

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 679 (Gonzalez) – As Amended March 26, 2019

**SUBJECT:** Voter qualifications: residence and domicile.

**SUMMARY:** Specifies that a person's domicile for voting purposes may be the same place at which the person does business.

**EXISTING LAW:**

- 1) Requires an affidavit of voter registration to include the voter's place of residence, among other information. Defines "residence" for voting purposes as a person's domicile.
- 2) Provides that for the purposes of the state's election laws, the domicile of a person is that place in which the person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever the person is absent, the person has the intention of returning. Provides that at a given time, a person may have only one domicile.
- 3) Specifies that if a person has a family fixed in one place and does business in another place, the former is the person's place of domicile for the purposes of the state's election laws. Provides that if the person having a family fixed in one place has taken up an abode in another place with the intention of remaining, the person is domiciled at that place of abode, even if the person's family does not reside with the person.
- 4) Provides that residence in a trailer or vehicle or at any public camp or camping ground may constitute a domicile for voting purposes if the voter complies with other specified requirements.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

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

Californians live in a variety of different housing accommodation across the state, many of which are not traditional single family homes. As the state struggles to build sufficient housing to meet demand, the number of Californians utilizing these non-traditional living arrangements has only increased. For instance, in urban areas one may find an apartment located above or behind a storefront, or even rooms in the back of a business which may be used for living quarters.

Under California law, voters cannot use their place of business as their domicile for voting purposes if their family lives in a different location, assuming they have not decided to live away from their family and remain separated. The intention of this code section is to ensure that individuals do not register at their work place rather than their home.

In practice, this has meant that many county elections officials say that voters cannot register at a business address. In the course of ensuring the integrity of our elections, county election officials may exclude mail ballots and provisional ballots for reasons such as an invalid address, voting on both a mail and provisional ballot, lack of signature, or invalid signature.

However, when determining invalid addresses, officials have excluded ballots simply because it was determined that a business address was listed as the domicile of the voter, due to interpretation of current law.

While it is important for the integrity of our elections to ensure that the ballots counted are valid and of those living in the appropriate district, automatically excluding a ballot simply because there is a business located at that address does not capture the reality of domiciles in California.

AB 679 would clarify that a domicile may include these nontraditional living situations, to ensure that county elections officials take appropriate care when deciding ballot validity, and not inadvertently exclude eligible individuals from voting if they legitimately live at a business address.

- 2) **Domicile and Residency:** Determining the domicile for voting purposes of most Californians is relatively straightforward; for any person who has only one residence as defined by state law, that person's residence will also be the person's domicile. For people who have more than one residence, however, the determination of which of those residences is the person's domicile will depend on a number of factors. Among other provisions, state law provides that factors that are relevant in determining a person's domicile include where that person's family resides; the address at which the person claims a homeowner's property tax exemption or a renter's tax credit; the address on the person's driver's license, identification card, or vehicle registration; and whether or not the person has physically resided at the residence in the preceding year. State law also provides that a person does not gain or lose a domicile solely by reason of their presence or absence from a place while in the service of the United States or while a student of any institution of learning. The Secretary of State has advised that “[a] student who is going to school away from home may register to vote either at the address where they live when going to school or at the address where they live when they are not going to school.”

In addition to providing rules to clarify the domicile for voting purposes of people who have more than one residence, the Elections Code and case law include rules for establishing the domicile for voting purposes of people in nontraditional living situations. For example, Section 2027 of the Elections Code provides that residence in a trailer or vehicle or at any public camp or camping ground may constitute a domicile for voting purposes if the registrant otherwise complies with specified provisions of state law. In *Collier v. Menzel* (1985), 176 Cal.App.3d 24, the Court of Appeal of California for the Second Appellate District, Division Six, ruled that a group of homeless individuals could use a public park as their domicile for voting purposes as long as they actually resided at that park. In reaching that conclusion, the court noted that “The type of place that a person calls home has no relevance to his/her eligibility to vote if compliance with registration has been achieved, that is, the designation of a fixed habitation, the declaration of an intent to remain at that place

and to return to it after temporary absences, and the designation of a street address where mail can be received.” The court noted that although a city ordinance made it illegal to use the public park as a residence, the intention of the individuals to remain in the park—and thus to satisfy the requirements for identifying that park as their domicile for voting purposes—was “legally independent of any intent to violate the ordinance” that prohibited using the park as a residence.

Nothing in state law explicitly prohibits a person from registering to vote at the place at which the person does business if that address is the person’s true domicile. Furthermore, in light of the court’s decision in *Collier*, the fact that zoning or other restrictions prohibit a property from being used for residential purposes does not appear to be relevant in determining whether a person may use that property as the person’s domicile for voting purposes. Notwithstanding these facts, however, state law clearly does not permit a person to register to vote at their business address if that address is not the person’s true domicile.

Given the aforementioned information, it could be argued that this bill is unnecessary—that state law already sufficiently provides for voter registration by individuals who are truly domiciled at the place where they do business. In describing the need for this bill, however, the author contends that a lack of clarity in state law has resulted in situations where ballots have been disqualified or where elections officials have provided information to voters indicating that a person may not register to vote at a business address.

Specifically, the author points to a voter registration “frequently asked questions” (FAQ) document maintained by one California county that states that “A person may only register to vote as his or her place of residence. A business address or a P.O. Box number may only be used as a mailing address.” Other California counties appear to use similar language in FAQ documents in response to a question of whether a voter may register to vote at a business address. This information appears to be designed to clarify that a voter may not choose to register to vote at their business address if the voter has a separate place of residence, which likely is the case for a significant majority of California voters.

The author also points to a 2015 appellate court decision regarding an election contest in which the contestant challenged the elections official’s decision to reject 12 ballots on various grounds (*Clark v. McCann* (2015), 243 Cal. App. 4th 910). In that case, the court upheld a superior court decision to reject the election contest, in part, on the grounds that the registrar of voters “acted within his discretion in excluding provisional ballots that did not list a residence address showing the individual’s eligibility to vote” in the election.

Of the 12 rejected ballots that were at issue in that election contest, two were vote by mail (VBM) ballots that were completed and returned by voters who had not applied for VBM voter status. The other 10 rejected ballots were provisional ballots where the voter had written a post office box, business address, or nonexistent address in the space on the provisional ballot envelope where the voter is asked to provide their current residence address. One of the 10 rejected provisional ballots was cast by a voter who listed a business address as the voter’s residence address on a previously-completed voter registration form. That registration was rejected by the elections official on the grounds that the voter had not provided a valid residential address. The appellate court’s decision does not discuss whether any of the voters whose ballots were rejected were actually domiciled at a business address.

- 3) **Previous Legislation:** As introduced, AB 668 (Gonzalez Fletcher) of 2017, contained provisions that are substantially similar to this bill. Prior to a hearing in any policy committee, however, AB 668 was gutted-and-amended and used for another purpose.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file.

**Opposition**

None on file.

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