

**Introduced by Senator Lara**February 22, 2013

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An act to add Section 18352 to the Elections Code, relating to elections.

## LEGISLATIVE COUNSEL'S DIGEST

SB 638, as introduced, Lara. Election crimes: misrepresentation by candidates.

Existing law makes it a misdemeanor for a person who, with intent to mislead the voters in connection with his or her campaign for nomination or election to a public office or in connection with the campaign of another person for nomination or election to a public office, assumes, pretends, or implies, by his or her statements or conduct, that he or she is the incumbent of a public office, or that he or she has been acting in the capacity of a public officer, when that is not the case.

This bill, in addition, would make it a misdemeanor for an individual to become, or induce another individual to become, a candidate for a local or state elective office under a name that is identical to, or very similar to, another candidate for that same office, with the sole intent of deliberately misleading voters who desire to vote for that other candidate, and otherwise would vote for that other candidate, but for confusion caused by the similarity in names. The bill also would authorize a candidate for a local or state office election in which this conduct occurs to seek a writ of mandate or an injunction requiring the removal of the offending candidate from the ballot. The bill would make the authority to issue a peremptory writ of mandate or injunction contingent upon clear and convincing proof that the specified conduct has occurred.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 18352 is added to the Elections Code,  
2 immediately following Section 18351, to read:

3 18352. (a) An individual who becomes, or induces another  
4 individual to become, a candidate for a local or state elective office  
5 under a name that is identical to, or very similar to, another  
6 candidate for that same office, with the sole intent of deliberately  
7 misleading voters who desire to vote for that other candidate, and  
8 otherwise would vote for that other candidate, but for confusion  
9 caused by the similarity in names, is guilty of a misdemeanor.

10 (b) A candidate for a local or state office election in which an  
11 individual becomes a candidate under a name that is identical to,  
12 or very similar to, another candidate for that same office, with the  
13 sole intent of deliberately misleading voters who desire to vote for  
14 that other candidate, and otherwise would vote for that other  
15 candidate, but for the confusion caused by the similarity in names,  
16 may seek a writ of mandate or an injunction requiring the removal  
17 of the offending candidate from the ballot. A peremptory writ of  
18 mandate or injunction shall be issued pursuant to this subdivision  
19 only upon clear and convincing proof that the conduct described  
20 in this subdivision has occurred.

21 SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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