

SENATE BILL NO. 291

INTRODUCED BY F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED ONLY TO VOTING SYSTEMS AND BALLOT FORM; SPECIFYING THAT AN APPROVED VOTER INTERFACE DEVICE WITH ACCESSIBLE VOTING TECHNOLOGY FOR DISABLED ELECTORS MUST BE AVAILABLE AT EVERY POLLING PLACE; SPECIFYING MINIMUM STANDARDS FOR DEVICE APPROVAL BY THE SECRETARY OF STATE; SPECIFYING STANDARDS FOR USE OF THE DEVICE BY COUNTY ELECTION ADMINISTRATORS; AMENDING SECTIONS 13-1-101, 13-12-202, AND 13-17-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Accessible voting technology.** (1) The intent of this section is to:

(a) ensure that disabled electors have access to voting technology that allows the electors to cast ballots independently, privately, and securely;

(b) provide that votes cast using accessible voting technology are COLLECTED AND counted in a manner that preserves secrecy; and

(c) comply with applicable federal and state law concerning accessibility for disabled electors.

(2) County election administrators shall ensure that at least one voter interface device is available at each polling place. Each voter interface device must be set up and located within the polling place in a manner that allows any elector using the device to cast a ballot independently and privately. ~~A county may choose the type of voter interface device to be used in the county, subject to 13-17-101,~~ INCLUDING THE PROVISION OF ACCOMMODATIONS TO PROVIDE A PHYSICAL BARRIER OR OTHER METHOD TO ENSURE THAT THE SCREEN OF THE DEVICE IS BLOCKED FROM THE VIEW OF OTHER VOTERS IN THE POLLING PLACE.

(3) Subject to subsection (4):

(a) votes on a ballot produced by a voter interface device may be counted manually or using an automatic tabulating system;

(b) ballots counted manually must be counted in accordance with 13-15-206; and

(c) if ballots produced by a voter interface device cannot be processed through an automatic tabulator

1 used in the county and the election administrator does not provide for the ballots to be counted manually, the
2 election administrator may provide for the votes on each ballot produced by the device to be transcribed to the
3 standard ballot form used in the precinct so that the ballots may be processed through an automatic tabulator
4 used in the county.

5 (4) (a) If the voter interface device produces a ballot form that is distinguishable from the standard ballot
6 form used in the precinct, the county election administrator shall take measures to protect the secrecy of the votes
7 cast by an elector using the device.

8 (b) Measures to ensure secrecy ~~may include but are not limited to:~~

9 ~~—— (i) encouraging a portion of the nondisabled electors to use the device to cast their ballots; or~~

10 ~~—— (ii) providing MUST MAY PROVIDE that votes on a ballot produced by the voter interface device are~~
11 ~~transcribed in secret to the standard ballot form used in the precinct so that the ballots are indistinguishable from~~
12 ~~and counted with the other ballots.~~

13 (C) MEASURES MAY MUST ALSO INCLUDE ENCOURAGING A PORTION OF THE NONDISABLED ELECTORS TO USE
14 THE DEVICE TO CAST THEIR BALLOT.

15 (5) Any transcription of votes conducted pursuant to this section must be conducted IN SECRET by at least
16 three election officials in substantially the same manner as provided for in 13-13-246.

17
18 **Section 2.** Section 13-1-101, MCA, is amended to read:

19 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following
20 definitions apply:

21 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure
22 to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

23 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

24 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that
25 is ordinarily not given away free but is purchased.

26 (4) "Application for voter registration" means a voter registration form prescribed by the secretary of state
27 that is completed and signed by an elector, is submitted to the election administrator, and contains voter
28 registration information subject to verification as provided by law.

29 (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an
30 optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean services provided without compensation by individuals volunteering

1 a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by
2 individuals in their private residences for a candidate or other individual.

3 (10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation
4 with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a
5 candidate or political committee.

6 (11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger
7 registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant
8 enforcement as a campaign practices violation under Title 13, chapter 37.

9 (12) "Election" means a general, special, or primary election held pursuant to the requirements of state
10 law, regardless of the time or purpose.

11 (13) (a) "Election administrator" means, except as provided in subsection (13)(b), the county clerk and
12 recorder or the individual designated by a county governing body to be responsible for all election administration
13 duties, except that with regard to school elections not administered by the county, the term means the school
14 district clerk.

15 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or
16 the individual designated by a county governing body to be responsible for all election administration duties even
17 if the school election is administered by the school district clerk.

18 (14) (a) "Election communication" means the following forms of communication to support or oppose a
19 candidate or ballot issue:

20 (i) a paid advertisement broadcast over radio, television, cable, or satellite;

21 (ii) paid placement of content on the internet or other electronic communication network;

22 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;

23 (iv) a mailing; or

24 (v) printed materials.

25 (b) The term does not mean:

26 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote,
27 if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

28 (ii) a communication that does not support or oppose a candidate or ballot issue;

29 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
30 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or

(v) a communication that the commissioner determines by rule is not an election communication.

(15) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

(16) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

(17) "Elector" means an individual qualified to vote under state law.

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering

1 communications.

2 (b) "Expenditure" does not mean:

3 (i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

4 (ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities
5 for the candidate and the candidate's family;

6 (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities
7 of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

8 (iv) the cost of any communication by any membership organization or corporation to its members or
9 stockholders or employees.

10 (19) "Federal election" means an election in even-numbered years in which an elector may vote for
11 individuals for the office of president of the United States or for the United States congress.

12 (20) "General election" means an election that is held for offices that first appear on a primary election
13 ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

14 (21) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name
15 was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

16 (22) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

17 (23) (a) "Incidental committee" means a political committee that is not specifically organized or operating
18 for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become
19 a political committee by receiving a contribution or making an expenditure.

20 (b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner by
21 rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose
22 or goal of the person or individuals that form the committee.

23 (24) "Independent committee" means a political committee organized for the primary purpose of receiving
24 contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that
25 does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits
26 set forth in 13-37-216(1).

27 (25) "Independent expenditure" means an expenditure for an election communication to support or
28 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue
29 committee.

30 (26) "Individual" means a human being.

(27) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(28) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(29) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(30) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(32) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(33) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(34) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(35) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(36) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(37) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(38) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(39) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(40) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(41) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(42) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(43) "School election" has the meaning provided in 20-1-101.

(44) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(45) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(46) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(47) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(48) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(49) "Statewide voter registration list" means the voter registration list established and maintained

1 pursuant to 13-2-107 and 13-2-108.

2 (50) "Support or oppose", including any variations of the term, means:

3 (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or
4 "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election
5 or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters
6 in an election; or

7 (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot
8 issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination,
9 election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or
10 defeat of the ballot issue or other question submitted to the voters in an election.

11 (51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in
12 13-15-206.

13 (52) "Voted ballot" means a ballot that is:

- 14 (a) deposited in the ballot box at a polling place;
15 (b) received at the election administrator's office; or
16 (c) returned to a place of deposit.

17 (53) "Voter interface device" means a voting system that:

18 (A) IS ACCESSIBLE TO ELECTORS WITH DISABILITIES;

19 (B) communicates voting instructions and ballot information to a voter and that;

20 (C) allows the voter to select and vote for candidates and issues and to verify and change selections;
21 and that

22 (D) produces a paper ballot that DISPLAYS ELECTORS' CHOICES SO THE ELECTOR CAN CONFIRM THE BALLOT'S
23 ACCURACY AND THAT may be manually counted.

24 ~~(53)~~(54) "Voting system" or "system" means any machine, device, technology, or equipment used to
25 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."
26

27 **Section 3.** Section 13-12-202, MCA, is amended to read:

28 **"13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform rules
29 that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions
30 of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

- 1 (a) the manner in which each type of ballot may be corrected under 13-12-204;
- 2 (b) what provisions must be made on the ballot for write-in candidates;
- 3 (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
- 4 (d) how unvoted ballots must be handled;
- 5 (e) how the number of individuals voting and the number of ballots cast must be recorded; and
- 6 (f) the order and arrangement of voting system ballots.

7 (2) The names of all candidates ~~to that~~ appear on ~~the ballots~~ the face of a ballot must ~~be~~ appear in the
8 same font size and style.

9 (3) Notwithstanding 13-19-106(1) and except as provided in [section 1], when the stubs are detached,
10 it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

11 (4) The ballots must contain the name of each candidate whose nomination is certified under law for an
12 office and no other names, except that the names of candidates for president and vice president of the United
13 States must appear on the ballot as provided in 13-25-101(5)."

14
15 **Section 4.** Section 13-17-103, MCA, is amended to read:

16 **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved
17 under 13-17-101 unless the voting system:

- 18 (a) allows an elector to vote in secrecy;
- 19 (b) prevents an elector from voting for any candidate or on any ballot issue more than once;
- 20 (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;
- 21 (d) allows an elector to vote only for the candidates of the party selected by the elector in the primary
22 election;
- 23 (e) allows an elector to vote a split ticket in a general election if the elector desires;
- 24 (f) allows each valid vote cast to be registered and recorded within the performance standards adopted
25 pursuant to subsection ~~(2)~~ (3);
- 26 (g) is protected from tampering for a fraudulent purpose;
- 27 (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or
28 on any ballot issue during the progress of voting;
- 29 (i) allows write-in voting;
- 30 (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and

1 technical assistance will be provided to election officials under the contract for purchase of the voting system;

2 (k) uses a paper ballot that allows votes to be manually counted; and

3 (l) allows auditors to access and monitor any software program while it is running on the system to
4 determine whether the software is running properly.

5 (2) A voter interface device may not be approved for use in this state unless the device:

6 (a) THE DEVICE meets the electronic security standards adopted by the secretary of state;

7 (b) THE DEVICE provides accessible voting technology for electors with hearing, vision, speech, or
8 ambulatory impairments; and

9 (c) THE DEVICE meets all requirements specified in subsection (1); AND

10 (D) THE DEVICE HAS BEEN MADE AVAILABLE FOR DEMONSTRATION AND USE BY ELECTORS WITH DISABILITIES IN
11 AT LEAST ONE PUBLIC EVENT HELD BY THE SECRETARY OF STATE; AND

12 (E) DISABLED ELECTORS HAVE BEEN ABLE TO PARTICIPATE IN THE PROCESS OF DETERMINING WHETHER THE
13 SYSTEM MEETS ACCESSIBILITY STANDARDS.

14 (2)(3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting
15 a benchmark performance standard that must be met in tests by each voting system prior to approval under
16 13-17-101. The standard must be based on commonly accepted industry standards for readily available
17 technologies."

18
19 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
20 integral part of Title 13, chapter 3, part 2, and the provisions of Title 13, chapter 3, part 2, apply to [section 1].

21
22 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

23 - END -