

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2050 (Pellerin)  
Version: May 20, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
ME

**SUBJECT**

Voter registration database: Electronic Registration Information Center

**DIGEST**

This bill diminishes the privacy rights of Californians who have registered to vote in California and who are registered with the California Department of Motor Vehicles. The bill permits the sharing of the personal information of Californians with an out of state nonprofit who will share this personal information with other states. The stated purpose of the bill is to better ensure electoral integrity. While the bill has guarantees about protecting the personal information received from out of state residents, the bill cannot guarantee that other states that will gain access to voter's personal information will actually protect that information. Proponents argue that the benefit the bill provides to democracy outweighs privacy concerns.

**EXECUTIVE SUMMARY**

This bill changes California's longstanding policy to protect certain personal identifying voter information from disclosure. This bill overturns California's privacy laws, including voter privacy law, to allow the Secretary of State (SOS) to provide confidential voter data and Department of Motor Vehicle data to an out-of-state nongovernmental organization and then to other specified states without the consent of each individual. Proponents contend that the personal information is protected through the system set up by the nongovernmental organization and that the benefit to democracy of maintaining accurate voter rolls outweighs any privacy concerns.

The bill is sponsored by the California Association of Clerks and Election Officials, is supported by the California State Association of Counties, County of Los Angeles, City Clerks Association of California, California Environmental Voters, Institute for Responsive Government Action, and California Secretary of State, Dr. Shirley N. Weber. The American Civil Liberties Union California Action and the Election Integrity Project California, Inc. oppose the bill. AB 2050 passed the Senate Elections and Constitutional Amendments Committee on a vote of 6 to 1.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the California Constitution, that all people are by nature free and independent and have inalienable rights. Among these rights is the fundamental right to privacy. (Cal. Const. art. I, § 1.)
- 2) Provides 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,” and 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; and
  - 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) Defines “personal information” pursuant to the Information Practices Act as: any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, the individual’s name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. (Civ. Code § 1798.3 (a))
- 5) 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.)
- 6) 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.)
- 7) Permits a person who is 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 to register to vote in any local, state, or federal election. (Cal. Const., Art. II, §2, §4.)

- 8) 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.)
- 9) 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. (Elec. Code §2194(a).)
- 10) Requires an affiant's driver's license number, identification card number, social security number, and the signature contained on an affidavit of registration or voter registration card to be confidential and not be disclosed, as specified. (Elec. Code §2194(b).)
- 11) Provides that 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. (Gov. Code §7924.000.)
- 12) 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. (Elec. Code §2188.5.)
- 13) 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).)
- 14) 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, and establishes that such documents and information are not a public record. (Veh. Code § 12800.7.)

- 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.)
- 16) Provides that notwithstanding any other law, the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter, or added to voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), are confidential and shall not be disclosed to any person. (Elec. Code § 2194 (b).)

This bill:

- 1) Allows the SOS to apply for membership with the Electronic Registration Information Center, an out of state nonprofit.
- 2) Provides that if the membership application is approved by the nonprofit, the SOS may execute a membership agreement with the nonprofit on behalf of the state.
- 3) The SOS is required to ensure that any confidential information or data provided by another state to the SOS remains confidential while in the SOS's possession.
- 4) Specifies that unless otherwise provided in this bill, the SOS will be able to provide confidential information or data to any person or any organization pursuant to an agreement the SOS enters into with the nonprofit. Specifies that the privacy protections afforded to Californians pursuant to Government Code § 7924.000 and Elections Code § 2194 (b)(1) will no longer protect confidential information or data from being sent to persons or organizations pursuant to the agreement referenced in 1), above.
- 5) Specifies that information or data related to citizenship or any driver's license or identification card issued pursuant to Vehicle Code § 12801.9 shall not be disclosed to any person or organization pursuant to an agreement entered into under this bill with the state and the nonprofit.
- 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 in 4), above.
- 7) Requires the SOS to consult with the California Privacy Protection Agency on the development of any regulations related to the nonprofit.
- 8) Requires the SOS to receive a specified certification from the Department of Technology (DOT) before the SOS can send information or data to the nonprofit.

- 9) Provides that before sending any information or data to the nonprofit, the SOS shall receive a certification from the DOT that all proper cybersecurity protections, as determined by the DOT, are in place to allow the SOS to send, and the nonprofit to receive, the data required by the nonprofit. Provides that if the nonprofit changes its data requirements, the SOS shall receive a new certification from the DOT certifying that all proper cybersecurity protections, as determined by the DOT, are in place to allow the SOS to send, and the nonprofit to receive, the data required by the nonprofit.

### COMMENTS

1. Stated need for the bill

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.

California Environmental Voters writes the following in support of AB 2050:

California Environmental Voters (formerly, The California League of Conservation Voters) is writing to express our support as this bill would require the Secretary of State to ensure that any confidential information or data provided by another state remains confidential and would authorize the Secretary of State to transmit confidential information or data pursuant to that agreement. ERIC, a non-profit data consortium, is respected across the political spectrum and works to help election officials maintain and improve the accuracy of state voter rolls. California would join the 30+ other states who transmit data to ERIC, allowing us a wealth of information that would make our voter rolls more accurate.

Recently, California has made significant improvements to voter registration and voter accessibility, and still, we need to robustly expand the electorate and bring millions more voters into our voter registration system.

Secretary of State Shirley N. Weber, Ph.D. writes, "I agree with the author that this measure is a helpful mechanism that may help close the voter registration gap and improve the accuracy of our voter rolls."

The California Association of Clerks and Election Officials writes the following in support of AB 2050:

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

AB 2050 would also require the Secretary of State to ensure that any confidential information or data provided by another state remains confidential and would authorize the Secretary of State to securely transmit certain confidential information or data pursuant to that agreement. The bill would also authorize the Secretary of State to develop regulations necessary to implement these provisions in consultation with the California Privacy Protection Agency.

## 2. The Electronic Registration Information Center (ERIC)

This bill allows the SOS to join the Electronic Registration Information Center (ERIC). ERIC is a nonprofit organization that was created to enable state election officials to share voter information with each member state to improve the accuracy of the voter rolls and to identify potential unregistered eligible voters. According to the ERIC website, "ERIC is a public charity non-profit membership organization comprised of 24 states and the District of Columbia. ERIC's mission is to assist states in improving the accuracy of America's voter rolls and increasing access to voter registration for all eligible citizens." ERIC allows states to compare voter data with each other. Each state is required to submit voter registration and motor vehicle department data to ERIC. The data submitted includes names, addresses, dates of birth, driver's license or state ID numbers, and the last four digits of the social security number. The District of Columbia is a member of ERIC as well as these states: Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Illinois, Kentucky, Maine, Massachusetts, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Washington, and Wisconsin.

According to ERIC's website:

At least every 60 days, each member submits their voter registration data and licensing and identification data from motor vehicle departments (MVD) to ERIC. ERIC refers to these data as Member Data. ERIC's technical staff uses sophisticated data matching software to compare Member Data from all member states, sometimes with data from other sources, to create the following four "list maintenance" reports.

1. Cross-State Movers Report: Identifies voters who appear to have moved from one ERIC member to another using voter registration data and MVD data.
2. In-State Updates Report: Identifies voters who appear to have moved within the jurisdiction, or who recently updated their contact information, using voter registration and MVD data.
3. Duplicate Report: Identifies voters with duplicate registrations in the same state using voter registration data and MVD data.
4. Deceased Report: Identifies voters who have died using voter registration data and Social Security death data known as the Limited Access Death Master File and MVD data.

In addition, ERIC offers three other reports:

1. Eligible but Unregistered Report: Identifies individuals who appear to be eligible but who are not yet registered by matching voter registration data against MVD data.
2. National Change of Address (NCOA) Report: Identifies voters who have moved using official data ERIC licenses from the US Postal Service.
3. Voter Participation Report: For each federal general election, members can request reports identifying voters who appear to have voted more than once in the member jurisdiction in the same election, in more than one member jurisdiction in the same election, or on behalf of a deceased voter within the member jurisdiction.

Address validation is important and there are other tools available to help election officials identify addresses that may not be valid for the purposes of voter registration. Currently, ERIC does not investigate the validity of an address in a member's voter registration record. Simply put, ERIC compares a member's voter records to other members' voter records, MVD records, and to federal deceased data and national change of address data, for the purposes of flagging differences that indicate a member's voter record may be out of date or inaccurate. This is different from analyzing an address in a voter record to determine if the address is valid.

The agreement that California would be required to agree to in order to belong to ERIC highlights limitations in liability on the part of ERIC in the event there is unauthorized disclosure of information.<sup>1</sup> The bylaws specify the following, among other provisions:

Notice of Unauthorized Disclosure of Data/Indemnification-ERIC: Should there be an unauthorized disclosure of Member Data, Third-Party Data, or ERIC Reports by ERIC, whether accidental or intentional or the responsibility of a third party (“ERIC Unauthorized Disclosure”), ERIC shall immediately give notice to Members and take such other steps as required by law, insurance policies, and its incident response plan. ERIC shall keep the membership reasonably apprised of the steps it is taking to address the ERIC Unauthorized Disclosure. Understanding that ERIC’s primary source of funds are fees and dues paid by Members, and subject to consultation and approval by the Board, ERIC agrees to indemnify, defend, and hold harmless state motor vehicle agencies against any claims related to an ERIC Unauthorized Disclosure attributable to a negligent act or omission by ERIC, capped at the limit of any applicable ERIC insurance policy.

Additionally, the agreement that all member states enter into with ERIC specifies the following: “Should there be an unauthorized or impermissible use, access, acquisition, or disclosure or transmission of an ERIC Report, Member Data, Third-Party Data or protected ERIC Information, regardless of whether it is accidental or intentional (for example, Member intentionally sells, distributes, publishes or uses an ERIC Report for a purpose other than election administration, including a commercial purpose) or by a third party,” members shall take specified steps of notifying ERIC and engage in a remediation process. A member state can be removed if they do not follow the process agreed to between ERIC and the state. Member states also must agree to indemnify, defend, and hold ERIC harmless “against any claims or losses related to or stemming from the Unauthorized Disclosure.” Specifically, the agreement provides that “[t]o the extent permitted under each Member’s state law, the Member agrees to indemnify, defend and hold harmless ERIC against any claims or losses related to or stemming from the unauthorized disclosure.”

### 3. Privacy concerns

Californians provide their sensitive personal information to the Department of Motor Vehicles in order to obtain a driver’s license or state identification. Californians provide our personal information to elections officials in order to register to vote. This is done with the expectation that each person’s personal information will be protected because it has historically been protected through statute and the constitution. Californians have a right to privacy that is enshrined in the California Constitution and our personal information is protected through a series of state laws. The American Civil Liberties

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<sup>1</sup> Bylaws of the Electronic Registration Information Center, Inc., available at [ERIC Bylaws & Membership Agreement \(ericstates.org\)](https://ericstates.org) [as of June 29, 2024]



Union California Action explains the expectation of privacy that Californians are entitled to and the various laws that exist to protect our personal information. They write the following in opposition to AB 2050:

[This bill] would require the California Secretary of State (SoS) to share sensitive data with the Electronic Registration Information Center (ERIC) in conflict with California's longstanding strict privacy statutes and constitutional requirements that protect such data.

While we appreciate the guardrails that the author has added to the bill in an attempt to safeguard Californians' privacy, our concerns about confidentiality of private information and problematic errors in the ERIC system persist. In addition, recent problems related to the accuracy of ERIC's data sharing and matching programs show that voters could be erroneously flagged for removal from the voter file and wrongfully disenfranchised.

ERIC is a non-profit corporation governed by a board of directors made up of representatives from member states. ERIC collects personal data from a variety of sources on residents of those member states. Membership in ERIC requires a state to transmit to ERIC voter file data and motor vehicle license and identification records, and requires member states to make best efforts to transmit data on individuals from other state agencies that perform voter registration functions.

AB 2050 would enable the SoS to "provide confidential information or data to persons or organizations pursuant to an agreement entered into under this section." AB 2050 does provide for a narrow exclusion of information related to citizenship or any driver's license or voter ID card secured under AB 60 (Chapter 524: Statutes of 2013), but that exclusion highlights the other personal information that would be shared with ERIC under such an agreement. AB 2050 does not contain any requirements that the SoS inform voters that their personal voter registration information is being shared, nor does the bill require a voter to consent to their personal information being shared. California could thus participate in ERIC and share, without an individual's knowledge or consent, sensitive voter file, motor vehicle, and potentially other government agency data in spite of California Vehicle Code, Elections Code, and Civil Code provisions that explicitly protect this data.

First, the California Department of Motor Vehicles is explicitly prohibited from sharing residence address data. California Vehicle Code Section 1808.21(a) states, "Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.22 or 1808.23." Sections 1808.22 and 1808.23 provide exceptions that would not apply to ERIC.

Second, California Elections Code 2194(b)(1) states, “the California driver’s license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to the voter registration records to comply with the requirements of the Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.), are confidential and shall not be disclosed to any person.” There are no exceptions.

Third, California has a comprehensive ban on state agencies sharing data. California Civil Code Section 1798.24 states “[a]n agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains.” That code section includes a list of exceptions, none of which would include ERIC.

Participation in ERIC also conflicts with Article I, Section 1 of the California Constitution, which guarantees an inalienable right to privacy. Placed in the Constitution by ballot proposition in 1972, this provision has been read by the State Supreme Court to create “a legal and enforceable right of privacy for every Californian,” enforceable against the government and private parties.

In addition to these 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.” 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.

Supporters of the bill note that having accurate voter registration lists is critical for democracy. As explained by Professor Michael Morse from the University of Pennsylvania, Penn Carey Law School:

Accurate lists promote both electoral integrity and voter access, since voters typically must be registered to vote where they reside, even if they’ve moved. In contrast, inaccurate lists are not benign – they limit access, because voters with outdated registrations can have difficulty voting, and offer a foothold for false narratives of fraud. But accurate lists require the sharing of confidential

data. ERIC is the best tool for achieving accurate lists through list maintenance, and the ACLU does not suggest otherwise. [citations omitted]

As I've written, voter registration lists are best understood as the vulnerable backbone of election administration. The problem is that our mobile electorate is scattered across different state registration lists. The result is our lists are both inaccurate and incomplete – more than a tenth of the electorate is likely registered at their former address and more than a third not registered at all. The solution has become list maintenance – or, identifying when voters, previously registered at one address, subsequently move or die, often by matching administrative data.

In 2014, a commission appointed by President Obama encouraged states to “share data and synchronize voter lists so that states, on their own initiative, come as close as possible to creating an accurate database of all eligible voters.” But if the idea of state coordination is simple, its implementation is not. In general, state voter registrations often lack a unique national identifier because of federal privacy restrictions on the collection of Social Security numbers. As a result, simply comparing voter registration lists across states can manufacture the appearance of fraud when none exists – because there are too many people who share the same name and date of birth for reliable comparison. ERIC unifies our disjointed registration lists by incorporating motor vehicle records too, which typically connect an individual with both their state driver's license number and Social Security number. ERIC can thus reliably compare voter registration records across states and with the federal death list, which is indexed by Social Security number.

The allure of privacy leads the ACLU to assume that more data protections are always better. But that approach unwittingly sacrifices sound election administration. A system where election administration is decentralized, where voters are mobile, and where privacy protections strangle the flow of information, will be inaccurate. In contrast, AB 2050 strikes a better balance, permitting the limited sharing of confidential information with significant protections. For one, AB 2050 is similar to the legislative authorizations of many other ERIC states, including its certification of cybersecurity protections. For another, ERIC uses one-way hashing to protect sensitive data.

For additional information regarding data security, please visit ERIC's website at: [Security - ERIC, Inc. \(ericstates.org\)](https://ericstates.org). The website explains, among other things, that ERIC's “data center is hosted by a U.S. based vendor.”

4. Respecting the privacy rights of Californians and providing them with agency over their personal information

The Committee may wish to amend the bill to require that the SOS to receive consent from an individual before their information is used in any transaction involving ERIC. The public policy of the state of California has been protective of the people's right to privacy. In line with our strong public policy to protect the personal information of Californians, the Committee may wish to ensure that a person affirmatively opts in to this program. At the very least, this Committee may wish to require that a person be notified that their information will be shared with ERIC and be given a meaningful opportunity to opt out. The bill in print provides no notice to Californians who would have their personal information shared with ERIC.

**SUPPORT**

California Association of Clerks and Election Officials (sponsor)  
California Environmental Voters  
California Secretary of State Shirley N. Weber, Ph.D.  
California State Association of Counties  
City Clerks Association of California  
County of Los Angeles  
Institute for Responsive Government Action  
One individual

**OPPOSITION**

American Civil Liberties Union California Action  
Election Integrity Project California, Inc.

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 1206 (Pellerin, 2023) was substantially similar to this bill. The bill was held on suspense in the Assembly Appropriations Committee.

AB 1766 (Stone, Chap. 482, Stat. 2022) required that by January 1, 2027, the 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) was substantially similar to this bill, but would have required the SOS to apply for membership in ERIC. SB 1316 was not heard in any policy committee.

AB 2375 (Oberholte, 2018) would have permitted the SOS to apply for membership with ERIC. AB 2375 was held on suspense in the Assembly Appropriations Committee.

AB 2433 (T. Allen, 2016) was substantially similar to AB 2375. AB 2433 was held on suspense in the Assembly Appropriations Committee.

**PRIOR VOTES:**

Senate Elections and Constitutional Amendments Committee (Ayes 6, Noes 1)

Assembly Floor (Ayes 59, Noes 1)

Assembly Appropriations Committee (Ayes 11, Noes 2)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 1)

Assembly Elections Committee (Ayes 7, Noes 0)

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