

SENATE No. 348

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Ensuring the Freedom to Vote in the Commonwealth..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 50 of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by inserting, in line 65, before the word “ballot” the word:-
3 paper.

4 SECTION 2. Said section 1 of chapter 50 is hereby amended by striking out, in lines 66
5 and 67, the words “and where voting machines are used shall include ballot labels,” and inserting
6 in place thereof the following words:- and shall be the sole record of the vote used for counting
7 and tallying purposes.

8 SECTION 3. Section 1 of chapter 51 of the General Laws, as appearing in the 2006
9 Official Edition, is hereby amended by striking out the last sentence and inserting in place
10 thereof the following sentence:- A person otherwise qualified to vote for national or state
11 officers shall not, by reason of a change of residence within the commonwealth, be disqualified
12 from voting for such national or state officers in the city or town from which he has removed his
13 residence until the expiration of 6 months from such removal, provided further, that a person
14 having changed his residence shall be eligible to register under section 34A..

15 SECTION 4. Section 3 of said chapter 51, as so appearing, is hereby amended, by
16 inserting, after the word, “registration” in lines 7 and 16, the following words:- , or in accordance
17 with the provisions of section 34A.

18 SECTION 5. Section 26 of said chapter 51, as so appearing, is hereby amended by
19 striking out, in lines 9 and 10, the words “eight o’clock in the evening” and inserting in place
20 thereof, in each instance, the following figure:- 5:00 pm.

21 SECTION 6. Said chapter 51 is hereby further amended by striking out section 28, as so
22 appearing, and inserting in place thereof the following section:-

23 Section 28. Registrars shall hold a continuous session from 9:00 am until 5:00 pm on the
24 last day for registration prescribed under section 26. For those towns having less than 1,500
25 voters, such session shall be sufficient if it includes the time from 9:00 until 11:00 am and from
26 2:00 until 5:00 pm.

27 SECTION 7. Said chapter 51 is hereby further amended by striking out section 34, as
28 appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

29 Section 34. Except as otherwise provided in section 34A, after 5:00 pm of a day on
30 which registration is to cease, the registrars shall not register any person to vote in the next
31 election, except that they shall furnish, or cause to be furnished, to each person waiting in line at
32 the hour of 5:00 pm for the purpose of being registered, a card or slip of identification bearing
33 such person’s name and shall, before registration ceases, permit such person to register. The
34 registrars may, however, enter or correct on the registers the names of persons who have
35 registered as voters between December 31st preceding and the close of registration.

36 SECTION 8. Said chapter 51 is hereby further amended by inserting after section 34 the
37 following section:-

38 Section 34A.

39 An individual who is eligible to vote may register on the day of an election by appearing
40 in person at the polling place, during the hours it is open for voting, for the precinct in which the
41 individual maintains residence, by completing a registration application in a form prescribed by
42 the state secretary which complies with identity requirements of 42 U.S.C. section 15483, by
43 presenting to the appropriate election official proof of residency and by making a written oath
44 which shall be as follows: I certify that I: am a citizen of the United States; am at least 18 years
45 old; am not under guardianship or otherwise prohibited from voting; am not temporarily or
46 permanently disqualified by law because of corrupt practices in respect to elections; have read
47 and understand this statement: I further understand that giving false information is a felony
48 punishable by not more than 5 years imprisonment or a fine of not more than \$10,000, or both.

49 For purposes of this section, the term “proof of residence” shall mean 1 of the following,
50 so long as it includes the name of the applicant and the address from which he or she is
51 registering:

52 a valid photo identification including, but not limited to, a Massachusetts’ driver’s license
53 or other state-issued identification card; or

54 other documentation demonstrating the name and address where the applicant maintains
55 residence and seeks to register including, but not limited to, a copy of a current utility bill,
56 residential lease agreement, bank statement, government check, paycheck, other government

57 document or a current student fee statement or other document from a post-secondary
58 educational institution that verifies the student's current address.

59 Upon meeting the identity requirements of subsection (a), production of proof of
60 residence, and the making of an oath sufficient to support registration, the ballot clerk or his
61 designee shall permit the applicant to vote on the day of an election and the registrar or his or her
62 designee shall place the applicant's name and address on the annual register of voters as soon as
63 reasonably practicable following the date of the election as prescribed by the state secretary.

64 Any person who registers to vote on the day of an election in accordance with this section shall,
65 absent disqualification, be registered to vote at all subsequent primaries and elections.

66 The state secretary shall make available, to the election officers, to the extent possible, at
67 each polling place, access to the central registry of voters set forth in section 47C. For the
68 purposes of this section, a printed copy of all voters registered to vote in that precinct as of the
69 last day of the registration period, as required by sections 55 and 60, shall be sufficient.

70 This section shall not apply to an individual seeking to register to vote in any town for the
71 purposes of voting at annual town meeting or special town meeting.

72 A registered voter shall not re-register on the day of an election for the exclusive purpose
73 of altering his party affiliation.

74 The state secretary shall adopt regulations to implement the relevant provisions of this
75 chapter.

76 Upon credible information or allegation of illegal voter registration, or credible
77 information or allegation of illegal multiple voting, there shall be an investigation upon the

78 merits of said information or allegation by the attorney general, or by the district attorney having
79 jurisdiction over the municipality in which the alleged illegal registration or illegal multiple
80 voting occurred. Nothing in this subsection shall be construed as excluding enforcement of this
81 section by any means otherwise provided by law.

82 Violations of this section shall be punishable under sections 8, 26 and 27, of chapter 56.

83 SECTION 9. Section 47A of chapter 51 of the General Laws, as appearing in the 2002
84 Official Edition, is hereby amended by inserting at the end thereof the following:— A person
85 who is otherwise qualified may pre-register on or after that person’s sixteen and a half birthday
86 and may vote in any election occurring on or after that person’s eighteenth birthday.

87 SECTION 10. There shall be an advisory committee on the implementation of Election
88 Day registration. Among other issues it may consider, the advisory committee shall study the
89 resources necessary for, costs associated with, and feasibility of providing every polling location
90 with real-time electronic access to the central registry of voters. The advisory committee shall be
91 comprised of the secretary of state, or a designee, who shall chair the advisory committee, the
92 attorney general, or a designee, the house and senate chairs of the joint committee on election
93 laws, or their designees, 2 representatives of the Massachusetts Town Clerks Association, at least
94 1 of whom shall be a town clerk from a town of under 5,000 residents, and 2 representatives of
95 the Massachusetts City Clerks Association. The advisory committee shall complete its study on
96 the implementation of election day registration and submit an interim report and
97 recommendations for improving administration of election day registration, in writing, to the
98 joint committee on election laws and the senate and house committees on ways and means on or
99 before June 30, 2011, and the advisory committee shall submit its final report in writing to the

100 joint committee on election laws and the senate and house committees on ways and means on or
101 before June 30, 2013.

102 SECTION 11. Chapter 54 Section 11 of the General Laws is hereby amended by striking
103 the words “one warden, one deputy warden, one clerk, one deputy clerk, four inspectors and four
104 deputy inspectors” and replacing it with “one warden, one clerk, at least two 5 inspectors and a
105 ballot box inspector.”

106 SECTION 12. Chapter 54 Section 12 of the General Laws is 2 hereby amended by
107 striking the words “one warden, one deputy 3 warden, one clerk, one deputy clerk, two
108 inspectors and two deputy 4 inspectors” and replacing it with “one warden, one clerk, at least
109 two 5 inspectors and a ballot box inspector.”

110 SECTION 13. Section 33 of chapter 54 of the General Laws, as appearing in the 2004
111 Official Edition, is hereby amended by inserting before the first paragraph the following
112 paragraph:-

113 All voting systems shall allow voters to directly mark an official paper ballot, either by
114 hand or, in the case of voters with disabilities, by way of a marking device. All voting systems
115 shall allow the voter to verify his vote on the official ballot before the vote is cast. No voting
116 system shall be approved if the recording and tallying of the votes take place electronically in
117 one machine or in machines electronically connected to each other, even if such machines
118 provide a paper receipt. The official ballot marked, verified, and cast by the voter shall be the
119 official record of the vote. Only votes on official ballots may be counted.

120 SECTION 14. Said section 33 of chapter 54 is hereby amended by striking out, in line 6,
121 the words “but no machine shall be approved which does not secure to the voter as much secrecy

122 in voting as is afforded by the use of the official ballot”, and inserting in place thereof the
123 following words:- but no machine shall be approved which does not allow the voter to directly
124 mark and verify his own official paper ballot, and does not secure to the voter as much secrecy in
125 voting as marking the official ballot by hand.

126 SECTION 15. Said section 33 of chapter 54 is hereby amended by deleting the second
127 paragraph.

128 SECTION 16. Said section 33 of chapter 54 is hereby amended by striking out, in lines
129 35 to 37, the words “but no machine shall be approved which does not secure to the voter as
130 much secrecy in voting as is afforded by the use of the official ballot” and inserting in place
131 thereof the following words:- but no machine shall be approved which does not allow the voter
132 to directly mark and verify his own official paper ballot, and does not secure to the voter as much
133 secrecy in voting as marking the official ballot by hand.

134 SECTION 17. Section 33 of chapter 54 is hereby amended by deleting fifth paragraph.

135 SECTION 18. Chapter 54 of the General Laws, as appearing in the 2004 Official
136 Edition, is hereby amended by deleting Section 33A.

137 SECTION 19. Section 37 of chapter 54 of the General Laws, as appearing in the 2004
138 Official Edition, is hereby amended by inserting, in line 4, after the words “kinds of ballots,” the
139 words:- provided that no ballot shall be an electronic ballot.

140 SECTION 20. Said section 37 of chapter 54 is hereby amended by amended by striking,
141 in line 4, the words “ballot labels.”

142 SECTION 21. Said section 37 of chapter 54 is hereby amended by inserting, in line 7,
143 after the word “thirty-two,” the words:- and thirty-three.

144 SECTION 22. Paragraph 2 of section 44 of chapter 54 of the General Laws, as appearing
145 in the 2004 Official Edition, is hereby amended by striking the first sentence and adding in place
146 thereof the following sentence:- The official ballots shall be of ordinary white printing paper, of
147 two of more pages, and shall, except as otherwise provided in this chapter, be so folded before
148 distribution as to measure not less than four and one half nor more than five inches in width and
149 not less than six nor more than thirteen and one half inches in length.

150 SECTION 23. Chapter 54 of the Massachusetts General Laws, as appearing in the 2004
151 Official Edition, is hereby amended by inserting the following new section:-

152 Section 62A Early Voting.

153 Pursuant to a request, in person, by a qualified voter, as defined by Section 1 of Chapter
154 51 of the General Laws, the local election officers and registrars of every city or town shall allow
155 any qualified voter to cast a ballot for any biennial state election, special state election, primary,
156 or special primary prior to an election day. Cities and towns may also provide for early voting in
157 elections not held in conjunction with State elections.

158 Early voting shall begin on the 14th day preceding an election. The early voting period
159 shall end on the day preceding an election. In case of a special election the early voting period
160 shall begin on the 8th day preceding an election and shall end on the day preceding an election.

161 In order to allow for early voting, the registrars of each city or town shall identify and
162 provide for at least one centrally-located and convenient polling location within each city or

163 town for use during the early voting period. The designation of an early voting polling location
164 must be made 30 days in advance of the election. The location and hours of the polling location
165 are within the discretion of the registrars of each city or town. However, each early voting
166 polling location must be open for eight hours on each weekday during the early voting period.
167 The polling location must be open for an aggregate of eight hours each weekend during the early
168 voting period. Further, the polling location shall be accessible to persons with disabilities and
169 suitable voting machines shall be made available to all qualified voters.

170 The registrars for each city or town shall publish the location of the early voting polling
171 place as well as the applicable dates and hours. Said publication shall occur during the week
172 prior to the commencement of the early voting period and at least once a week during the early
173 voting period. Notice of the dates and hours of early voting shall be sent to every newspaper
174 listed in the Directory of New England Newspapers and Periodicals, located in such town or
175 city. Notice of the dates and hours of early voting shall also be conspicuously posted in the
176 office of the city clerk or on the principal official bulletin board of each city or town and any
177 other public building deemed necessary.

178 The secretary of state must provide a sufficient number of early voting ballots and Early
179 Voting Certificates to the registrars of each city or town for use during the early voting period.
180 The early voting ballots shall be similar to the official ballots used on the Election Day with the
181 exception that they shall be printed on paper differing in color from that used for the official or
182 absentee ballot. The ballots and Early Voting Certificates must be delivered to the registrars of
183 each city or town 30 days in advance of the early voting period.

184 Early voting ballots and Early Voter Certificates shall be provided to each qualified voter
185 who participates in early voting.

186 Qualified voters shall sign, under the pains of perjury, an Early Voter Certificate,
187 swearing that they are voting under their legal name and address and that they will not partake in
188 any fraudulent activities while participating in the early voting period. The Early Voting
189 Certificate will also require qualified voters to provide their ward and precinct information. In
190 order to facilitate the organization of ballots by ward and precinct on election night, the Early
191 Voting Certificate shall be attached to the sealed early voting ballot. The Early Voting
192 Certificate shall have the following form:

193 EARLY VOTING VOTER CERTIFICATE

194 I, _____, am a qualified elector in this election and registered voter of _____ County,
195 Massachusetts. I do solemnly swear or affirm that I am the person so listed on the voter
196 registration rolls of _____ County and that I reside at the listed address. I understand that if I
197 commit or attempt to commit fraud in connection with voting, vote a fraudulent ballot, or vote
198 more than once in an election I could be convicted of a felony of the third degree and both fined
199 up to \$5,000 and imprisoned for up to 5 years. I understand that my failure to sign this certificate
200 invalidates my ballot.

201 In compliance with Section 60 of Chapter 51 of the General Laws, before the
202 commencement of the early voting period, the registrars for each city or town shall prepare a list
203 for the early voting polling location, containing the names and residences of all persons qualified
204 to vote therein, as the same appear upon the annual register, and shall reasonably transmit the
205 same to the election officers at every polling location designated by the registrars.

206 The presiding election officer at the early voting polling location shall cause to be placed
207 on the voting lists opposite the name of any qualified voter who participates in early voting the
208 letters in capital EV designating an early voter.

209 At the end of each day during the early voting period, the presiding election officer must
210 separate, compile, and record the early ballots cast at each polling location into the appropriate
211 ward and precinct. The resulting list of early voters shall be updated daily and saved
212 electronically. By 5:00 pm on the day before the Election Day, the list shall be forwarded to the
213 appropriate ward and precinct location.

214 Sections 65, 66, 72, 73 and 75 of this chapter, governing the conduct of elections, shall
215 apply to the conduct of polling locations during early elections.

216 The ballot boxes for early voting shall be sealed and locked each night and maintained
217 securely by the election officers.

218 The registrars for each city or town shall designate a location for the counting of early
219 and absentee ballots. The early and absentee ballots shall be opened at the close of all polling
220 locations on Election Day. All totals shall be added to the totals at the relevant wards and
221 precincts.

222 SECTION 24. Section 66 of chapter 54 of the General Laws, as appearing in the 2004
223 Official Edition, is hereby amended by striking, in lines 2 and 3, the words “where official
224 ballots are used,” and inserting in place thereof the following words:- except as otherwise
225 provided in this chapter.

226 SECTION 25. Section 71 of chapter 54 of the Massachusetts General Laws is hereby
227 amended by inserting the following new paragraphs:-

228 During the course of an election the presiding officer at each polling place or his or her
229 designee shall keep a log of issues that arise in the polling place and record other data, including:

230 Any alleged malfunction of the voting equipment and any actions taken to resolve the
231 same;

232 Issues that may require further investigation;

233 Issues regarding the conduct of challengers or watchers and any incidents involving
234 intimidation;

235 The number of provisional ballots distributed and the reason therefore;

236 The names and signatures of each poll worker and the serial number and model of each
237 electronic voting machine.

238 SECTION 26. Chapter 54 Section 72 of the general laws is hereby amended by inserting
239 after the word “shall” the following:-- as necessary or as requested by the city or town clerk

240 SECTION 27. Section 91A of chapter 54 is hereby amended by inserting after the words
241 “the manner prescribed in section eighty-nine” in the first sentence and the words “in the manner
242 prescribed in section ninety-one B” in the second sentence the following new words:--or if the
243 specially qualified voter is on active duty outside the territorial limits of the United States, and
244 requests it, by electronic means as further specified by the State Secretary.

245 SECTION 28. The Massachusetts General Laws are hereby amended by inserting after
246 section 109 of chapter 54 the following new section:--

247 Section 109A. Audits of election results.

248 Following each primary, general or special election, a random hand-counted audit shall
249 be conducted as provided in this section of the votes in each race for president, U.S. senator, U.S.
250 representative, governor, attorney general, state secretary; for one race chosen at random from
251 the office of lieutenant governor, treasurer, and auditor; and also for each statewide initiative and
252 referendum question. Races in which only one candidate's name appears on the ballot shall not
253 be audited.

254 The state secretary shall establish an audit protocol such that:

255 for elections which appeared on the ballot state-wide, the audit shall be designed and
256 implemented to provide at least a 99% probability of leading to a hand recount of 100% of the
257 ballots whenever such a recount would change the electoral outcome of such contest, and

258 for each election held for United States Representative, the audit shall be designed and
259 implemented to provide at least a 90% probability of leading to a hand recount of 100% of the
260 ballots whenever such a recount would change the electoral outcome of such contest, and

261 a minimum of five precincts per Congressional district are selected for audits of elections
262 for U.S. representative, and a minimum of ten precincts from all the precincts in the
263 Commonwealth are selected for audit of races that appeared on the ballots state-wide.

264 The precincts to be audited shall be chosen in a random, publicly verifiable, non-
265 computerized drawing supervised by the state secretary following the reporting of unofficial

266 election results from each precinct, which shall be made publicly available by municipal clerks
267 and by the state secretary. The time and place of the drawing shall be announced at least 48
268 hours in advance and be open to representatives of each political party and to the public. Except
269 as provided in b (iii) of this section, precincts that are selected in the random drawing may be
270 used to audit any races subject to audit under this section.

271 The board of registrars in each municipality where precincts have been selected shall
272 conduct the audit of the precincts in such municipality. The board of registrars may employ tally
273 clerks for the purpose of counting the ballots. Audits shall commence not later than 24 hours
274 following the random drawing of precincts supervised by the state secretary and shall continue
275 on each successive business day or other day at the discretion of the board of registrars in each
276 municipality. The time and place of the audits in each municipality where precincts have been
277 selected shall be publicly announced in advance and the audits shall be performed in full public
278 view and conducted pursuant to the procedures for hand-counts of ballots in Section 105 of
279 Chapter 54.

280 Upon receipt of the results of the manual audit count from the audited precincts, the state
281 secretary shall calculate the total number of votes for each candidate and ballot question as
282 recorded in the manual audit count and shall compare this total to the sum of the originally
283 reported votes for each candidate and ballot question in the audited precincts. The state secretary
284 shall order audits of such additional precincts as shall be necessary to carry out the requirements
285 of this section.

286 Whenever the difference between the hand-counted audit and the originally reported tally
287 is more than one percent for any particular machine model, the discrepancy between the hand-

288 counted audit and the original vote tally shall be analyzed to ascertain the cause of the
289 discrepancy. The state secretary shall oversee the analysis and shall publish and make available
290 online the findings, along with the factual information on which they were based, within 180
291 days.

292 If there is a discrepancy between a manual count and originally reported tallies, where the
293 original results were obtained using electronic equipment, the manual count of the official paper
294 ballots shall be the official vote of record.

295 The results of audits and hand-counts, as well as the corresponding data for the originally
296 reported tallies, shall be made publicly available on a precinct-by-precinct basis both in hardcopy
297 and in electronic file format.

298 The audit and publication of the results thereof shall be completed prior to the time the
299 State shall make a final determination concerning the appointment of its electors for President
300 and Vice President of the United States as established in federal law.

301 The state secretary shall adopt regulations to implement the requirements of this section
302 and shall hold public hearings both before and after issuing draft regulations. The state secretary
303 shall consult one or more persons with expertise in statistics and election auditing to develop the
304 procedures that will be used to select the precincts for audit, and to determine when, in light of
305 any errors the audit uncovers, a sufficient number of precincts have been counted manually to
306 fulfill the requirements of paragraphs a (i) and (ii) of this section. Final regulations concerning
307 such procedures shall be published at least 60 days before the date of the election.

308 SECTION 29. Section 135 of chapter 54 of the General Laws is hereby amended by
309 inserting in paragraph 9 after the first sentence the following new sentence:--

310 Ballots that have already been counted in a manual audit of the election in question
311 provided under section 109A of the general laws do not have to be counted under this section.

312 SECTION 30. Chapter 56 is hereby amended by inserting after section 29 the following
313 new section:--

314 Section 29A. Deceptive Election Practices.

315 No person, political committee, organization, association, or other entity shall falsely
316 impersonate an election official, use the state seal without authority, or otherwise distribute false
317 information about voting and elections for the purpose of delaying, preventing, dissuading or
318 otherwise interfering with a voter exercising the right to vote whether such false information is
319 communicated by written, electronic, spoken, by telephone or by any other means. Violation of
320 this section shall be punished by imprisonment for not more than one year or by a fine of not
321 more than five thousand dollars.

322 SECTION 31. Section 31 of chapter 56 of the General Laws is hereby amended by
323 striking the word “shall be punished by a fine of not more than one hundred dollars,” and
324 inserting therefore—shall be punished by imprisonment for not more than one year or by a fine
325 of not more than one thousand dollars

326 SECTION 32. Chapter 56 of the General Laws is hereby amended by inserting after
327 section 39 the following new section:--

328 Section 39A. Closed Captioning of Campaign Advertisements.

329 A campaign advertisement that is disseminated as an advertisement by broadcast or
330 cable television must include closed captioning for deaf and hard-of-hearing viewers, unless the

331 candidate posted on the candidate's web site a transcript of the spoken content of the
332 advertisement. A campaign advertisement that is disseminated as an advertisement to the public
333 on the candidate's web site must include closed captioning for deaf and hard-of-hearing viewers,
334 unless the candidate has posted on the web site a transcript of the spoken content of the
335 advertisement. A campaign advertisement must not be disseminated as an advertisement by radio
336 unless the candidate has posted on the candidate's web site a transcript of the spoken content of
337 the advertisement.

338 For the purposes of this section, "Campaign advertisement" means a professionally
339 produced visual or audio recording produced by a candidate, his or her political committee, or a
340 political party committee, for the purpose of influencing the nomination or election of a
341 candidate.

342 Violation of any provision of this section shall be punished by a fine of not more than
343 five hundred dollars.

344 SECTION 33. Chapter 149 of the Massachusetts General Laws is amended by striking
345 section 178 in its entirety and inserting in place thereof the following section:—Section 178.

346 Eligible electors entitled to vote in a federal, state, or municipal election, shall be entitled
347 to absent themselves for the purpose of voting from any service or employment in which they are
348 then engaged or employed on the day of the election for a period of two hours during the time
349 the polls are open. Any such absence shall not be sufficient reason for the discharge of any
350 person from service or employment. Eligible electors, who so absent themselves shall not be
351 liable for any penalty, nor shall any deduction be made from their usual salary or wages, on
352 account of their absence. Eligible electors who are employed and paid by the hour shall receive

353 their regular hourly wage for the period of their absence, not to exceed two hours. Application
354 shall be made for the leave of absence prior to the day of election. The employer may specify the
355 hours during which the employee may be absent, but the hours shall be at the beginning or end of
356 the work shift, if the employee so requests. The employer may require proof of voting from the
357 employee, where proof of voting shall be made available and on a form prescribed by the
358 Secretary of the Commonwealth at the time the polls in a voting precinct, ward, or town are
359 open.

360 If by the day prior to the election, an employee believes that time off will be necessary in
361 order to vote on the day of the election, he shall notify his employer.

362 This section shall not apply to any person whose hours of employment on the day of the
363 election are such that there are three or more hours between the time of opening and the time of
364 closing of the polls during which the elector is not required to be on the job.