Senate Bill No. 541

Passed the Senate September 10, 2009

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Secretary of the Senate

Passed the Assembly September 9, 2009

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 13002, 13004, 13005, 13006, 18400, 19202, 19214, and 19214.5 of, to add Section 19212.5 to, and to repeal Section 13007 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, Pavley. Elections: ballot cards and voting systems.

Existing law requires the Secretary of State to adopt regulations governing the manufacture, distribution, and inventory control of punchcards, and requiring the inspection of facilities that manufacture and store punchcards. Existing law requires the Secretary of State to approve a punchcard manufacturer prior to the manufacturer's providing of punchcards for use in California elections.

This bill would instead require the Secretary of State to adopt regulations governing the manufacture, finishing, quality standards, and inventory control of ballot cards, and requiring the biennial inspection of facilities that manufacture, finish, and store ballot cards. The bill would require that, no later than 5 days prior to inspection, the ballot card manufacturer or finisher disclose to the Secretary of State known flaws or defects in its current or past manufacturing or finishing process of ballot cards or manufactured or finished ballot cards that could adversely affect the casting or tallying of votes. The bill would require a manufacturer or finisher of ballot cards to notify the Secretary of State and affected local elections officials of defects that would adversely affect the casting or tallying of ballot cards that it discovers after approval by the Secretary of State within 2 business days of their discovery.

Existing law provides for a revolving fund that is continuously appropriated for the purpose of purchasing ballot paper and punchcards.

This bill would repeal these provisions.

Existing law provides that a person or corporation owning or being interested in a voting system or part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. Existing law requires the Secretary of State to issue a report regarding whether, in his

or her opinion, the voting system or part of a voting system can be safely used.

This bill would instead require that a vendor of a voting system or part of a voting system include in its application to the Secretary of State notification of a known defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system. The bill would also require the vendor to notify the Secretary of State of such a defect, fault, or failure discovered either after the vendor submitted his or her application but prior to the issuance of the Secretary of State's report or after the voting system or the part of a voting system is approved by the Secretary of State. The bill would also require the Secretary of State to notify and issue a report to the United States Election Assistance Commission regarding the defects, faults, or failures made known by the vendor at the initiation of, during, or after the approval process.

Existing law permits the Secretary of State to seek damages for an unauthorized change in hardware, software, or firmware in a certified or conditionally certified voting system.

This bill would also permit the Secretary of State to seek civil penalties for a known but undisclosed defect, fault, or failure in an approved or conditionally approved voting system and for a failure to comply with notification requirements concerning the defect, fault, or failure and to seek a refund of payment made for the voting system or part of the system.

The people of the State of California do enact as follows:

SECTION 1. Section 13002 of the Elections Code is amended to read:

13002. Ballot paper and ballot cards used by a jurisdiction holding an election pursuant to the laws of California shall be tinted and watermarked or overprinted with a design, to be furnished by the Secretary of State, so that the watermark or overprint is plainly discernible.

SEC. 2. Section 13004 of the Elections Code is amended to read:

13004. (a) The Secretary of State shall adopt regulations governing the manufacture, finishing, quality standards, distribution, and inventory control of ballot cards and requiring

the biennial inspection of the manufacturing, finishing, and storage facilities involving ballot cards. The Secretary of State shall also approve each ballot card manufacturer or finisher prior to a manufacturer or finisher providing ballot cards for use in California elections.

(b) Not later than five working days before the Secretary of State begins his or her initial inspection, the ballot card manufacturer or finisher shall disclose to the Secretary of State in writing any known flaw or defect in its current or past ballot card manufacturing or finishing process or manufactured or finished ballot cards that could adversely affect the casting or tallying of votes. Once approved by the Secretary of State, the ballot card manufacturer or finisher shall notify the Secretary of State and the affected local elections officials in writing within two business days after it discovers any flaw or defect in its ballot card manufacturing or finishing process or manufactured or finished ballot cards that could adversely affect the casting or tallying of votes.

SEC. 3. Section 13005 of the Elections Code is amended to read:

13005. (a) Before a user may purchase ballot cards, the user shall request in writing a release for a specific quantity of these ballot cards from the Secretary of State. If the request is in order, the Secretary of State shall issue a written release for that quantity to the manufacturer, or to the authorized warehouse, and to the user. The format, text, and use of the request and release shall be governed by regulations adopted by the Secretary of State.

(b) Nothing in this section prohibits a verbal request or verbal release, provided that this verbal request or verbal release is immediately confirmed in writing. The regulations shall expressly deny the manufacturing of ballot cards without a specific release.

SEC. 4. Section 13006 of the Elections Code is amended to read:

13006. A user, vendor, or manufacturer shall not warehouse for a subsequent election ballot paper or ballot cards furnished or released by the Secretary of State for a specific election without first obtaining authorization in writing from the Secretary of State for the storage. The authorization shall include the particular details of the amount to be stored so that audit controls may be established and maintained. Ballot paper or ballot cards not used in that

election, not authorized to be retained for subsequent elections, and not returned to the Secretary of State, shall be destroyed. A certificate of destruction setting forth the date of destruction and the amount of the ballot paper or ballot cards destroyed shall be transmitted to the Secretary of State.

SEC. 5. Section 13007 of the Elections Code is repealed.

SEC. 6. Section 18400 of the Elections Code is amended to read:

18400. A person who makes, uses, keeps, or furnishes to others, paper or cards watermarked or overprinted in imitation of ballot paper or ballot cards is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, two or three years, or by both the fine and imprisonment.

SEC. 7. Section 19202 of the Elections Code is amended to read:

19202. (a) A person or corporation owning or being interested in a voting system or a part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. As part of its application, the vendor of a voting system or the part of a voting system shall notify the Secretary of State in writing of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted. The Secretary of State shall not begin his or her examination until he or she receives a completed application from the vendor of the voting system or the part of the voting system. The vendor shall also notify the Secretary of State in writing of any defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted that is discovered after the application is submitted and before the Secretary of State submits the report required by Section 19207. The Secretary of State shall complete his or her examination without undue delay.

(b) After receiving a vendor's written notification of a defect, fault, or failure, the Secretary of State shall notify the United States Election Assistance Commission or its successor entity of the problem as soon as practicable so as to present a reasonably complete description of the problem. The Secretary of State shall subsequently submit a report regarding the problem to the United

States Election Assistance Commission or its successor entity. The report shall include any report regarding the problem submitted to the Secretary of State by the vendor.

(c) The following definitions apply for purposes of this article:

(1) "Defect" means any flaw in the hardware or documentation of an approved or conditionally approved voting system that could result in a state of unfitness for use or nonconformance to the manufacturer's specifications.

(2) "Failure" means a discrepancy between the external results of the operation of any software or firmware in an approved or conditionally approved voting system and the manufacturer's product requirements for that software or firmware.

(3) "Fault" means a step, process, or data definition in any software or firmware in an approved or conditionally approved voting system that is incorrect under the manufacturer's program specification.

SEC. 8. Section 19212.5 is added to the Elections Code, to read:

19212.5. (a) When a voting system or a part of a voting system has been approved by the Secretary of State, the vendor shall notify the Secretary of State and all local elections officials who use the system in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system within 30 calendar days after the vendor learns of the defect, fault, or failure.

(b) Not later than January 8, 2010, the vendor of a voting system or a part of a voting system that has been approved by the Secretary of State prior to the effective date of this section shall notify the Secretary of State and all local elections officials who use the system in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system the vendor was aware of prior to January 1, 2010.

(c) After receiving a vendor's written notification of a defect, fault, or failure pursuant to subdivision (a) or (b), the Secretary of State shall notify the United States Election Assistance Commission or its successor entity of the problem as soon as practicable so as to present a reasonably complete description of the problem. The Secretary of State shall subsequently submit a report regarding the problem to the United States Election Assistance Commission or

its successor entity. The report shall include any report regarding the problem submitted to the Secretary of State by the vendor.

SEC. 9. Section 19214 of the Elections Code is amended to read:

19214. The Secretary of State may seek injunctive and administrative relief when a voting system or a part of a voting system has been compromised by the addition or deletion of hardware, software, or firmware without prior approval or is defective due to a known hardware, software, or firmware defect, fault, or failure that has not been disclosed pursuant to Section 19202 or 19212.5.

SEC. 10. Section 19214.5 of the Elections Code is amended to read:

19214.5. (a) The Secretary of State may seek all of the following relief for an unauthorized change in hardware, software, or firmware in a voting system approved or conditionally approved in California:

(1) A civil penalty from the offending party or parties, not to exceed ten thousand dollars ($10,000) per violation. For purposes of this subdivision, each voting system component found to contain the unauthorized hardware, software, or firmware shall be considered a separate violation. A penalty imposed pursuant to this subdivision shall be apportioned 50 percent to the county in which the violation occurred, if applicable, and 50 percent to the Office of the Secretary of State for purposes of bolstering voting systems security efforts.

(2) Immediate commencement of proceedings to withdraw approval for the voting system in question.

(3) Prohibiting the manufacturer or vendor of a voting system from doing elections-related business in the state for one, two, or three years.

(4) Refund of all moneys paid by a local agency for a voting system or a part of a voting system that is compromised by an unauthorized change or modification, whether or not the voting system has been used in an election.

(5) Any other remedial actions authorized by law to prevent unjust enrichment of the offending party.

(b) (1) The Secretary of State may seek all of the following relief for a known but undisclosed defect, fault, or failure in a

voting system or part of a voting system approved or conditionally approved in California:

(A) Refund of all moneys paid by a local agency for a voting system or part of a voting system that is defective due to a known but undisclosed defect, fault, or failure, whether or not the voting system has been used in an election.

(B) A civil penalty from the offending party or parties, not to exceed fifty thousand dollars ($50,000) per violation. For purposes of this subdivision, each defect, fault, or failure, but not each voting system found to contain that defect, fault, or failure, shall be considered a separate violation.

(C) In addition to any other penalties or remedies established by this section, the offending party or parties shall be liable in the amount of one thousand dollars ($1,000) per day after the applicable deadline established in Section 19212.5 until the required disclosure is filed with the Secretary of State.

(2) A penalty imposed pursuant to subparagraph (B) or (C) of paragraph (1) shall be deposited in the General Fund.

(c) Prior to seeking any measure of relief under this section, the Secretary of State shall hold a public hearing. The Secretary of State shall give notice of the hearing in the manner prescribed by Section 6064 of the Government Code in a newspaper of general circulation published in Sacramento County. The Secretary of State also shall transmit written notice of the hearing, at least 30 days prior to the hearing, to each county elections official, the offending party or parties, a person that the Secretary of State believes will be interested in the hearing, and a person who requests, in writing, notice of the hearing.

(d) The decision of the Secretary of State, to seek relief under this section, shall be in writing and state his or her findings. The decision shall be open to public inspection.

Approved _____, 2009

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Governor