

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2054 Session of 2024

INTRODUCED BY M. MACKENZIE, R. MACKENZIE, BERNSTINE, GREINER, HAMM, KAUFFMAN, MOUL, ROWE, RYNCAVAGE, SCHEUREN, SCIALABBA, WARNER, RADER AND GILLEN, FEBRUARY 22, 2024

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 22, 2024

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled
 2 "An act concerning elections, including general, municipal,
 3 special and primary elections, the nomination of candidates,
 4 primary and election expenses and election contests; creating
 5 and defining membership of county boards of elections;
 6 imposing duties upon the Secretary of the Commonwealth,
 7 courts, county boards of elections, county commissioners;
 8 imposing penalties for violation of the act, and codifying,
 9 revising and consolidating the laws relating thereto; and
 10 repealing certain acts and parts of acts relating to
 11 elections," in electronic voting systems, providing for
 12 defects, disclosure, investigations and penalties.

13 The General Assembly of the Commonwealth of Pennsylvania
 14 hereby enacts as follows:

15 Section 1. The act of June 3, 1937 (P.L.1333, No.320), known
 16 as the Pennsylvania Election Code, is amended by adding a
 17 section to read:

18 Section 1121.1-A. Defects, Disclosure, Investigations and
 19 Penalties.--(a) No later than January 1 of every odd-numbered
 20 year, each vendor shall file a written disclosure with the
 21 department identifying any known defect in an electronic voting
 22 system or the fact that there is no known defect, the effect of

1 any defect on the operation and use of the approved electronic
2 voting system and any known corrective measures to cure a
3 defect, including advisories and bulletins issued to electronic
4 voting system users.

5 (b) Implementation of corrective measures approved by the
6 department which enable an electronic voting system to conform
7 to the standards and ensure the timeliness and accuracy of the
8 casting and counting of ballots constitutes a cure of a defect.

9 (c) If a vendor becomes aware of the existence of a defect,
10 the vendor shall file a new disclosure with the department as
11 provided under subsection (a) within thirty days of the date the
12 vendor determined or reasonably should have determined that the
13 defect existed.

14 (d) If a vendor discloses to the department that a defect
15 exists, the department may suspend all sales or leases of the
16 electronic voting system in this Commonwealth and may suspend
17 the use of the electronic voting system in any election in this
18 Commonwealth. The department shall provide written notice of a
19 suspension under this subsection to the affected vendor and
20 county boards of elections. If the department determines that
21 the defect no longer exists, the department shall lift the
22 suspension and provide written notice to each affected vendor
23 and supervisor of elections.

24 (e) If a vendor fails to file a required disclosure for an
25 electronic voting system previously approved by the department,
26 that electronic voting system may not be sold, leased or used
27 for elections in this Commonwealth until the electronic voting
28 system has been submitted for examination and approval under
29 this act. The department shall provide written notice to each
30 county board of elections that the electronic voting system is

1 no longer approved.

2 (f) If the department has reasonable cause to believe an
3 electronic voting system approved under this act contains a
4 defect either before, during or after an election which has not
5 been disclosed under this section, the department shall
6 investigate whether the electronic voting system has a defect.

7 (g) The department shall initiate an investigation on its
8 own initiative or upon the written request of the board of
9 elections of a county that purchased an electronic voting system
10 that contains the alleged defect.

11 (h) Upon initiation of an investigation, the department
12 shall provide written notice to the vendor and each county board
13 of elections.

14 (i) If the department determines by a preponderance of the
15 evidence that a defect exists in the electronic voting system,
16 or that the vendor failed to timely disclose a defect under this
17 section, the department shall provide written notice to the
18 affected vendor and county board of elections.

19 (j) A vendor who receives notice of a defect shall, within
20 ten days of receipt of the notice under subsection (i), file a
21 written response to the department which:

22 (1) denies that the alleged defect exists or existed as
23 alleged by the department or that the vendor failed to timely
24 disclose a defect and provide the reasons for the denial; or

25 (2) admits that the defect exists or existed as alleged by
26 the department or that the vendor failed to timely disclose a
27 defect.

28 (k) If the defect has been cured, the vendor shall provide
29 an explanation of how the defect was cured.

30 (l) If the defect has not been cured, the vendor shall

1 inform the department whether the defect can be cured and shall
2 provide the department with a plan for curing the defect.

3 (m) If the defect can be cured, the department shall
4 establish a time frame within which to cure the defect.

5 (n) If, after receiving a response from the vendor, the
6 department determines that a defect does not exist or has been
7 cured within the time frame established by the department, the
8 department shall take no further action.

9 (o) If the department determines that a vendor failed to
10 timely disclose a defect or that a defect exists and a vendor
11 has not filed a written response or has failed to cure within
12 the time frame established by the department, or if the defect
13 cannot be cured, the department shall impose a civil penalty of
14 twenty-five thousand dollars (\$25,000) for the defect plus an
15 amount equal to the actual costs incurred by the department in
16 conducting the investigation.

17 (p) If the department finds that a defect existed:

18 (1) The department may suspend all sales and leases of the
19 electronic voting system and may suspend its use in any county
20 in this Commonwealth. The department shall provide written
21 notice of the suspension to each affected vendor and county
22 board of elections.

23 (2) If the department determines that a defect no longer
24 exists in an electronic voting system that has been suspended
25 from use under this section, the department shall lift the
26 suspension and authorize the sale, lease and use of the
27 electronic voting system in any election in this Commonwealth.
28 The department shall provide written notice that the suspension
29 has been lifted to each affected vendor and county board of
30 elections.

1 (3) If the defect cannot be cured, the department may
2 disapprove the electronic voting system for use in elections in
3 this Commonwealth. The department shall provide written notice
4 to all county boards of elections that the electronic voting
5 system is no longer approved. After approval of an electronic
6 voting system that has been withdrawn under this paragraph, the
7 electronic voting system may not be sold, leased or used in this
8 Commonwealth until it has been resubmitted for examination and
9 approval and adopted for use under this act.

10 (4) A vendor for whom a civil penalty was imposed under this
11 section may not submit an electronic voting system for approval
12 by the department or enter into a contract for sale or lease of
13 an electronic voting system in this Commonwealth until each
14 civil penalty has been paid and the department provides written
15 confirmation of the payment to the county board of elections.

16 (g) The department shall prepare a written report of any
17 investigation conducted under this section and submit the report
18 to the President pro tempore of the Senate, the Speaker of the
19 House of Representatives, the Majority Leader and Minority
20 Leader of the Senate, the Majority Leader and Minority Leader of
21 the House of Representatives, the chair and minority chair of
22 the State Government Committee of the Senate and the chair and
23 minority chair of the State Government Committee of the House of
24 Representatives.

25 (r) The authority of the department under this section shall
26 be in addition to, and not exclusive of, any other authority
27 provided by law.

28 (s) For the purposes of this section:

29 "Defect" means a failure, fault or flaw in an electronic or
30 electro-mechanical electronic voting system approved under this

1 act, which results in nonconformance with the standards in a
2 manner that affects the timeliness or accuracy of the casting or
3 counting of ballots or a failure or inability of the electronic
4 voting system manufacturer or vendor to make available and
5 provide approved replacements of hardware or software to the
6 counties that have purchased the approved electronic voting
7 system, the unavailability of which results in the electronic
8 voting system's nonconformance with the standards in a manner
9 that affects the timeliness or accuracy of the casting or
10 counting of ballots.

11 "Department" means the Department of State of the
12 Commonwealth.

13 Section 2. This act shall take effect in 60 days.