

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1678 (Berman) – As Amended May 30, 2018

**CONCURRENCE IN SENATE AMENDMENTS**

ASSEMBLY: (May 30, 2017) SENATE: 37-0 (June 14, 2018)

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(vote not relevant)

**SUBJECT:** Elections: voter registration information: security: campaign literature and communications.

**SUMMARY:** Requires the Secretary of State (SOS) to adopt regulations that describe the best practices for storage and security of voter registration information. Requires a person who has received voter registration information, as specified, to disclose breaches in the security of the storage of that information. Makes it a misdemeanor to distribute specified false or misleading information regarding elections and voting with actual knowledge and intent to deceive.

**The Senate amendments** delete the Assembly version of this bill, and instead:

- 1) Require the SOS to adopt regulations that describe the best practices for storage and security of voter registration information that is requested and received by a candidate or committee, as specified, or by a person for election, scholarly, journalistic, political, or governmental purposes, as specified.
- 2) Require a person or entity who has received voter registration information, as specified, to disclose any breach in the security of the storage of the information to the SOS. Require that disclosure to occur in the most expedient time possible and without unreasonable delay following discovery or notification of the breach.
- 3) Make it a misdemeanor for a person, with actual knowledge and intent to deceive, to distribute or cause to be distributed, as specified, any form of communication to a voter that includes any of the following:
  - a) The incorrect location of a vote center, office of an elections official, satellite office of an elections official where voting is permitted, vote by mail (VBM) drop box, or VBM ballot drop-off location.
  - b) False or misleading information regarding the qualifications to vote or to register to vote.
  - c) False or misleading information regarding the date of an election or the days, dates, or times voting may occur, as specified.
- 4) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

**EXISTING LAW:**

- 1) Provides, except as specified, that voter registration information shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.
- 2) Provides that specified voter registration information shall be provided to any candidate or committee, or to any person for election, scholarly, journalistic, political, or governmental purposes, as determined by the SOS. Requires a person who seeks this information to complete an application and submit it to the SOS or to the county elections official.
- 3) Provides that the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter are confidential and shall not be disclosed to any person, including candidates, ballot measure committees, and persons for election, scholarly, journalistic, or political purposes.
- 4) Provides that the signature of a voter shown on the affidavit of voter registration is confidential and shall not be disclosed to any person, including candidates, ballot measure committees, and persons for election, scholarly, journalistic, or political purposes, except as specified.
- 5) Provides that voter registration information shall not be used for any personal, private, or commercial purpose, including, but not limited to any of the following:
  - a) The harassment of any voter or voter's household;
  - b) The advertising, solicitation, sale, or marketing of products or services to any voter or voter's household; or,
  - c) Reproduction in print, broadcast visual or audio, or display on the Internet or any computer terminal unless pursuant to specified permissible uses.
- 6) Makes it a misdemeanor for a person in possession of specified voter registration information to knowingly use or permit the use of that information for any purpose other than as permitted by law.
- 7) Makes it a misdemeanor for a person to knowingly cause literature to be mailed or distributed to any voter if it includes a designation of the voter's polling place other than the polling place listed for that voter in an official polling place list, as specified.

**AS PASSED BY THE ASSEMBLY**, this bill clarified that local agencies, school districts, and community college districts may establish public campaign financing programs in accordance with certain provisions of existing law. (Those provisions were found to be invalid by the Sacramento County Superior Court in *Howard Jarvis Taxpayers Association v. Brown* (2016), Case Number 34-2016-80002512, and an appeal is pending in the Third District Court of Appeals.)

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

- **SOS:** SOS would incur a one-time cost of \$50,000 to promulgate the regulations specified by this bill. (General Fund)
- **Courts:** Unknown, potentially-significant cost pressures to the court to adjudicate charges brought against defendants who disseminate false or misleading elections-related information as proscribed by this bill. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. (General Fund/Trial Court Trust Fund)
- **Prosecution & Incarceration:** Unknown potential increase in non-reimbursable local enforcement and incarceration costs to prosecute and incarcerate those charged with and found guilty of conduct proscribed by this bill. Costs would be offset, to a degree, by fee and assessment revenue. (Local funds)

#### COMMENTS:

- 1) **Prior Assembly Consideration of this Bill:** As approved by the Assembly last year, this bill would have clarified that local agencies, school districts, and community college districts may establish public campaign financing programs in accordance with existing provisions of law. Subsequent to the Assembly's approval of this measure, it was amended in the Senate to delete the Assembly-approved provisions of the bill, and to add the current provisions. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.
- 2) **Purpose of the Bill:** According to the author:

Earlier this year, the Assembly Elections & Redistricting Committee and the Senate Elections & Constitutional Amendments Committee held a joint informational hearing on Cybersecurity and California Elections. At that hearing, the committees heard from federal, state, and county elections officials and other experts regarding the extent of the threat to the security of our elections.

This bill will make two distinct modernizations to the law in order to protect information about voters, as well as information disseminated to voters. First, this bill would direct the Secretary of State to adopt regulations that describe the best practices for storage and security of voter registration information and would require a person or entity who has received access to voter information to disclose any data breach to the Secretary of State. Recent data breaches, including an alleged hack of the voter file reported by the San Diego Union Tribune and a ransomware attack on the Sacramento Bee, demonstrate the urgent need for stronger data security protections.

In addition to the threat posed by cyber-attacks, social media and other technologies have resulted in an expansion in the intentional distribution of misinformation about voting times, locations, and qualifications, which presents a threat to the integrity of our elections. AB 1678 would expand current laws on voter misinformation to encompass the intentional distribution of incorrect information regarding voting times, locations, and qualifications. It would also

modernize the law to address the intentional distribution of such misinformation via the Internet or other electronic means.

Given the ongoing and increasingly sophisticated threats to our elections systems, California cannot afford to be complacent about the security of our elections.

- 3) **Joint Informational Hearing on Election Cybersecurity:** As indicated in the author's statement above, on March 7, this committee held a Joint Informational Hearing with the Senate Committee on Elections & Constitutional Amendments on the topic of Cybersecurity and California Elections. In light of the increased focus on election security since the 2016 elections, the purpose of the hearing was to explore California's policies for protecting the security of elections systems in an environment where the number and sophistication of threats to election infrastructure continues to increase. Strategies designed to mitigate the spread of election-related misinformation intended to confuse voters, suppress turnout, or cause other disruptions were also discussed among panelists and committee members.

Witnesses that participated in the hearing included the SOS, a member of the United States Election Assistance Commission, three California county elections officials, the former Senior Director for Cybersecurity Policy at The White House, and a Senior Advisor and Past President to a nonprofit organization that advocates for legislation and regulation that promotes accuracy, transparency and verifiability of elections.

Witnesses at the hearing generally agreed that there was no evidence to suggest that voting machines or vote tallying in California were compromised during the 2016 election. Nonetheless, all of the witnesses stressed the importance of continuing to evaluate cyber and other security threats to election infrastructure and to regularly evaluate processes and procedures to protect against those threats and to promote voter confidence in the accuracy of election results.

- 4) **Access to Voter Registration Information:** As detailed above, the voter registration information for every voter is confidential under existing law, though specified information from a voter's registration records are available for election, scholarly, journalistic, political, or governmental purposes. When information is provided to individuals and organizations pursuant to these provisions, a voter's driver's license number, identification number, social security number, and signature are not disclosed. Individuals or entities who wish to receive voter registration information for one of those permissible purposes must submit an application that includes a description of the intended use of the voter registration information.

In the past year, there have been media reports of various instances in which the security of California voter registration information that was held by third parties was compromised. Last December, the *San Diego Union-Tribune* reported that cyber criminals accessed a voter registration database that contained the registration information of more than 19 million California registered voters, and held that information for ransom. While it is not known who compiled that database, it appears to have included voter registration information that was obtained from California election officials in accordance with state law. Similarly, a February 7, 2018 article in the *Sacramento Bee* reported that two of their databases on a third-party computer server were seized by an anonymous hacker who demanded the *Bee* pay a ransom in Bitcoin to get the data back. One of the databases contained the voter registration database

legally obtained from the SOS pursuant to existing law.

While misuse of voter registration information obtained from California elections officials is punishable by potential criminal or monetary penalties, the laws that provide for these penalties generally were designed to deter entities who obtained the information from elections officials from using that information for purposes that are not permitted by law (e.g., for commercial purposes). State law generally does not set standards for how individuals and entities must secure voter registration information that they obtain, nor does it detail steps that must be taken to protect it against inadvertent disclosure.

- 5) **False or Misleading Election Information:** Numerous incidents of false or misleading information regarding elections distributed via the Internet or other means have surfaced in recent years throughout the United States. Such instances include false or misleading information related to the time, place, and manner of voting as well as the legal qualifications to vote or to register to vote. While existing California law prohibits dissemination of false information regarding a voter's precinct polling place, the dissemination of other false or misleading information regarding elections can similarly interfere with the rights of voters. Examples of these types of offending communications provided to the committee include informing voters that members of differing political parties must vote on different election days, that votes for certain candidates can be cast via cell phone texts or through social media posts, that traffic violations disqualify persons from voting, and that persons may only vote in one election per year, among others.
- 6) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes in support:

Recent incidents where unauthorized users accessed voter data indicate that voter data may have been stored inadequately. California currently provides limited voter data to campaigns, journalists, and academic researchers for authorized purposes. The format of how the voter data is provided has evolved from paper copies to electronic data. Guidance for how to secure this data has not been clarified.

Similarly, current law provides criminal penalties for distributing false information about polling place locations. When these penalties were written, polling places were the only place a voter could cast a ballot. In the past few years, voters now can cast their ballots at Vote Centers and drop boxes. The law has not been updated to deter misinformation about where to cast a ballot.

- 7) **Related Legislation:** AB 3075 (Berman), which was pending in the Senate Appropriations Committee at the time this analysis was prepared, creates the Office of Elections Cybersecurity within the Office of the SOS, and charges it with coordinating efforts to reduce the likelihood and severity of cyber incidents that interfere with election security or integrity. AB 3075 was approved by this committee on a 6-0 vote, and was approved by the Assembly on a 71-0 vote.

AB 2748 (Chau), which was pending in the Senate Governmental Organization Committee at the time this analysis was prepared, establishes a pilot program until 2023 under which up to five participating counties would have an independent security assessment of their election

infrastructure conducted by specified state government entities. AB 2748 was approved by this committee on a 7-0 vote, and was approved by the Assembly on a 78-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Secretary of State Alex Padilla (sponsor) (prior version)  
League of Women Voters of California (prior version)

**Opposition**

None on file.

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