

Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 2841 (Low) – As Amended March 24, 2022

SUBJECT: Disqualification from voting.

SUMMARY: Requires the Secretary of State (SOS) to post data showing the number of conservatorship voting rights disqualifications and restorations by county, and to provide training to court and county staff related to conservatorship voting rights to ensure compliance with existing law. Requires a county elections official, before canceling a voter's registration, to notify the voter and provide the voter with an opportunity to correct an erroneous cancellation, as specified. Specifically, **this bill:**

- 1) Requires a county elections official, between 15 and 30 days before canceling a person's registration on the grounds that the person is mentally incompetent, imprisoned for a conviction for a felony, or has changed residence, to send a forwardable notice by first class mail, including a postage-paid and preaddressed return form, to the person.
- 2) Requires the notice to be provided in the person's preferred language if the county is required to provide translated ballots in that language pursuant to the federal Voting Rights Act of 1965 (VRA). Requires the notice to include a statement substantially similar to the following:

“IMPORTANT NOTICE. Your voter registration record is scheduled to be canceled on [date]. This cancellation is due to information the [county name] County elections office has received indicating your ineligibility to vote in that county due to a change of residence, death, mental incapacity to vote, or a prison commitment pursuant to Sections 2208, 2209, 2210, or 2211 of the California Elections Code, as applicable.

If you believe this cancellation is an error, please notify our office within 15 days from the date of this notice either by returning the attached postage-paid postcard or by calling [county elections office phone number] toll free.

If we do not receive your response to this notice, you may be required to reregister to vote in the next election or to vote using a provisional ballot. You can find more information about voter eligibility rules on the Secretary of State's internet website at [URL] or voter hotline at [phone numbers]. You can also check your current registration status at [URL].”

- 3) Requires the return form described above to include all of the following:
 - a) Space for the voter to provide their current place of residence.
 - b) Space for the voter to provide their current mailing address, if different from the place of residence.

- c) A box next to a statement substantially similar to the following: “I am not currently serving a state or federal prison term.”
 - d) Space for the voter to provide their signature and the date.
- 4) Permits the elections official to send additional written notices to a voter, and to notify the voter in person, by telephone or email, or by other means of the planned registration cancellation.
- 5) Requires the clerk of the superior court of each county, by the first day of each month, and more frequently if the clerk so chooses, to notify the SOS pursuant to the provisions of this bill of both of the following:
- a) All findings made by the court regarding any person’s competency to vote, in accordance with existing law, since the clerk’s last report.
 - b) The total number of proceedings in which an individual was deemed disqualified from voting by the court pursuant to existing law, that occurred in that court since the clerk’s last report.
- 6) Requires the Judicial Council, in consultation with the Secretary of State (SOS), to adopt rules of court to implement the provisions of this bill, and the Judicial Council forms that are used by courts to provide the notices to the SOS described above in 5). Requires the forms to contain clearly identified spaces for all of the following:
- a) Personal identification information for the affected person, including all of the following:
 - i) All known first names.
 - ii) All known last names.
 - iii) All known middle names.
 - iv) All known name suffixes.
 - v) Last known address.
 - vi) Date of birth.
 - vii) Last four digits of the person’s social security number, if available.
 - viii) Driver’s license or state-issued identification number, if available.
 - b) The court case number.
 - c) The date of the order affecting the individual’s voting rights.

- d) The specific provision of state law pursuant to which the court's order was made.
 - e) Whether the legal effect of the court's order is a disqualification or a restoration of the right to vote.
 - f) A certification, if applicable, that the individual has been disqualified from voting due to the court's finding by clear and convincing evidence that the individual is incapable, with or without reasonable accommodations, to communicate a desire to participate in the voting process.
- 7) Requires the SOS to inform the clerk of the court when it receives a notice from the court that is missing any personal identifying information as required in 6).
- 8) Requires the SOS, upon receipt of all of the required personal identifying information described in 6), to do both of the following:
- a) Identify any registration record in the statewide voter database that contains personal identifying information that matches each of the unique identifiers in 6).
 - b) Within three days of receiving the information from the court, for any matched records, to provide the personal identifiable information, the corresponding unique identifier or identifiers contained in the statewide voter database, and a statement regarding whether the legal effect of the court's order is to disqualify or restore the right to vote, to the appropriate county elections official.
- 9) Requires the county elections official, upon receiving information from the SOS, to do either of the following, as applicable:
- a) Begin the cancellation notification procedures for any person whose registration information matches the unique identifier or identifiers provided by the SOS and who, according to the information provided by the SOS, has been disqualified to vote by a court.
 - b) If a person's right to vote has been restored and the person's address is within the county according to the information provided by the SOS, notify the person that their voting rights are restored and that they may register to vote if they are otherwise eligible, along with information regarding the procedures for registering to vote. Requires the elections official, if the address provided by the SOS is different from the address contained in the county's voter registration file, to provide the notice and information to the person at both addresses. Requires the SOS to prepare a form that the county elections officials use to provide the notice.
- 10) Provides that a county or county elections official is not liable for taking or failing to take action when the county or county elections official has received erroneous information from the SOS.

- 11) Provides if a person who is ineligible to vote receives a notice pursuant to this bill that the person's right to vote has been restored, and subsequently becomes registered or preregistered to vote, and votes or attempts to vote in an election held after the effective date of the person's registration or preregistration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote pursuant to existing law, unless that person willfully votes or attempts to vote knowing that the person is not eligible to vote.
- 12) Requires the SOS, each month, to post on its website a report showing, for the preceding period, the number of voting rights disqualifications and the number of voting rights restorations pursuant to existing law, as applicable, that were ordered within each county and the number of court proceedings in each county in which a person was deemed mentally incompetent, and therefore disqualified from voting, pursuant to specified provisions of existing law.
- 13) Requires the SOS, in consultation with the Judicial Council, to prepare and deliver a training via a remote web-based learning platform that is accessible through the SOS's website that contains information about the responsibilities of superior courts and county elections officials, as specified in this bill, and information about the legal standards for voting rights disqualification, the duties of court investigators, and the reporting requirements for courts related to voting rights disqualification and restoration. Requires each court executive officer and each county elections official, at least annually, to complete this training. Requires the SOS to track the court executive officers and county elections officials who have completed the training, as specified.
- 14) Makes conforming changes.

EXISTING LAW:

- 1) Permits a person who is a United States (US) citizen, a resident of California, not imprisoned for the conviction of a felony, not found mentally incompetent to vote by a court, and at least 18 years of age at the time of the next election, to register to vote and to vote.
- 2) Provides that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned for the conviction of a felony.
- 3) Requires each county elections official to conduct a pre-election residency confirmation of each registered voter pursuant to one of the following procedures prior to each primary election:
 - a) By mailing a non-forwardable postcard to each voter in the county who has not voted at an election in the six months preceding the start of the confirmation procedure;
 - b) By contracting with the US Postal Service (USPS) or its licensees to obtain use of the postal service change-of-address data such as National Change of Address (NCOA);

- c) By contracting with a consumer credit reporting agency or its licensees to obtain use of change-of-address data, as specified; or,
 - d) By including the return address of the elections official's office along with specified language on the outside of the county voter information guide mailed to the voter for an election conducted within the six months prior to the start of the confirmation process. If an elections official uses this procedure, the official must confirm the addresses of voters who were not eligible to vote at an election during that six months period using one of the other permitted procedures.
- 4) Provides that the following actions shall be taken with respect to information that the county elections official receives from the USPS or its licensees as a result of the pre-election residency confirmation process:
- a) If NCOA data indicates that the voter has moved and left no forwarding address, the voter's registration may be made inactive.
 - b) If a postcard or sample ballot is returned as undeliverable and without a forwarding address, the registration of that person may be made inactive, and the elections official must send the voter a forwardable postcard asking the voter to confirm the voter's residence address. If the voter's registration is made inactive, the voter does not reply to the forwardable postcard, and the voter does not vote between the time of that mailing and the second federal general election conducted after that mailing, the voter's registration is canceled.
 - c) If postal service change-of-address data indicates that the voter has moved to a new address in California, the voter's registration is updated to reflect the new address and the voter is mailed a postcard indicating that the voter's registration will be changed unless the voter notifies the elections official within 15 days that the change-of-address was not a change of the voter's permanent residence.
- 5) Provides that any voter whose registration is inactive and who offers to vote or who notifies the elections official of a continued residency shall be removed from the inactive list and placed on the active voter list.
- 6) Requires the county elections official to cancel a voter's registration in the following cases:
- a) At the signed, written request of the person registered.
 - b) When the mental incompetency of the person registered is legally established pursuant to existing law.
 - c) Upon proof that the person is presently imprisoned for conviction of a felony.
 - d) Upon the production of a certified copy of a judgment directing the cancellation to be made.

- e) Upon the death of the person registered.
 - f) Upon notification as part of a preelection residency confirmation procedure that the person has moved, but only after a specified notification is sent to the voter and only if the voter subsequently fails to vote or update their voter registration during the period between the time that notification is mailed and two federal general elections after the date of that mailing, as specified.
 - g) Upon official notification that the voter is registered to vote in another state.
 - h) Upon proof that the person is otherwise ineligible to vote.
- 7) Permits the SOS to cancel a voter's registration in the following cases:
- a) When the mental incompetency of the person registered is legally established pursuant to existing law.
 - b) Upon proof that the person is presently imprisoned for the conviction of a felony.
 - c) Upon the death of the person registered.
- 8) Provides that a person is presumed competent to vote regardless of their conservatorship status.
- 9) Requires a person to be deemed mentally incompetent, and therefore disqualified from voting, if a court or jury, as specified, finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.
- 10) Prohibits a person from being disqualified from voting on the basis that the person did any of the following:
- a) Signed the affidavit of voter registration with a mark or cross pursuant to existing law;
 - b) Signed the affidavit of voter registration by means of a signature stamp;
 - c) Completed the affidavit of voter registration with the assistance of another person; or,
 - d) Completed the affidavit of voter registration with reasonable accommodations.
- 11) Requires a court investigator, as part of the process for establishing or reviewing a conservatorship of a person, to review the person's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process, as specified. Requires a court investigator, if the conservatee's capability of communicating a desire to participate in the voting process has changed, to inform the court and requires the court to hold a hearing regarding the capability, as specified.

- 12) Requires a court to forward the order to the county elections official and the SOS if it is found by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, or that the person can communicate, with or without reasonable accommodations, a desire to participate in the voting process.

EXISTING FEDERAL LAW:

- 1) Requires each state, pursuant to the National Voter Registration Act (NVRA), to conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of death of the registrant, or a change in the residence of the registrant, as specified.
- 2) Prohibits, pursuant to NVRA and the Help America Vote Act, the removal of a voter from the list of eligible voters in elections for federal office on the grounds that the registrant has changed residence unless either of the following is true:
 - i) The registrant confirms their change in residence in writing, as specified; or,
 - ii) The registrant has failed to respond to a specified notice and has not voted or appeared to vote in an election between the time that the notice is sent and the date of the second federal general election after the notice is sent.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

This voting rights bill would address two procedural concerns: 1) conservatorship voting rights clean-up and 2) notice of registration cancellation.

Although California has made some improvements to protections for the rights of people with disabilities in recent years, voters with disabilities are still underrepresented in our democracy. And while there has recently been an increase in public awareness about the urgency of protecting the rights of people with disabilities who are placed under conservatorship, more must be done to ensure that eligible voters under conservatorship are not wrongly excluded from the ballot box.

Errors in existing reporting systems and overly aggressive voter purges lead to the disenfranchisement of eligible voters. Studies show that these erroneous cancellations disproportionately impact voters who are Black, Brown, Indigenous, or other people of color, low-income, and young people. AB 2841 would implement best practices for preventing the disenfranchisement of eligible voters by requiring county elections officials to notify affected voters before cancelling

their registration and to give those voters an opportunity to stop erroneous cancellations before they happen.

- 2) **Voting Rights of People in Conservatorships and Previous Legislation:** In California, if an adult is unable to manage their medical and personal decisions, a conservator of the person may be appointed. While a conservator of the person has charge of the care, custody and control of the conservatee, that power is not absolute. According to a form adopted by the Judicial Council entitled Notice of Conservatee's Rights, when a person becomes a conservatee, they do not necessarily lose the right to take part in important decisions affecting their property and way of life. After appointment of a conservator, the conservatee keeps specified rights including the right to vote unless the court has limited or taken that right away.

In 2014, the Legislature approved and the Governor signed AB 1311 (Bradford), Chapter 591, Statutes of 2014, which clarified the voting protections for conservatees. Specifically, AB 1311 prohibited a person, including a conservatee, from being disqualified from voting on the basis that they sign the affidavit of voter registration with mark or a cross, sign the affidavit of voter registration with a signature stamp, or complete the affidavit of registration with the assistance of another person. AB 1311 ensured federal and state laws related to voter registration assistance are applied equally to any individual who seeks to register to vote.

While AB 1311 clarified current law to explicitly permit certain accommodations in completing a voter registration affidavit, it did not modify the standard for determining when a disabled, conserved individual is not competent to participate in the voting process. Accordingly, in 2015, the Legislature passed and the Governor signed SB 589 (Block), Chapter 736, Statutes of 2015, which codified specific legal protections for the voting rights of people with disabilities who are placed under conservatorship. Specifically, SB 589 prohibited a conservatee from being disqualified from voting if the conservatee is able to complete an affidavit of voter registration with reasonable accommodations. Additionally, SB 589 required a court, in order to deem a person mentally incompetent and disqualified from voting, to make a finding of clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

According to background information provided to the committee by the author and sponsors of this bill, in the years following the enactment of SB 589, the sponsors conducted investigations to assess statewide compliance with the provisions of SB 589. In the course of their investigation, they found that conservatorship voting rights disqualification and restoration practices vary widely across counties and data is inconsistently tracked and reported to the SOS. For instance, records provided in response to Public Records Act requests showed that almost half of courts were not using a standardized conservatorship voting rights modification form created by the SOS and Judicial Council of California. According to the sponsors, the data counties sent to the SOS is incomplete, unclear, and often missing critical data points. Consequently, it is challenging to evaluate and determine whether the law is consistently implemented across counties.

According to the sponsors, this bill will ensure transparency and improve oversight, thereby

improving statewide compliance with SB 589. Specifically, this bill would create and codify best practices to ensure data is uniformly tracked and reported. Additionally, this bill would require the SOS to post monthly data showing the number of conservatorship voting rights disqualifications and restorations by county, and ensure relevant county agencies receive adequate training and support.

- 3) **List Maintenance and the National Voter Registration Act:** The NVRA was enacted by Congress in 1993 and took effect in 1995. Also known as the "Motor Voter Act," the enactment of the NVRA was intended to enhance and increase voting opportunities for eligible voters to register to vote and maintain their registration. In addition to expanding opportunities to register to vote, the NVRA imposes requirements on states to protect the integrity of the electoral process and ensure that accurate and current voter registration rolls are maintained. Specifically, Section 8 of the NVRA requires states to conduct general voter registration list maintenance programs that make a reasonable effort to remove ineligible persons from the voter rolls by reason of the person's death, or a change in the residence of the registrant outside of the jurisdiction.
- 4) **New Notification:** This bill adds a new voter registration notification and requires a county elections official, between 15 and 30 days before canceling a person's registration for the reasons of mental incompetency, imprisonment for a conviction for a felony, or a change in residence, to send a forwardable notice by first class mail to the person. The notification informs the voter that their voter registration is scheduled to be canceled and suggests the voter notify the registrar of voter's office within 15 days from the date of the notice if this cancellation is an error. According to the sponsors, because current law does not require elections to provide voters with any form of notice at the time their registration is cancelled, incorrectly flagged voters usually do not know that they have been removed from the voter rolls until they attempt to vote during the next election.

As detailed above, state and federal law require county elections officials to periodically confirm the residence addresses of registered voters. If the county receives information from that procedure indicating that a voter has either moved out of state, or has moved and did not leave a forwarding address, the registration of the person may be made inactive and the elections official must then send the voter a forwardable postcard asking the voter to confirm their residence address. If the voter does not respond to this subsequent address verification mailing, does not offer to vote or vote at any election between the date of the mailing and two federal general elections after the date of the that mailing, and does not otherwise notify a county elections official of continued residency within California, the voter's registration is cancelled.

Given these existing procedures, it is unclear how many people would receive actionable information as a result of the additional notice required by this bill. That notice would be sent to a voter only in a situation where (1) information from a governmental source indicated that the voter has moved (in many circumstances, this information comes in the form of mail to the voter that was returned to the county elections official as undeliverable), and (2) a subsequent notice was mailed to the voter in an effort to verify the voter's current residence address, and that notice did not result in a confirmation of or update to the voter's address. Furthermore, given the requirements of state and federal law, there would be at least two

federal general elections held between the time the elections official receives information indicating that a voter was not living at the address at which the voter is registered and the time that this new notice is sent to the voter at that same address. If earlier notices are being returned as undeliverable or otherwise failing to result in a confirmation of or update to a voter's residence address, then it is not clear how often a voter will receive this new notice that would be mailed to that same address years later.

- 5) **Other States:** A 2008 Brennan Center for Justice report titled "Voter Purges" examined state practices for updating voter registration lists and the removal of voters from those lists, referred to in the report as "purging" the voter rolls. Their analysis is based on a review and examination of state statutes, regulatory materials, and news reports in twelve states. The report makes various policy recommendations and details best practices to reduce the occurrence of erroneous purges and protect eligible voters from erroneous purges.

One of the best practices recommended in the report is that a voter should be individually notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility, before the voter's registration is canceled. For example, the report notes that New York requires most registrants at risk of having their registration canceled to be notified at least 14 days in advance of the cancellation. The report further states that best practices would extend this protection to all individuals whose registrations are proposed to be cancelled, and to give each such individual 30 days to respond before cancelling the person's voter registration.

The report additionally suggests that states should develop and publish rules and procedures for curing a voter's erroneous inclusion in an impending purge. For registrants who have been purged from the voter registration list, the report recommends that states should explicitly set out a means by which they may be restored easily to the voter registration list, without regard to the voter registration deadline. As an example, the report notes that Pennsylvania provides certain registrants both notice of an impending purge and a process for responding to any erroneous purge, and sends a written notice to each individual whose registration is canceled.

- 6) **Arguments in Support:** In support of this bill, Disability Rights California writes:

Under current law, California voters are not provided any form of notice at the time their registration is cancelled by elections officials, whether the cancellation is for prison commitment, "mental incompetency" (including in conservatorship cases), or due to list maintenance required by federal law. While regular and responsible list maintenance is of course important to accurate voter registration rolls, overly aggressive voter removal based on faulty data provided to county elections officials or errors due to false matches between different agencies' records can disenfranchise eligible voters. Studies show that these erroneous cancellations disproportionately impact voters who are already underrepresented, including those who are Black, Brown, Indigenous, or other people of color, low-income, and young people.

Voters with disabilities are also underrepresented in our democracy. California

sought to protect the rights of voters with disabilities under conservatorship by enacting SB 589 (Block, 2015), which no longer based the revocation of the right to vote on whether a person can fill out a voter registration form but instead on whether a person can express a desire to participate in the voting process. However, research by the ACLU indicates that counties continue to track and report conservatorship voting rights disqualifications and restorations in an inconsistent and unclear manner. This research also reveals that SB 589 compliance appears to be lacking in many counties, indicating an urgent need for improved oversight. There has recently been an increase in national public awareness about the importance of protecting the rights of people with disabilities who are placed under conservatorship, and more must be done to ensure that eligible California voters under conservatorship are not wrongly excluded from the ballot box...

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (co-sponsor)
League of Women Voters of California (co-sponsor)
A New Way of Life Re-entry Project
California Environmental Voters
Courage California
Disability Rights California
Dolores Huerta Foundation
Ella Baker Center for Human Rights
National Council of Jewish Women-California
The W. Haywood Burns Institute

Opposition

None on file.

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