

HOUSE BILL 863

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9lr2084
CF SB 814

By: **Delegates Barve, Cardin, and Weldon**

Introduced and read first time: February 12, 2009

Assigned to: Ways and Means

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 replace or upgrade certain software under certain conditions; authorizing a
8 person other than the State to file a civil action on behalf of the State against a
9 person who has breached a certain warranty; providing for the procedures to be
10 followed in a civil action; authorizing the State to intervene and proceed with
11 the action under certain circumstances; authorizing the person who initiated
12 the action to conduct the action if the State notifies the court that it will not
13 proceed with the action; prohibiting persons other than the State from
14 intervening or bringing a related action based on the same facts; establishing
15 that if the State proceeds with a civil action, the State bears primary
16 responsibility for proceeding and is not bound by certain acts; prohibiting the
17 person who initiated the civil action from continuing as a party to the action if
18 the State proceeds with a civil action; authorizing the State to petition the court
19 to dismiss an action under certain circumstances; authorizing the State to settle
20 an action under certain circumstances; authorizing the court to award certain
21 costs and fees; defining a certain term; and generally relating to requiring a
22 warranty for the purchase of voting machines.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Election Law

9–101.

(a) **IN THIS SECTION, “VOTING METHOD” MEANS A SYSTEM OF RULES FOR CASTING, SORTING, AND COUNTING VOTES WITHOUT REFERENCE TO THE SPECIFIC VOTING MACHINE OR OTHER PHYSICAL INFRASTRUCTURE USED TO CAST, SORT, AND COUNT VOTES, INCLUDING PLURALITY VOTING AND INSTANT RUNOFF VOTING.**

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

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

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

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

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

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

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

(I) **REQUIRE THE VENDOR TO REPLACE OR UPGRADE ANY VOTING MACHINE HARDWARE NECESSARY TO CONDUCT AN ELECTION USING ANY VOTING METHOD IN USE IN THE STATE OR THAT MAY BE ADOPTED DURING THE WARRANTY PERIOD, AT NO COST TO THE STATE; AND**

(II) **REQUIRE THE VENDOR TO REPLACE OR UPGRADE ANY VOTING MACHINE SOFTWARE NECESSARY TO CONDUCT AN ELECTION USING ANY VOTING METHOD IN USE IN THE STATE OR THAT MAY BE ADOPTED DURING THE WARRANTY PERIOD, AT NO COST TO THE STATE.**

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

5 (2) A CIVIL ACTION FILED UNDER THIS SUBTITLE SHALL BE
6 BROUGHT IN THE NAME OF THE STATE.

7 (3) ON THE SAME DAY A PERSON FILES A COMPLAINT UNDER
8 PARAGRAPH (1) OF THIS SUBSECTION, THE PERSON SHALL SERVE ON THE
9 STATE A COPY OF THE COMPLAINT AND A WRITTEN DISCLOSURE OF
10 SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION THAT THE
11 PERSON POSSESSES, IN ACCORDANCE WITH THE PROVISIONS OF TITLE 2 OF
12 THE MARYLAND RULES FOR SERVING PROCESS ON THE STATE.

13 (4) (I) WITHIN 60 DAYS AFTER THE STATE RECEIVES A
14 COMPLAINT AND MATERIAL EVIDENCE AND INFORMATION SERVED IN
15 ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION, THE STATE MAY
16 INTERVENE AND PROCEED WITH THE CIVIL ACTION.

17 (II) FOR GOOD CAUSE SHOWN, THE STATE MAY REQUEST
18 THAT THE COURT ORDER AN EXTENSION OF THE 60-DAY PERIOD FOR UP TO 90
19 DAYS.

20 (5) BEFORE THE LATER OF ANY EXPIRATION OF THE 60-DAY
21 PERIOD OR AN EXTENSION OF THE 60-DAY PERIOD, THE STATE SHALL:

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

24 (II) NOTIFY THE COURT THAT IT WILL NOT PROCEED WITH
25 THE CIVIL ACTION.

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

29 (7) IF A PERSON BRINGS A VALID CIVIL ACTION UNDER THIS
30 SUBSECTION, NO PERSON OTHER THAN THE STATE MAY INTERVENE OR BRING A
31 RELATED ACTION BASED ON THE FACTS UNDERLYING THE PENDING CIVIL
32 ACTION.

33 (8) IF THE STATE PROCEEDS WITH A CIVIL ACTION UNDER THIS
34 SECTION:

1 **(I) THE STATE HAS THE PRIMARY RESPONSIBILITY FOR**
2 **PROCEEDING WITH THE ACTION AND IS NOT BOUND BY ANY ACT OF THE PERSON**
3 **WHO INITIATED THE ACTION; AND**

4 **(II) THE PERSON WHO INITIATED THE CIVIL ACTION MAY**
5 **NOT CONTINUE AS A PARTY TO THE ACTION.**

6 **(9) NOTWITHSTANDING THE OBJECTIONS OF THE PERSON**
7 **INITIATING THE CIVIL ACTION, THE STATE MAY PETITION THE COURT TO**
8 **DISMISS AN ACTION IF:**

9 **(I) THE PERSON INITIATING THE ACTION IS NOTIFIED BY**
10 **THE STATE OF THE FILING OF THE MOTION TO DISMISS; AND**

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

13 **(10) NOTWITHSTANDING THE OBJECTIONS OF THE PERSON**
14 **INITIATING THE CIVIL ACTION, IF THE COURT DETERMINES AFTER A HEARING**
15 **THAT A PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE UNDER**
16 **THE CIRCUMSTANCES, THE STATE MAY SETTLE A CIVIL ACTION UNDER THIS**
17 **SECTION.**

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

21 **(I) AN AMOUNT FOR REASONABLE EXPENSES THAT THE**
22 **COURT FINDS TO HAVE BEEN NECESSARILY INCURRED; AND**

23 **(II) REASONABLE ATTORNEY'S FEES AND COSTS.**

24 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **October 1, 2009.**