

Date of Hearing: July 2, 2025

ASSEMBLY COMMITTEE ON ELECTIONS  
Gail Pellerin, Chair  
SB 398 (Umberg) – As Amended April 21, 2025

**SENATE VOTE:** 38-0

**SUBJECT:** Election crimes: payment based on voting or voter registration.

**SUMMARY:** Makes it a crime for a person to pay or offer to pay money or other valuable consideration with the intent to induce another person to vote or register to vote, or where the payment is contingent upon whether the person voted or the person's voter registration status. Specifically, **this bill:**

- 1) Makes it a crime for a person to knowingly or willfully pay or offer to pay money or other valuable consideration to another person with the intent to induce the person to vote or to register to vote, or where the payment is contingent upon whether the person voted or the person's voter registration status.
- 2) Provides that "other valuable consideration" includes, but is not limited to, a chance to win a lottery or similar prize-drawing contest.
- 3) Provides that a violation of this prohibition is punishable by a fine of up to \$10,000, imprisonment for 16 months or two or three years, or in a county jail not exceeding one year, or by both a fine and imprisonment.

**EXISTING LAW:**

- 1) Provides, under federal law, that a person who knowingly or willfully pays or offers to pay any person to register to vote or to vote, or accepts payment for registering to vote or voting, in an election where a federal office is on the ballot, shall be fined not more than \$10,000, imprisoned not more than five years, or both. (52 U.S.C. §10307(c))
- 2) Provides, under federal law, that a person that makes or offers to make an expenditure to any person, either to vote or withhold their vote, or to vote for or against any candidate; and whoever solicits, accepts, or receives any such expenditure in consideration of their vote or the withholding of their vote in an election where a federal office is on the ballot, shall be fined or imprisoned not more than one year, or both; and if the violation was willful, shall be fined or imprisoned not more than two years, or both. (18 U.S.C. §597)
- 3) Prohibits a person, directly or through any other person, from paying or receiving any money or other valuable consideration before, during, or after an election in order to reward any person or as a reward for voting for or against or agreeing to vote for or against the election or endorsement of any other person as the nominee or candidate of any caucus, convention, organized assemblage of delegates, or other body representing or claiming to represent a political party, candidate, or principle, or any club, society, or association. Provides that a violation of this prohibition is punishable by imprisonment for 16 months or two or three years. (Elections Code §18310)

- 4) Prohibits a person, directly or through another person, from giving, offering, or promising any office, place, or employment, or from promising to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to refrain from voting, vote for any particular person, or refrain from voting for any particular person. Provides a violation of these provisions is punishable by imprisonment for 16 months or two or three years. (Elections Code §18520)
- 5) Prohibits a person, directly or through any other person, from receiving, agreeing, or contracting for, before, during, or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for themselves or any other person because they or any other person:
  - a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.
  - b) Remained away from the polls.
  - c) Refrained or agreed to refrain from voting.
  - d) Induced any other person to:
    - i) Remain away from the polls.
    - ii) Refrain from voting.
    - iii) Vote or refrain from voting for any particular person or measure.

Provides that any person violating these prohibitions is punishable by imprisonment for 16 months or two or three years. (Elections Code §18521)

- 6) Prohibits a person and a controlled committee, directly or through any other person or controlled committee, from paying, lending, contributing, or offering or promising to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to:
  - a) Induce any voter to:
    - i) Refrain from voting at any election.
    - ii) Vote or refrain from voting at an election for any particular person or measure.
    - iii) Remain away from the polls at an election.
  - b) Reward any voter for having:
    - i) Refrained from voting.
    - ii) Voted for any particular person or measure.

- c) Refrained from voting for any particular person or measure.
- d) Remained away from the polls at an election.

Provides that any person or candidate violating these provisions is punishable by imprisonment for 16 months or two or three years. (Elections Code §18522)

- 7) Prohibits a person, directly or through any other person, from advancing or paying, or causing to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, be used in bribery at any election, or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money expended in bribery at any election. Provides that any person violating this prohibition is punishable by imprisonment for 16 months or two or three years. (Elections Code §18523)

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- The Secretary of State (SOS) indicates that this bill could potentially result in a one-time cost of \$107,000 from increased printing costs. SOS indicates that it would have to add the punitive provisions and specific restrictions for lotteries and contests for prize giveaways to the *Guide to Voter Registration Drives* to ensure that anyone conducting outreach events is aware of the new restrictions.

If this update occurred during the course of normal operations due to other legislative changes, the bill would not result in new costs. However, if no other changes were required, and SOS has to replace the existing publication stock to notify voters of the bill's changes, then publication costs would be \$107,000 (General Fund).

- Violations of this bill's provisions could result in an increase in penalty revenue; the magnitude is unknown.
- Violations could also result in unknown, potentially significant costs (local funds, General Fund) to the counties to incarcerate people for the crime created by this bill. The average annual cost to incarcerate one person in county jail is approximately \$77,000 per year. Actual incarceration costs to counties would depend on the number of convictions and the length of each sentence. Although county incarceration costs are generally not considered reimbursable state mandates pursuant to Proposition 30 (2012), overcrowding in county jails creates cost pressure on the General Fund because the State has historically granted new funding to counties to offset overcrowding resulting from 2011 public safety realignment.

## COMMENTS:

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

In October 2024, Elon Musk's "America PAC" announced a \$1 million lottery for individuals in swing states who signed a petition supporting the First and Second Amendments. Despite vote buying being illegal, Musk and the PAC argued that they weren't directly paying people to vote in a specific way. Musk and America PAC claimed legality on the basis that they weren't technically paying someone

to vote in a particular manner. However, it can still be inferred that America PAC created an alluring offer that likely incentivized constituents to register to vote if they had not already done so with a designated swing state. Federal law explicitly prohibits anyone from knowingly or willingly paying or offering to pay or accepting payment either for registration to vote or for voting. At the very least, what Elon Musk has done is spit in the face of our forefathers, longstanding campaign ethics, and federal election law. At least we know he's consistent in his blatant disregard for the rule of law. Californians should not tolerate such blatant interference with our elections by wealthy oligarchs like Elon Musk. We need to hold those who seek to bend our institutions to their own selfish whims, accountable. If Mr. Musk wants to muck around in elections ethics, he can try that in Texas. My bill, SB 398 will make it clear that such electioneering is not welcome in California.

- 2) **Federal and State Protections:** Existing federal law prohibits paying or providing anything of value to any person to register to vote or to vote, or for accepting payment for registering to vote or voting in a federal election. State law prohibits paying or providing anything of value to any person to vote or refrain from voting *for a particular candidate or measure*. State law does not expressly prohibit providing someone with a thing of value (e.g., a dozen donuts; a chicken dinner) for voting in a local or state election where no federal offices are on the ballot.

A 2017 United States Department of Justice's (US DOJ) manual on prosecuting election crimes, provides that the federal law prohibition on paying or providing anything of value for a person to register to vote or to vote includes any payment "having monetary value, including cash, liquor, lottery chances, and welfare benefits such as food stamps...However, offering free rides to the polls or providing employees paid leave while they vote are not prohibited...Such things are given to make it easier for people to vote, not to induce them to do so. This distinction is important. For an offer or a payment to violate [federal law] it must have been intended to induce or reward the voter for engaging in one or more acts necessary to cast a ballot. [Federal law] does not prohibit offering or giving things having pecuniary value, such as a ride to the polls or time off from work, to help individuals who have already made up their minds to vote to do so."

According to the author, federal law does not expressly prohibit the use of lotteries as a registration incentive and currently no such crime exists at the state level, limiting enforcement only through federal prosecution. Accordingly, this bill expands state law to more broadly prohibit a person paying money or other valuable consideration to another person with the intent to induce the person to vote or to register to vote, or where the payment is contingent upon whether the person voted or the person's voter registration status. Additionally, this bill specifies that the term "other valuable consideration" includes, but is not limited to, a lottery or a similar prize-drawing contest.

- 3) **Is this Duplicative?** This bill expands existing prohibitions to more broadly prohibit paying money or other valuable consideration to a person to vote or register to vote, and specifies that "other valuable consideration" includes a lottery or a similar prize-drawing. It is unclear whether these specific restrictions are necessary as an argument could be made that these acts are within the scope of existing federal prohibitions.

On the other hand, it could be argued that codifying similar provisions into state law will provide more robust protections in the law that explicitly make these actions illegal.

- 4) **Broad Implications and Suggested Amendments:** The language of the bill is broad as it not only makes it a crime to pay someone with the intent of inducing them to vote or register to vote, but also where the payment is *contingent upon* whether the person voted or the person's voter registration status. The broad nature of the prohibition could result in unintended consequences.

For instance, if an employer gives their employees time off to vote, but limits that time off to people who are actually voting, would that payment be illegal under the provisions of this bill because the payment is *contingent upon* whether the person voted even if it's not an inducement to vote, but rather an effort to facilitate the act of voting?

Moreover, in order to be a member of the state California Citizens Redistricting Commission – a paid position – a person must be registered to vote, and must have voted in a certain number of prior elections. Being a member of the Commission is *contingent upon* the person being registered to vote and having voted in elections. Similarly, state law requires an individual to be registered to vote in order to be a candidate for various elective offices for which the officeholders receive compensation. In those cases, being elected to office is *contingent upon* the person being registered to vote. These types of eligibility requirements could be prohibited under this bill as currently drafted. Having a prohibition on payments that are *contingent* on a person having voted or being registered to vote could similarly bring into question the legality of other things that the Legislature may not want to restrict. It is also a significant departure from the existing prohibition in federal law. As described in the US DOJ's manual on election crimes that is described above, that prohibition applies only to payments that are "intended to induce or reward the voter for engaging in one or more acts necessary to cast a ballot."

To avoid possible unintended consequences of the circumstances described above, committee staff recommends amending the bill to, at a minimum, exempt the following types of payments from this bill's restrictions:

- 1) Transportation to or from voting locations.
- 2) Compensation provided to individuals by governmental entities.
- 3) Granting time off to employees to vote.

While these amendments may help avoid some of the unintended consequences of this bill, the broad nature of this bill's restrictions may result in other unintended consequences. As such, future legislation may be necessary to address any such unanticipated applications of this bill.

- 5) **America PAC and the 2024 Presidential Election:** During the 2024 presidential election, Elon Musk's America Political Action Committee (PAC) announced that it was giving away \$1 million through a lottery each day until Election Day to registered voters in swing states (Arizona, Georgia, Michigan, Nevada, North Carolina, Pennsylvania, and Wisconsin) who

signed America PAC's petition to support the First and Second Amendments.

According to news articles, the US DOJ sent a warning letter to Elon Musk's America PAC, alerting it that it was a crime to knowingly offer anything of value to register to vote or vote. The media article stated that the warning letter did not specify any immediate legal action, but it did spell out the penalties for breaking US voting laws, including possible imprisonment of up to five years.

According to media articles, in Pennsylvania, the Philadelphia District Attorney tried suing and requested an emergency injunction to block America PAC's effort alleging that the payouts were an illegal lottery. Philadelphia County Court of Common Pleas Judge Angelo J. Foglietta's denied the request. The ruling centered on the definition of a lottery and whether the program constituted one. The court found that the prosecution failed to prove it was an illegal lottery. According to the Senate Public Safety Committee's analysis, the plaintiff failed to establish the three required elements that constitute a lottery: 1) a prize to be won, 2) a winner determined by chance, and 3) a payment of consideration by the player. The judge also noted that those selected earned their compensation by agreeing to be a spokesperson for America PAC.

According to the author, federal law does not expressly prohibit the use of lotteries as registration incentives which creates room for error like what Elon Musk did. According to the Senate Public Safety analysis, while this bill specifies that a lottery or similar prize-drawing contest is valuable consideration for purposes of inducing votes or voter registration, the Philadelphia judge concluded that what Elon Musk and America PAC did was not a lottery.

- 6) **Wisconsin:** In June, a lawsuit was filed in Wisconsin alleging that ahead of the Wisconsin Supreme Court election earlier this year, Elon Musk handed out \$1 million checks to Wisconsin voters and his PAC, America PAC, and US of America Inc. paid registered voters \$100 each for signing petitions and providing their contact information. According to media articles, the lawsuit alleges that those actions violated Wisconsin state law which bars offering or giving any amount of money over \$1 to induce anyone to go to the polls, vote or vote for a particular person, and violated the state's prohibition on unauthorized lotteries. The plaintiffs are asking the court to declare that the conduct broke state law and to bar Musk and the defendants from replicating such conduct in future Wisconsin elections. The lawsuit is pending.

- 7) **Arguments in Support:** In support of this bill, California Civil Liberties Advocacy, writes:

By focusing on payments made with the intent to induce voting or registration, or on payments that are contingent upon a person's voter registration status or whether they voted, the bill now strikes an appropriate balance between deterrence and protection of lawful activity. This refined approach ensures that the law will be enforceable against those who attempt to manipulate the electoral process through high-dollar inducements or gamified tactics—such as the 2024 example where a \$1 million lottery was used to incentivize registration in swing states—while avoiding unintended consequences for legitimate civic engagement.

SB 398 also smartly aligns California law with long-standing federal prohibitions on vote buying (52 U.S.C § 10307), codifying a consistent legal standard across jurisdictions. The inclusion of calibrated penalties under Penal Code Section 1170(h) reflects a proportionate and practical enforcement model that will not burden counties or over-penalize marginal conduct. By targeting only knowing and willful conduct that crosses the line from civic participation into inducement or conditional compensation, SB 398 preserves the space for nonprofit organizations, educators, and community leaders to promote voter participation through outreach, education, and engagement—without fear of running afoul of vague or overly broad laws.

- 8) **Arguments in Opposition:** In opposition to the bill, the San Francisco Public Defender's Office, writes:

The United States has the highest rate of incarceration in the world – with this nation making up less than 5% of the world's population, but nearly 25% of the world's total prison population. While California has recently made some progress in reducing its incarceration rate, that progress cannot continue if proposals for creating new felonies are passed.

California must invest in effective and less expensive ways to ensure that billionaires do not buy elections, such as championing campaign finance reform, increasing transparency, and passing laws that amplify the voices of everyday Californians.

- 9) **Double Referral:** This bill is double referred to the Assembly Committee on Public Safety.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Civil Liberties Advocacy  
California Clean Money Campaign  
Election Integrity Project California, Inc.  
Indivisible CA: StateStrong

### **Opposition**

San Francisco Public Defender's Office

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