SENATE BILL 814

A BILL ENTITLED

1   AN ACT concerning

2   **Election Law – Voting Machines – Voting System Warranty Requirement**

3   FOR the purpose of requiring a certain voting system selected by the State Board of
4   Elections to be warranted by the vendor for a certain period of time; requiring a
5   certain warranty to require the vendor to replace or upgrade certain hardware
6   under certain conditions; requiring a certain warranty to require the vendor to
7   disclose and remedy certain matters relating to a voting system and to recall a
8   voting system under certain conditions; authorizing a person other than the
9   State to file a civil action on behalf of the State against a person who has
10   breached a certain warranty; providing for the procedures to be followed in a
11   civil action; authorizing the State to intervene and proceed with the action
12   under certain circumstances; authorizing the person who initiated the action to
13   conduct the action if the State notifies the court that it will not proceed with the
14   action; prohibiting persons other than the State from intervening or bringing a
15   related action based on the same facts; establishing that if the State proceeds
16   with a civil action, the State bears primary responsibility for proceeding and is
17   not bound by certain acts; authorizing the person who initiated the civil action
18   to continue as a party to the action if the State proceeds with a civil action;
19   authorizing the State to petition the court to dismiss an action under certain
20   circumstances; authorizing the State to settle an action under certain
21   circumstances; authorizing the court to award certain costs and fees; defining a
22   certain term; making this Act an emergency measure; and generally relating to
23   requiring a warranty for the purchase of voting machines.

24   BY repealing and reenacting, with amendments,
25   Article – Election Law
26   Section 9–101
27   Annotated Code of Maryland
28   (2003 Volume and 2008 Supplement)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
     [Brackets] indicate matter deleted from existing law.

1   SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3   **Article – Election Law**

4 9–101.

5   (a)   **IN THIS SECTION, "VOTING METHOD" MEANS A SYSTEM OF RULES**
6 **FOR CASTING, SORTING, AND COUNTING VOTES, INCLUDING PLURALITY VOTING**
7 **AND INSTANT RUNOFF VOTING, WITHOUT REFERENCE TO THE SPECIFIC VOTING**
8 **MACHINE OR OTHER PHYSICAL INFRASTRUCTURE USED TO IMPLEMENT THE**
9 **SYSTEM.**

10   **(B)**   [The] **SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE** State
11 Board, in consultation with the local boards, shall select and certify a voting system
12 for voting in polling places and a voting system for absentee voting.

13   [(b)] **(C)**   The voting system selected and certified for voting in polling places
14 and the voting system selected and certified for absentee voting shall be used in all
15 counties.

16   [(c)] **(D)**   The State Board shall acquire:

17   (1)   the voting system selected and certified for voting in polling places;
18 and

19   (2)   the voting system selected and certified for absentee voting.

20   **(E)**   **(1)**   **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A VOTING**
21 **SYSTEM SELECTED BY THE STATE BOARD UNDER THIS SECTION SHALL BE**
22 **WARRANTED BY THE VENDOR FOR A PERIOD OF 2 YEARS FROM THE DATE THE**
23 **CONTRACT IS ENTERED INTO.**

24   **(2)**   **A WARRANTY PROVIDED BY A VENDOR UNDER PARAGRAPH (1)**
25 **OF THIS SUBSECTION SHALL:**

26   **(I)**   **REQUIRE THAT THE VENDOR PROMPTLY AND FULLY**
27 **DISCLOSE ANY FLAW, DEFECT, OR VULNERABILITY IN THE VOTING SYSTEM OF**
28 **WHICH THE VENDOR IS AWARE OR BECOMES AWARE;**

29   **(II)**   **REQUIRE THAT THE VENDOR WILL REMEDY ANY FLAW,**
30 **DEFECT, OR VULNERABILITY IN THE VOTING SYSTEM IDENTIFIED IN**
31 **SUBPARAGRAPH (I) OF THIS PARAGRAPH AT NO COST TO THE STATE; AND**

1   **(III)** IF THE FLAW, DEFECT, OR VULNERABILITY IN THE
2 VOTING SYSTEM CANNOT BE CORRECTED IN ACCORDANCE WITH
3 SUBPARAGRAPH (II) OF THIS PARAGRAPH, REQUIRE THAT THE VENDOR RECALL
4 THE VOTING SYSTEM OR THE AFFECTED PART OF THE VOTING SYSTEM AND
5 EITHER:

6   **1.** REPLACE THE VOTING SYSTEM OR THE AFFECTED
7 PART OF THE VOTING SYSTEM AND PROVIDE AT NO COST TO THE STATE THE
8 SAME OR A COMPARABLE VOTING SYSTEM THAT FUNCTIONS IN A PROPER
9 MANNER; OR

10   **2.** AT THE DISCRETION OF THE STATE, REIMBURSE
11 THE STATE FOR THE FULL PURCHASE PRICE OF THE VOTING SYSTEM OR FOR
12 THE VALUE OF THE AFFECTED PART OF THE VOTING SYSTEM THAT
13 MALFUNCTIONS, PLUS ANY COSTS INCURRED BY THE STATE AS A RESULT OF
14 THE FLAW, DEFECT, OR VULNERABILITY.

15   **(F)** **(1)** A PERSON MAY FILE A CIVIL ACTION ON BEHALF OF THE
16 PERSON AND THE STATE IN A COURT OF COMPETENT JURISDICTION AGAINST A
17 VENDOR WHO HAS BREACHED THE WARRANTY SPECIFIED IN SUBSECTION (E) OF
18 THIS SECTION.

19   **(2)** A CIVIL ACTION FILED UNDER THIS SUBTITLE SHALL BE
20 BROUGHT IN THE NAME OF THE PERSON AND THE STATE.

21   **(3)** ON THE SAME DAY A PERSON FILES A COMPLAINT UNDER
22 PARAGRAPH (1) OF THIS SUBSECTION, THE PERSON SHALL SERVE ON THE
23 STATE A COPY OF THE COMPLAINT AND A WRITTEN DISCLOSURE OF
24 SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION THAT THE
25 PERSON POSSESSES, IN ACCORDANCE WITH THE PROVISIONS OF TITLE 2 OF
26 THE MARYLAND RULES FOR SERVING PROCESS ON THE STATE.

27   **(4)** **(I)** WITHIN 60 DAYS AFTER THE STATE RECEIVES A
28 COMPLAINT AND MATERIAL EVIDENCE AND INFORMATION SERVED IN
29 ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION, THE STATE MAY
30 INTERVENE AND PROCEED WITH THE CIVIL ACTION.

31   **(II)** FOR GOOD CAUSE SHOWN, THE STATE MAY REQUEST
32 THAT THE COURT ORDER AN EXTENSION OF THE 60–DAY PERIOD FOR UP TO 90
33 DAYS.

34   **(5)** BEFORE THE LATER OF ANY EXPIRATION OF THE 60–DAY
35 PERIOD OR AN EXTENSION OF THE 60–DAY PERIOD, THE STATE SHALL:

1   (I)   PROCEED WITH THE CIVIL ACTION IN A COURT OF
2   COMPETENT JURISDICTION WITHIN THE STATE; OR

3   (II)   NOTIFY THE COURT THAT IT WILL NOT PROCEED WITH
4   THE CIVIL ACTION.

5   (6)   IF THE STATE NOTIFIES THE COURT THAT IT WILL NOT
6   PROCEED WITH AN ACTION, THE PERSON WHO INITIATED THE ACTION MAY
7   CONDUCT THE ACTION.

8   (7)   IF A PERSON BRINGS A VALID CIVIL ACTION UNDER THIS
9   SUBSECTION, NO PERSON OTHER THAN THE STATE MAY INTERVENE OR BRING A
10   RELATED ACTION BASED ON THE FACTS UNDERLYING THE PENDING CIVIL
11   ACTION.

12   (8)   IF THE STATE PROCEEDS WITH A CIVIL ACTION UNDER THIS
13   SECTION, THE PERSON WHO INITIATED THE CIVIL ACTION ALSO MAY CONTINUE
14   AS A PARTY TO THE ACTION.

15   (9)   NOTWITHSTANDING THE OBJECTIONS OF THE PERSON
16   INITIATING THE CIVIL ACTION, THE STATE MAY PETITION THE COURT TO
17   DISMISS AN ACTION IF:

18   (I)   THE PERSON INITIATING THE ACTION IS NOTIFIED BY
19   THE STATE OF THE FILING OF THE MOTION TO DISMISS; AND

20   (II)   THE COURT PROVIDES THE PERSON INITIATING THE
21   ACTION WITH AN OPPORTUNITY FOR A HEARING ON THE MOTION TO DISMISS.

22   (10)   NOTWITHSTANDING THE OBJECTIONS OF THE PERSON
23   INITIATING THE CIVIL ACTION, IF THE COURT DETERMINES AFTER A HEARING
24   THAT A PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE UNDER
25   THE CIRCUMSTANCES, THE STATE MAY SETTLE A CIVIL ACTION UNDER THIS
26   SECTION.

27   (11)   IN AN ACTION BROUGHT UNDER THIS SECTION, IN ADDITION
28   TO ANY SETTLEMENT REGARDING REPLACEMENT VOTING MACHINE HARDWARE
29   OR SOFTWARE, THE COURT, IN ITS DISCRETION, MAY AWARD:

30   (I)   AN AMOUNT FOR REASONABLE EXPENSES THAT THE
31   COURT FINDS TO HAVE BEEN NECESSARILY INCURRED; AND

32   (II)   REASONABLE ATTORNEY'S FEES AND COSTS.

1   SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
2 measure, is necessary for the immediate preservation of the public health or safety,
3 has been passed by a yea and nay vote supported by three–fifths of all the members
4 elected to each of the two Houses of the General Assembly, and shall take effect from
5 the date it is enacted.