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UNFINISHED BUSINESS

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Bill No: SB 739  
Author: Stern (D), et al.  
Amended: 8/12/20  
Vote: 27 - Urgency

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PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: 72-1, 8/30/20 - See last page for vote

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**SUBJECT:** Elections: vote by mail ballots and false or misleading information

**SOURCE:** Secretary of State Alex Padilla

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**DIGEST:** This bill 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. Allows, instead of requires, an elections official to include VBM applications with county voter information guides for the November 3, 2020 statewide general election only.

*Assembly Amendments* delete the prior version of this bill relating to fire prevention and insert the current language as described below.

**ANALYSIS:**

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.
  - 4) Requires county elections officials to mail a VBM ballot to every registered voter for the November 3, 2020, statewide general election.
  - 5) Requires elections officials to mail every registered voter a county voter information guide, as specified.
  - 6) Requires elections officials to include with the county voter information guide an application for a VBM ballot.

This bill:

- 1) Makes it a misdemeanor to distribute specified false or misleading information regarding the qualifications to apply for, receive, or return a VBM ballot with actual knowledge and intent to deceive.
- 2) Allows, instead of requires, an elections official to include VBM applications with county voter information guides for the November 3, 2020 statewide general election only.

- 3) 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.
- 4) Permits an elections official, for the statewide general election held on November 3, 2020 only, to include an application for a VBM ballot in the county voter information guide, instead of requiring the VBM application to be included.
- 5) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

## **Background**

*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. AB 3075 also 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.

*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.

*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.

*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, the Legislature recently 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.

## **Comments**

- 1) *According to the author*, "In November 2020, all registered Californians will receive a vote-by-mail ballot. For some voters, this will be routine but for others, this will be the first time they cast their ballot from the safety of their home. In an age of information, we need to ensure that all Californians are receiving only the most reliable and correct information about their right to apply for, receive, or return a vote-by-mail ballot.

"Currently, it is a misdemeanor for a person to distribute information with an intent to deceive voters about the location of polling places, about the qualifications to register to vote, and the qualifications to vote. However, the law is silent when it comes to deliberate misinformation distribution regarding vote-by-mail qualifications. That's why SB 739 adds additional safeguards to vote-by-mail misinformation.

"Since all registered voters will receive a vote-by-mail ballot this November, SB 739 will suspend a provision of current law which requires that certain voters receive an application to vote-by-mail. The suspension is only applicable for the November 2020 election and will reduce confusion among voters this fall.

"Arming Californians with correct information about voting-by-mail is

important both for the integrity of our election and the confidence of our voters. Voters who don't vote by mail may not know, for instance, that they can return their ballot to any polling location or county elections drop-off box. Knowledge is power, and SB 739 is a common sense measure seeking to empower and protect voters as they fulfill a citizen's most sacred obligation."

### **Related/Prior Legislation**

See Background discussion, above.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Possible cost pressures in the hundreds of thousands of dollars (Trial Court Trust Fund/GF) annually for increased court costs, including possible trial costs, given this bill may expand an existing misdemeanor to include new conduct.

A defendant charged with a misdemeanor is entitled to a no-cost legal representation and a jury trial. If 15 new misdemeanors are filed annually statewide and proceed to trial resulting in the use of two days of court time, at an estimated cost of approximately \$7,644 for an eight-hour court day, the approximate cost to the trial courts is \$229,320. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for staff to perform existing duties. This is particularly true given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved.

- 2) According to the Department of Justice, this bill will result in an increase in arrest fingerprints, resulting in annual increased costs of approximately \$100,000 (General Fund).
- 3) Absorbable SOS costs.

**SUPPORT:** (Verified 8/29/20)

Secretary of State Alex Padilla (source)  
California Association of Clerks and Election Officials  
California Clean Money Campaign  
California League of Conservation Voters

**OPPOSITION:** (Verified 8/29/20)

None received

**ARGUMENTS IN SUPPORT:** In a letter supporting this bill, Secretary of State Alex Padilla, stated the following, in part:

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.

Current law also requires that certain voters receive an application to vote-by-mail. This bill would suspend this requirement for the November General Election since all voters will be receiving [a] ballot in the mail. Without this change, voter confusion would likely ensue.

**ASSEMBLY FLOOR:** 72-1, 8/30/20

**AYES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Daly, Diep, Flora, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wood, Rendon

**NOES:** Kiley

**NO VOTE RECORDED:** Megan Dahle, Eggman, Fong, Frazier, Voepel, Wicks

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8/31/20 0:46:52

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