

**State of South Dakota
State Board of Elections
Petition for Declaratory Rulings**

Pursuant to the provisions of SDCL [1-26-15](#), I (**Rick Weible**) of (**803 Elk St, Elkton SD 57026**), am (**a resident of Brookings County, SD**), and do hereby petition the South Dakota State Board of Elections for its declaratory ruling in regard to the following:

1. The state statute or State Board of Elections rule or order or form in question is:

-----Start of Rule-----

5:02:09:02. Approval of automatic tabulating systems required before distribution. Prior to distribution in South Dakota, a company or corporation dealing in automatic tabulating or electronic ballot marking systems shall give written notice to the state board of elections and demonstrate that its system complies with SDCL [12-17B-2](#) and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission. If the State Board of Elections approves the system, it shall issue a certificate of approval.

Any changes or modifications in an approved automatic tabulating or electronic ballot marking system may be certified by the State Board of Elections with or without the demonstration described in this section for initial approval. The modification for the already approved system must have been certified as fulfilling the requirements of the Election Assistance Commission voting system 2015 standards by an independent test authority accredited by the Election Assistance Commission or been certified to meet the national standard by another state. Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 16 SDR 203, effective May 28, 1990; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 29 SDR 113, effective January 30, 2003; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009; 46 SDR 42, effective September 30, 2019; 47 SDR 37, effective October 6, 2020.

General Authority: SDCL [12-17B-17\(1\)](#).

Law Implemented: SDCL [12-17B-2](#).

----- End of Rule-----

2. ES&S has not been abiding by the voting system 2015 standards requirement 7.4.2: Protection Against Malicious Software, where it specifically states ***“Voting systems shall deploy protection against the many forms of threats to which they may be exposed such as file and macro viruses, worms, Trojan horses, and logic bombs. Vendors shall develop and document the procedures to be followed to ensure that such protection is maintained in a current status.”*** No Engineering Change Orders have been filed to update the Norton antivirus on the Electionware reporting software desktop and laptops from its certified version of March 29th, 2019, for the ES&S EVS 6.1.1.0 systems. The fact that they are certified is not permission to leave the machines

unmaintained and vulnerable to the latest threats by not properly maintaining the equipment as required.

3. If it is determined that ES&S did not “*develop and document the procedures to be followed to ensure that such protection is maintained in a current status.*”, I am requesting that the State Board of Elections issue a letter to require compliance and an engineering change order with the US Election Assistance Commission before Minnehaha, Lincoln, Pennington and Davison counties are able to use their ES&S election management system laptops for the 2024 primary and general elections. Otherwise, I am requesting that the South Dakota Board of Elections in conjunction with the Secretary of State immediately issue a decertification or an advisory that the afore mentioned counties will have to suspend use of the laptops due to security concerns.

Dated at (Elkton, SD), this 27th day of March, 2024.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner