

CHAPTER 11.

VOTING MACHINES AND ABSENT VOTING.

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11.01, 11.02 [Repealed by 1927 c. 474 s. 1]

11.03 **Structural requirements and adaptability to voting system.** (1) No voting machine shall be used in this state unless it be so constructed as to afford every elector a reasonable opportunity to vote for any person for any office or for or against any proposition for whom, or for or against which he is by law entitled to vote and enable him to do this in secrecy; and it must be so constructed as to preclude an elector from voting for any candidate for the same office or upon any question more than once, and from voting for any person for any office for whom he is not by law entitled to vote.

(2) The machine or machine system may be provided with one lever or device by the use of which an elector may vote for all candidates of one party, if he so desires, but it must admit of his voting a split ticket as he may desire. It must also be so constructed as to register or record each and every vote cast.

(3) For presidential electors one device may be provided for voting for all the candidates of one party at one time by the use of such device, opposite or adjacent to which shall be a ballot on the machine containing the names of the candidates for president and vice president of that party, preceded by the party's name, and a vote registered or recorded by the use of such device shall be counted for each of the candidates for presidential electors of such party.

(4) The machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purposes; and the machine must be so locked, arranged or constructed that during the progress of the voting, no person can see or know the number of votes registered or recorded for any candidate.

11.04 **Referendum on use of machines.** The common council of any city, the trustees of any village and the town board of any town may adopt and purchase for use in the various precincts, any voting machine which complies with the requirements of section 11.03 and none other; provided, however, that no machine shall be adopted or purchased by any village or town until the question of such adoption and purchase shall have been submitted to a vote of the people of such village or town at some regular village or town election, and a majority of the votes cast on such question shall have been in favor of such adoption and purchase. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following the adoption of such machines in any city, village or town as many may be supplied as it is practicable to procure, and the same shall be used in such precincts of the municipality as the proper officers may order. The proper officers of any city, village or town may, not later than sixty days before any election, unite two or more precincts or wards into one election precinct for the purpose of using therein at such election a voting machine; provided, in case two or more wards shall be so united, such machine shall be so constructed that it will permit the voters of each ward to vote for any and all candidates nominated for offices in such

ward, but will prevent such voters from voting for any and all candidates nominated for offices in all other wards; and a notice of such uniting shall be given in the manner prescribed by law for the change of election districts.

11.05 [Repealed by 1921 c. 576 s. 5]

11.06 **Methods of using machines.** (1) More than one voting machine may be used in any one polling place.

(2) Where more than one voting machine shall be used in an election precinct, one additional election inspector may be appointed by the proper authorities for the additional machine; such additional inspector to be of the party casting the largest vote at the preceding general election.

(3) At any election or primary, when voting machines are used, the services of ballot clerks shall be dispensed with at such primary and election days in the election districts where voting machines are used.

(4) The room in which the election is held shall have a railing separating that part of the room to be occupied by the election officers from that part of the room occupied by the voting machine or machines. The exterior of the voting machine and every part of the polling place shall be in plain view of the inspectors. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or determine from the outside of the room. After the opening of the polls the inspectors shall not allow any person to pass within the railing to that part of the room where the machine is situated, except for the purpose of voting and except as provided in section 11.08; and they shall permit only one voter at a time for each machine to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted.

(5) Each voter shall be allowed a reasonable time in which to vote, such time to be determined by a majority of the inspectors in the booth, having regard to the size of the ballot and the number of voters in line ready to vote, but in no case shall such time be less than one minute. If a voter refuses to leave the voting machine after being notified by one of the inspectors that such time has expired, he shall at once be removed by the inspectors.

11.07 [Repealed by 1943 c. 232]

Cross Reference: See 6.35 (1) as to opening and closing polls and voters in line at closing hour.

11.08 **General election laws applicable where machines are used.** All the provisions of chapter 6 relating to general elections and all statutes declaring misconduct at or in relation to elections to be crimes or the grounds or occasions of forfeiture, shall, as far as consistent with the provisions of this chapter, be applicable to elections at which voting machines are used.

11.09 **Ballots for machine; samples, etc.** (1) Ballots shall be provided by the respective city and county clerks, except that in cities having more than one hundred thousand inhabitants ballots shall be provided by the board of election commissioners, for all the candidates to be voted for at an election and of suitable size to fit the space provided for that purpose on or in the machine, and each shall be placed on or in the machine adjacent to or on the registering or recording device therefor.

(2) The ballots shall be placed on or in the machine in the order of arrangement provided by section 6.23 of the statutes, except that they may be vertical or horizontal rows. Ballots for all questions must be provided in the same manner and must be arranged on or in the machine in the places provided for such purpose.

(3) The officers charged with the duty of providing ballots for any polling place, shall provide therefor two sample ballots which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the voting machine as it will appear after the ballots are arranged thereon for voting on election day. Such sample ballots shall be posted by the inspectors of the precinct, near the entrance of the election booth and shall there be open to public inspection during the whole of election day.

(4) In all cities having more than one hundred thousand inhabitants using voting machines, the officer or board charged with the duty of providing ballots shall, and in all other cities using voting machines he may, not less than ten days before each election, provide for each election precinct in which such machine is to be used at least one-half as many sample ballots as the number of votes cast in such precinct at the last preceding general election; said sample ballots to be in the form of a reduced size diagram showing the face of the machine and the names of the candidates, parties and questions thereon, to-

gether with such instructions to voters as are required by law. Fifty per cent of such sample ballots shall be on hand at the office of the city clerk or of the board of election commissioners for distribution to such voters as shall call therefor, and fifty per cent shall be delivered to the inspectors of election for distribution to such voters as shall call therefor on the last day of registration and on election.

(5) All ballots shall be published as now provided by law. The ballots for the machines, and also sample ballots, shall be furnished the inspectors at least one day before the election.

(6) The officers charged with the duty of providing ballots shall provide for each election precinct in which a voting machine is to be used, return sheets, certificates, and other printed matter necessary for the proper conduct of the election and making up the returns thereof, according to the type of voting machine to be used therein.

11.10 Custodians; preparation of machines; instructions; certificate of proficiency.

(1) The board of election commissioners in cities having more than one hundred thousand inhabitants, the common council of every other city, board of trustees of every village, and the town board of every town in which a voting machine is to be used, shall cause the proper ballot to be put on each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set, and adjusted, ready for use in voting when delivered at the precinct; and for the purpose of so labeling the machine, putting in order, setting and adjusting the same, they may employ one or more competent persons who shall be known as the voting machine custodians, who shall be paid for the time spent in the discharge of their duties, in the same manner as the inspectors of election are paid.

(2) The said custodians shall, under the direction of such board of election commissioners or common council, village trustees or town board, cause the machine to be so labeled, in order, set and adjusted, and to be delivered at the voting precinct together with all necessary furniture and appliances that go with the same in the rooms where the election is to be held, at least one hour before the time set for opening the polls on election day.

(3) In preparing a voting machine for an election, the custodian shall, according to the directions furnished, arrange the machine and the ballot therefor so that they will in every particular meet the requirements for voting and counting at such election in the manner provided for by the construction of such machine.

(4) When a voting machine shall have been properly prepared for the election and delivered at the election precinct, it shall be locked and sealed against any movement, and the officers, common council, village trustees or town board shall provide proper protection to prevent its being tampered with; and the custodian or custodians preparing such machine shall deliver the keys thereof to the clerk of the city, village or town in which the machine is to be used, together with a written report of the condition of the machine.

(5) Before an election at which a voting machine is to be used, the said custodian shall instruct each election officer that is to serve in an election district in which the machine is to be used, in the use of the machine and the duties of election officers in connection with it, and shall give to each election officer that has received such instruction and is fully qualified to properly conduct the election with the machine under the conditions that will exist thereat a certificate to that effect. For the purpose of giving such instruction the custodian shall call such meeting or meetings of the election officers as shall be necessary.

11.11 School of instruction of election officers. (1) The election board of each election district in which a voting machine is to be used, shall, before each election at which they are to serve, attend such meeting or meetings as shall be called by the custodian of the machine, for the purpose of receiving such instruction concerning their duties as shall be necessary for the proper conducting of the election with the machine. Each election officer that shall qualify and serve in the election shall be paid the sum of one dollar for the time spent in receiving such instruction, in the same manner and at the same time as he is paid for his services on election day. In no case, however, shall he receive any payment for receiving such instruction unless he thoroughly understands the machine, and is fully qualified to properly perform his duties in connection with its use and has received a certificate to that effect from the custodian of the machine.

(2) The members of the election board of each election precinct in which a voting machine is to be used shall meet at the polling place therein at least fifteen minutes before the time set for the opening of the polls at the election, and shall arrange the voting machine and furniture therein for the proper conduct of the election.

(3) They shall also, before the opening of the polls, compare the ballot labels on the machine with the sample ballots furnished, and see that the names, numbers and letters

thereon agree. They shall also examine the seal upon the voting machine, to see that it has not been broken, and shall examine every counter therein to see that each registers 000. If any counter in the voting machine shall be found not to register 000, a notice of such fact, stating the designating number of such counter, together with the number registered thereon, shall be written out and signed by all the members of the election board and a copy thereof posted in a conspicuous place upon the wall of the polling place, where it shall remain during the election day.

(4) The members of the election board shall then certify on each of the blanks furnished for that purpose as to the condition of the voting machine and the counters therein, which blank shall be signed by each member of the board, and after the election one delivered with each copy of the election returns.

11.12 Irregular ballots; canvass of machine results. (1) In case a voting machine may be adopted which provides for the registering or recording of votes for candidates whose names are not on the official ballot, such ballots shall be denominated irregular ballots. A person whose name appears on a ballot or on or in a machine or machine system, shall not be voted for, for the same office or on or in any irregular device for casting an irregular ticket, and any such votes shall not be counted, except for the office of presidential electors, and any elector may vote in or on such irregular device for one or more persons nominated by one party with one or more persons nominated by any or all other parties, or for one or more persons nominated by one or more parties with one or more persons not in nomination, or he may vote in such irregular device a presidential electoral ticket composed entirely of names of persons not in nomination.

(2) As soon as the polls of the election are closed, the inspectors shall immediately lock the machine, or remove the recording device so as to provide against voting, and open the registering or recording compartment in the presence of any person desiring to attend the same, and shall proceed to ascertain the number of votes cast for each person voted for at the election, and to canvass, record, announce and return the same as provided for on the return sheets and certificates furnished. In recording the votes registered on any counter that before the opening of the polls did not register 000, the inspectors shall upon the return sheets subtract the number registered on such counter before the opening of the polls from the number registered thereon at the close of the polls, and the difference between such numbers shall be taken as the correct vote for the candidate whose name is opposite such counter on the voting machine; provided, however, that if the number registered on such counter at the close of the polls shall be smaller than the number registered thereon before the opening of the polls, the number one thousand shall be added to the number registered on such counter at the close of the polls, before such subtraction shall be made.

11.13 Returns of machine ballots. The inspectors as soon as the count is completed and fully ascertained, shall seal, close, lock the machine, or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the inspectors shall return them in a properly sealed package indorsed "Irregular Ballots," and indicating the precinct and county and file such package with the county clerk. It shall be preserved for six months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction; at the end of such six months, unless ordered otherwise by the court, such package and its contents shall be destroyed by the county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

11.14 [*Repealed by 1929 c. 482 s. 1*]

11.14 Experimental use of voting machines. The proper officers authorized to adopt voting machines, may provide for the experimental use at an election, in one or more precincts, of a machine which meets the requirements of section 11.03, without a formal adoption or purchase thereof, and its use at such election shall be as valid for all purposes as if formally adopted. [*1937 c. 11*]

11.15 Voting machines at primaries. Voting machines may be used at primary elections, subject to the requirements of section 11.03 of the statutes, and to the following provisions: Each machine shall be constructed and arranged so that: (1) The names of all candidates entitled to appear on the ballots at the primary shall appear on the machine; (2) the voter cannot vote for the candidates of more than one party, whenever the law requires this restriction on the voter; (3) the voter can secretly select the party for which he wishes to vote; (4) the voter can vote for as many candidates for each office as he is lawfully entitled to vote for, but no more.

11.16 Irregular ballots on machines at primaries. No vote on the irregular ballot device shall be counted for any person for any party, if such person's name appears on the printed ballot labels of that party. To vote for any person as the candidate of any party when the name of such person does not appear upon the printed ballot labels of that party, the voter shall write the name of such person in the proper place in the irregular ballot device, and designate the party for which he desires such person to be the nominee.

11.17 Voting machine law applicable to its use at primaries. All laws of this state relating to the use of voting machines at elections, and all penalties prescribed for violations of such laws shall apply to the use of voting machines at primary elections insofar as such laws are not in conflict with the provisions of this section. Provided, however, that any voting machine used at a primary election, which has been sealed, closed or locked, as prescribed in section 11.13 of this chapter, may be opened seven days after such sealing, closing or locking.

11.18 to 11.53 [Repealed by 1921 c. 60]

11.54 Grounds for absent voting. (1) Any qualified elector of this state registered, where registration is required or who swears in his vote as herein provided, who is absent or expects to be absent from the city, town or village in which he is a qualified elector, or from this state, whether by reason of active service in the United States army, navy, marine corps or coast guard or for any other reason, or who because of sickness or physical disability or religious reasons cannot appear at the polling place in his precinct, on the day of holding any election, may vote at any such election as provided in sections 11.54 to 11.68. Whenever the term "absent or sick or disabled voter" appears in said sections such terms shall be deemed to include a qualified elector unable to appear at the polling place in his precinct on the day of any such election for religious reasons.

(2) Any application or affidavit or other act required under sections 11.54 to 11.68 of a qualified voter in the armed forces of the United States, including women's auxiliary organizations created by federal authority, may be made before, and subscribed or sworn to by [before] any duly commissioned officer of the military or naval service of the United States. [1935 c. 421; 1939 c. 26, 389; 1943 c. 45]

Note: Orthodox Hebrews whose religious Passover season, may vote under absent voting beliefs prevent their voting on a date within ing statutes. 25 Atty. Gen. 225.

11.55 Application for ballot. Any elector, as defined in section 11.54 may, not more than 60 nor less than 3 days, or if application is made in person not later than during the regular office hours of the day, prior to such primary or election, make application for an official ballot either to the county clerk of such county, or to the clerk of his city, village or town, in the case of any state, congressional, or county primary or election, to the clerk of his city, village or town in case of any local primary or election, or to the clerk of any school district or any other municipal or quasi-corporation in case of any such primary or election, or to the clerk of any school district which elects officers under section 40.07. [1939 c. 389; 1941 c. 291; 1943 c. 264]

11.56 Application, how made. Application for such ballot shall be made in person or in writing to such clerk. [1939 c. 26; 1943 c. 233]

11.57 Delivery of ballot blank. Upon receipt of such request not more than 12 nor less than 3 days prior to such election, such clerk, or his deputy or deputies shall write on the back and outside of the official ballot in the space for the official indorsement of the ballot clerks, his initials or name and his official title and shall mail to the applicant, postage prepaid, said official ballot or ballots if more than one are to be voted at said election, or such officer shall deliver said ballot or ballots to the applicant personally at the office of the clerk, not more than 10 nor less than one secular day before said election. Any such ballot not mailed or delivered personally as herein stated shall not be counted. [1937 c. 187; 1939 c. 389; 1943 c. 233]

11.58 Form of envelope for ballot. Such clerk shall inclose such ballot or ballots in an envelope unsealed to be furnished by him, which envelope shall bear upon the face thereof the name, official title and post-office address of such clerk, and upon the other side a printed affidavit in substantially the following form:

STATE OF }
County of } ss.

I,, do solemnly swear that I am a resident of the precinct of the (town) (village) of or of the ward in the city of, residing at in said city, and the county of and state of Wisconsin, and am entitled to vote in such precinct at the election to be held on That I cannot appear at the polling place in said precinct on the day of said election because (indicate one of the following reasons) I expect to be absent from the city, town or village or because of sickness or physical disability or religious reasons . I further swear that I marked the inclosed ballot in secret.

Signed

Subscribed and sworn to before me this day of, A. D.,, and I hereby certify that the affiant exhibited the inclosed ballot to me unmarked; that he then in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballot and inclosed and sealed the same in this envelope; that the affiant was not solicited or advised by me to vote for or against any candidate or measure.

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[1939 c. 389; 1939 c. 517 s. 1; 1943 c. 233]

11.59 Voting; execution of affidavit. Such absent or sick or disabled voter shall make and subscribe to the affidavit provided for in section 11.58 of the statutes, before the clerk to whom the ballot is returned or before any other officer authorized by law to administer oaths, and such voter shall thereupon in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot know how such ballot is marked, and such ballot or ballots shall then in the presence of such officer be folded by such voter so that each ballot will be separate and so as to conceal the marking, and be, in the presence of such officer, deposited in such envelope, together with any unused portion of the ballot, and the envelope securely sealed. Said envelope shall be mailed by such voter, postage prepaid, to the officer issuing the ballot, or if more convenient it may be delivered in person.

11.60 Inclosing ballot. Upon receipt of such absent or sick or disabled voter's ballot, the county, city, village or town clerk, or the school district clerk in a district which elects officers under section 40.07, as the case may be, shall forthwith inclose the same, unopened, together with the application made by said absent or sick or disabled voter, in a larger or carrier envelope which shall be securely sealed and indorsed with the name and official title of such clerk, and the words, "this envelope contains an absent or sick or disabled voter's ballot and must be opened only at the polls on election day while said polls are open," and such clerk shall thereafter safely keep the same in his office until delivered by him as provided in section 11.61. [1943 c. 264]

11.605 List of absent voters for public inspection. The county, city, village or town clerk, or the school district clerk in a district which elects officers under section 40.07, as the case may be, shall keep a list of all electors who have made application for an absent voter's ballot or who have voted under the provisions of sections 11.54 to 11.68, with the name and address and date of application of each such elector. Such list shall be open to public inspection. [1933 c. 211; 1943 c. 264]

11.61 Delivery of ballot. In case an absent or sick or disabled voter's ballot is received by the county, city, village, school district or town clerk, as the case may be, prior to the delivery of the official ballots to the inspectors of election of the precinct in which said elector resides, such ballot envelope, sealed in the carrier envelope, shall be inclosed in such package and therewith delivered to the inspectors of election of such precinct. In case the official ballots for such precinct have been delivered to the inspectors of election at the time of the receipt by the county, city, village, school district or town clerk of such absent or sick or disabled voter's ballot, such official shall immediately inclose said envelope containing such voter's ballot, in a larger or carrier envelope which shall be securely sealed and indorsed on the face to the inspectors of election, giving the name or number of precinct, street and number of the polling place, city, village, school district or town in which such voter is a qualified elector and the words "this envelope contains an absent or sick or disabled voter's ballot and must be opened only on election day at the polls while the polls are open," mailing the same, postage prepaid, to such inspectors of election or, if more convenient, such county, city, village, school district or town clerk may deliver such voter's ballot to the inspectors of election in person or by duly deputized agent. Such clerk or agent shall secure his receipt for delivery of such ballot or ballots. Provided that such delivery of ballots by person shall be made without expense to the county, city, village, school district or town, as the case may be. [1943 c. 233, 264, 552]

11.62 Deposit of ballot in ballot box. At any time between the opening and closing of the polls on such election day the inspectors of election of said precinct shall open the outer or carrier envelope only, and announce the absent or sick or disabled voter's name. In case the inspectors find the affidavit executed, that the applicant is a duly qualified elector of the precinct and that the applicant has not voted in person at said election, they shall open the envelope containing such voter's ballot in such manner as not to deface or destroy the affidavit thereon and take out the ballot or ballots therein contained without unfolding or permitting the same to be unfolded or examined and, after verification that the ballot has been indorsed by the issuing county, town, city or village clerk, deposit the same in the proper ballot box or boxes and enter the absent or sick or disabled voter's name in the poll book, the same as if he had been

present and voted in person. In case such affidavit is found to be insufficient, or that the applicant is not a duly qualified elector in such precinct, or that the ballot is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or if at a primary the unused portion of the ballot shall not be returned, such vote shall not be accepted or counted. Every ballot not counted shall be indorsed on the back thereof "rejected" (giving reason therefor). All rejected ballots shall be inclosed and securely sealed in an envelope on which the inspectors shall indorse "defective ballots" with a statement of the precinct in which and the date of the election at which they were cast, signed by the inspectors and returned to the same officer and in the same manner as by law provided for the return and preservation of official ballots voted at such election. [1941 c. 11; 1943 c. 233]

Note: 11.62 and 11.57, Stats. 1939, are not in conflict and latter section does not im- plicitly repeal former section. Absent voter is not to be disfranchised merely because ballot clerk fails to initial his ballot at time of voting as required by 11.62. 29 Atty. Gen. 256.

11.63 Challenge of mail vote. The vote of any absent or sick or disabled voter may be challenged for cause and the inspectors of election shall have all the power and authority given by law to hear and determine the legality of such ballot as if the ballot were cast by the voter in person.

11.64 Death of voter. Whenever it shall be made to appear by due proof to the inspectors of election that any elector, who has marked and forwarded his ballot as provided in sections 11.54 to 11.68, inclusive, of the statutes, has died, then the ballot of such deceased voter shall be returned by the inspectors of election with defective ballots to the official issuing it, but the casting of the ballot of a deceased voter shall not invalidate the election.

11.65 Election laws applicable. All the provisions of the election laws now in force and not inconsistent with the provisions of sections 11.54 to 11.68, inclusive, of the statutes, shall apply with full force and effect to all counties, cities, villages and towns in which voting machines are used, relative to the furnishing of ballot boxes; the printing and furnishing of official ballots in such number as the county, city, village or town clerk, as the case may be, may deem necessary; and the canvassing of the ballots and making the proper return of the result of the election. The absent or sick or disabled voter's ballot shall be counted and returned separately, with the returns of the ballots cast on the voting machine.

11.66 In cities of first class. In cities of the first class, application for ballots shall be made to the secretary of the board of election commissioners who shall perform all the duties required of city clerks by the provisions of sections 11.54 to 11.65, inclusive, of the statutes.

11.67 Penalties for violations. If any person shall wilfully swear falsely to any such affidavit he shall be guilty of perjury and shall upon conviction thereof be punished as in such cases by law provided. If any person who, having procured an official ballot or ballots as heretofore provided, shall wilfully neglect or refuse to cast or return same in the manner heretofore provided, or shall wilfully violate any provision of sections 11.54 to 11.67, inclusive, of the statutes, he shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. If any county, city, village or town clerk or any election officer shall refuse or neglect to perform any of the duties prescribed by said sections, or shall violate any of the provisions thereof, he shall upon conviction be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not to exceed ninety days.

11.68 Construction of act. The provisions of sections 11.54 to 11.67, inclusive, of the statutes, shall be deemed to provide a method of voting in addition to the method now provided by statute, and, to such extent, as amendatory of existing statutes relating to the manner and method of voting.

11.69 to 11.82 Electors in military service, voting provisions. [Not printed; 1921 c. 590 s. 1; see 1919 Stats.]