

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 2050 (Pellerin) – As Introduced February 1, 2024

**SUBJECT:** Voter registration database: Electronic Registration Information Center

**SYNOPSIS**

*This bill allows 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 As a result of these theories, a number of states have withdrawn, falling from 33 states a year ago to 24 states and the District of Columbia as of April 2024. No evidence supporting the accusations has been forthcoming and the conspiracy theories have been largely debunked.*

*Last year, when the Committee heard a substantially similar bill there were significant privacy concerns. 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. That bill and this one change California's longstanding policy to protect certain personal identifying voter information from disclosure.*

*In the form last year's bill came to this Committee, it 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 was unclear what, if anything, would prevent ERIC or other states who had joined ERIC from sharing the 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 built in additional protections into the bill. This bill maintains those changes and is identical to the amended bill last year.*

*This bill is author sponsored and is supported by the California Association of Clerks and Election Officials and the California State Association of Counties.*

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

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

- 1) Authorizes the SOS, if the membership application is approved, to execute a membership agreement with ERIC on behalf of the state.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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 are by nature free and independent and have inalienable rights. Among these the fundamental right to privacy. (Cal. Const. art. I, § 1.)
- 2) States that the "right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them." Further states these findings of the Legislature:
  - a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.
  - b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.

- c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits. (Civ. Code § 1798.1.)
- 3) Establishes the Information Practices Act of 1977, which places restrictions on state agencies collecting and sharing an individual's personal information. (Civ. Code § 1798 et seq.)
- 4) Requires that each state agency maintain in its records only personal information that is relevant and necessary to accomplish the purpose of the agency. (Civ. Code § 1798.14.)
- 5) Requires that each agency collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source. (Civ. Code § 1798.15.)
- 6) Permits a person who is a United States (US) 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 to register to vote in any local, state, or federal election. (California Constitution, Article II, §§2, 4.)
- 7) Requires each state, pursuant to the federal Help America Vote Act of 2002 (HAVA), to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state. (52 U.S.C. §21083.)
- 8) Requires certain information on an affidavit of voter registration, such as the voter's name, home address, telephone number, email address, and party preference, to be provided to, among others, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the SOS. (Elections Code §2194(a).)
- 9) Requires an affiant's driver's license number, identification card number, social security number (SSN), and the signature contained on an affidavit of registration or voter registration card to be confidential and not be disclosed, as specified. (Elections Code §2194(b).)
- 10) Provides the home address, telephone number, e-mail address, precinct number, or other number specified by the SOS for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters, are confidential and shall not be disclosed to any person, except as specified pursuant to existing law. (Government Code §7924.000.)
- 11) Prohibits a person who requests voter information pursuant to existing law or who obtains signatures or other information collected for an initiative, referendum, political party qualification, or recall petition from sending that information outside of the US or making it available in any way electronically to persons outside the US, including, but not limited to, access over the Internet. (Elections Code §2188.5.)
- 12) 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).)

- 13) 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.)
- 14) 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).)
- 15) 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.)

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

**COMMENTS:**

1) **Purpose of this bill.** This bill would allow 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:

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.

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. Becoming an ERIC member state is a natural next step in California's mission to improve the accessibility and ease of voting.

3) **AB 1206 (Pellerin).** Last year, when the Committee heard a substantially similar bill there were significant privacy concerns. 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. That bill and this one change California's longstanding policy to protect certain personal identifying voter information from disclosure.

In the form last year's bill came to this Committee, it 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 was unclear what, if anything, would prevent ERIC or other states who had joined ERIC from sharing the 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 built in additional protections into the bill to 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.

This bill maintains those changes and is identical to the amended bill last year.

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 2012 and is owned, governed, and funded by the states that choose to join. As of April 2024, Washington D.C. and 24 states are members of ERIC (this is a reduction from the 33 states that belonged in April 2023).<sup>1</sup>

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

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<sup>1</sup> More information on the current ERIC membership is available at <https://ericstates.org/who-we-are/>.

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.<sup>2</sup>

This bill authorizes 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.<sup>3</sup>

6) **States Withdrawing from ERIC.** A number of states have withdrawn from ERIC over the last year. 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.

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<sup>2</sup> More information available at <https://ericstates.org/how-does-it-work/>.

<sup>3</sup> Birkeland, *Colorado accidentally sent voter registration notices to 30,000 residents who are not citizens*, Colorado Public Radio (Oct. 7, 2022), <https://www.cpr.org/2022/10/07/colorado-voter-registration-notices-non-citizens/>.

Unfortunately, over the last few years, 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.<sup>4</sup>

7) **Privacy implications 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. Like AB 1206 last year, 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 without the individuals' consent. 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) **ERIC cybersecurity policy.** According to documents from the ERIC website, there are three primary components to ERIC's data matching process: data collection, anonymization, and file transfer.

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<sup>4</sup> Clapman, *States Cave to Conspiracy Theories and Leave Voter Data Cooperative, ERIC*, Brennan Center for Justice (Mar. 13, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/states-cave-conspiracy-theories-and-leave-voter-data-cooperative-eric>.

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.<sup>5</sup>

10) **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.<sup>6</sup> 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. This bill explicitly prohibits the sharing AB 60 restricted drivers’ licenses and identification cards in order to protect the personal

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<sup>5</sup> More information on ERIC’s data security is available at <https://ericstates.org/security/>.

<sup>6</sup> Kitson, *Undocumented Californians Significantly Contribute to State and Local Revenue* (Apr. 2019), <https://calbudgetcenter.org/resources/undocumented-californians-significantly-contribute-to-state-local-revenue/>.

information of California residents who may be lacking the proper documentation to be verify that they are in the United States legally.

11) **Related legislation.** AB 1206 (Pellerin) of 2023, is substantially similar to this bill. AB 1206 was held on the Assembly Appropriations Committee's suspense file. AB 1206 passed out of the Committee on Elections on a 7-0 vote and passed out of the Committee on Privacy and Consumer Protection on a 9-1 vote.

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 2375 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.

**ARGUMENTS IN SUPPORT:** The Institute for Responsive Government Action writes in support:

ERIC is one of the best tools a state can adopt to efficiently identify movers and update registration records accordingly. By pooling information across multiple states, ERIC provides reliable, targeted data for updating voters who have moved within and between states and allows election officials to begin the process of removal for voters who have left the state. To date, ERIC has flagged nearly 40 million movers nationwide.

This data on movers is crucial to the functioning of California's elections. Accurate registration records are the backbone of an effective election system. This is particularly true in a vote by mail jurisdiction like California. Accurate registration records ensure that voters are registered at the correct location and that election mail (including mail ballots) actually reaches the correct address. In the absence of these updates, ballots would be returned undeliverable or never reach voters. Voters would lose the benefit of voting by mail and would be forced to update their registration through other methods, including at the polls on election day. Better address data from ERIC is a win-win for election officials and voters,

saving time, money, and effort for clerks while increasing accessibility and reducing hassles for voters.

**ARGUMENTS IN OPPOSITION:** In opposition, ACLU California Action warns:

In addition to . . . grave privacy concerns, participation in ERIC could put California voters at risk of being moved to inactive status, depriving them of important elections-related mailings and information, or worse, eventually triggering wrongful removal from the voter file.

Joining ERIC could disproportionately disenfranchise voters of color by improperly flagging them as having changed addresses. One study published in 2021 asserted: “Consistent with concerns about the potential disparate racial impact of voter list maintenance, we find that minority registrants in the movers poll books were more than twice as likely as white registrants in the movers poll books to vote at the address flagged by ERIC as out of date.”<sup>3</sup> In fact, that study estimated that about 9% of those who cast a ballot in Wisconsin in 2018 did so at the address of registration that ERIC had marked as out of date, raising serious concerns of voter disenfranchisement.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Environmental Voters (formerly CLCV)  
California State Association of Counties  
City Clerks Association of California  
Institute for Responsive Government  
Los Angeles County

##### **Opposition**

ACLU California Action  
Election Integrity Project California

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