

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS  
Marc Berman, Chair  
AB 796 (Berman) – As Amended April 6, 2021

**SUBJECT:** Voter registration: California New Motor Voter Program.

**SUMMARY:** Codifies voter registration information transmittal requirements in the federal National Vote Registration Act (NVRA) of 1993, as specified. Codifies into state law various provisions from a legal settlement regarding the transmission of voter registration information, as specified. Requires the Secretary of State (SOS) to establish a taskforce to evaluate the California New Motor Voter (NMV) Program, as specified. Specifically, **this bill:**

- 1) Defines the following terms, for the purposes of this bill:
  - a) “Completed voter registration” and “completed voter registration application” to mean the part of the driver’s license application containing the voter registration application for an applicant who has not affirmatively declined to register to vote, the transmittal of which is not prohibited by existing law, and which includes the minimum information necessary to prevent duplicate voter registrations and preregistrations, to assess the eligibility of the applicant, and to administer voter registration, preregistration, and other procedures for elections.
  - b) “Driver’s license application” to mean a driver’s license or identification card application, renewal, or notification of a change of address pursuant to existing law.
- 2) Requires the SOS and the Department of Motor Vehicles (DMV) to develop and enter into an interagency agreement specifying how the DMV and the SOS will cooperate to fulfill the requirements of the California NVM program. Requires the agreement to be updated as necessary, and requires the current version of the agreement to be published on the internet website of the SOS, except those parts of the agreement for which publication would compromise security.
- 3) Codifies the following transmittal deadlines pursuant to the NVRA in the NMV program:
  - a) Requires a completed voter registration application included with a driver’s license application and accepted at the DMV to be transmitted to the SOS no later than 10 days after the DMV accepts it.
  - b) Requires a completed voter registration application accepted within five days of the last day to register to vote in an election to be transmitted to the SOS no later than five days after the date of acceptance.
- 4) Provides, for the purpose of establishing the DMV’s transmittal deadlines required by the provisions of this bill and existing federal law, that the completed voter registration application included with the driver’s license application shall be deemed accepted on the date the completed voter registration application arrives at the DMV, whether by mail, in person, electronically, or otherwise.

- 5) Requires the DMV to accept and transmit a completed voter registration application included with a driver's license application even if, pursuant to existing law, the driver's license application is incomplete or the driver's license or identification card associated with the voter who submitted the voter registration application is inactive due to a failure to pay fees, or any other reason that is unrelated to an elections official's ability to prevent duplicate voter registrations or preregistrations, to assess the eligibility of the applicant, or to administer voter registration, preregistration, and other elections procedures.
- 6) Requires the DMV, if a completed voter registration application has not been, or is not expected to be, provided to the SOS according to the deadlines established by this bill, to do both of the following within 10 days of discovering the delay:
  - a) Notify the applicant that the voter registration information provided during the applicant's recent transaction at the DMV was not processed in a timely manner.
  - b) Provide the applicant with a voter registration application and information about how to register to vote or to update the applicant's voter registration online.
- 7) Requires the DMV, notwithstanding the delay and notification to the applicant, to attempt to provide the SOS the information of each person who submits a driver's license application pursuant to existing law.
- 8) Codifies provisions of the NVRA that requires every driver's license application to include a voter registration application and requires all of the following apply to the voter registration application included with the driver's license application:
  - a) The voter registration application shall require only the minimum information necessary to prevent duplicate voter registrations and to enable the SOS to assess the eligibility of the applicant and to administer voter registration and other procedures for elections.
  - b) The voter registration application shall not require any information that duplicates information required for the driver's license application, other than an additional signature or other information required on the voter registration application.
  - c) The voter registration application shall include all of the following:
    - i) A statement of the voter eligibility requirements, including those regarding citizenship.
    - ii) An attestation that the applicant meets each voter eligibility requirement.
    - iii) The signature of the applicant, under penalty of perjury.
    - iv) An opportunity to decline to register to vote.
- 9) Requires a voter who attests to the voter's eligibility to be registered to vote unless the voter affirmatively declines to register to vote.

- 10) Requires the DMV to designate an employee, known as the DMV's NVRA coordinator, to be responsible for the DMV's compliance with the requirements of this bill and the requirements of existing federal law. Requires the responsibilities of the DMV's NVRA coordinator to include, but not be limited to, all of the following:
- a) Ensuring the accurate processing and timely transmission of voter registration applications submitted to the DMV.
  - b) Ensuring employees are trained pursuant to the provisions of this bill.
  - c) Coordinating with the SOS's NVRA coordinator to ensure the DMV's compliance with provisions of this bill and with existing federal law.
  - d) Ensuring that the interagency agreement required by this bill is updated as necessary.
  - e) Preparing monthly reports pursuant to the provisions of this bill.
  - f) Notifying the SOS within three days of identifying any violations of this bill or federal law.
  - g) Assisting with the preparation of the annual report required by this bill.
- 11) Requires the SOS to appoint an employee, known as the SOS's NVRA coordinator, to be responsible for the SOS's compliance with the requirements of this bill and the requirements of existing federal law. Requires the responsibilities of the SOS's NVRA coordinator to include, but not be limited to, all of the following:
- a) Monitoring voter registration records received from the DMV and identifying untimely registrations or other irregularities.
  - b) Ensuring the accurate processing and timely transmission of voter registration applications received from the DMV.
  - c) Ensuring employees are trained pursuant to this bill.
  - d) Coordinating with the DMV's NVRA coordinator to ensure the SOS's compliance with this bill and with federal law.
  - e) Ensuring the interagency agreement required by this bill is updated as necessary.
  - f) Publishing the monthly reports required by this bill on the SOS's internet website.
  - g) Preparing the annual report required by this bill.
- 12) Requires the DMV's NVRA coordinator to ensure that each employee of the DMV who interacts with the California NVM program receives training on the requirements of this bill and the federal NVRA as part of an initial new employee orientation, and annually thereafter. Requires the training to include, but not be limited to, instructing employees regarding

processing voter information submitted to the DMV, acceptance rules, transmission deadlines, and procedures for identifying and reporting errors or delays.

- 13) Requires the SOS's NVRA coordinator to ensure that each employee of the SOS responsible for the receipt and processing of voter registration information from the DMV receives training on the requirements of this bill and the federal NVRA as part of an initial new employee orientation, and annually thereafter. Requires the training to include, but not be limited to, instructing employees regarding procedures for the regular monitoring of the timeliness of the receipt of registration data from DMV transactions and the protocol for reporting and addressing problems with the timeliness and quality of the voter registration data received from the DMV.
- 14) Requires the DMV, in consultation with the SOS, to monitor the timeliness of the DMV's transmittals to the SOS pursuant to this bill. Requires the DMV, by the 10th day of each calendar month, to provide to the SOS, in a manner and method to be determined by the DMV in consultation with the SOS, all of the following information concerning voter registration from the preceding month:
  - a) The number of completed voter registration applications transmitted to the SOS after the deadlines specified in this bill, if any.
  - b) The number of notices sent pursuant to provisions of this bill.
  - c) The reasons for any irregularities in the processing of records specified in this bill or in the transmittal of any completed voter registration applications after the deadlines pursuant to this bill.
- 15) Requires the SOS, within 10 days of receipt, to publish information on the number of notices sent pursuant to this bill on its internet website.
- 16) Requires the SOS to establish a taskforce that includes all of the following members:
  - a) The SOS's NVRA coordinator.
  - b) The DMV's NVRA coordinator.
  - c) County elections officials.
  - d) Individuals with demonstrated language accessibility experience for languages covered under the federal Voting Rights Act of 1965.
  - e) Representatives of the disability community and community organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities.
  - f) Experts with demonstrated experience in the field of elections.
  - g) Experts with demonstrated experience in the field of civic design.

- 17) Requires the SOS to convene the taskforce for meetings at least quarterly.
- 18) Requires the taskforce to consult with the SOS and the DMV on the development of the annual review required by this bill. Requires the taskforce to advise the SOS and the DMV on the effective implementation of the California NMV program.
- 19) Provides that the taskforce provisions will remain in effect only until January 1, 2025, and as of that date are repealed.
- 20) Requires the SOS, in consultation with the DMV and the taskforce required by this bill, to review the effectiveness of the California NMV program annually, and to draft a written report. Requires the written report to, at a minimum, include all of the following:
  - a) Information about trends of voters registering through the California NMV program.
  - b) An analysis of the timeliness of the DMV's transmittals to the SOS pursuant to this bill for the preceding year.
  - c) A summary of any significant errors or delays during the preceding year with respect to processing or transmitting the records specified by this bill, and how those incidents were resolved.
- 21) Makes corresponding changes.

**EXISTING LAW:**

- 1) Requires, pursuant to the NVRA, 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 for the conviction of a felony, and at least 18 years of age at the time of the next election.
- 6) Requires the SOS and the DMV to establish and implement the California NMV program for the purpose of increasing opportunities for voter registration for qualified voters.

- 7) 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. 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 their presence in the United States is authorized under federal law.
- 8) Provides that the information transmitted to the SOS constitutes a completed affidavit of registration, and requires the SOS to register the person to vote or preregister the person to vote, unless the person affirmatively declines to be registered or preregistered to vote, the person's records do not reflect they attested to meeting all voter eligibility or preregistration eligibility requirements, the SOS determines the person is ineligible to vote, or other specified conditions exist.
- 9) Requires the SOS to adopt regulations, including regulations addressing both of the following:
  - a) A process for canceling the registration or preregistration of a person who is ineligible to vote, but became registered or preregistered under the California NVM program in the absence of any violation by that person.
  - b) An education and outreach campaign informing voters about the California NVM program that the SOS will conduct, as specified.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

The National Voter Registration Act and California's New Motor Voter program have been instrumental in closing voter registration gaps by making it easier for eligible voters to register or update their registration when completing a driver's license and state identification card transaction. By improving the accuracy of millions of voters' mailing addresses and reducing reliance on in-person same day voter registration, these programs played a crucial role this year in increasing access to vote-by-mail and helped ensure that voters didn't have to choose between their health and their right to vote during the coronavirus pandemic. AB 796 will ensure that the progress made under our New Motor Voter program will continue, assist the more than 3 million eligible but unregistered Californians to register to vote, and keep California's voter rolls accurate and up to date.

- 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. In addition to other methods of voter registration states offer, the NVRA requires states to provide the opportunity to apply to register to vote for federal elections through various methods. Section 5 of the NVRA requires states to offer voter registration opportunities at motor vehicle agencies. Additionally, Section 6 of the NVRA requires states to provide voter registration opportunities by mail-in application.

Finally, Section 7 of the NVRA requires states to offer voter registration opportunities at all offices that provide public assistance or state-funded programs primarily engaged in providing services to persons with disabilities.

- 3) **NVRA and California New Motor Voter Program:** As mentioned above, 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 at the DMV. 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.

In the years following the enactment of the NVRA, California was not fully in compliance with the NVRA's prohibition on requiring duplicate information. Rather, a separate voter registration form was attached to the driver's license form, which required 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).

In 2015, a non-compliance 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.

In response to the non-compliance letter the Legislature approved and Governor Brown signed into law AB 1461 (Gonzalez), Chapter 729, Statutes of 2014, also known as California NMV program, which provides for every person who has a driver's license or state identification card and who is eligible to register to vote to be automatically registered to vote at the DMV, unless that person opts out. Under the NMV program, a DMV customer who attests to their eligibility and does not opt out is automatically registered to vote. The implementation of AB 1461 was contingent upon the implementation of a federally required statewide voter registration database (also known as VoteCal), the appropriation of funds from the Legislature necessary for the SOS and the DMV to implement AB 1461, and the adoption of regulations required by AB 1461. The California NMV program became operative in April 2018.

- 4) **Lawsuits and Extended Settlement Agreements:** Despite early positive results from the NVM program, there continued to be challenges with modernizing the voter registration process at the DMV and with bringing California in compliance with the NVRA. Consequently, a lawsuit was filed, *League of Women Voters v. Annis*, which was settled in 2018. The settlement agreement initially remained in effect for an eight-month period, which began on April 30, 2018, and included the following terms:
- Ensure the driver's license renewal-by-mail (RBM) serves as an application for voter registration, and does not require individuals to provide information for voter

registration purposes that duplicates the information already provided on the renewal form or that is otherwise in the DMV's possession;

- Develop, procure, and launch any technology and hardware needed to scan and transmit to the SOS all the information required by NMV program;
- Ensure the voter registration information is transmitted, pursuant to the NVRA, to the SOS not later than 10 days after the date it is received by DMV; and,
- Require the SOS to provide monthly NVRA reports posted on its website, as specified.

According to court documents, however, violations to the initial settlement agreement led to delays in registrations for thousands of voters. Specifically, court documents state the DMV failed to transmit complete voter registration applications received with RBM forms to the SOS within the time period required by the settlement agreement, and the DMV did not accept and timely transmit complete voter registration information received as part of an RBM application unless the application also included the correct payment of the fees for the driver's license or identification card. Consequently, the settlement agreement was updated in February 2019 and extended to 2020 and new terms were added, including the following:

- Investigate the scope and cause of delays in transmitting voter registration information from the DMV to the SOS, as specified.
- Require the SOS to send a letter to all persons whose voter registration records were affected by delays of the transmittal of voter registration information, as specified.
- Require the DMV and SOS to provide plaintiffs with monthly data showing the processing times for voter registration applications transmitted to the SOS from the DMV and a monthly written report describing any delayed voter registration transmissions, along with the DMV's and SOS's plan to address those delays;
- Require the DMV and the SOS to provide training to their employees on the NVRA's requirements for timely transmission of voter registration applications;
- Require the DMV and SOS to appoint management-level NVRA Coordinators to monitor their respective compliance with the NVRA; and,
- Require the SOS to update the NVRA Manual, as specified.

Earlier this year, the settlement agreement was extended again and will expire in early 2022. The author and sponsors contend that the settlement terms have been instrumental in identifying and addressing non-compliance with the NVRA and improving the functionality of the NMV program. Moreover, the oversight mechanisms created by the settlement agreement have allowed the DMV, SOS, and civil rights organizations to work together to identify and resolve systemic issues that were delaying the transmission of voter registration applications. This bill codifies many of the provisions of the settlement agreement that will expire in early 2022.



5) **Department of Finance (DOF) & Independent Assessment of New Motor Voter**

**Program:** In September of 2018, at the request of Governor Brown, the DOF initiated a performance audit of the DMV Information Technology and Customer Service Functions. That audit did not include an assessment of any activities related to the NMV program. To complement the performance audit, DOF contracted for an independent technical assessment of the NMV program. An independent technical assessment audit was performed by Ernst and Young, LLP and included fieldwork at both the DMV and the SOS offices and technical assessments, including a review of file transfers that resulted from administrative processing errors, as specified.

Many of the recommendations from the Ernst and Young report mirror those identified in the DOF's audit report and the DMV has already addressed or was in the process of addressing the recommendations. Some of these processes included maintaining a Quality Assurance process to ensure the timely release of records to SOS, ensuring legal and compliance resources were assigned to the program, and establishing data governance policies including data retention and data sharing. Moreover, the assessment found that when there were differences in data transfer, those differences were expected and did not jeopardize voter registration through the California NMV program.

Additionally, the DMV and the SOS formed a workgroup to address ongoing voter registration record collection, processing and delivery activities. The workgroup proactively collaborated to improve the voter registration program and met weekly to discuss production-related questions, issues, customer records, and any other stakeholder concerns.

- 6) **DMV New Motor Voter Registration Statistics:** According DMV NMV voter registration transaction data from the SOS's website, in 2019 there were of over 4.7 million NMV transactions at the DMV. Out of that, over 1.2 million were new voter registrations, almost 3 million were re-registrations, and over half a million were updated addresses. In 2020, there were close to 4.2 million NMV transactions at the DMV. Of that, over 900,000 were new registrations, over 2.4 million were re-registrations, and over 800,000 were updated addresses.

- 7) **Arguments in Support:** In support of this bill the Asian Americans Advancing Justice – California writes:

Since the Motor Voter program launched at the DMV in 2018, it has resulted in 12 million new or updated voter registrations. With more than 80 percent of eligible Californians being registered to vote before the November 2020 General Election—the highest percentage in the past 80 years—time has shown that this program has dramatically improved voter accessibility in California.

Despite these accomplishments, more than 3 million eligible adults in California remain unregistered, a disproportionate number of whom are youth, people with disabilities, Black, Latino, Native, Indigenous, and people of color, those with limited English proficiency, or have low income. A study by the Center for Inclusive Democracy found that while nearly 84.5 percent of the general public has registered to vote immediately before the 2020 general election, only 59.5 percent of Asian Americans have done the same. Similarly, Asian American voter turnout rates tend to be much lower than the state average. It is critical for the

state to facilitate the process for casting a ballot, through laws like the NMV, to better ensure that Californians of all backgrounds can participate in how the state handles the people's business.

Furthermore, with 15 existing Voter's Choice Act (VCA) counties in California and more counties considering the adoption of the VCA ahead of the 2022 elections, maintaining the accuracy of our voter rolls becomes increasingly important as more Californians expect to receive their ballot by mail. Streamlined, efficient voter registration opportunities at the DMV will ensure that our voter rolls are regularly updated and AB 796 will help create a more representative democracy and ensure that the DMV's voter registration process is efficient, fair, and secure.

- 8) **Related Legislation:** AB 1137 (Mullin), requires the SOS to report to the Legislature on designated voter registration agencies that have, pursuant to existing law, an established system that allows a person who applies online for services to electronically submit a voter preference form and an affidavit of voter registration, as specified. AB 1137 is scheduled to be heard in this committee today.

SB 583 (Newman), requires the DMV to transmit specified information to the SOS with respect to a person who, when submitting an application for a driver's license or identification card, provides documentation demonstrating United States citizenship and that the person is of an eligible age to register or preregister to vote, among other requirements and requires the SOS, upon receipt of this information, to register or preregister the person to vote, as specified. SB 583 is scheduled to be heard in the Senate Elections & Constitutional Amendments Committee on April 12, 2021.

- 9) **Previous Legislation:** AB 1407 (McCarty), Chapter 4, Statutes of 2017, provides for every person who is applying for a driver's license or state identification card and who is eligible to preregister to vote to be automatically preregistered to vote, unless that person opts out.

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

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Civil Liberties Union California Action (co-sponsor)  
California Common Cause (co-sponsor)  
League of Women Voters of California (co-sponsor)  
Asian Americans Advancing Justice – California  
Black Women Organized for Political Action Political Action Committee  
California Association of Nonprofits (prior version)  
California League of Conservation Voters  
California League of United Latin American Citizens  
Courage California (prior version)  
Disability Rights California  
Los Angeles LGBT Center (prior version)

National Council of Jewish Women-California (prior version)  
Silicon Valley Community Foundation  
One Individual

**Opposition**

None on file.

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