

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 1206 (Pellerin) – As Introduced February 16, 2023

As Proposed to be Amended

SUBJECT: Voter registration database: Electronic Registration Information Center

SYNOPSIS

This bill requires the Secretary of State (SOS) to join the multi-state Electronic Registration Information Center (ERIC), a non-profit organization founded in 2012 by seven states, four with Republican chief election officials and three with Democratic officials. The idea behind the organization is for state election officials of member states to share voter registration information with one another in order to both remove ineligible voters from their rolls and help identify unregistered eligible voters.

The ERIC data center allows states to compare voter data, thereby improving the accuracy of their voter rolls. States that choose to participate in ERIC are able to compare information on eligible voters from official data sources submitted by the states. Each member state submits, at a minimum, its voter registration and motor vehicles department data. The data includes names, addresses, date of births, driver's license or state identification number, and the SSN⁴. Other information, such as phone numbers, email addresses, and current record status are also submitted as available.

Recently, ERIC has become the subject of far right conspiracy theories with former President Donald Trump at one point claiming that ERIC was inflating voter rolls in favor of Democrats. As a result of these theories, several states have either withdrawn or are threatening to withdraw from ERIC. No evidence supporting the accusations has been forthcoming and the conspiracy theories have been largely debunked. That being said, this bill does raise a number of concerns for the committee staff.

There are significant privacy concerns related to this bill. Current state law permits only certain voter information, such as the name, home address, telephone number, email address, and party affiliation, to be shared specifically for "election, scholarly, journalistic, or political purposes, or for governmental purposes." Existing law explicitly requires voters' CDL/ID numbers, SSNs, and signatures to be kept strictly confidential and not disclosed. This bill changes California's longstanding policy to protect certain personal identifying voter information from disclosure.

In the form it came to this Committee, the bill threatened to overturn vital privacy laws, including voter privacy law, to allow the SOS to provide confidential voter data to an out-of-state nongovernmental organization, which may or may not have sufficient cybersecurity countermeasures in place to protect sensitive voter data. In addition, it is unclear what, if anything, would prevent ERIC or other states who have joined ERIC from sharing this confidential information about California voters with the federal government or with other private entities beyond the knowledge and consent of this State and its voters.

In response, Committee amendments build additional protections into the bill. The amendments do four things:

- 1. State that no AB 60 driver's license/identification card data can be included with the data sent to ERIC.*
- 2. Prohibit the sending of any data related to citizenship.*
- 3. Prior to sending data to ERIC, the SOS must receive certification from the California Department of Technology (CDT) that all proper cybersecurity protections are in place, both on the SOS (sending) end and the ERIC (receiving) end. This process is required to be repeated any time the data requirements change.*
- 4. The SOS must consult with the California Privacy Protection Agency on the development of any regulations related to ERIC.*

The first two amendments are particularly intended to protect California residents who have emigrated here from other counties. The latter two amendments are meant to address concerns about waiving privacy protection laws designed to keep Californians' voter records protected.

This bill is author sponsored and is supported by the California Association of Clerks and Election Officials and opposed by Election Integrity Project California.

This bill previously passed the Assembly Elections Committee on a 7-0-1 vote.

SUMMARY: Requires the Secretary of State (SOS) to apply for membership with the Electronic Registration Information Center (ERIC). Specifically, **this bill:**

- 1) Requires the SOS to apply for membership with ERIC.
- 2) Requires the SOS, if the membership application is approved, to execute a membership agreement with ERIC on behalf of the state.
- 3) Requires the SOS, prior to preparing and sending data, to receive certification from the California Department of Technology (CDT) insuring that all necessary cybersecurity protections are taken both in terms of the SOS's systems and ERIC's system. In addition, recertification is required each time the data sharing requirements change.
- 4) Prohibits the SOS from sending any data to ERIC that may disclose a person's immigration and citizenship status, including prohibiting the sharing of any Department of Motor Vehicle (DMV) data relating to drivers who have obtained driver's licenses or identification cards without submitting proof of authorized presence in the United States.
- 5) Authorizes the SOS, notwithstanding specified provisions of existing law or any other law, to provide confidential information or data to persons or organizations pursuant to an agreement entered into under this bill.
- 6) Authorizes the SOS to adopt regulations necessary to implement the provisions of this bill, including, but not limited to, regulations establishing procedures necessary to protect the confidential information identified above.

- 7) Requires that the SOS consult with the California Privacy Protection Agency on the development of any regulations under the bill.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 2) Requires each state, pursuant to the federal Help America Vote Act of 2002, to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list at the state level that contains the name and voter registration information, including the full California driver's license or identification number (CDL/ID) and last four digits of the Social Security number (SSN4), of every legally registered voter in the state. (42 U.S.C. §§ 15301-15545.)
- 3) 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. (Elec. Code § 2000.)
- 4) Authorizes certain voter registration information, such as the name, home address, telephone number, email address, and party affiliation, to be shared specifically for election, scholarly, journalistic, political purposes, or for governmental purposes, as determined by the SOS. (Elec. Code § 2194(a).)
- 5) Requires the Department of Motor Vehicles (DMV) to issue an original driver's license to applicants who cannot provide satisfactory proof that their presence in the United States is authorized under federal law if they meet all other qualifications and provide satisfactory proof to the DMV of their identity and California residency. (Veh. Code § 12801.9 (a)(1).)
- 6) Prohibits the DMV from disclosing information submitted for purposes of obtaining a driver's license or ID card, absent a subpoena for individual records in a criminal court proceeding, a court order, or in response to a law enforcement request to address an urgent health or safety need, provided the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order. Also establishes that such documents and information are not a public record. (Veh. Code § 12800.7.)
- 7) Makes it unlawful to discriminate against a person because the person holds or presents a license issued under specified sections of the Vehicle Code. (Veh. Code § 12801.9(h).)
- 8) Requires, notwithstanding any other provision of law, a voter's CDL/ID, SSN4, and signature to be confidential and not disclosed. (Elec. Code §§ 2138.5, 2194(b).)
- 9) Provides for confidential voter registration for certain voters, including victims of domestic violence, reproductive health care workers, public safety officers, and elected officials. (Elec. Code §§ 2166, 2166.5, and 2166.7.)
- 10) Prohibits voter information from being shared outside the U.S., including the provision of access to voter information on the internet. (Elec. Code § 2188.5.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS:

1) **Purpose of the bill.** This bill would require the Secretary of State (SOS) to join the multi-state Electronic Registration Information Center (ERIC), a non-profit organization founded in 2012 by seven states, four with Republican chief election officials and three with Democratic officials. The idea behind the organization is for the state election official of member states to share voter registration information in order to both remove ineligible voters from their rolls and help identify unregistered eligible voters.

2) **Author's statement.** According to the author:

In an election, accurate voter rolls are crucial for democracy. In California, there are likely millions of voter registration records that are out of date due to a recent move. Joining the Electronic Registration Information Center ensures that elections officials have access to the best data to keep their voter rolls current, and it would provide them with additional tools they could utilize to reach out to unregistered eligible voters. The increased accessibility of California's voter registration system has been a great success; in November of 2022, 81.63% of eligible Californians were registered to vote. However, there are almost 5 million eligible and unregistered voters in California, outnumbering the populations of 26 states. Becoming an ERIC member state is a natural next step in California's mission to improve the accessibility and ease of voting.

3) **2014 Presidential Commission report:** In 2013, the Presidential Commission on Election Administration was established by Executive Order with the mission of identifying best practices in election administration and to make recommendations to improve the voting experience. (The complete Executive Order is available at <https://obamawhitehouse.archives.gov/the-press-office/2013/03/28/executive-order-establishment-presidential-commission-election-administr>.)

The Commission submitted its report in January 2014, entitled, "The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration." One of the Commission's main recommendations focused on voter registration, specifically voter roll accuracy. In an effort to increase the accuracy of voter rolls, the Commission report makes the following recommendations: 1) states should adopt online registration; 2) interstate exchanges of voter registration information should be expanded; and 3) states should seamlessly integrate voter data acquired through the DMV with their statewide voter registration lists. (*The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* (Jan. 2014), available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf.)

4) **Electronic Registration Information Center (ERIC).** ERIC is a non-profit organization with the stated mission of assisting states in improving the accuracy of America's voter rolls and increasing access to voter registration for all eligible citizens. With the assistance of the PEW Charitable Trust, ERIC was formed in 2013 and is owned, governed, and funded by the states that choose to join. As of April 2023, Washington D.C. and 33 states are members of ERIC. However, the ERIC website lists six states whose resignations will become effective either this month or in June. Those states are Alabama, Florida, Iowa, Missouri, Ohio, and West Virginia. Each state has a vote, however only the first 20 states to join ERIC are members of the Board of Directors—thus California would be precluded from serving on the board. (More information on the current ERIC membership is available at <https://ericstates.org/who-we-are/>.)

ERIC was created to address what has been characterized as a “quirk” of the election system—there is no national database of voters in the United States. The lack of a national database is because elections are regulated by states rather than at the federal level. As a result, it is very difficult for state election officials to determine if someone is only registered in one state and is only voting once in each election. ERIC gives member states a way to compare voter data across state lines in order to both remove duplicate voters and identify eligible voters who may have moved to another state between elections and not re-registered.

According to information provided on the ERIC website, the ERIC data center allows states to securely and safely compare voter data, thereby improving the accuracy of the voter rolls. States that choose to participate in ERIC are able to compare information on eligible voters from official data sources submitted by the states. Each member state submits, at a minimum, its voter registration and motor vehicles department data. The data includes names, addresses, dates of birth, driver’s license or state identification numbers, and the last four numbers of the person’s Social Security number (SSN4). Other information, such as phone numbers, email addresses, and current record status is also submitted as available. According to the ERIC website, ERIC has safeguards in place that anonymize certain (but not all) sensitive identifying data by converting it into indecipherable characters that is unreadable and unusable to potential hackers, such as “one-way hashing.”

These records go through a data-matching exchange that crosschecks the information against lists from other member states, as well as other data sources such as the National Change of Address data from the United States Postal Service and other existing government databases, such as death records from the Social Security Administration. ERIC then reports back to the states where there is a “highly confident match” indicating a voter moved or died, or the existence of a duplicate record. It is unclear, however, exactly how many data points constitute a match. Once states receive the reports they can then begin the process of cleaning up the voter rolls, subject to state and federal law. Participating states also receive information on unregistered individuals who are potentially eligible to vote. This information will allow states to reach out to those citizens to encourage them to register to vote. Member states pay annual dues which vary depending on the population size of the state. Large states usually pay more than small states. (More information available at <https://ericstates.org/how-does-it-work/>.)

This bill requires the SOS to apply for membership to the ERIC program and, if approved, requires the SOS to execute a membership agreement with ERIC on behalf of the state. The bill contains a provision that overrides state laws designed to protect voter privacy and the confidentiality of sensitive voter data, such as Social Security numbers and driver’s license numbers. Specifically, this bill authorizes the SOS, notwithstanding specific voter privacy laws which prohibit disclosure of a voter’s CDL/ID, SSN4, and signature, such as Elections Code 2194(b), or “any other law,” to provide such confidential information or data to persons or organizations if an agreement is entered to participate in ERIC.

5) Colorado and ERIC mailing. According to an October 2022 news article, approximately 30,000 Colorado residents who are non-citizens and therefore ineligible to register to vote were mailed notices from the state informing them on how they could register to vote. The problem occurred, according to a Colorado elections official, when the state compared a list of potential unregistered voters from ERIC with local DMV records. The DMV data included people who hold non-citizen driver’s licenses—which were created to allow people without legal residency to drive legally—because a formatting error caused the system not to flag those individuals as

ineligible. Consequently, postcards encouraging voter registration were sent to those voters. According to the article, in an effort to address this error the Colorado's SOS took additional steps to make sure none of the non-citizens registered to vote. (Birkeland, *Colorado accidentally sent voter registration notices to 30,000 residents who are not citizens*, Colorado Public Radio (Oct. 7, 2022), available at <https://www.cpr.org/2022/10/07/colorado-voter-registration-notices-non-citizens/>.)

6) **States Withdrawing from ERIC.** Several states have withdrawn or are withdrawing from ERIC. Specifically, Louisiana and Alabama recently left and Ohio, Texas and Wisconsin may do the same. As noted previously, for the last decade, ERIC has operated as a nonpartisan organization with the shared goal of improving states' voter registration rolls. According to the Brennan Center, the group has helped states identify millions of registrants who should be taken off the rolls because they moved or died, and it has facilitated millions of new registrations of eligible voters.

Unfortunately, over the last year, ERIC has been accused by former President Donald Trump and others of inflating the voter rolls in favor of Democrats. Far-right media outlets have also suggested that ERIC's origins are suspect because it was founded by state elections officials with financial assistance from the Pew Foundation.

According to the Brennan Center, the states that appear to be going along with these attacks have given conflicting and inaccurate reasons for withdrawing, primarily related to data collection. Missouri, on the one hand, objected to the restrictions placed on the states' use of the data collected by ERIC. On the other hand, Florida and Alabama have raised concerns because of a lack of privacy protections. (Clapman, *States Cave to Conspiracy Theories and Leave Voter Data Cooperative, ERIC*, Brennan Center for Justice (Mar. 13, 2023), available at <https://www.brennancenter.org/our-work/analysis-opinion/states-cave-conspiracy-theories-and-leave-voter-data-cooperative-eric>.)

7) **Privacy risks of releasing confidential voter registration data.** Current state law permits only certain voter information, such as the name, home address, telephone number, email address, and party affiliation, to be shared specifically for "election, scholarly, journalistic, or political purposes, or for governmental purposes." Current state law also explicitly requires voters' CDL/ID numbers, SSNs, and signatures to be kept strictly confidential and not disclosed. This bill changes California's longstanding policy to protect certain personal identifying voter information from disclosure. In effect, this bill overturns all of California's privacy laws, including voter privacy law, to allow the SOS to provide confidential voter data to an out-of-state nongovernmental organization. The ERIC bylaws, as of the March 17, 2023 update, require the SOS to provide the following data fields for all registered voters:

1. All name fields
2. All address fields
3. Driver's license or state ID number
4. Last four digits of Social Security number
5. Date of birth

6. Activity dates
7. Current record status
8. Phone number
9. E-mail address or other electronic contact method

8) **Data security risks.** According to documents from the ERIC website, there are three primary components to ERIC’s data matching process: data collection, anonymization, and file transfer.

1. To secure sensitive information, which ERIC defines as the date of birth, SSN4 and DL number, they provide an anonymization application to each participating jurisdiction. The anonymization, also known as “one-way hashing,” converts sensitive identifying data into indecipherable characters that are unreadable and unusable to potential hackers. According to ERIC’s security statement:

The sensitive data elements are the driver’s license or state ID number, any part of the social security number, and date of birth. The hashing application converts these data into what appears to be a string of random characters, making the data significantly more difficult for a potential hacker to utilize. A cryptographic hash is not meant to be decrypted. ERIC only accepts voter and driver’s license data files that have been hashed using the application. This ensures these sensitive data are protected at the source, in the member’s environment, prior to submission to the ERIC data center. The distribution of the hashing application to ERIC members is a closely monitored and structured process. [Emphasis added.]

2. Documents state that to further strengthen the security measures around the data, all records are sent through the anonymization process twice – once at the state level, before data is ever sent to ERIC, and once by ERIC as it receives data. States are then given account credentials to access a secure file transfer protocol (sFTP) site where their anonymized files are uploaded to a state-specific location. ERIC proceeds to run and generate reports that are available for state-specific download on the same sFTP site.

3. According to ERIC’s membership agreement, participating states are required to upload all voter data every 60 days. (More information on ERIC’s data security is available at <https://ericstates.org/security/>.)

9) **AB 60 licenses and identification cards.** In 2013, the Legislature approved AB 60 (Alejo), which granted DMV the ability to issue driver’s licenses to undocumented immigrants. AB 60 was viewed by its supporters as a necessary step to not only ensure the safety of California drivers on the road, but also to address pervasive inequities faced by the state’s undocumented population. Without access to driver’s licenses, undocumented individuals were unable to legally drive themselves to accomplish the tasks of everyday life—including traveling to and from work, thereby contributing a significant portion of the state’s economy. (Kitson, *Undocumented Californians Significantly Contribute to State and Local Revenue* (Apr. 2019), available at <https://calbudgetcenter.org/resources/undocumented-californians-significantly-contribute-to-state-local-revenue/>.) They were also unable to obtain auto insurance to protect themselves and other drivers who may encounter them.

In 2022, the Legislature expanded AB 60 licenses to include identification (ID) cards in AB 1766 (Stone, Chap. 482, Stat. 2022). That bill requires that, starting January 1, 2027, the DMV must issue ID cards to any undocumented person who is able to demonstrate proof of their identity and California residency. The bill mirrored existing privacy protections to shield applicants' information from third parties and to preclude information and documents collected pursuant to the provisions of the bill from being treated as a public record, and would establish that such information cannot be disclosed by the department, except where necessary to comply with an order, warrant, or subpoena, each if issued by a court.

10) Concerns with this legislation. While the goals of ERIC are laudable and the organization appears to be useful in helping states maintain their voter rolls, this bill does raise a number of concerns for the author and the Committee to consider. Not least among them, the author and the Committee may wish to consider whether California voter records should be released to an out-of-state, nongovernmental entity, which may or may not have sufficient cybersecurity countermeasures in place to protect sensitive voter data, such as full CDL/ID numbers, names, and SSN4s. In addition, it is unclear what, if anything, would prevent ERIC or other states who have joined ERIC from sharing this confidential information about California voters with the federal government or with other private entities beyond the knowledge and consent of this State and its voters.

Also, this bill, as it is currently in print, requires that the SOS review and evaluate ERIC's data security requirements and only join ERIC "after making a determination that it will adequately protect all of California voters' data." This is arguably a function that the Legislature should not wholly delegate to the SOS without setting some minimum standards as to what those findings must reflect before the SOS agrees to join on behalf of the State. In response, the committee amendments, discussed in a subsequent section, require CDT to certify that appropriate cybersecurity measures are in place prior to the SOS sharing any data.

10) Pro-voter registration measures already in place. Federal law, the Help America Vote Act of 2002, requires every state to implement a computerized statewide voter registration database. The California statewide voter registration system, called VoteCal, which was live in every county as of March 2016, has made much-needed improvements to the administration of elections in California by streamlining the voter registration process; allowing voters to update their voter registration records seamlessly when they update their address with the DMV or with the state's Employment Development Department; and by making it easier and more efficient for elections officials to do "list maintenance," including identifying and eliminating duplicate registrations, transferring a voter's record from one county to another when the voter moves, and canceling the registrations of individuals who are no longer eligible to vote. VoteCal also allows for same day voter registration on Election Day.

Aside from the benefits VoteCal provides, California already has numerous processes in place for removing duplicate voter records, deceased voters, felons, and people who have moved from voter rolls. These checks are conducted with data from federal agencies, including the Social Security Administration, and the United States Post Office National Change of Address Program. California also checks voter registration data against information from Department of Vital Statistics, DMV, the Department of Corrections and Rehabilitation, and the Department of Health Services. In addition, all county elections officials receive reports from superior courts of individuals convicted of felonies.

States already cooperate in a wide variety of ways to ensure the accuracy of voter data and to prevent duplicate voter records. For instance, if a new voter in a state fills out a voter registration form and indicates that he or she was registered in another state previously, the jurisdiction informs the other state that the voter has moved. This is current practice in California.

11) **Committee analysis.** Given the privacy concerns raised above, the robust VoteCal system that the state already has in place, and the fact that the Secretary of State does not appear to have expressed an interest in joining ERIC or provided information on whether or not she would use the data provided by other states if California becomes a member, it is not clear at this time that the potential advantages of joining outweigh the risks to Californians' private information.

12) **Committee amendments.** In response, committee amendments aim to address the largest privacy concerns with this bill, particularly as it pertains to California residents who have emigrated from other countries. The amendments will do four things:

1. State that no AB 60 driver's license/identification card data can be included with the data sent to ERIC.
2. Prohibit the sending of any data related to citizenship.
3. Prior to sending data to ERIC, the SOS must receive certification from the California Department of Technology (CDT) that all proper cybersecurity protections are in place, both on the SOS (sending) end and the ERIC (receiving) end. This process is required to be repeated any time the data requirements change.
4. The SOS must consult with the California Privacy Protection Agency on the development of any regulations related to ERIC.

The first two amendments are particularly intended to protect California residents who have emigrated here from other counties. The latter two amendments are meant to address concerns about waiving privacy protection laws designed to keep Californians' voter records protected.

In addition, passing this bill will also mean that the DMV license and identification records of many voting-age Californians (with the exception of AB 60 license and identification cardholders) will also be shared, arguably eroding the privacy not only of voters, but many other California residents 18 years or older.

12) **Related legislation.** AB 1766 (Stone, Chap. 482, Stat. 2022) required that by January 1, 2027, DMV issue restricted identification cards to eligible applicants who are unable to verify that their presence in the United States is authorized under federal law.

SB 1316 (Moorlach, 2020), which was substantially similar to this bill, would have required the SOS to apply for membership of ERIC to share voter information or data with states or groups of states in order to improve the accuracy of the statewide voter registration database. SB 1316 was not heard in any policy committee.

AB 2375 (Oberholte, 2018) would have permitted the SOS to apply for membership with ERIC to share voter registration information or data with other states or groups of states, and to use the information to update California's voter registration lists, as specified. AB 2375 passed out of

this committee on a 6-1 vote. AB 2433 was held on the Assembly Appropriations Committee's suspense file.

AB 2433 (T. Allen, 2016), which had provisions substantially similar to AB 2375 of 2018, passed out of this committee on an 8-1 vote. AB 2433 was held on the Assembly Appropriations Committee's suspense file.

AB 60 (Alejo, Chap. 524, Stats. 2013) authorized the DMV to issue an original driver's license to a person who unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law, provided that person meets all other qualifications for licensure and provides satisfactory proof to DMV of their identity and California residency.

STATEMENTS IN SUPPORT: In support of the bill, the California Association of Clerks and Election Officials (CACEO) writes:

Current law requires the Secretary of State to establish a statewide system to facilitate removal of duplicate or prior voter registrations to facilitate the reporting of election results and voter and candidate information and to otherwise administer and enhance election administration. Existing law also requires that certain voter registration information be provided to, among others, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

Your proposal would require the Secretary of State to apply for membership with the Electronic Registration Information Center and, if that application is approved, require the Secretary of State to execute a membership agreement with the Electronic Registration Information Center on behalf of the state.

[. . .]

CACEO supports Assemblymember Pellerin's desire to provide California with an additional tool to maintain accurate voter rolls. We respectfully request the committee's AYE vote on AB 1206.

STATEMENTS IN OPPOSITION: The Election Integrity Project California raises a number of privacy concerns in their opposition. Among them:

It should also be noted that at the same time ERIC demands these risky disclosures of personal information, it expressly forbids the transmission of citizenship information.

“Under no circumstances shall the Member transmit an individual's record where the record contains documentation or other information indicating that the individual is a non-citizen.” (ERIC Bylaws)

This endangers California's non-citizen population, who may become registered and therefore enabled to unwittingly commit a felony that would thwart their path to citizenship. ERIC's (or CEIR's) mission to provide lists of “eligible but unregistered individuals” while expressly rejecting information regarding citizenship is impossible to fulfill, and has and will lead to much harm.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks & Election Officials

Opposition

Election Integrity Project California

2 Individuals

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