

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 739 (Stern) – As Amended July 27, 2020

SENATE VOTE: (vote not relevant)

SUBJECT: Elections: false or misleading information.

SUMMARY: Makes it a misdemeanor to distribute specified false or misleading information regarding the qualifications to apply for, receive, or return a vote by mail (VBM) ballot with actual knowledge and intent to deceive. Specifically, **this bill** expands a current prohibition that makes it a misdemeanor for a person who, with actual knowledge and intent to deceive, distributes incorrect, false, or misleading information regarding voting times, locations, and qualifications, to include the distribution of false or misleading information about the qualification to apply for, receive, or return a VBM ballot.

EXISTING LAW:

- 1) Provides that a person is guilty of a misdemeanor who knowingly causes to be mailed or distributed, or knowingly mails or distributes, literature to a voter that includes a designation of the voter's precinct polling place other than a precinct polling place listed for that voter in an official precinct polling list, as specified.
- 2) Provides that a person is guilty of a misdemeanor who, with actual knowledge and intent to deceive, causes to be distributed or distributes, including distribution by mail, radio or television broadcast, telephone call, text message, email, or any other electronic means, including over the Internet, literature or any other 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, VBM ballot 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 at a vote center, office of an elections official, satellite office of an elections official where voting is permitted, VBM ballot drop box, or VBM ballot drop-off location.
- 3) Requires the Secretary of State (SOS) to create the Office of Elections Cybersecurity (OEC) within the Office of the SOS, as specified, and requires the OEC to monitor and counteract false or misleading information regarding the electoral process that is published online or on other platforms and that may suppress voter participation or cause confusion and disruption of the orderly and secure administration of elections.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

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

While the majority of California voters have been casting ballots by mail since 2012, the November 2020 election will be the first time all registered voters will automatically receive mail-in ballots. That fact alone is likely to catch some voters by surprise and it those who do not traditionally vote by mail are likely not familiar with the rules that entitle them to receive a ballot, how they can cast it, and what their options are for returning it. As such, in this age where information – and mis-information – spreads so quickly, it is imperative that we have safeguards in place to try and guard against the spread of mis-information when it comes to vote-by-mail voting. No one should receive false information about how, when or where they can return their vote-by-mail ballot, how to receive a mail-in ballot, or whether they are eligible to vote by mail at all. By protecting voters and our communities from vote-by-mail dis- or mis-information, California voters will be ensured their ballots will be counted exactly as they cast it.

2) **Previous Legislation:** Last session, the Legislature approved and Governor Brown signed AB 1678 (Berman), Chapter 96, Statutes of 2018, which expanded current laws on voter misinformation to encompass the intentional distribution of incorrect information regarding voting times, locations, and qualifications, and modernized the law to address the intentional distribution of such misinformation via the Internet or other electronic means. Additionally, AB 1678 provides that a person is guilty of a misdemeanor who, with actual knowledge and intent to deceive, distributes literature or any other form of communication to a voter that the person knows to include voting information that is incorrect, false, or misleading, as specified.

Additionally, the Legislature approved and Governor Brown signed AB 3075 (Berman), Chapter 241, Statutes of 2018, which created the OEC within the Office of the SOS. The mission of the OEC is to coordinate efforts between the SOS and local elections officials to reduce the likelihood and severity of cyber incidents that could interfere with the security or integrity of elections in the state, as specified. Additionally, AB 3075 requires the OEC to monitor and counteract false or misleading information regarding the electoral process that may suppress voter participation or cause confusion and disruption of the orderly and secure administration of elections. AB 3075 specifically requires the OEC to assess false or misleading information regarding the electoral process, mitigate that false or misleading information, and educate voters with valid information from elections officials, as specified.

This bill expands the current prohibition against the intentional distribution of incorrect, misleading or false information regarding voting times, locations, and qualifications to include false or misleading information regarding the qualifications to apply for, receive, or return a VBM ballot. Committee staff is unaware of any evidence that demonstrates that the current prohibition is insufficient and does not currently provide this protection. The background materials provided to the committee, however, state that while there have been sporadic reports of misinformation regarding VBM voting, the intent of this measure is to be preventative and to be proactive in preventing mis-information from being put into the public domain that may have a negative impact on a person's ability to vote in November.

- 3) **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 all of which can interfere with the rights of voters. According to previous bill analyses, examples of these types of offending communications that were previously 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.

Moreover, according to the National Conference of State Legislatures (NCSL), disinformation campaigns distribute and promote deliberately false or misleading information with the intent to cause harm. In the past, while such campaigns may have relied on flyers or mailers, more recently they are usually conducted through social media. Moreover, NCSL states that disinformation campaigns are distinct from cyberattacks in that they rely on existing public communication channels, such as Facebook or Twitter and are hard to combat, since they take place outside the control of election officials.

Last year, the National Association of Secretaries of State launched a new initiative—TrustedInfo2020—an education effort to promote election officials as the trusted sources of election information. The mission of the initiative is to drive voters directly to election officials’ websites and social media pages to ensure voters are getting accurate election information and to cut down on the misinformation and disinformation that can surround elections. The initiative aims to highlight state and local election officials as the credible, verified sources for election information.

- 4) **Current Vote by Mail Ballot Use in California:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which, among other provisions, authorized any voter to become a permanent VBM voter. As a result, California voters have increasingly used VBM ballots to vote in elections. Since 2012, a majority of ballots cast in all California statewide elections were VBM ballots.

Nearly 60 percent of all California voters are now permanent VBM voters. In three counties (Alpine, Plumas, and Sierra), 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts. Fifteen counties conduct elections pursuant to the California Voter’s Choice Act (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) wherein every registered voter receives a ballot in the mail. The net result is that for the November 3, 2020 statewide general election, more than 87 percent of California’s registered voters will already be receiving a ballot in the mail even without the enactment of recent legislation or the Governor’s recent executive order that are described below.

- 5) **Executive Order and New Legislation:** On May 8, 2020, Governor Newsom issued Executive Order N-64-20, which requires each county’s elections official to send VBM ballots for the November 3, 2020 general election to all registered voters. The Executive Order noted that “it is unknown to what degree COVID-19 will pose a threat to public health in November, and California and its counties must begin taking action now—to procure supplies, secure polling places, enlist volunteers, and draw up plans, among other steps—to

ensure that the November 3, 2020 General Election is held in a manner that is accessible, secure, and safe.”

Additionally, last month, the Legislature approved and the Governor signed AB 860 (Berman), Chapter 4, Statutes of 2020, which requires county elections officials to mail ballots to all active registered voters for the November 3, 2020 presidential general election, among other provisions.

6) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes:

California has allowed any registered voter to vote by mail for nearly a half-century. The importance of voting by mail will be vital to our democracy this November when all registered California voters will receive a ballot by mail. Californians should not be subject to confusion from deliberate misinformation about how to receive, cast, and return a vote by mail ballot.

Current law provides criminal penalties for distributing false information about polling place locations, eligibility and election procedures. This bill merely ensures criminal penalties for distributing false information regarding the qualifications to apply for, receive, and return a vote by mail ballot.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)
California League of Conservation Voters

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094