

## SENATE THIRD READING

SB 398 (Umberg)

As Amended July 3, 2025

Majority vote

**SUMMARY**

Makes it a crime for a person to pay or offer to pay money or other valuable consideration with the intent to induce another person to vote or register to vote, or where the payment is contingent upon whether the person voted or the person's voter registration status.

**Major Provisions**

- 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) Defines "other valuable consideration," for the purposes of this bill, to include a chance to win a lottery or similar prize-drawing contest, and to exclude certain acts, such as transportation to or from a voting location, compensation provided to an individual by a governmental entity, and granting time off to an employee to vote.
- 3) Provides that a violation of this prohibition is punishable by a fine of up to \$10,000, imprisonment for 16 months or two or three years, or in a county jail not exceeding one year, or by both a fine and imprisonment.

**COMMENTS**

Existing federal law prohibits paying or providing anything of value to any person to register to vote or to vote, or for accepting payment for registering to vote or voting in a federal election. State law prohibits paying or providing anything of value to any person to vote or refrain from voting for a particular candidate or measure. State law does not expressly prohibit providing someone with a thing of value (e.g., a dozen donuts; a chicken dinner) for voting in a local or state election where no federal offices are on the ballot.

A 2017 United States Department of Justice manual on prosecuting election crimes provides that the federal law prohibition on paying or providing anything of value for a person to register to vote or to vote includes any payment "having monetary value, including cash, liquor, lottery chances, and welfare benefits such as food stamps...However, offering free rides to the polls or providing employees paid leave while they vote are not prohibited...Such things are given to make it easier for people to vote, not to induce them to do so. This distinction is important. For an offer or a payment to violate [federal law] it must have been intended to induce or reward the voter for engaging in one or more acts necessary to cast a ballot. [Federal law] does not prohibit offering or giving things having pecuniary value, such as a ride to the polls or time off from work, to help individuals who have already made up their minds to vote to do so."

According to the author, federal law does not expressly prohibit the use of lotteries as a registration incentive and currently no such crime exists at the state level, limiting enforcement only through federal prosecution.

The language of the bill is broad as it not only makes it a crime to pay someone with the intent of inducing them to vote or register to vote, but also where the payment is contingent upon whether the person voted or the person's voter registration status. The broad nature of the prohibition could result in unintended consequences.

Please see the policy committee analysis for a full discussion of this bill.

### **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."

### **Arguments in Support**

In support of this bill, California Civil Liberties Advocacy, writes: "SB 398...smartly aligns California law with long-standing federal prohibitions on vote buying (52 U.S.C Section 10307), codifying a consistent legal standard across jurisdictions. The inclusion of calibrated penalties under Penal Code Section 1170(h) reflects a proportionate and practical enforcement model that will not burden counties or over-penalize marginal conduct. By targeting only knowing and willful conduct that crosses the line from civic participation into inducement or conditional compensation, SB 398 preserves the space for nonprofit organizations, educators, and community leaders to promote voter participation through outreach, education, and engagement—without fear of running afoul of vague or overly broad laws."

### **Arguments in Opposition**

In opposition to a previous version of this bill, the San Francisco Public Defender's Office, wrote: "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."

## FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) One-time costs of approximately \$120,000 to the Secretary of State (SOS) to add and translate information about the new crime to the SOS's "Guide to Voter Registration Drives" and notices about a voter's right to time off to vote (General Fund).
- 2) Ongoing cost pressures (General Fund (GF) or Trial Court Trust Fund (TCTF)) of an unknown, but potentially significant amount, to the trial courts in increased workload, as this bill creates a new crime. A criminal defendant is entitled to no-cost legal representation and a jury trial. It is unclear how many new charges may be filed statewide, but the estimated workload cost of one hour of court time is \$1,000. Although courts are not funded on the basis of workload, increased pressure on staff and the TCTF may create a demand for increased court funding from the GF to perform existing duties. The Budget Act of 2025 provides \$82 million ongoing GF to the TCTF for court operations.
- 3) Potential ongoing costs to the California Department of Corrections and Rehabilitation (CDCR) (GF) and non-reimbursable costs to county jails, to the extent this bill results in additional incarcerations. Actual costs depend on the number of charges and convictions, defendants' criminal histories, and judicial discretion, all of which is unknown. The average annual cost to incarcerate a person is approximately \$133,000 for CDCR and \$29,000 for a county jail. California county jails are increasingly overcrowded. Although new crimes are not considered reimbursable state mandates, overcrowding in county jails creates cost pressure on the GF because the state has historically granted new funding to counties to offset overcrowding after the 2011 Realignment Act.

## VOTES

### SENATE FLOOR: 38-0-2

**YES:** Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

**ABS, ABST OR NV:** Limón, Reyes

### ASM ELECTIONS: 7-0-0

**YES:** Pellerin, Macedo, Bennett, Berman, Solache, Stefani, Tangipa

### ASM PUBLIC SAFETY: 9-0-0

**YES:** Schultz, Alanis, Mark González, Haney, Harabedian, Lackey, Nguyen, Ramos, Sharp-Collins

### ASM APPROPRIATIONS: 15-0-0

**YES:** Wicks, Sanchez, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache, Ta, Tangipa

**UPDATED**

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