place; provided, however, that a poll manager, in his or her discretion, may allow
 251 the use of photographic devices in the polling place under such conditions and limitations
 252 as the election superintendent finds appropriate, and provided, further, that no photography
 253 shall be allowed of a ballot or the face of a voting machine or DRE unit or electronic ballot
 254 marker while an elector is voting such ballot or machine or DRE unit or using such
 255 electronic ballot marker and no photography shall be allowed of an electors list, electronic
 256 electors list, or the use of an electors list or electronic electors list. This subsection shall
 257 not prohibit the use of photographic or other electronic monitoring or recording devices,
 258 cameras, or cellular telephones by poll officials for official purposes."

259 **SECTION 13.**

260 Said chapter is further amended by revising Code Section 21-2-482, relating to absentee
 261 ballots for precincts using optical scanning voting equipment, as follows:

262 "21-2-482.

263 Ballots in a precinct using optical scanning voting equipment for ~~use~~ voting by absentee
 264 electors shall be prepared sufficiently in advance by the superintendent and shall be
 265 delivered to the board of registrars as provided in Code Section 21-2-384. Such ballots
 266 shall be marked 'Official Absentee Ballot' and shall be in substantially the form for ballots
 267 required by Article 8 of this chapter, except that in counties or municipalities using voting
 268 machines, direct recording electronic (DRE) units, or ~~optical~~ ballot scanners, the ballots
 269 may be in substantially the form for the ballot labels required by Article 9 of this chapter
 270 or in such form as will allow the ballot to be machine tabulated. Every such ballot shall
 271 have printed on the face thereof the following:

272 I understand that the offer or acceptance of money or any other object of value to vote
 273 for any particular candidate, list of candidates, issue, or list of issues included in this
 274 election constitutes an act of voter fraud and is a felony under Georgia law.'
 275 The form for either ballot shall be determined and prescribed by the Secretary of State."

276 SECTION 14.

277 Said chapter is further amended by revising subsection (k) of Code Section 21-2-493, relating
 278 to computation, canvassing, and tabulation of returns; investigation of discrepancies in vote
 279 counts; recount procedure; certification of returns; and change in returns, as follows:

280 "(k) As the returns from each precinct are read, computed, and found to be correct or
 281 corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until
 282 all the returns from the various precincts which are entitled to be counted shall have been
 283 duly recorded; then they shall be added together, announced, and attested by the assistants
 284 who made and computed the entries respectively and shall be signed by the superintendent.
 285 The consolidated returns shall then be certified by the superintendent in the manner
 286 required by this chapter. Such returns shall be certified by the superintendent not later than
 287 5:00 P.M. on the ~~Monday~~ eighth day following the date on which such election was held
 288 and such returns shall be immediately transmitted to the Secretary of State."

289 SECTION 15.

290 Said chapter is further amended by revising paragraph (8) of Code Section 21-2-566, relating
 291 to interference with primaries and elections generally, as follows:

292 "(8) Willfully tampers with any electors list, voter's certificate, numbered list of voters,
 293 ballot box, voting machine, direct recording electronic (DRE) equipment, electronic
 294 ballot marker, or tabulating machine"

295 SECTION 16.

296 Said chapter is further amended by revising paragraph (3) of Code Section 21-2-579, relating
 297 to fraudulently allowing ballot or voting machine to be seen, casting unofficial ballot, and
 298 receiving unauthorized assistance in voting, as follows:

299 "(3) Without having made the affirmation under oath or declaration required by Code
 300 Section 21-2-409, or when the disability which he or she declared at the time of
 301 registration no longer exists, permits another to accompany him or her into the voting
 302 compartment or voting machine booth or to mark his or her ballot or to register his or her
 303 vote on the voting machine or direct recording electronic (DRE) equipment or use an
 304 electronic ballot marker; or"

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SECTION 17.

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Said chapter is further amended by revising Code Section 21-2-580, relating to tampering with, damaging, improper preparation of, or prevention of proper operation of voting machines, as follows:

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"21-2-580.

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Any person who:

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(1) Unlawfully opens, tampers with, or damages any voting machine or electronic ballot marker or tabulating machine to be used or being used at any primary or election;

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(2) Willfully prepares a voting machine or an electronic ballot marker or tabulating machine for use in a primary or election in improper order for voting; or

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(3) Prevents or attempts to prevent the correct operation of such electronic ballot marker or tabulating machine or voting machine

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shall be guilty of a felony."

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SECTION 18.

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Said chapter is further amended by revising Code Section 21-2-582, relating to tampering with, damaging, or preventing of proper operation of direct recording electronic equipment or tabulating device, as follows:

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"21-2-582.

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Any person who tampers with or damages any direct recording electronic (DRE) equipment or electronic ballot marker or tabulating computer machine or device to be used

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or being used at or in connection with any primary or election or who prevents or attempts to prevent the correct operation of any direct recording electronic (DRE) equipment or

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electronic ballot marker or tabulating ~~computer~~ machine or device shall be guilty of a felony."

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SECTION 19.

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Said chapter is further amended by revising Code Section 21-2-582.1, relating to penalty for voting equipment modification, as follows:

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"21-2-582.1.

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(a) For the purposes of this Code section, the term 'voting equipment' shall mean a voting machine, tabulating machine, optical scanning voting system, ~~or~~ direct recording electronic voting system, or electronic ballot marker.

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(b) Any person or entity, including, but not limited to, a manufacturer or seller of voting equipment, who alters, modifies, or changes any aspect of such voting equipment without prior approval of the Secretary of State is guilty of a felony."

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SECTION 20.

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Said chapter is further amended by revising Code Section 21-2-587, relating to frauds by poll workers, as follows:

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"21-2-587.

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Any poll officer who willfully:

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(1) Makes a false return of the votes cast at any primary or election;

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(2) Deposits fraudulent ballots in the ballot box or certifies as correct a false return of ballots;

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(3) Registers fraudulent votes upon any voting machine or certifies as correct a return of fraudulent votes cast upon any voting machine;

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(4) Makes any false entries in the electors list;

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(5) Destroys or alters any ballot, voter's certificate, or electors list;

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(6) Tampers with any voting machine, direct recording electronic (DRE) equipment, electronic ballot marker, or tabulating ~~computer~~ machine or device;

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(7) Prepares or files any false voter's certificate not prepared by or for an elector actually voting at such primary or election; or

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(8) Fails to return to the officials prescribed by this chapter, following any primary or election, any keys of a voting machine; ballot box; general or duplicate return sheet; tally paper; oaths of poll officers; affidavits of electors and others; record of assisted voters; numbered list of voters; electors list; voter's certificate; spoiled and canceled ballots; ballots deposited, written, or affixed in or upon a voting machine; DRE, electronic ballot marker, or tabulating machine memory cards; or any certificate or any other paper or record required to be returned under this chapter

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shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both."

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SECTION 21.

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This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 22.

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All laws and parts of laws in conflict with this Act are repealed.