

Date of Hearing: July 15, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 398 (Umberg) – As Amended July 3, 2025

SUMMARY: Makes it a crime for a person to pay money or other valuable consideration to another person in exchange for that person to voting or registering to vote. Specifically, **this bill:**

- 1) Makes it a crime for a person to knowingly or willfully pay or offer to pay money or other valuable consideration to another person with the intent to induce the person to vote or to register to vote, or where the payment is contingent upon whether the person voted or the person's voter registration status.
- 2) Makes this crime punishable for 16 months, two years, or three years, or in county jail for up to one year, by a fine of up to \$10,000, or by both fine and imprisonment.
- 3) Defines "other valuable consideration" to include, but not be limited to, a chance to win a lottery or similar prize-drawing contest.
- 4) Establishes that this law does not apply to a person transporting someone or from a voting location, compensation provided to an individual by a governmental entity, and granting time off to an employee to vote.

EXISTING FEDERAL LAW:

- 1) Provides that whoever knowingly or willfully pays or offers to pay any person to register to vote or to vote, or accepts payment for registering to vote or voting, shall be fined not more than \$10,000, imprisoned not more than five years, or both. (52 U.S.C. § 10307(c).)
- 2) Provides that whoever makes or offers to make an expenditure to any person, either to vote or withhold their vote, or to vote for or against any candidate; and whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote, shall be fined or imprisoned not more than one year, or both; and if the violation was willful, shall be fined or imprisoned not more than two years, or both. (18 U.S.C. § 597.)

EXISTING STATE LAW:

- 1) Provides that any person who, in exchange for money or other valuable consideration, assists another to register to vote, must provide their identifying information on the affidavit of registration, as well as the identifying information of the person, company, or organization, if any, that agrees to pay money or other valuable consideration for the completed affidavit of registration. (Elec. Code, § 2159, subd. (a).)

- 2) Requires a person, company, or other organization that agrees to pay money or other valuable consideration, to assist another person to register to vote by receiving or assisting with the submission of a completed affidavit to maintain records, as specified. (Elec. Code, § 2159.5.)
- 3) Authorizes the court, for a conviction for any crime punishable by imprisonment in jail or prison in which no fine is prescribed, to impose a fine of up to \$1,000 for a misdemeanor or up to \$25,000 for a felony, in addition any imprisonment. (Elec. Code, § 18001.)
- 4) Establishes that every person who, in the person's official capacity, knowingly and fraudulently acts in contravention or violation of any laws relating to elections, is, unless a different punishment is prescribed, punishable by fine not exceeding \$1,000 or by imprisonment for 16 months or two or three years, or by both. (Elec. Code, § 18002.)
- 5) States that every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that they are not entitled to registration, is punishable by an alternate felony/misdemeanor. (Elec. Code, § 18100, subd. (a).)
- 6) Provides that a person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official is guilty of a crime punishable as an alternate felony/misdemeanor. (Elec. Code, § 18100, subd. (b).)
- 7) States that every person who knowingly and willfully completes, or causes or procures the completion of, in whole or in part, an affidavit of registration or a voter registration card, with the intent to cause the registration or reregistration as a voter of a fictitious person or of any person who has not requested registration or reregistration as a voter, is guilty of a crime punishable as an alternate felony/misdemeanor. (Elec. Code, § 18101.)
- 8) Provides that knowingly or negligently interfering with the prompt transfer of a completed affidavit of registration to the county elections official, retaining a voter's completed registration card, without the voter's authorization, under specified circumstances, or denying a voter the right to return to their completed registration card, is guilty of a misdemeanor punishable by a fine not to exceed \$1,000. (Elec. Code, § 18103.)
- 9) Specifies that every person is punishable by an alternate felony/misdemeanor who, without the specific consent of the affiant, willfully and with the intent to affect the affiant's voting rights, causes, procures, or allows the completion, alteration, or defacement of the affiant's party affiliation declaration contained in an executed, or partially executed, affidavit of registration, as defined. (Elec. Code, § 18106.)
- 10) States that a person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, except as defined, and fails to sign in his or her handwriting and affix directly on the affidavit of registration specified information, is guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or by up to one year in county, or both. (Elec. Code, § 18108, subd. (a).)
- 11) Provides that a third or subsequent conviction for the above is punishable by up to \$10,000, by up to one year in county jail, or by both. (Elec. Code, § 18108, subd. (b).)

- 12) States that a person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, except as defined, and knowingly misrepresents himself or herself as having helped register another to vote on a registration form, as defined, is guilty of a misdemeanor punishable by a fine of up to \$1,000, by up to six months in county jail, or by both. (Elec. Code, § 18108.1, subd. (a).)
- 13) Provides that a third or subsequent conviction for the above is punishable by a fine of up to \$10,000, by up to one year in county jail, or by both. (Elec. Code, § 18108.1, subd. (b).)
- 14) Provides that a person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to a person who assists another person to register to vote by receiving the completed affidavit of registration, or by assisting with the submission of an affidavit of registration electronically, who fails to sign in his or her handwriting and affix directly on the affidavit of registration specified information, is guilty of a misdemeanor punishable by a fine of up to \$1,000, by up to one year in county jail, or by both. (Elec. Code, § 18108.5, subd. (a).)
- 15) Specifies that a third or subsequent conviction of the above is punishable by a fine of up to \$10,000, by up to one year in county jail, or by both. (Elec. Code, § 18108.5, subd. (b).)
- 16) States that any person who commits fraud or attempts to commit fraud, and any person who aids or abets fraud or attempts to aid or abet fraud, in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony punishable by imprisonment for 16 months or two years or three years. (Elec. Code, § 18500.)
- 17) Makes it an alternate felony/misdemeanor for a person to directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to refrain from voting, vote for any particular person, or refrain from voting for any particular person. (Elec. Code, § 18520.)
- 18) Makes it an alternate felony/misdemeanor for a person to directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person voted, agreed to vote, refrained from voting, or agreed to refrain from voting; remained away from the polls; refrained or agreed to refrain from voting; or induced any other person from any of the above. (Elec. Code, § 18521.)
- 19) Makes it an alternate felony/misdemeanor for a person or a controlled committee to directly or through any other person or controlled committee pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to induce or reward any voter for refraining from voting at any election, voting or refraining from voting at an election for any particular person or measure, or remaining away from the polls at an election. (Elec. Code, § 18522.)
- 20) Makes it an alternate felony/misdemeanor for a person to directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, shall be used in bribery at any election, or knowingly pay or cause to be paid any money or other valuable thing to any

person in discharge or repayment of any money, wholly or in part, expended in bribery at any election. (Elec. Code, § 18523.)

- 21) Makes it an alternate felony/misdemeanor for a person to directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, will be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of that person or to induce that person to vote for any particular person or measure. (Elec. Code, § 18524.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "In October 2024, Elon Musk's 'America PAC' announced a \$1 million lottery for individuals in swing states who signed a petition supporting the First and Second Amendments. Despite vote buying being illegal, Musk and the PAC argued that they weren't directly paying people to vote in a specific way. Musk and America PAC claimed legality on the basis that they weren't technically paying someone to vote in a particular manner. However, it can still be inferred that America PAC created an alluring offer that likely incentivized constituents to register to vote if they had not already done so with a designated swing state. Federal law explicitly prohibits anyone from knowingly or willingly paying or offering to pay or accepting payment either for registration to vote or for voting. At the very least, what Elon Musk has done is spit in the face of our forefathers, longstanding campaign ethics, and federal election law. At least we know he's consistent in his blatant disregard for the rule of law. Californians should not tolerate such blatant interference with our elections by wealthy oligarchs like Elon Musk. We need to hold those who seek to bend our institutions to their own selfish whims, accountable. If Mr. Musk wants to muck around in elections ethics, he can try that in Texas. My bill, SB 398 will make it clear that such electioneering is not welcome in California."
- 2) **Effect of the Bill:** This bill would clarify that existing prohibitions against providing consideration to a person as a means of inducing them to vote or for actually voting includes lotteries or other prize-drawing style contests.

The ability for the American people to choose their leaders through a confidential and secure voting process is sacrosanct. Despite attacks on this process by some officials, including some elected through our democratic process, we had a relatively long history of confidence in the veracity of the outcomes and mostly peaceful transfers of power.¹ At the dawn of Civil Rights era, in 1960, President Dwight Eisenhower said, "In the long perspective of history, the right to vote has been one of the strongest pillars of a free society. Our first duty is to protect this right against all encroachment."² Restoring voter confidence in elections is

¹ See *The 2020-21 Presidential Transition: Lessons Learned and Recommendations* (Jan. 20, 2022) Center for Presidential Transition <<https://presidentialtransition.org/reports-publications/2020-21-lessons-learned/>> [as of June 30, 2025].

² Annual Message to the Congress on the State of the Union, The American Presidency Project (Jan. 7, 1960) <<https://www.presidency.ucsb.edu/documents/annual-message-the-congress-the-state-the-union-6>> [as of June 5, 2025].

essential to the success of our experiment in self-government.³ This bill attempts to protect Californians' right to freely and securely vote by prohibiting rewarding actual or likely voters through a lottery or contest.

During the 2024 U.S. Presidential Election, billionaire Elon Musk's political action committee "America PAC" announced that it was giving away \$1 million per day to *registered voters* in swing states who signed his petition supporting the First and Second Amendments.⁴ As one scholar noted, "The law prohibits paying people to vote, to register to vote, or to vote in a particular way or not in a federal election. This is none of those things."⁵ In Pennsylvania, the Philadelphia District Attorney tried suing to block America PAC's effort alleging that the payouts were an illegal lottery, but he was unsuccessful.⁶ Two weeks prior to a state Supreme Court election, Musk's group was using a nearly identical tactic, offering \$100 to Wisconsin voters to sign a petition in opposition to "activist judges."⁷

According to information provided by the author's office: "Musk and America PAC claimed legality on the basis that they weren't technically paying someone to vote in a particular manner. However, it can still be inferred that the America PAC created an alluring offer that likely incentivized constituents to register to vote if they had not already done so with a designated swing state . . . Currently, the problem is that no such crime exists at the state level, limiting enforcements only through federal prosecution."

While California does not currently have a crime on the books squarely directed at prohibiting the type of behavior engaged in by Elon Musk, under California law it is a crime to pay or provide valuable consideration to a person to induce them to vote for a particular person or measure or to reward them for voting for a particular person or measure. (Elec. Code, §§ 18520-18521.) It is also a crime to pay or receive any money or other valuable consideration in order to reward a person or as a reward for voting for or against or agreeing to vote for or against the election or endorsement of any other person as the nominee or candidate of any caucus, convention, organized assemblage of delegates, or other body representing or claiming to represent a political party, candidate, or principle, or any club, society, or association. (Elec. Code, § 18522.) Both offenses are punishable by imprisonment in the county jail for 16 months, two years, or three years. (*Ibid.*)

³ See Cain and Ginsberg, *Restoring Confidence in American Elections* (June 2024) Hoover Institution at Stanford University

<https://www.hoover.org/sites/default/files/research/docs/Restoring_Confidence_in_American_Elections.pdf> [as of June 30, 2024].

⁴ Renshaw, *Elon Musk's Election promise of \$1 million daily giveaway sparks call for probe* (Oct. 20, 2024) Reuters <<https://www.reuters.com/world/us/elon-musk-promises-award-1-mln-each-day-signer-his-petition-2024-10-20/>> [as of June 30, 2025].

⁵ Tenbarge, *Elon Musk's PAC offers \$47 payouts to refer swing state voters to sign petition* <<https://www.nbcnews.com/tech/tech-news/musk-pac-signature-47-pay-refer-swing-state-voters-sign-petition-rcna174310>> [as of June 30, 2025].

⁶ Tanenbaum, *Judge dismisses Philly DA Larry Krasner's lawsuit challenging Elon Musk's \$1 million giveaways* <<https://www.phillyvoice.com/elon-musk-lottery-america-pac-random-court-philadelphia-krasner/>> [as of June 30, 2025].

⁷ Bauer, *Musk group offers \$100 to Wisconsin voters ahead of pivotal state Supreme Court election* <<https://apnews.com/article/wisconsin-supreme-court-musk-trump-b9be6119d500bdacc9c6341be013cd62>> [as of June 30, 2025].

This bill expands on these provisions to prohibit paying money or other valuable consideration to a person with the intent to induce them to vote or where the payment is contingent upon them voting, irrespective of whether they vote for a particular person or measure. This bill also prohibits paying money or valuable consideration to a person with the intent to induce them to register to vote or where the payment is contingent on them registering to vote. This bill would, however, would not apply to a person transporting someone or from a voting location, compensation provided to an individual by a governmental entity, or an employer granting time off to an employee to vote. While this bill expands current prohibitions on paying someone to vote and prohibits paying someone to register to vote, to capture what Musk and America-PAC did under this bill, it will be necessary to show it was done with the intent to induce someone to vote or register to vote.

Also, while this bill specifies that a “lottery or similar prize-drawing contest” is valuable consideration for purposes of inducing votes or registration, as noted above, a Philadelphia judge concluded that what Musk and America PAC did was not an illegal lottery.⁸

- 3) **Argument in Support:** According to *California Clean Money Campaign*, “I am writing to express strong support for SB 398 (Umberg) to criminalize the use of lotteries or similar prize-drawing contests as incentives for voter registration.

“One of the cornerstones of our democracy is the principle that no one should be allowed to buy votes. Federal law prohibits offering payments in exchange for registering to vote or for voting. However, it does not explicitly ban the use of lotteries as incentives for voter registration. This loophole has recently been exploited.

“During the 2024 U.S. Presidential Election, Elon Musk’s “America PAC” conducted a \$1 million lottery for individuals in swing states who signed a petition under the guise of supporting the First and Second Amendments of the U.S. Constitution. Voter registration in a swing state was a prerequisite for entry. In March, America PAC offered Wisconsin registered voters entry into another \$1 million lottery for signing a petition against “activist judges” in a transparent attempt to influence voter registration ahead of Wisconsin’s highly contested Supreme Court race. Elon Musk then tweeted (but took down) that anyone who voted in the election would be eligible to attend his event where they would be eligible for two more \$1 million lottery prizes.

“SB 398 closes these loopholes in California by making offering to pay money or other valuable consideration for another person to register to vote a crime in California and by explicitly counting giving voters “a chance to win a lottery or similar prize-drawing contest” as a violation.

“As now amended, SB 398 also includes offering such monetary compensation based on whether the person voted or the person’s voter registration status, which addresses the types of petitions and offers made by America PAC and Elon Musk. Under SB 398, knowingly or willfully offering such incentives for voter registration would be punishable by imprisonment

⁸ Dale, *Philly DA failed to show that Elon Musk's voter sweepstakes was illegal: Judge* (Nov. 13, 2024) NBC News Philadelphia <<https://www.nbcphiladelphia.com/news/local/philly-da-failed-to-show-that-elon-musks-voter-sweepstakes-was-illegal-judge/4027537/>> [as of June 30, 2025].

for up to three years and/or a fine of up to \$10,000, conforming to Section 1170 of the Penal Code.

“Neither billionaires nor anyone else should be able to circumvent federal bans on payments for voter registration by offering lotteries or prize-drawing contests to individuals likely to hold certain political views. SB 398 is thus a critical addition to California law to ensure this practice is prohibited.”

- 4) **Argument in Opposition:** According to the *San Francisco Public Defender’s Office*, “I write in respectful opposition to SB 398 (Umberg). While the bill may be well-intentioned, it creates an unnecessary, new felony within our criminal legal system...”

“The United States has the highest rate of incarceration in the world – with this nation making up less than 5% of the world’s population, but nearly 25% of the world’s total prison population. While California has recently made some progress in reducing its incarceration rate, that progress cannot continue if proposals for creating new felonies are passed.

“California must invest in effective and less expensive ways to ensure that billionaires do not buy elections, such as championing campaign finance reform, increasing transparency, and passing laws that amplify the voices of everyday Californians.”

5) **Prior Legislation:**

- a) AB 2839 (Pellerin), Chapter 262, Statutes of 2024, would prohibit a person, committee, or other entity from knowingly distributing an advertisement or other election communication that contains certain materially deceptive content with malice, as defined, subject to specified exemptions.
- b) AB 2642 (Berman), Chapter 533, Statutes of 2024, would prohibit a person from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other person for engaging in specified election-related activities.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy
California Clean Money Campaign
Election Integrity Project California
Indivisible CA Statestrong

Oppose

San Francisco Public Defender

Analysis Prepared by: Dustin Weber / PUB. S. / (916) 319-3744