

§696. Challenged, defective or void ballots

The counting of ballots is governed by the following provisions. [PL 1985, c. 161, §6 (NEW).]

1. Challenged ballot. A challenged ballot must be counted the same as a regular ballot. The validity of a challenged ballot need not be determined unless it affects the results of an election.

If the challenged ballot affects the result of an election, the envelope containing the challenge certificate and the signed affidavit under section 673, subsection 1 must be submitted to the Supreme Judicial Court and its validity must be determined, except when final determination of the election of a candidate is governed by the United States Constitution.

[PL 2003, c. 395, §5 (AMD).]

2. Invalid vote. A vote for an office, candidate or question held to be invalid by the warden, ward clerk or deputy warden may not be counted for that office, candidate or question as follows.

A. Except as provided in section 723-A for elections determined by ranked-choice voting, if a voter marks more names for an office than there are vacancies to be filled or more choices for a question than are permitted, the voter's vote for that office or question may not be counted. [PL 2019, c. 320, §5 (AMD).]

B. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted. [PL 1997, c. 436, §101 (AMD).]

C. If a voter marks a write-in indicator for an office, but does not write the name of a declared write-in candidate in the blank space provided next to the write-in indicator, that vote for that office may not be counted, unless a determination of choice under subsection 4 is possible. [PL 2023, c. 304, Pt. A, §12 (AMD).]

D. If a voter writes in the name of a declared write-in candidate in the write-in space pursuant to section 691, but does not mark the write-in indicator, that vote for that office may not be counted. [PL 2009, c. 253, §32 (AMD).]

E. If a voter writes in a write-in space the name of a person who has not filed a declaration of write-in candidacy as provided by section 722-A, the vote for that office may not be counted. [PL 2017, c. 141, §1 (AMD).]

F. The warden, ward clerk or deputy warden shall write "Invalid vote" on the ballot and the reason the vote is invalid beside the office, candidate or question for which it is invalid and shall sign it and replace the ballot with the other ballots, to be counted for other offices or questions. [PL 2001, c. 310, §39 (AMD).]

[PL 2023, c. 304, Pt. A, §12 (AMD).]

3. Defective ballots. A ballot held to be defective by the warden, ward clerk or deputy warden may not be counted.

A. A ballot that is not prepared in accordance with the requirements of this Title is defective. [PL 2001, c. 310, §40 (AMD).]

B. The warden, ward clerk or deputy warden shall write "Defective ballot" and the reason that the ballot is defective on the ballot and shall sign it. The election official shall then segregate the defective ballot with any other defective ballots in an envelope labeled "Defective ballots" and shall package and return the envelope of segregated ballots in accordance with section 698. The Secretary of State shall provide the clerk of each municipality with either a label and instructions on proper handling of defective ballots or a special envelope printed with this label and instructions. [PL 2003, c. 298, §2 (AMD).]

C. A ballot is not defective if the Secretary of State has given prior approval for its use at the election. [PL 2005, c. 404, §4 (NEW).]
[PL 2005, c. 404, §4 (AMD).]

4. Determination of choice possible. If a voter marks the voter's ballot in a manner that differs from the instructions at the top of the ballot but in such a manner that it is possible to determine the voter's choice, then the vote for the office or question concerned must be counted.

A. [PL 2001, c. 310, §41 (RP).]
[PL 2005, c. 404, §5 (AMD).]

5. Void ballots. A ballot held to be void by the warden, ward clerk or deputy warden may not be counted.

A. A ballot on which a voter has made a distinguishing mark is void. [PL 2005, c. 404, §6 (AMD).]

B. The warden, ward clerk or deputy warden shall write "Void ballot" and the reason that the ballot is void on the ballot and shall sign it. The election official shall then segregate the void ballot with any other void ballots in an envelope labeled "Void ballots" and shall package and return the envelope of segregated ballots in accordance with section 698. The Secretary of State shall provide the clerk of each municipality with either a label and instructions on proper handling of void ballots or a special envelope printed with this label and instructions. [PL 2003, c. 298, §3 (AMD).]
[PL 2005, c. 404, §6 (AMD).]

6. Rules. The Secretary of State is authorized to adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for determining voter intent based on relevant case law and provisions of this Title. These rules must be used by election officials in tabulating the results of state and local elections and in all recounts conducted pursuant to this Title. A copy of the rules must be included with the instructional materials provided to the clerk, registrar and election officials in each municipality pursuant to section 605-A, subsection 1 and must be used by the Secretary of State in the training of election officials pursuant to section 505. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 342, §25 (AMD).]

SECTION HISTORY

PL 1985, c. 161, §6 (NEW). PL 1985, c. 357, §§4,19 (AMD). PL 1993, c. 473, §23 (AMD). PL 1993, c. 473, §46 (AFF). PL 1995, c. 459, §64 (AMD). PL 1997, c. 436, §§100-102 (AMD). PL 2001, c. 310, §§39-42 (AMD). PL 2003, c. 298, §§2,3 (AMD). PL 2003, c. 395, §5 (AMD). PL 2005, c. 404, §§3-7 (AMD). PL 2005, c. 568, §16 (AMD). PL 2007, c. 455, §38 (AMD). PL 2009, c. 253, §§32, 33 (AMD). PL 2011, c. 342, §25 (AMD). PL 2017, c. 141, §1 (AMD). PL 2019, c. 320, §5 (AMD). PL 2023, c. 304, Pt. A, §12 (AMD).

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