

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2065 (Harper) – As Amended March 18, 2016

SUBJECT: Voter registration: California New Motor Voter Program.

SUMMARY: Changes the California New Motor Voter Program (CNMVP) from an opt-out to an opt-in program and provides that a person may be registered to vote under the program only if the Department of Motor Vehicles (DMV) has a record of being provided a document that proves that the person is a citizen. Specifically, **this bill:**

- 1) Requires the DMV to electronically provide to the Secretary of State (SOS) records of each person who submits an application for a driver's license or state identification card, or a change of address, if the proof that the person is required to submit to prove that his or her presence in the United States is authorized under federal law also establishes that the person is a citizen of the United States, instead of requiring the DMV to electronically provide to the SOS records of each person who submits an application for a driver's license or state identification card, or a change of address, and who attests that he or she meets all voter eligibility requirements, as specified.
- 2) Requires each person who submits an application for a driver's license or state identification card, or change of address, to affirmatively agree to become registered to vote during that transaction, instead of providing that a person will be registered to vote unless that person opts-out.

EXISTING LAW:

- 1) Requires, pursuant to the federal National Voter Registration Act (NVRA) of 1993, each state to offer voter registration services at motor vehicle agency offices, offices that provide public assistance, offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, Armed Forces recruitment offices, and other state and local offices within the state designated as NVRA voter registration agencies.
- 2) Requires the DMV to provide the opportunity to register to vote to individuals who apply for, renew, or change an address for a driver's license or personal identification card issued by the DMV.
- 3) Requires a driver's license or identification application to be used as an application for voter registration, unless the applicant fails to sign the application.
- 4) Requires change of address information received by the DMV to be used for the purpose of updating voter registration records, unless the registrant chooses otherwise.
- 5) Provides that a person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

- 6) Requires a county elections official to cancel the registration of any person if the mental incompetency of that person is legally established, as provided.
- 7) Provides a person may not be registered to vote except by affidavit of registration.
- 8) Permits a registered voter to cancel his or her voter registration at any time by submitting a signed, written request to the county elections official.
- 9) Establishes the CNMVP. Requires the DMV, in consultation with the SOS, to establish a schedule and method for the DMV to electronically provide to the SOS the records of each person who submits an application for a driver's license or state identification card, or provides the DMV with a change of address, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Under the new CNMVP Act, individuals who apply at the DMV for a driver's license or a state identification card, or who submit a change of address form, will be automatically registered to vote by the Secretary of State (SOS) unless they affirmatively opt-out of registration. As a result, persons who sign an application but do not specifically state that they do not wish to register to vote, will be registered to vote regardless of whether or not that was their intention.

In addition, a last-minute amendment to the legislation introduced a major security flaw that requires the DMV to also forward the information received from non-citizen applicants to the SOS, for voter registration purposes. The SOS is then required to register those persons, even though they informed the DMV that they are not citizens, unless they remembered to check the "no" box on the application when asked to register to vote.

Under both state and federal law, only U.S. citizens are entitled to register to vote, and to vote. The drafters of the CNMVP Act apparently recognized that this new procedure will result in non-citizens being registered to vote, since they also changed state law to make it much harder for prosecutors to bring criminal charges against non-citizens who illegally register or vote under this procedure.

But while the CNMVP Act can provide these protections under state law, it is still a felony offense under federal law for non-citizens to vote, or just to register to vote, even if they registered by mistake by failing to check the "no" box on the DMV application.

According to the U.S. Citizenship and Immigration Services, a lawful immigrant could be subject to deportation for conviction of either offense. Further, an individual may be denied naturalization, even if the applicant was not convicted of unlawful voting or false claim to citizenship for voting. As a result, the CNMVP Act harms lawful immigrants for actions taken by the state without their

affirmative consent.

By requiring persons who fill out DMV forms to affirmative opt-in to voter registration, and by ensuring that only eligible citizens are registered, AB 2065 will safeguard the right of all eligible Californians to exercise their voting rights. It will also ensure that legal immigrants do not accidentally become registered to vote, which could subject them to criminal prosecution and damage their right to stay in the U.S. and become citizens.

- 2) **National Voter Registration Act:** In 1993, the federal government enacted the NVRA, commonly referred to as the "motor voter" law, to make it easier for Americans to register to vote and to remain registered to vote. Among other provisions, the NVRA requires states to provide individuals with the opportunity to register to vote at the same time that they apply for or renew a driver's license, requires states to offer voter registration opportunities at all offices that provide public assistance, guarantees that citizens can register to vote by mail using uniform federal registration forms, and establishes procedures for how states maintain voter registration lists for federal elections.

One of the provisions of the NVRA prohibits the voter registration portion of a driver's license application from requiring any information that duplicates information required in the driver's license portion of the form, other than a second signature or a statement attesting to the person's eligibility to register to vote.

The California DMV, however, does not currently comply with NVRA's prohibition on requiring duplicate information. Rather, a separate voter registration form is attached to the driver's license form which requires the affiant to fill in duplicate information. This dual form policy was the result of a settlement in a lawsuit to force the State of California to comply with NVRA when former Governor Pete Wilson refused to implement it unless federal funding was provided (NVRA did not provide the states with any direct funding or any mechanism for reimbursement of costs associated with implementation).

Last year, a letter was sent to the SOS from the ACLU Foundation of San Diego and Imperial Counties, Dēmos, Morrison & Forester LLP, and Project Vote stating that California is engaging in continuous and ongoing violations of the NVRA due to the state's dual form policy. The letter also stated that it constituted a formal notice of the senders' intent to initiate litigation at the end of the statutory 90-day waiting period should California fail to remedy the violations of the NVRA, as specified.

- 3) **Motor Voter Enhancements in the 2015-16 Budget:** In an effort to comply with the NVRA's requirements, the 2015-16 State Budget included \$2.35 million in the SOS's budget to improve the voter registration process at the DMV with \$1.25 million of it directed to DMV for this purpose with an estimated implementation date no later than April 1, 2016. The new DMV process will eliminate the two form procedure currently in place and instead will prompt an individual who wishes to register to vote for voting-related information (e.g. party preference, permanent vote by mail status, etc.) to complete the voter registration process, without the need for those individuals to repeat personal information that the DMV already has.

- 4) **California New Motor Voter Program:** Last year, the Legislature passed and the Governor signed AB 1461 (Gonzalez), Chapter 729, Statutes of 2015, which provides for every person who submits an application for a driver's license or state identification card, or provides the DMV with a change of address, and who attests that he or she meets all voter eligibility requirements, is automatically registered to vote, unless that person opts out, as specified. Specifically, AB 1461 requires the DMV, in consultation with the SOS, to establish a schedule and method for the DMV to electronically provide to the SOS the records of each person who submits an application for a driver's license or state identification card, or provides the DMV with a change of address. AB 1461 requires the records to include the person's name; date of birth; residence address and/or mailing address; digitized signature; telephone number, if available; email address, if available; language preference; political party preference; whether the person chooses to become a permanent vote by mail voter; whether the person affirmatively declined to register to vote during a transaction with the DMV; a notation that the applicant has attested that he or she meets all voter eligibility requirements; and other information specified in regulations adopted pursuant to the program. Additionally, AB 1461 explicitly prohibits the DMV from electronically providing the records of a person who is issued a driver's license pursuant to specified provisions of law because that person is unable to establish satisfactory proof that his or her presence in the United States is authorized under federal law.

Under the CNMVP, an individual's records that are transmitted from the DMV to the SOS constitute a completed affidavit of voter registration unless the person affirmatively declines to register to vote at the DMV, the person does not attest that he or she meets all voter eligibility requirements while at the DMV, or the SOS determines that the person is not eligible to register to vote.

Pursuant to existing law, the CNMVP will be implemented no later than one year after the SOS certifies all of the following: 1) the statewide voter registration database, also known as VoteCal, complies with the Help America Vote Act of 2002; 2) the Legislature has appropriated the funds necessary for the SOS and the DMV to implement and maintain the CNMVP; and, 3) regulations required by the CNMVP have been adopted by the SOS.

This bill provides that a person would be registered to vote under the CNMVP only if: 1) that person opted in to being registered to vote, and 2) the proof of legal presence that person provided to the DMV when obtaining a driver's license or identification card also proved that the person was a citizen. The author claims that these changes are necessary due to a concern that "a last-minute amendment to the [CNMVP]... required [the SOS] to register...persons [to vote], even though they informed the DMV that they are not citizens."

The CNMVP, however, clearly provides that a person will not be registered to vote if that person fails to declare his or her eligibility, including that he or she is a citizen, under penalty of perjury. Specifically, paragraph (2) of subdivision (a) of Section 2265 of the Elections Code provides that a person will not be registered to vote pursuant to CNMVP if that person's records "do not reflect that he or she has attested to meeting all voter eligibility requirements," as specified, including the requirement that a person must be a citizen in order to register to vote. Requiring a person to attest to his or her eligibility under penalty of perjury when registering to vote has been the longstanding policy and practice in California. Moreover, the provisions of this bill allowing a person to be registered to vote pursuant to the CNMVP only if that person submitted proof to the DMV that the person is a citizen of the

United States will prevent some citizens – including those who used a military identification to prove legal presence to the DMV – from being registered to vote under the CNMVP. The DMV is not required to collect, nor does it necessarily have, information pertaining to a person's citizenship.

- 5) **Documentation:** Except for individuals who receive driver's licenses pursuant to AB 60, as described below, every applicant in California for a state identification card or driver's license is required to provide proof of legal presence in the United States. In order for a person to prove legal presence, an applicant is required to provide the original or a certified copy of one of 28 different documents to the DMV. Of those 28 documents, some (such as a United States passport) are documents that are available only to citizens, while others (such as a permanent resident card) would be issued only to individuals who were not citizens. Other acceptable documents (such as a United States military identification card) could be issued to citizens or non-citizens. According to the DMV and the State Transportation Agency, DMV records contain information about the document that individuals used to establish legal presence in the country.

Once a person has provided documentation of his or her legal presence in the United States, that person typically is not required to provide proof of legal presence again during subsequent transactions with the DMV. As a result, it is plausible for a person's citizenship status to change and for the DMV to have no record. For example, if a person used a permanent resident card to prove his or her legal presence when obtaining a driver's license, then subsequently became a citizen of the United States, it is unlikely that the DMV would have any information to indicate that the person had become a citizen. When that person renews his or her driver's license, the DMV already has documented proof of that person's legal presence from the initial transaction. As a result, the DMV typically would not request the person to provide proof of legal presence again, so it is unlikely that the DMV would ever receive information about the change in the person's citizenship status.

This bill provides that the DMV will forward personal information of individuals to the SOS for the purposes of the CNMVP only if those individuals used a document to establish legal presence in the country that also establishes that the person is a citizen. The new procedure established by this bill would prevent many individuals who are eligible to vote from being registered to vote under the CNMVP, even if those individuals have driver's licenses or state identification cards. As a result, this bill can be expected to significantly reduce the number of eligible voters who are registered to vote under the CNMVP.

- 6) **AB 60 Licensees:** AB 60 (Alejo), Chapter 524, Statutes of 2013, requires the DMV to issue an original driver's license to an applicant who is unable to submit satisfactory proof of legal presence in the United States. Driver's license applicants under AB 60 must meet all other qualifications for licensure and must provide satisfactory proof of identity and California residency. The DMV began accepting applications for licenses under AB 60 on January 2, 2015.

Because the AB 60 licensing process was specifically established for individuals who are unable to submit satisfactory proof of legal presence in the United States, the CNMVP expressly prohibits the DMV from transmitting information to the SOS about individuals who applied for or received a driver's license pursuant to AB 60.

7) **Arguments in Support:** In support, the Election Integrity Project, Inc., writes:

AB 2065 retains the benefit of simultaneous DMV interaction and voter registration while returning the decision to be registered to an opt-in system. This protects the voter rolls from being overwhelmed and bloated with people who do not wish to participate, thus lowering the number of people on the rolls who are ripe for undetectable voter impersonation...

The second "fix" to AB 1461 provided by AB 2065 is the creation and mandated procedure by which the citizenship status of all potential registrants will be verified prior to uploading information to the [SOS]. It is California law that only U.S. citizens may vote. Since the DMV is required to receive documentation of citizenship and residency status of each person to whom they issue a license or an ID card, this requirement puts no additional mandate on the office, but simply requires that DMV clerks upload for voter registration only those who have proof of citizenship...

8) **Arguments in Opposition:** In opposition, the American Civil Liberties Union of California writes:

Section 5 of the NVRA requires that "[e]ach state motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application." The NVRA requires that states register for federal elections all individuals who submit a voter registration application in this manner and prohibits states from imposing any additional requirements on such individuals, including proof of citizenship requirements. Thus, the proposed legislation would unlawfully add a proof of citizenship requirement to voter registration at DMV in direct violation of federal law.

Notably, the NVRA requires that the voter registration application at DMV list a state's voter eligibility requirements, including citizenship, and requires applicants attest to meeting the eligibility requirements under penalty of perjury. California's New Motor Voter law already reinforces this requirement by specifically requiring DMV to transmit the attestation to eligibility to the Secretary of State as part of the voter registration application.

9) **Double-Referral:** This bill has been double-referred to the Assembly Committee on Transportation.

REGISTERED SUPPORT / OPPOSITION:

Support

Election Integrity Project, Inc.
Howard Jarvis Taxpayers Association
Three individuals

Opposition

American Civil Liberties Union of California
California Labor Federation
Secretary of State Alex Padilla

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