

Chapter 524

(House Bill 1331)

AN ACT concerning

Election Law – Cybersecurity

FOR the purpose of ~~requiring the State Administrator of Elections to notify certain persons within a certain period of time after becoming aware of a security incident involving an election system; requiring that the notification include certain information; authorizing the Secretary of Information Technology to require that information contained in a notification be withheld from the general public if the Secretary makes a certain determination; requiring an election service provider to take certain actions within a certain period of time after becoming aware of a security incident involving an election system; requiring the State Administrator of Elections, under certain circumstances, to submit a written~~ certain report to the Department of Information Technology and certain persons within a certain period of time after becoming aware of a certain security violation and significant attempted security violation involving an election system; requiring that the report include certain information and be updated continuously as new information becomes available; requiring the State Administrator to submit a written report to certain persons on a certain date each year that describes any significant attempted security violations involving an election system in the previous year; requiring that the annual report include certain information and be updated continuously as new information becomes available; requiring the Department to forward certain information to certain appropriate persons and the State Administrator within a certain period of time after receiving a certain report submitted by the State Board; authorizing the Secretary of Information Technology to require that information contained in a certain report be withheld from the general public if the Secretary makes a certain determination; requiring an election service provider, under certain circumstances, to take certain actions within a certain period of time after becoming aware of a security violation or significant attempted security violation involving an election system; requiring a voter who uses the online absentee ballot application to request an absentee ballot be sent by any method or who uses any method to request to receive a blank absentee ballot through the Internet to provide certain information; requiring the State Board approved absentee ballot application and online absentee ballot application to require the applicant to check a box acknowledging a certain statement; requiring a voter who chooses to receive a blank absentee ballot through the Internet to check a box acknowledging a certain statement before choosing whether to mark the ballot by hand or use the online ballot marking tool; requiring each polling place and early voting center to have a paper or electronic backup copy of the election register available for the use of the election judges if certain computer devices do not function properly during an election; defining certain terms; and generally relating to election cybersecurity.

BY adding to

Article – Election Law
 Section 2–108
 Annotated Code of Maryland
 (2017 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
 Article – Election Law
 Section 9–305, ~~9–308.1~~, and 10–302
 Annotated Code of Maryland
 (2017 Replacement Volume and 2017 Supplement)

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

Article – Election Law

2–108.

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) “ELECTION SERVICE PROVIDER” MEANS ANY PERSON PROVIDING, SUPPORTING, OR MAINTAINING AN ELECTION SYSTEM ON BEHALF OF THE STATE BOARD OR A LOCAL BOARD, INCLUDING A CONTRACTOR OR VENDOR.~~

~~(3) “ELECTION SYSTEM” MEANS ANY INFORMATION SYSTEM USED FOR THE MANAGEMENT, SUPPORT, OR ADMINISTRATION OF AN ELECTION, INCLUDING:~~

~~(I) THE VOTING SYSTEM;~~

~~(II) THE ONLINE VOTER REGISTRATION SYSTEM;~~

~~(III) THE VOTER REGISTRATION DATABASE;~~

~~(IV) THE ONLINE BALLOT REQUEST, DELIVERY, OR MARKING SYSTEMS;~~

~~(V) THE ELECTRONIC POLLBOOKS;~~

~~(VI) THE SYSTEM FOR TABULATING OR REPORTING ELECTION RESULTS; AND~~

~~(VII) THE STATE BOARD OR LOCAL BOARD E-MAIL SYSTEM.~~

~~(4) "SECURITY INCIDENT" MEANS AN OCCURRENCE THAT:~~

~~(I) ACTUALLY OR IMMINENTLY JEOPARDIZES, WITHOUT LAWFUL AUTHORITY, THE INTEGRITY, CONFIDENTIALITY, OR AVAILABILITY OF INFORMATION OR AN INFORMATION SYSTEM; OR~~

~~(II) CONSTITUTES A VIOLATION OR AN IMMINENT THREAT OF A VIOLATION OF LAW, SECURITY POLICIES, SECURITY PROCEDURES, OR ACCEPTABLE USE POLICIES.~~

~~(B) (1) NOTWITHSTANDING ANY OTHER LAW, IF THE STATE ADMINISTRATOR HAS REASON TO BELIEVE THAT A SECURITY INCIDENT HAS OCCURRED INVOLVING AN ELECTION SYSTEM OWNED, OPERATED, OR MAINTAINED BY THE STATE BOARD OR A LOCAL BOARD, OR AN ELECTION SYSTEM PROVIDED, SUPPORTED, OR MAINTAINED BY AN ELECTION SERVICE PROVIDER, THE STATE ADMINISTRATOR SHALL NOTIFY THE FOLLOWING WITHIN 7 DAYS AFTER BECOMING AWARE OF THE SECURITY INCIDENT:~~

~~(I) THE STATE BOARD;~~

~~(II) THE GOVERNOR;~~

~~(III) THE PRESIDENT OF THE SENATE OF MARYLAND;~~

~~(IV) THE SPEAKER OF THE HOUSE OF DELEGATES;~~

~~(V) THE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE;~~

~~(VI) THE COMMITTEE ON WAYS AND MEANS;~~

~~(VII) THE DEPARTMENT OF INFORMATION TECHNOLOGY; AND~~

~~(VIII) THE OFFICE OF LEGISLATIVE AUDITS IN THE DEPARTMENT OF LEGISLATIVE SERVICES.~~

~~(2) A NOTIFICATION UNDER THIS SUBSECTION SHALL:~~

~~(I) PROVIDE THE DATE AND DURATION OF THE SECURITY INCIDENT;~~

~~(II) DESCRIBE THE SPECIFIC ELECTION SYSTEMS AFFECTED AND INFORMATION ACCESSED;~~

~~(III) LIST SPECIFIC ACTIONS TAKEN TO RECOVER FROM THE SECURITY INCIDENT AND PREVENT SIMILAR FUTURE SECURITY INCIDENTS; AND~~

~~(IV) BE UPDATED CONTINUOUSLY AS NEW INFORMATION BECOMES AVAILABLE.~~

~~(3) NOTWITHSTANDING ANY OTHER LAW, THE SECRETARY OF INFORMATION TECHNOLOGY MAY REQUIRE THAT THE INFORMATION CONTAINED IN A NOTIFICATION PROVIDED UNDER THIS SUBSECTION BE WITHHELD FROM THE GENERAL PUBLIC IF THE SECRETARY DETERMINES THAT THE PUBLIC INTEREST IS SERVED BY WITHHOLDING THE INFORMATION.~~

~~(C) IF AN ELECTION SERVICE PROVIDER HAS REASON TO BELIEVE THAT A SECURITY INCIDENT HAS OCCURRED INVOLVING AN ELECTION SYSTEM PROVIDED, SUPPORTED, OR MAINTAINED BY THE ELECTION SERVICE PROVIDER, THE ELECTION SERVICE PROVIDER SHALL:~~

~~(1) NOTIFY THE STATE ADMINISTRATOR WITHIN 7 DAYS AFTER BECOMING AWARE OF THE SECURITY INCIDENT; AND~~

~~(2) COOPERATE WITH THE STATE ADMINISTRATOR IN PROVIDING THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.~~

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "APPROPRIATE PERSONS" MEANS:

(I) THE STATE BOARD;

(II) THE GOVERNOR;

(III) THE PRESIDENT OF THE SENATE OF MARYLAND; AND

(IV) THE SPEAKER OF THE HOUSE OF DELEGATES; AND

(V) THE ATTORNEY GENERAL.

(3) "ELECTION SERVICE PROVIDER" MEANS ANY PERSON PROVIDING, SUPPORTING, OR MAINTAINING AN ELECTION SYSTEM ON BEHALF OF THE STATE BOARD OR A LOCAL BOARD, INCLUDING A CONTRACTOR OR VENDOR.

(4) “ELECTION SYSTEM” MEANS ANY INFORMATION SYSTEM USED FOR THE MANAGEMENT, SUPPORT, OR ADMINISTRATION OF AN ELECTION, INCLUDING:

- (I) THE VOTING SYSTEM;
- (II) THE ONLINE VOTER REGISTRATION SYSTEM;
- (III) THE VOTER REGISTRATION DATABASE;
- (IV) THE ONLINE BALLOT REQUEST, DELIVERY, OR MARKING SYSTEMS;
- (V) THE ELECTRONIC POLLBOOKS;
- (VI) THE SYSTEM FOR TABULATING OR REPORTING ELECTION RESULTS; AND
- (VII) THE STATE BOARD OR LOCAL BOARD E-MAIL SYSTEM.

(5) “SECURITY VIOLATION” MEANS ~~ANY OF THE FOLLOWING INCIDENTS:~~

~~(I) A PERSON GAINING LOGICAL OR PHYSICAL ACCESS TO AN ELECTION SYSTEM WITHOUT AUTHORIZATION;~~

~~(II) A DENIAL OF SERVICE ATTACK THAT SUCCESSFULLY PREVENTS OR IMPAIRS THE NORMAL AUTHORIZED FUNCTIONALITY OF AN ELECTION SYSTEM BY EXHAUSTING RESOURCES;~~

~~(III) A SUCCESSFUL INSTALLATION OF MALICIOUS SOFTWARE THAT INFECTS AN ELECTION SYSTEM; OR~~

~~(IV) A VIOLATION OF ACCEPTABLE USE POLICIES RELATING TO AN ELECTION SYSTEM, AS SPECIFIED IN THE STATE INFORMATION SECURITY POLICY~~ *THE INCIDENT CATEGORIES DEFINED BY THE DEPARTMENT OF INFORMATION TECHNOLOGY IN THE STATE INFORMATION SECURITY POLICY.*

(6) “SIGNIFICANT ATTEMPTED SECURITY VIOLATION” MEANS AN ATTEMPT TO COMMIT A SECURITY VIOLATION THAT:

(I) IS KNOWN ~~OR REASONABLY SUSPECTED~~ TO HAVE BEEN COMMITTED BY A FOREIGN GOVERNMENT OR AGENTS OF A FOREIGN GOVERNMENT; OR

(II) THE STATE ADMINISTRATOR CONSIDERS TO BE OF PARTICULAR SIGNIFICANCE OR CONCERN.

~~(B) (1) NOTWITHSTANDING ANY OTHER LAW, IF THE STATE ADMINISTRATOR KNOWS OR REASONABLY SUSPECTS THAT A SECURITY VIOLATION INVOLVING AN ELECTION SYSTEM OWNED, OPERATED, OR MAINTAINED BY THE STATE BOARD OR A LOCAL BOARD OR AN ELECTION SYSTEM PROVIDED, SUPPORTED, OR MAINTAINED BY AN ELECTION SERVICE PROVIDER HAS OCCURRED, THE STATE ADMINISTRATOR SHALL SUBMIT A WRITTEN REPORT TO THE APPROPRIATE PERSONS WITHIN 7 DAYS AFTER BECOMING AWARE OF THE SECURITY VIOLATION.~~

~~(2) A REPORT UNDER THIS SUBSECTION SHALL:~~

~~(I) PROVIDE THE DATE AND DURATION OF THE SECURITY VIOLATION;~~

~~(II) DESCRIBE THE NATURE OF THE SECURITY VIOLATION AND THE SPECIFIC ELECTION SYSTEMS AFFECTED;~~

~~(III) LIST SPECIFIC ACTIONS TAKEN TO RECOVER FROM THE SECURITY VIOLATION AND PREVENT SIMILAR FUTURE SECURITY VIOLATIONS; AND~~

~~(IV) BE UPDATED CONTINUOUSLY AS NEW INFORMATION BECOMES AVAILABLE.~~

~~(C) (1) NOTWITHSTANDING ANY OTHER LAW, ON JANUARY 1 EACH YEAR THE STATE ADMINISTRATOR SHALL SUBMIT A WRITTEN REPORT TO THE APPROPRIATE PERSONS THAT DESCRIBES ANY SIGNIFICANT ATTEMPTED SECURITY VIOLATION INVOLVING AN ELECTION SYSTEM OWNED, OPERATED, OR MAINTAINED BY THE STATE BOARD OR A LOCAL BOARD OR AN ELECTION SYSTEM PROVIDED, SUPPORTED, OR MAINTAINED BY AN ELECTION SERVICE PROVIDER THAT THE STATE ADMINISTRATOR KNOWS OR REASONABLY SUSPECTS OCCURRED IN THE PREVIOUS YEAR.~~

~~(2) THE REPORT UNDER THIS SUBSECTION SHALL:~~

~~(I) PROVIDE THE DATE AND DURATION OF THE SIGNIFICANT ATTEMPTED SECURITY VIOLATION;~~

~~(II) DESCRIBE THE NATURE OF THE SIGNIFICANT ATTEMPTED SECURITY VIOLATION AND THE SPECIFIC ELECTION SYSTEM TARGETED;~~

~~(III) DESCRIBE HOW THE TARGETED ELECTION SYSTEM WAS PROTECTED AND WHETHER ANY ADDITIONAL MEASURES TO PROTECT THE ELECTION SYSTEM ARE WARRANTED; AND~~

~~(IV) BE UPDATED CONTINUOUSLY AS NEW INFORMATION BECOMES AVAILABLE.~~

(B) WITHIN 7 DAYS AFTER BECOMING AWARE OF A SECURITY VIOLATION OR SIGNIFICANT ATTEMPTED SECURITY VIOLATION, THE STATE ADMINISTRATOR SHALL SUBMIT TO THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE APPROPRIATE PERSONS A REPORT ON EACH SECURITY VIOLATION AND SIGNIFICANT ATTEMPTED SECURITY VIOLATION INVOLVING AN ELECTION SYSTEM:

(1) OWNED, OPERATED, OR MAINTAINED BY THE STATE BOARD OR A LOCAL BOARD OF ELECTIONS; OR

(2) PROVIDED, SUPPORTED, OR MAINTAINED BY AN ELECTION SERVICE PROVIDER.

(C) WITHIN 7 DAYS AFTER RECEIVING THE STATE BOARD'S REPORT SUBMITTED UNDER SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT OF INFORMATION TECHNOLOGY SHALL FORWARD ANY ADDITIONAL RELEVANT INFORMATION TO THE APPROPRIATE PERSONS AND THE STATE ADMINISTRATOR.

(D) NOTWITHSTANDING ANY OTHER LAW, THE SECRETARY OF INFORMATION TECHNOLOGY MAY REQUIRE THAT THE INFORMATION CONTAINED IN A REPORT SUBMITTED UNDER SUBSECTION (B) ~~OR (C)~~ OF THIS SECTION BE WITHHELD FROM THE GENERAL PUBLIC IF THE SECRETARY DETERMINES THAT THE PUBLIC INTEREST IS SERVED BY WITHHOLDING THE INFORMATION.

(E) IF AN ELECTION SERVICE PROVIDER KNOWS ~~OR REASONABLY SUSPECTS~~ THAT A SECURITY VIOLATION OR SIGNIFICANT ATTEMPTED SECURITY VIOLATION HAS OCCURRED INVOLVING AN ELECTION SYSTEM PROVIDED, SUPPORTED, OR MAINTAINED BY THE ELECTION SERVICE PROVIDER, THE ELECTION SERVICE PROVIDER SHALL:

(1) NOTIFY THE STATE ADMINISTRATOR IN WRITING ~~WITHIN~~ AS SOON AS PRACTICABLE BUT NOT LATER THAN 4 DAYS AFTER BECOMING AWARE OF THE SECURITY VIOLATION OR SIGNIFICANT ATTEMPTED SECURITY VIOLATION; AND

(2) COOPERATE WITH THE STATE ADMINISTRATOR IN SUBMITTING THE REPORT REQUIRED UNDER SUBSECTION (B) ~~OR (C)~~ OF THIS SECTION.

9-305.

- (a) A voter may request an absentee ballot by completing and submitting:
- (1) the State Board approved absentee ballot application;
 - (2) a form provided under federal law;
 - (3) **SUBJECT TO SUBSECTION (B) OF THIS SECTION**, a written request that includes:
 - (i) the voter's name, residence address, and signature; and
 - (ii) the address to which the ballot is to be mailed, if different from the residence address; or
 - (4) [as specified in subsection (c) of this section,] the accessible online absentee ballot application provided by the State Board.

(B) A VOTER WHO USES THE ONLINE ABSENTEE BALLOT APPLICATION TO REQUEST THAT AN ABSENTEE BALLOT BE SENT BY ANY METHOD OR WHO USES ANY METHOD TO REQUEST TO RECEIVE A BLANK ABSENTEE BALLOT THROUGH THE INTERNET SHALL PROVIDE THE FOLLOWING INFORMATION:

(1) A MARYLAND DRIVER'S LICENSE NUMBER OR MARYLAND IDENTIFICATION CARD NUMBER, THE LAST FOUR DIGITS OF THE APPLICANT'S SOCIAL SECURITY NUMBER, AND ANY OTHER INFORMATION IDENTIFIED BY THE STATE BOARD THAT IS NOT GENERALLY AVAILABLE TO THE PUBLIC BUT IS READILY AVAILABLE TO THE APPLICANT; OR

(2) IF THE APPLICANT IS AN ABSENT UNIFORMED SERVICES VOTER OR OVERSEAS VOTER AS DEFINED IN THE FEDERAL UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT OR A VOTER WITH A DISABILITY AND DOES NOT HAVE A MARYLAND DRIVER'S LICENSE OR MARYLAND IDENTIFICATION CARD, A SOCIAL SECURITY NUMBER.

~~**(C) THE STATE BOARD APPROVED ABSENTEE BALLOT APPLICATION AND THE ONLINE ABSENTEE BALLOT APPLICATION SHALL REQUIRE THE APPLICANT TO CHECK A BOX ACKNOWLEDGING THE FOLLOWING STATEMENT:**~~

~~**"I UNDERSTAND THAT IF I REQUEST TO RECEIVE AN ABSENTEE BALLOT ONLINE OR BY FAX, THE BALLOT I PRINT AND RETURN BY MAIL WILL NOT BE THE SAME BALLOT THAT IS COUNTED. THE BALLOT THAT I PRINT AND RETURN WILL BE DUPLICATED BY ELECTION OFFICIALS ONTO AN OFFICIAL BALLOT THAT IS MACHINE**~~

~~READABLE. IF I WANT AN OFFICIAL BALLOT THAT WILL NOT NEED TO BE
DUPLICATED, I MAY REQUEST TO RECEIVE AN ABSENTEE BALLOT BY MAIL.” CHECK
A BOX ACKNOWLEDGING A STATEMENT THAT, IF THE VOTER REQUESTS TO RECEIVE
AN ABSENTEE BALLOT ONLINE OR BY FAX, THE BALLOT THE VOTER RETURNS WILL
HAVE TO BE DUPLICATED BY ELECTION OFFICIALS ONTO AN OFFICIAL BALLOT THAT
IS MACHINE READABLE TO BE COUNTED.~~

[(b)] ~~(D)~~ (C) An application for an absentee ballot must be received by a local board:

(1) if the voter requests the absentee ballot be sent by mail or facsimile transmission, not later than the Tuesday preceding the election, at the time specified in the guidelines;

(2) if the voter requests the absentee ballot be sent by the Internet, not later than the Friday preceding the election, at the time specified in the guidelines; or

(3) if the voter or the voter’s duly authorized agent applies for an absentee ballot in person at the local board office, not later than the closing of the polls on election day.

[(c)] The online absentee ballot application provided by the State Board shall require the applicant to provide:

(1) a Maryland driver’s license number or Maryland identification card number, the last four digits of the applicant’s Social Security number, and other information identified by the State Board that is not generally available to the public but is readily available to the applicant; or

(2) if the applicant is an absent uniformed services voter or overseas voter as defined in the federal Uniformed and Overseas Citizens Absentee Voting Act and does not have a Maryland driver’s license or Maryland identification card, a Social Security number.]

~~9-308.1.~~

~~(a) In this section:~~

~~(1) “online ballot marking tool” includes a system that allows a voter to:~~

~~(i) access a blank ballot through the Internet;~~

~~(ii) electronically mark the ballot with the voter’s selections; and~~

~~(iii) print a paper copy of the marked ballot for mailing to a local~~

~~board; and~~

~~(2) “online ballot marking tool” does not include a system that is capable of storing, tabulating, or transmitting votes or voted ballots by electronic or electromagnetic means through the Internet.~~

~~(b) The State Board may provide an accessible optional online ballot marking tool for use by a voter who requested to have the absentee ballot sent by the Internet.~~

~~(e) (1) Except as provided in paragraph (2) of this subsection, the State Board shall certify that an online ballot marking tool satisfies all of the certification requirements under § 9-102(d) of this title before approving an online ballot marking tool for use by voters.~~

~~(2) An online ballot marking tool is not required to satisfy the requirements of:~~

~~(i) § 9-102(d)(2) of this title if the U.S. Election Assistance Commission has not approved specific performance and test standards for online ballot marking tools; or~~

~~(ii) § 9-102(d)(1)(iii) of this title.~~

~~**(D) A VOTER WHO CHOOSES TO RECEIVE A BLANK ABSENTEE BALLOT THROUGH THE INTERNET SHALL BE REQUIRED TO CHECK A BOX ACKNOWLEDGING THE FOLLOWING STATEMENT BEFORE CHOOSING WHETHER TO MARK THE BALLOT BY HAND OR USE THE ONLINE BALLOT MARKING TOOL:**~~

~~**“I UNDERSTAND THAT IF I CHOOSE TO MARK MY BALLOT ON MY COMPUTER USING THE INTERNET, IT IS POSSIBLE THAT MY CHOICES COULD BE VIEWED BY OTHERS WITHOUT MY KNOWLEDGE. IF I WANT TO BE CERTAIN TO KEEP MY CHOICES SECRET, I MAY PRINT OUT MY BALLOT AND MARK IT BY HAND.” A STATEMENT THAT, IF THE VOTER CHOOSES TO MARK THE VOTER’S BALLOT ON THE VOTER’S COMPUTER USING THE INTERNET, THE VOTER’S CHOICES COULD BE VIEWED BY OTHERS WITHOUT THE VOTER’S KNOWLEDGE.**~~

~~**(d)** (E) (1) This subsection applies if an online ballot marking tool utilizes a bar code that is used to generate a ballot that is acceptable for machine tabulation.~~

~~(2) A local board shall compare the vote in each contest on the ballot marked by the voter to the vote in each contest on the ballot generated from the bar code during the canvass.~~

~~(3) If there is a discrepancy in any contest between the vote on the ballot marked by the voter and the vote on the ballot generated from the bar code, the vote on the ballot marked by the voter shall be considered valid and shall be counted.~~

10-302.

(a) In a timely manner for each election, the local board shall provide for the delivery to each polling place the supplies, records, and equipment necessary for the conduct of the election.

(b) Each polling place shall be equipped with a computer device that contains a record of all registered voters in the county and that is capable of being networked to other polling place computer devices.

(C) EACH POLLING PLACE AND EARLY VOTING CENTER SHALL HAVE A PAPER OR ELECTRONIC BACKUP COPY OF THE ELECTION REGISTER AVAILABLE FOR THE USE OF THE ELECTION JUDGES IF THE COMPUTER DEVICES REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DO NOT FUNCTION PROPERLY DURING AN ELECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018.

Approved by the Governor, May 8, 2018.