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**AB-796 Voter registration: California New Motor Voter Program.** (2021-2022)

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**Assembly Bill No. 796**

**CHAPTER 314**

An act to amend Section 5100 of, to amend and renumber Sections 2263, 2265, 2266, 2267, 2268, 2269, and 2270 of, to amend, renumber, and add Sections 2262 and 2264 of, to add Sections 2272, 2273, 2274, and 2276 to, and to add and repeal Section 2275 of, the Elections Code, relating to voter registration.

[ Approved by Governor September 27, 2021. Filed with Secretary of State September 27, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 796, Berman. Voter registration: California New Motor Voter Program.

Existing federal law, the National Voter Registration Act of 1993, requires a state to, among other things, establish procedures to register a person to vote for federal office by an application made simultaneously with a driver's license application. Existing state law requires, in conformance with federal law, that the Secretary of State and the Department of Motor Vehicles establish and implement the California New Motor Voter Program for the purpose of increasing opportunities for voter registration for qualified voters. Existing state law requires the Department of Motor Vehicles to transmit to the Secretary of State specified information related to the person's eligibility to vote, which the person provides when applying for a driver's license or identification card. Existing state law provides that this information transmitted to the Secretary of State constitutes a completed affidavit of registration, and the Secretary of State is required to register the person to vote, unless the person affirmatively declines to register to vote or the person is ineligible to vote, or other specified conditions exist.

This bill would require a driver's license or identification card application, renewal, or change of address notification, as specified, to include a voter registration application and would require the Department of Motor Vehicles to transmit the application to the Secretary of State according to specified deadlines. The bill would require the Department of Motor Vehicles to monitor the timeliness of its transmittals to the Secretary of State, and to provide the Secretary of State information regarding delays and irregularities in its ability to do so. The bill would require the Department of Motor Vehicles and the Secretary of State each to designate an employee to undertake specified responsibilities to ensure compliance with the California New Motor Voter Program and the National Voter Registration Act. The bill would require the Secretary of State to convene a task force that would provide advice and perform other duties with respect to implementing the California New Motor Voter Program.

This bill would incorporate additional changes to Section 5100 of the Elections Code proposed by AB 446 to be operative only if this bill and AB 446 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 2262 of the Elections Code is amended and renumbered to read:

**2263.** (a) The Secretary of State and the department shall establish the California New Motor Voter Program for the purpose of increasing opportunities for voter registration by any person who is qualified to be a voter under Section 2 of Article II of the California Constitution.

(b) This chapter shall not be construed as requiring the department to determine eligibility for voter registration and voting. The Secretary of State is solely responsible for determining eligibility for voter registration, voter preregistration, and voting.

**SEC. 2.** Section 2262 is added to the Elections Code, to read:

**2262.** For purposes of this chapter, the following terms have the following meanings:

(a) "Completed voter registration" and "completed voter registration application" mean the part of the driver's license application containing the voter registration application for an applicant who has not affirmatively declined to register to vote, the transmittal of which is not prohibited by subdivision (f) of section 2265, and which includes the minimum information necessary to prevent duplicate voter registrations and preregistrations, to assess the eligibility of the applicant, and to administer voter registration, preregistration, and other procedures for elections.

(b) "Department" means the Department of Motor Vehicles.

(c) "Driver's license application" means a driver's license or identification card application, renewal, or notification of a change of address pursuant to Section 12800, 12815, 13000, or 14600 of the Vehicle Code.

**SEC. 3.** Section 2263 of the Elections Code is amended and renumbered to read:

**2265.** (a) (1) The department, in consultation with the Secretary of State, shall establish a schedule and method for the department to electronically provide to the Secretary of State the records specified in this section.

(2) The department and the Secretary of State shall develop and enter into an interagency agreement specifying how the department and the Secretary of State will cooperate to fulfill the requirements of this chapter. The agreement shall be updated as necessary, and the current version of the agreement shall be published on the internet website of the Secretary of State, except those parts of the agreement for which publication would compromise security.

(b) (1) The department shall provide to the Secretary of State, in a manner and method to be determined by the department in consultation with the Secretary of State, the following information associated with each person who submits a driver's license application:

(A) Name.

(B) Date of birth.

(C) Either or both of the following, as contained in the department's records:

(i) Residence address.

(ii) Mailing address.

(D) Digitized signature, as described in Section 12950.5 of the Vehicle Code.

(E) Telephone number, if available.

(F) Email address, if available.

(G) Language preference, if available.

(H) Political party preference, if available.

(I) Whether the person chooses to become a permanent vote by mail voter, if available.

(J) Whether the person affirmatively declined to become registered or preregistered to vote during a transaction with the department.

(K) A notation that the applicant has attested that the person meets all voter eligibility requirements, including United States citizenship, specified in Section 2101 and, as applicable, the preregistration eligibility requirements in subdivision (d) of Section 2102.

(L) Other information specified in regulations implementing this chapter.

(2) (A) A completed voter registration application included with a driver's license application and accepted at the department shall be transmitted to the Secretary of State no later than 10 days after the department accepts it.

(B) A completed voter registration application accepted within five days of the last day to register to vote for a federal or statewide election shall be transmitted to the Secretary of State no later than five days after the date of acceptance.

(C) (i) For purposes of establishing the department's transmittal deadlines required by this paragraph and by subdivision (e) of Section 20504 of Title 52 of the United States Code, the completed voter registration application included with the driver's license application shall be deemed accepted on the date the completed voter registration application arrives at the department, whether by mail, in person, electronically, or another manner, the application contains all of the information in paragraph (1) except to the extent paragraph (1) requires certain information to be provided only if available, and the department approves the documentation of identity submitted by the applicant that is required by the Vehicle Code for the type of license or identification card for which the applicant has applied.

(ii) This subparagraph shall become operative upon the completion of the Digital eXperience Platform project described in Item 2740-001-0044 of the Budget Bill of 2021 (Chs. 21 and 69, Stats. 2021), or on July 1, 2025, whichever is earlier.

(3) (A) The department shall accept and transmit a completed voter registration application included with a driver's license application as described in paragraph (2) even if, pursuant to the Vehicle Code, the driver's license application is incomplete or the driver's license or identification card associated with the voter who submitted the voter registration application is inactive due to a failure to pay fees, or any other reason that is unrelated to either of the following:

(i) The department's approval of an applicant's identity documentation pursuant to the Vehicle Code.

(ii) An elections official's ability to prevent duplicate voter registrations or preregistrations, to assess the eligibility of the applicant, or to administer voter registration, preregistration, and other elections procedures.

(B) This paragraph shall become operative upon the completion of the Digital eXperience Platform project described in Item 2740-001-0044 of the Budget Bill of 2021 (Chs. 21 and 69, Stats. 2021), or on July 1, 2025, whichever is earlier.

(4) (A) The department may provide the records described in paragraph (1) to the Secretary of State before the Secretary of State certifies that all of the conditions set forth in subdivision (e) of this section have been satisfied. Records provided pursuant to this paragraph shall only be used for purposes of outreach and education to eligible voters conducted by the Secretary of State.

(B) The Secretary shall provide materials created for purposes of outreach and education as described in this paragraph in languages other than English, as required by the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).

(c) The Secretary of State shall not sell, transfer, or allow any third party access to the information acquired from the department pursuant to this chapter without approval of the department, except as permitted by this chapter and Section 2194.

(d) The department shall not electronically provide records of a person who applies for or is issued a driver's license pursuant to Section 12801.9 of the Vehicle Code because the person is unable to submit satisfactory proof that the person's presence in the United States is authorized under federal law.

(e) Except as provided in paragraphs (2) and (3) of subdivision (b), the department shall commence implementation of this section no later than one year after the Secretary of State certifies all of the following:

(1) The State has a statewide voter registration database that complies with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.).

(2) The Legislature has appropriated the funds necessary for the Secretary of State and the department to implement and maintain the California New Motor Voter Program.

(3) The regulations required by Section 2277 have been adopted.

(f) The department shall not electronically provide records pursuant to this section that contain a home address designated as confidential pursuant to Section 1808.2, 1808.4, or 1808.6 of the Vehicle Code.

(g) It is the intent of the Legislature that the department continue its best practice of sending notice to voters when there is a delay in processing completed voter registration applications. It is further the intent of the Legislature that the notices continue to provide information about alternative options for submitting a voter registration application.

**SEC. 4.** Section 2264 of the Elections Code is amended and renumbered to read:

**2266.** (a) The willful, unauthorized disclosure of information obtained from the department pursuant to Section 2265 to any person, or the use of any false representation to obtain any of that information or the use of any of that information for a purpose other than as stated in Section 2265, is a misdemeanor punishable by a fine not exceeding five thousand dollars (\$5,000) or imprisonment in the county jail not exceeding one year, or both fine and imprisonment.

(b) The Secretary of State shall establish procedures to protect the confidentiality of the information acquired from the department pursuant to Section 2265. The disclosure of this information shall be governed by the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), and the Secretary of State shall account for any disclosures, including those due to security breaches, in accordance with that act.

**SEC. 5.** Section 2264 is added to the Elections Code, to read:

**2264.** (a) Every driver's license application shall include a voter registration application. All of the following apply to the voter registration application included with the driver's license application:

(1) The voter registration application shall require only the minimum information necessary to prevent duplicate voter registrations and to enable the Secretary of State to assess the eligibility of the applicant and to administer voter registration and other procedures for elections.

(2) The voter registration application shall not require any information that duplicates information required for the driver's license application, other than an additional signature or other information required by paragraph (3).

(3) The voter registration application shall include all of the following:

(A) A statement of the voter eligibility requirements, including those regarding citizenship.

(B) An attestation that the applicant meets each voter eligibility requirement.

(C) The signature of the applicant, under penalty of perjury.

(D) An opportunity to decline to register to vote.

(b) A voter who attests to the voter's eligibility shall be registered to vote unless the voter affirmatively declines to register to vote.

**SEC. 6.** Section 2265 of the Elections Code is amended and renumbered to read:

**2267.** (a) If the records of a person designated in paragraph (1) of subdivision (b) of Section 2265 constitute a completed voter registration application, the Secretary of State shall register the person to vote, or, as applicable, preregister the person to vote, unless any of the following conditions is satisfied:

(1) The person's records, as described in Section 2265, reflect that the person affirmatively declined to become registered or preregistered to vote during a transaction with the department.

(2) The person's records, as described in Section 2265, do not reflect that the person has attested to meeting all voter eligibility requirements specified in Section 2101 or, as applicable, all preregistration eligibility requirements in subdivision (d) of Section 2102.

(3) The Secretary of State determines that the person is ineligible to vote or, as applicable, will be ineligible to vote when the person reaches 18 years of age.

(b) If a person who is registered or preregistered to vote pursuant to this chapter does not provide a party preference, the person's party preference shall be designated as "Unknown" on a voter registration index under Article 5 (commencing with Section 2183) of Chapter 2, and the person shall otherwise be treated as a "No Party Preference" voter.

(c) If the Secretary of State receives from the department pursuant to paragraph (1) of subdivision (b) of Section 2265 the records of a person who is currently registered to vote, the Secretary of State shall use the information in the records to update the voter's registration information. If the Secretary of State does not receive information for the voter pursuant to paragraph (1) of subdivision (b) of Section 2265 for which space is provided on the voter registration application, but that information was provided in the voter's previous voter registration application, that information from the voter's previous voter registration application shall remain part of the voter's record.

**SEC. 7.** Section 2266 of the Elections Code is amended and renumbered to read:

**2268.** A person registered or preregistered to vote under this chapter may cancel the person's voter registration or preregistration at any time by any method available to any other registered or preregistered voter.

**SEC. 8.** Section 2267 of the Elections Code is amended and renumbered to read:

**2269.** This chapter does not affect the confidentiality of a person's voter registration or preregistration information, which remains confidential pursuant to Section 2194 of this code and Section 6254.4 of the Government Code and for all of the following persons:

- (a) A victim of domestic violence, sexual assault, or stalking pursuant to Section 2166.5.
- (b) A reproductive health care service provider, employee, volunteer, or patient pursuant to Section 2166.5.
- (c) A public safety officer pursuant to Section 2166.7.
- (d) A person with a life-threatening circumstance upon court order pursuant to Section 2166.

**SEC. 9.** Section 2268 of the Elections Code is amended and renumbered to read:

**2270.** If a person who is ineligible to vote becomes registered or preregistered to vote pursuant to this chapter in the absence of a violation by that person of Section 18100, that person's registration or preregistration shall be presumed to have been effected with official authorization and not the fault of that person.

**SEC. 10.** Section 2269 of the Elections Code is amended and renumbered to read:

**2271.** If a person who is ineligible to vote becomes registered or preregistered to vote pursuant to this chapter and votes or attempts to vote in an election held after the effective date of the person's registration or preregistration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote pursuant to Section 18560, unless that person willfully votes or attempts to vote knowing that the person is not entitled to vote.

**SEC. 11.** Section 2270 of the Elections Code is amended and renumbered to read:

**2277.** The Secretary of State shall adopt regulations to implement this chapter, including regulations addressing both of the following:

- (a) A process for canceling the registration or preregistration of a person who is ineligible to vote, but became registered or preregistered under the California New Motor Voter Program in the absence of any violation by that person of Section 18100.
- (b) An education and outreach campaign informing voters about the California New Motor Voter Program that the Secretary of State will conduct to implement this chapter. The Secretary of State may use any public and private funds available for this and shall provide materials created for this outreach and education campaign in languages other than English, as required by the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).

**SEC. 12.** Section 2272 is added to the Elections Code, to read:

**2272.** (a) The department shall designate an employee, known as the department's National Voter Registration Act (NVRA) coordinator, who shall be responsible for the department's compliance with the requirements of this chapter and the requirements of Section 20504 of Title 52 of the United States Code. The responsibilities of the department's NVRA coordinator include, but are not limited to, all of the following:

- (1) Ensuring the accurate processing and timely transmission of voter registration applications submitted to the department.
- (2) Ensuring employees are trained pursuant to Section 2273.
- (3) Coordinating with the Secretary of State's NVRA coordinator to ensure the department's compliance with this chapter and with Section 20504 of Title 52 of the United States Code.
- (4) Ensuring that the interagency agreement required by Section 2265 is updated as necessary.
- (5) Preparing monthly reports pursuant to Section 2274.
- (6) Notifying the Secretary of State within three days of identifying any violations of this chapter or Section 20504 of Title 52 of the United States Code.
- (7) Assisting with the preparation of the annual report required by Section 2276.

(b) The Secretary of State shall appoint an employee, known as the Secretary of State's NVRA coordinator, who shall be responsible for the Secretary of State's compliance with the requirements of this chapter and the requirements of Section 20504 of Title 52 of the United States Code. The responsibilities of the Secretary of State's NVRA coordinator include, but are not limited to, all of the following:

- (1) Monitoring voter registration records received from the department and identifying untimely registrations or other irregularities.
- (2) Ensuring the accurate processing and timely transmission of voter registration applications received from the department.
- (3) Ensuring employees are trained pursuant to Section 2273.
- (4) Coordinating with the department's NVRA coordinator to ensure the Secretary of State's compliance with this chapter and with Section 20504 of Title 52 of the United States Code.
- (5) Ensuring the interagency agreement required by Section 2265 is updated as necessary.
- (6) Publishing the monthly reports required by Section 2274 on the Secretary of State's internet website.
- (7) Preparing the annual report required by Section 2276.

**SEC. 13.** Section 2273 is added to the Elections Code, to read:

**2273.** (a) The department's NVRA coordinator shall ensure that each employee of the department who interacts with the California New Motor Voter Program shall, annually and as part of an initial new employee orientation, receive a training on the requirements of this chapter and the federal National Voter Registration Act of 1993 (52 U.S.C. Sec. 20501 et seq.). The training shall include, but is not limited to, instructing employees regarding processing voter information submitted to the department, acceptance rules, transmission deadlines, and procedures for identifying and reporting errors or delays.

(b) The Secretary of State's NVRA coordinator shall ensure that each employee of the Secretary of State responsible for the receipt and processing of voter registration information from the department shall, annually and as part of an initial new employee orientation, receive a training on the requirements of this chapter and the federal National Voter Registration Act of 1993 (52 U.S.C. Sec. 20501 et seq.). The training shall include, but is not limited to, instructing employees regarding procedures for the regular monitoring of the timeliness of the receipt of registration data from department transactions and the protocol for reporting and addressing problems with the timeliness and quality of the voter registration data received from the department.

**SEC. 14.** Section 2274 is added to the Elections Code, to read:

**2274.** (a) The department, in consultation with the Secretary of State, shall monitor the timeliness of the department's transmittals to the Secretary of State pursuant to paragraph (2) of subdivision (b) of Section 2265.

(b) By the 10th day of each calendar month, the department shall provide to the Secretary of State, in a manner and method to be determined by the department in consultation with the Secretary of State, all of the following information concerning voter registration from the preceding month:

- (1) The number of completed voter registration applications transmitted to the Secretary of State after the deadlines specified in paragraph (2) of subdivision (b) of Section 2265, if any.
- (2) The number of notices sent pursuant to subdivision (g) of Section 2265.
- (3) The reasons for any irregularities in the processing of records specified in subdivision (b) of Section 2265 or in the transmittal of any completed voter registration applications after the deadlines described in paragraph (2) of subdivision (b) of Section 2265.

(c) Within 10 days of receipt, the Secretary of State shall publish the information described in paragraph (2) of subdivision (b) on its internet website.

**SEC. 15.** Section 2275 is added to the Elections Code, to read:

**2275.** (a) The Secretary of State shall establish a taskforce that includes all of the following members:

- (1) The Secretary of State's NVRA coordinator.
- (2) The department's NVRA coordinator.

(3) County elections officials.

(4) Individuals with demonstrated language accessibility experience for languages covered under the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(5) Representatives of the disability community and community organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities.

(6) Experts with demonstrated experience in the field of elections.

(7) Experts with demonstrated experience in the field of civic design.

(b) The Secretary of State shall convene the taskforce for meetings at least quarterly.

(c) The taskforce shall consult with the Secretary of State and the department on the development of the annual review required by Section 2276.

(d) The taskforce shall advise the Secretary of State and the department on the effective implementation of the California New Motor Voter Program.

This section shall remain in effect only until January 1, 2025, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2025, deletes or extends that date.

**SEC. 16.** Section 2276 is added to the Elections Code, to read:

**2276.** The Secretary of State, in consultation with the department and the taskforce described in Section 2275, shall annually review the effectiveness of the California New Motor Voter Program and draft a written report. The written report shall, at a minimum, include all of the following:

(a) Information about trends of voters registering through the California New Motor Voter Program.

(b) An analysis of the information described in Section 2274 for the preceding year.

(c) A summary of any significant errors or delays during the preceding year with respect to processing or transmitting the records specified in subdivision (b) of Section 2265, and how those incidents were resolved.

**SEC. 17.** Section 5100 of the Elections Code is amended to read:

**5100.** A party is qualified to participate in a primary election under any of the following conditions:

(a) (1) At the last preceding gubernatorial primary election, the sum of the votes cast for all of the candidates for an office voted on throughout the state who disclosed a preference for that party on the ballot was at least 2 percent of the entire vote of the state for that office.

(2) Notwithstanding paragraph (1), a party may inform the Secretary of State that it declines to have the votes cast for a candidate who has disclosed that party as the candidate's party preference on the ballot counted toward the 2-percent qualification threshold. If the party wishes to have votes for a candidate not counted in support of its qualification under paragraph (1), the party shall notify the secretary in writing of that candidate's name by the seventh day before the gubernatorial primary election.

(b) (1) On or before the 135th day before a primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their declared political preference transmitted to the Secretary of State by the county elections officials, that voters equal in number to at least 0.33 percent of the total number of voters registered on the 154th day before the primary election have declared their preference for that party.

(2) A person whose party preference is designated as "Unknown" pursuant to Section 2154 or 2267 shall not be counted for purposes of determining the total number of voters registered on the specified day preceding the election under paragraph (1).

(c) On or before the 135th day before a primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, and verified, and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county elections officials substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point boldface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election."

**SEC. 17.5.** Section 5100 of the Elections Code is amended to read:

**5100.** A party is qualified to participate in a primary election under any of the following conditions:

(a) (1) At the last preceding gubernatorial primary election, the sum of the votes cast for all of the candidates for an office voted on throughout the state who disclosed a preference for that party on the ballot was at least 2 percent of the entire vote of the state for that office.

(2) Notwithstanding paragraph (1), a party may inform the Secretary of State that it declines to have the votes cast for a candidate who has disclosed that party as the candidate's party preference on the ballot counted toward the 2-percent qualification threshold. If the party wishes to have votes for a candidate not counted in support of its qualification under paragraph (1), the party shall notify the secretary in writing of that candidate's name by the seventh day before the gubernatorial primary election.

(b) (1) On or before the 135th day before a primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their declared political preference transmitted to the Secretary of State by the county elections officials, that voters equal in number to at least 0.33 percent of the total number of voters registered on the 154th day before the primary election have declared their preference for that party.

(2) A person whose party preference is designated as "Unknown" pursuant to Section 2154 or 2267 shall not be counted for purposes of determining the total number of voters registered on the specified day preceding the election under paragraph (1).

(c) On or before the 135th day before a primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 3 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, and verified, and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county elections officials substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point boldface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election."

**SEC. 18.** Section 17.5 of this bill incorporates amendments to Section 5100 of the Elections Code proposed by both this bill and Assembly Bill 446. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 5100 of the Elections Code, and (3) this bill is enacted after Assembly Bill 446, in which case Section 17 of this bill shall not become operative.