

Senate Bill 403

By: Senators Thompson of the 14th, Brass of the 28th, Mullis of the 53rd, Albers of the 56th, Beach of the 21st and others

**AS PASSED SENATE**

**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 provide for uniform election equipment in this  
3 state; to provide that direct recording electronic voting systems shall not be used in primaries  
4 or elections in this state after January 1, 2024; to provide for definitions; to provide for ballot  
5 marking devices and standards and procedures for such devices; to provide for audits of  
6 election results and procedures therefor; to provide methods for recounts; to provide for  
7 conforming changes; to provide for related matters; to provide for an effective date; to repeal  
8 conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

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

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

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

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

26 "(4.1) 'Direct recording electronic' or 'DRE' voting equipment means a computer driven  
 27 unit for casting and counting votes on which an elector touches a video screen or a button  
 28 adjacent to a video screen to cast his or her vote. Such term shall not encompass ballot  
 29 marking devices or electronic ballot markers."

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

36 "(18) 'Official ballot' means a ballot, whether paper, mechanical, or electronic, which is  
 37 furnished by the superintendent or governing authority in accordance with Code  
 38 Section 21-2-280, including ballots read by optical scanning tabulators that are read by  
 39 ballot scanners. An electronic image of a scanning ballot shall not be considered an  
 40 official ballot."

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

44 "(28.1) 'Precinct ballot scanner' is a ballot scanner."

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

## 49 SECTION 2.

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

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

## 55 SECTION 3.

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

58 "(a) The governing authority of each county and municipality shall provide and the  
 59 superintendent shall cause all rooms used as polling places to be provided with suitable  
 60 heat and light and, in precincts in which ballots are used, with a sufficient number of voting

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

83 **SECTION 4.**

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

86 "21-2-293.

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

95 (b) When it is shown by affidavit that a mistake or omission has occurred in the printing  
 96 of official ballots or in the programming of the display of the official ballot on DRE voting

97 equipment or electronic ballot markers for any primary or election, the superior court of  
 98 the proper county may, upon the application of any elector of the county or municipality,  
 99 require the superintendent to correct the mistake or omission or to show cause why he or  
 100 she should not do so."

#### 101 SECTION 5.

102 Said chapter is further amended by revising subsection (a) of Code Section 21-2-300, relating  
 103 to provision of new voting equipment by state, contingent upon appropriations, county  
 104 responsibilities, education, and county and municipal contracts for equipment, as follows:

105 ~~"(a)(1) Provided that the General Assembly specifically appropriates funding to the~~  
 106 ~~Secretary of State to implement this subsection, the~~ The equipment used for casting and  
 107 counting votes in county, state, and federal elections shall, by the July, 2004, primary  
 108 election and afterwards, be the same in each county in this state and shall be provided to  
 109 each county by the state, as determined by the Secretary of State. Notwithstanding any  
 110 provision of law to the contrary, on and after January 1, 2024, only optical scanning  
 111 voting system equipment shall be used in federal, state, and county primaries and  
 112 elections in the State of Georgia.

113 (2) Not later than January 31, 2019, the Secretary of State shall issue a competitive  
 114 public solicitation to select optical scanning voting system equipment and supporting  
 115 services for use in primaries and elections in each county in this state. A vendor selection  
 116 shall be made, price and contract negotiations shall be completed, and the selection shall  
 117 be announced by June 1, 2019.

118 (3) Provided that the General Assembly specifically appropriates funding to implement  
 119 this subsection by not later than July 1, 2019, the Secretary of State shall provide optical  
 120 scanning voting equipment to counties in Georgia for use in federal, state, and county  
 121 primaries and elections by not later than the 2020 presidential preference primary.

122 (4) Notwithstanding any provision of law to the contrary, the Secretary of State is  
 123 authorized to conduct pilot programs to test and evaluate the use of optical scanning  
 124 voting systems and voter-verifiable ballots in primaries and elections in this state."

#### 125 SECTION 6.

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

128 ~~"(5) An optical scanning tabulator~~ A ballot scanner shall preclude the counting of votes  
 129 for any candidate or upon any question for whom or upon which an elector is not entitled  
 130 to vote; shall preclude the counting of votes for more persons for any office than he or

131 she is entitled to vote for; and shall preclude the counting of votes for any candidate for  
 132 the same office or upon any question more than once;”.

133 **SECTION 7.**

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

136 “(a) The ballots shall be printed in black ink upon clear, white, or colored material, of such  
 137 size and arrangement as will suit the construction of the ~~optical~~ ballot scanner, and in plain,  
 138 clear type so as to be easily readable by persons with normal vision; provided, however,  
 139 that red material shall not be used except that all ovals appearing on the ballot to indicate  
 140 where a voter should mark to cast a vote may be printed in red ink.”

141 **SECTION 8.**

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

144 “21-2-372.

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

150 **SECTION 9.**

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

154 “21-2-374.

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

158 (b) On or before the third day preceding a primary or election, including special primaries,  
 159 special elections, and referendum elections, the superintendent shall have the ~~optical~~  
 160 ~~scanning tabulators~~ ballot scanners tested to ascertain that they will correctly count the  
 161 votes cast for all offices and on all questions. Public notice of the time and place of the test  
 162 shall be made at least five days prior thereto; provided, however, that, in the case of a  
 163 runoff, the public notice shall be made at least three days prior thereto. Representatives of  
 164 political parties and bodies, candidates, news media, and the public shall be permitted to

165 observe such tests. The test shall be conducted by processing a preaudited group of ballots  
 166 so marked as to record a predetermined number of valid votes for each candidate and on  
 167 each question and shall include for each office one or more ballots which are improperly  
 168 marked and one or more ballots which have votes in excess of the number allowed by law  
 169 in order to test the ability of the ~~optical scanning tabulator~~ ballot scanner to reject such  
 170 votes. The ~~optical scanning tabulator~~ ballot scanner shall not be approved unless it  
 171 produces an errorless count. If any error is detected, the cause therefor shall be ascertained  
 172 and corrected; and an errorless count shall be made before the ~~tabulator~~ ballot scanner is  
 173 approved. The superintendent shall cause the pretested ~~tabulators~~ ballot scanners to be  
 174 placed at the various polling places to be used in the primary or election. The  
 175 superintendent shall require that each ~~optical scanning tabulator~~ ballot scanner be  
 176 thoroughly tested and inspected prior to each primary and election in which it is used and  
 177 shall keep such tested material as certification of an errorless count on each ~~tabulator~~ ballot  
 178 scanner. In counties using central count ~~optical scanning tabulators~~ ballot scanners, the  
 179 same test shall be repeated immediately before the start of the official count of the ballots  
 180 and at the conclusion of such count. Precinct ~~tabulators~~ ballot scanners shall produce a  
 181 zero tape prior to any ballots being inserted on the day of any primary or election."

182

#### SECTION 10.

183 Said chapter is further amended by revising Code Section 21-2-375, relating to delivery of  
 184 equipment to polling places, protection for equipment, and required accessories, as follows:  
 185 "21-2-375.

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

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

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

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

- 199 (2) Prominently post directions for voting ~~on the optical scanning ballot~~ within the voting  
 200 booth; at least two sample ballots in use for the primary or election shall be posted  
 201 prominently outside the enclosed space within the polling place;
- 202 (3) Ensure that the precinct count ~~optical scanning tabulator~~ ballot scanner shall have a  
 203 seal securing the memory pack in use throughout the election day; such seal shall not be  
 204 broken unless the ~~tabulator~~ ballot scanner is replaced due to malfunction; and
- 205 (4) Provide such other materials and supplies as may be necessary or as may be required  
 206 by law."

207 **SECTION 11.**

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

210 "21-2-377.

- 211 (a) The superintendent shall designate a person or persons who shall have custody of the  
 212 ~~optical scanning tabulators~~ ballot scanners of the county or municipality when they are not  
 213 in use at a primary or election and shall provide for his or her compensation and for the  
 214 safe storage and care of the ~~optical scanning tabulators~~ ballot scanners.
- 215 (b) All ~~optical scanning tabulators~~ ballot scanners, when not in use, shall be properly  
 216 covered and stored in a suitable place or places."

217 **SECTION 12.**

218 Said chapter is further amended by revising Part 5 of Article 9, relating to electronic  
 219 recording voting systems, by repealing the part and inserting in lieu thereof the following:

220 "Part 6

221 21-2-379.21.

222 Each polling place in this state utilizing optical scanning voting systems shall be equipped  
 223 with at least one electronic ballot marker that meets the requirements as set forth in this  
 224 part.

225 21-2-379.22.

226 No electronic ballot marker shall be adopted or used in primaries or elections in this state  
 227 unless it shall, at the time, satisfy the following requirements:

- 228 (1) Provide facilities for marking ballots for all such candidates and questions for which  
 229 the elector shall be entitled to vote in a primary or election;

- 230 (2) Permit each elector, in one operation, to mark a vote for presidential electors for all  
 231 the candidates of one party or body for the office of presidential elector;  
 232 (3) Permit each elector to mark votes, at any election, for any person and for any office  
 233 for whom and for which he or she is lawfully entitled to vote, whether or not the name  
 234 of such person or persons appears as a candidate for election; to mark votes for as many  
 235 persons for an office as he or she is entitled to vote for; and to mark votes for or against  
 236 any question upon which he or she is entitled to vote;  
 237 (4) Preclude the marking of votes for any candidate or upon any question for whom or  
 238 upon which an elector is not entitled to vote; preclude the marking of votes for more  
 239 persons for any office than the elector is entitled to vote for; and preclude the marking of  
 240 votes for any candidate for the same office or upon any question more than once;  
 241 (5) Permit voting in absolute secrecy so that no person can see or know for whom any  
 242 other elector has voted or is voting, save an elector whom he or she has assisted or is  
 243 assisting in voting, as prescribed by law;  
 244 (6) Be constructed of material of good quality in a neat and workmanlike manner;  
 245 (7) When properly operated, mark correctly and accurately every vote cast;  
 246 (8) Be so constructed that an elector may readily learn the method of operating it; and  
 247 (9) Be safely transportable.

248 21-2-379.23.

249 (a) Any person or organization owning, manufacturing, or selling, or being interested in  
 250 the manufacture or sale of, any electronic ballot marker may request that the Secretary of  
 251 State examine the device. Any ten or more electors of this state may, at any time, request  
 252 that the Secretary of State reexamine any such device previously examined and approved  
 253 by him or her. Before any such examination or reexamination, the person, persons, or  
 254 organization requesting such examination or reexamination shall pay to the Secretary of  
 255 State the reasonable expenses of such examination or reexamination. The Secretary of  
 256 State shall publish and maintain on his or her website the cost of such examination or  
 257 reexamination. The Secretary of State may, at any time, in his or her discretion, reexamine  
 258 any such device.

259 (b) The Secretary of State shall thereupon examine or reexamine such device and shall  
 260 make and file in his or her office a report, attested by his or her signature and the seal of  
 261 his or her office, stating whether, in his or her opinion, the kind of device so examined can  
 262 be safely and accurately used by electors at primaries and elections as provided in this  
 263 chapter. If this report states that the device can be so used, the device shall be deemed  
 264 approved, and devices of its kind may be adopted for use at primaries and elections as  
 265 provided in this chapter.

266 (c) Any device that is not so approved shall not be used at any primary or election and if,  
267 upon the reexamination of any such device previously approved, it shall appear that the  
268 device can no longer be safely or accurately used by electors at primaries or elections as  
269 provided in this chapter because of an inability to accurately record votes, the approval of  
270 the same shall immediately be revoked by the Secretary of State, and no such device shall  
271 thereafter be purchased for use or be used in this state.

272 (d) Any vendor who completes a sale of an electronic ballot marker that has not been  
273 certified by the Secretary of State to a governmental body in this state shall be subject to  
274 a penalty of \$100,000.00, payable to the State of Georgia, plus reimbursement of all costs  
275 and expenses incurred by the governmental body in connection with the sale. The State  
276 Election Board shall have the authority to impose such penalty upon a finding that such a  
277 sale has occurred.

278 (e) When a device has been so approved, no improvement or change that does not impair  
279 its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval  
280 of such device, or of its kind.

281 (f) Neither the Secretary of State, nor any custodian, nor the governing authority of any  
282 county or municipality or a member of such governing authority nor any other person  
283 involved in the examination process shall have any pecuniary interest in any device or in  
284 the manufacture or sale thereof.

285 21-2-379.24.

286 (a) The superintendent of each county or municipality shall cause the proper ballot design  
287 and style to be programmed for each electronic ballot marker which is to be used in any  
288 precinct within such county or municipality, cause each such device to be placed in proper  
289 order for voting, and examine each unit before it is sent to a polling place for use in a  
290 primary or election to verify that each device is properly recording votes and producing  
291 proper ballots.

292 (b) The superintendent may appoint, with the approval of the county or municipal  
293 governing authority, as appropriate, a custodian of the electronic ballot markers, and deputy  
294 custodians as may be necessary, whose duty shall be to prepare the devices to be used in  
295 the county or municipality at the primaries and elections to be held therein. Each custodian  
296 and deputy custodian shall receive from the county or municipality such compensation as  
297 shall be fixed by the governing authority of such county or municipality. Such custodian  
298 shall, under the direction of the superintendent, have charge of and represent the  
299 superintendent during the preparation of the devices as required by this chapter. The  
300 custodian and deputy custodians shall serve at the pleasure of the superintendent. Each

301 custodian and deputy custodian shall take an oath of office prepared by the Secretary of  
 302 State before each primary or election which shall be filed with the superintendent.

303 (c) On or before the third day preceding a primary or election, including special primaries,  
 304 special elections, and referendum elections, the superintendent shall have each electronic  
 305 ballot marker tested to ascertain that it will correctly record the votes cast for all offices and  
 306 on all questions and produce a ballot reflecting such choices of the elector in a manner that  
 307 the State Election Board shall prescribe by rule or regulation. Public notice of the time and  
 308 place of the test shall be made at least five days prior thereto; provided, however, that, in  
 309 the case of a runoff, the public notice shall be made at least three days prior thereto.  
 310 Representatives of political parties and bodies, news media, and the public shall be  
 311 permitted to observe such tests.

312 21-2-379.25.

313 (a) All electronic ballot markers and related equipment, when not in use, shall be properly  
 314 stored and secured under conditions as shall be specified by the Secretary of State.

315 (b) The superintendent shall store the devices and related equipment under his or her  
 316 supervision or shall designate a person or entity who shall provide secure storage of such  
 317 devices and related equipment when it is not in use at a primary or election. The  
 318 superintendent shall provide compensation for the safe storage and care of such devices and  
 319 related equipment if the devices and related equipment are stored by a person or entity  
 320 other than the superintendent."

321 **SECTION 13.**

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

324 "(e) No person shall use photographic or other electronic monitoring or recording devices,  
 325 cameras, or cellular telephones while such person is in a polling place while voting is  
 326 taking place; provided, however, that a poll manager, in his or her discretion, may allow  
 327 the use of photographic devices in the polling place under such conditions and limitations  
 328 as the election superintendent finds appropriate, and provided, further, that no photography  
 329 shall be allowed of a ballot or the face of a voting machine or DRE unit or electronic ballot  
 330 marker while an elector is voting such ballot or machine or DRE unit or using such  
 331 electronic ballot marker and no photography shall be allowed of an electors list, electronic  
 332 electors list, or the use of an electors list or electronic electors list. This subsection shall  
 333 not prohibit the use of photographic or other electronic monitoring or recording devices,  
 334 cameras, or cellular telephones by poll officials for official purposes."

335 **SECTION 14.**

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

338 "21-2-482.

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

348 'I understand that the offer or acceptance of money or any other object of value to vote  
349 for any particular candidate, list of candidates, issue, or list of issues included in this  
350 election constitutes an act of voter fraud and is a felony under Georgia law.'

351 The form for either ballot shall be determined and prescribed by the Secretary of State."

352 **SECTION 15.**

353 Said chapter is further amended by revising subsection (a) of Code Section 21-2-495, relating  
354 to procedure for recount or recanvass of votes and losing candidate's right to a recount, and  
355 adding a new subsection to read as follows:

356 "(a) In precincts where paper ballots or scanning ballots have been used, the superintendent  
357 may, either of his or her own motion or upon petition of any candidate or political party,  
358 order the recount of all the ballots for a particular precinct or precincts for one or more  
359 offices in which it shall appear that a discrepancy or error, although not apparent on the  
360 face of the returns, has been made. Such recount may be held at any time prior to the  
361 certification of the consolidated returns by the superintendent and shall be conducted under  
362 the direction of the superintendent. Before making such recount, the superintendent shall  
363 give notice in writing to each candidate and to the county or municipal chairperson of each  
364 party or body affected by the recount. Each such candidate may be present in person or by  
365 representative, and each such party or body may send two representatives to be present at  
366 such recount. If upon such recount, it shall appear that the original count by the poll  
367 officers was incorrect, such returns and all papers being prepared by the superintendent  
368 shall be corrected accordingly. In cases in which scanning ballots have been used, the  
369 superintendent may, in his or her discretion, elect to recount the scanning ballots  
370 electronically, by using automatic tabulating equipment, or manually, by using the actual

371 scanning ballots. Images of such scanning ballots shall not be used for performing  
 372 recounts."  
 373 "(e) In performing a recount under this Code section in precincts in which scanning ballots  
 374 have been used, the superintendent may, in his or her discretion, elect to recount the  
 375 scanning ballots electronically, by using automatic tabulating equipment or manually, by  
 376 using the actual scanning ballots. Images of such scanning ballots shall not be used for  
 377 performing recounts."

378 **SECTION 16.**

379 Said chapter is further amended by revising Code Section 21-2-498, which was previously  
 380 reserved, as follows:

381 "21-2-498.

382 (a) As used in this Code section, the term 'risk-limiting audit' means an audit protocol that  
 383 makes use of statistical methods to limit to acceptable levels the risk of certifying a  
 384 preliminary election outcome that is inconsistent with the election outcome that would be  
 385 obtained by conducting a full manual tally count.

386 (b) Beginning with the 2020 presidential preference primary, the Secretary of State in  
 387 conjunction with local election superintendents shall be authorized to conduct  
 388 post-election, manual tally audits or risk-limiting audits for any primary, general, or special  
 389 election, any runoffs of such elections, or any ballot question, in accordance with  
 390 requirements set forth by rule or regulation of the Secretary of State.

391 (c) On and after January 1, 2024, the Secretary of State in conjunction with local election  
 392 superintendents shall conduct post-election, risk-limiting audits for all federal and  
 393 gubernatorial primary and general elections, any runoffs of such elections, and any  
 394 state-wide ballot question, in accordance with requirements set forth by rule or regulation  
 395 of the Secretary of State.

396 (d) In conducting each audit, the Secretary of State and local election superintendents  
 397 shall:

398 (1) Complete the audit prior to final certification of the contest;

399 (2) Ensure that all ballots are included in the audit, whether cast in person, by absentee  
 400 ballot, advance voting, provisional ballot, or otherwise;

401 (3) Provide to the public a report of the unofficial final tabulated vote results for the  
 402 contest prior to conducting the audit;

403 (4) Complete the audit in public view; and

404 (5) Provide to the public details of the audit within 48 hours of completion.

405 (e) If the audit of any contest leads to a full manual tally count of the ballots cast, the  
 406 results of such manual tally count shall determine the official contest results.

407 (f) The State Election Board shall promulgate rules, regulations, and procedures to  
 408 implement and administer the provisions of this Code section. Reserved."

409 **SECTION 17.**

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

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

415 **SECTION 18.**

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

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

425 **SECTION 19.**

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

429 "21-2-580.

430 Any person who:

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

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

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

437 shall be guilty of a felony."

438 **SECTION 20.**

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

442 "21-2-582.

443 Any person who tampers with or damages any direct recording electronic (DRE)  
 444 equipment or electronic ballot marker or tabulating ~~computer~~ machine or device to be used  
 445 or being used at or in connection with any primary or election or who prevents or attempts  
 446 to prevent the correct operation of any direct recording electronic (DRE) equipment or  
 447 electronic ballot marker or tabulating ~~computer~~ machine or device shall be guilty of a  
 448 felony."

449 **SECTION 21.**

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

452 "21-2-582.1.

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

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

459 **SECTION 22.**

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

462 "21-2-587.

463 Any poll officer who willfully:

- 464 (1) Makes a false return of the votes cast at any primary or election;
- 465 (2) Deposits fraudulent ballots in the ballot box or certifies as correct a false return of  
 466 ballots;
- 467 (3) Registers fraudulent votes upon any voting machine or certifies as correct a return  
 468 of fraudulent votes cast upon any voting machine;
- 469 (4) Makes any false entries in the electors list;
- 470 (5) Destroys or alters any ballot, voter's certificate, or electors list;
- 471 (6) Tampers with any voting machine, direct recording electronic (DRE) equipment,  
 472 electronic ballot marker, or tabulating ~~computer~~ machine or device;

473 (7) Prepares or files any false voter's certificate not prepared by or for an elector actually  
474 voting at such primary or election; or  
475 (8) Fails to return to the officials prescribed by this chapter, following any primary or  
476 election, any keys of a voting machine; ballot box; general or duplicate return sheet;  
477 tally paper; oaths of poll officers; affidavits of electors and others; record of assisted  
478 voters; numbered list of voters; electors list; voter's certificate; spoiled and canceled  
479 ballots; ballots deposited, written, or affixed in or upon a voting machine; DRE,  
480 electronic ballot marker, or tabulating machine memory cards; or any certificate or any  
481 other paper or record required to be returned under this chapter  
482 shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment  
483 for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00,  
484 or both."

485 **SECTION 23.**

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

488 **SECTION 24.**

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