

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1494

Introduced by Assembly Member Levine
(Coauthors: Senators Allen and McGuire)

February 27, 2015

An act to amend Section 85500 of, and to add Section 12179.2 to the Government Code, relating to the Political Reform Act of 1974. An act to amend Sections 14291, 18403, 18564, and 18564.5 of, and to repeal Section 14276 of, the Elections Code, relating to voting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1494, as amended, Levine. ~~Political Reform Act of 1974: independent expenditure report annual fee. Voting: marked ballots: distributing and sharing photographs and digital images.~~

Existing law prohibits a voter from showing his or her ballot after it is marked in such a way as to reveal its contents. Existing law provides that a person who interferes or attempts to interfere with the secrecy of voting is guilty of a felony, and authorizes the Secretary of State, the Attorney General, or a local elections official to bring an action to impose additional civil penalties for committing those acts.

This bill would authorize a voter to take a photograph or digital image of his or her marked ballot and distribute or share that photograph or digital image using social media or by any other means, unless the voter does so for certain prohibited purposes. The bill would

exempt these authorized acts from the criminal and civil penalties described above. The bill would also repeal a duplicative provision.

Under existing law, any person other than an elections official or a member of the precinct board who receives a voted ballot from a voter or who examines or solicits the voter to show his or her voted ballot is guilty of an offense punishable by a fine, imprisonment, or by both fine and imprisonment. Existing law exempts from this crime a person returning a vote by mail ballot or persons assisting a voter.

The bill would also exempt from that crime a person examining or soliciting a voter to show a photograph or digital image of his or her marked ballot that has been distributed or shared using social media or by other means.

~~Existing law designates the Secretary of State as the chief elections officer of the state and requires him or her to see that elections are efficiently conducted and that state election laws are enforced. Existing law also authorizes the Secretary of State in certain circumstances to assist the county elections officer in discharging his or her duties.~~

~~The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, including requiring the filing of reports of contributions and expenditures. Among its provisions, the act requires a committee that makes an independent expenditure, as defined, of \$1,000 or more during an election cycle in connection with a candidate for elective state office or a state ballot measure to disclose that expenditure by filing a report online or electronically with the Secretary of State.~~

~~This bill would require a committee subject to the independent expenditure disclosure requirement to pay to the Secretary of State, within 5 days of filing an independent expenditure report, an annual reporting fee in an amount based on the amount that the committee declares that it will spend in each 2-year election cycle, as defined. The bill would require those fees to be deposited into a Civic Engagement Fund created by the bill. The bill would, upon appropriation by the Legislature, require the Secretary of State to allocate the funds in the Civic Engagement Fund for the costs of oversight of committees filing the independent expenditure reports, to the Fair Political Practices Commission for the purpose of increasing transparency in political campaigns, and to local elections offices, through a competitive grant program, to increase voter registration and turnout.~~

~~Existing law makes a willful violation of the Political Reform Act of 1974 a misdemeanor and subject offenders to criminal penalties.~~

~~This bill would impose a state-mandated local program by creating additional crimes:~~

~~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:~~

~~The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a 2/3 vote of each house and compliance with specified procedural requirements:~~

~~This bill would declare that it furthers the purposes of the act.~~

~~Vote: 2/3-majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes-no.~~

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

1 SECTION 1. Section 14276 of the Elections Code is repealed.

2 14276. ~~After his or her ballot is marked, a voter shall not show~~
3 ~~it to any person in such a way as to reveal its contents:~~

4 SEC. 2. Section 14291 of the Elections Code is amended to
5 read:

6 14291. (a) After the ballot is marked, a voter shall not show
7 it to any person in such a way as to reveal its ~~contents:~~ contents,
8 except as provided in subdivision (b).

9 (b) A voter may take a photograph or digital image of his or
10 her marked ballot and distribute or share the photograph or digital
11 image using social media or by any other means. A photograph
12 or digital image taken and distributed or shared pursuant to this
13 subdivision shall not be used to coerce or intimidate a voter,
14 impede a voter’s ability to vote, cause voter delay in a polling
15 place, disrupt a polling place, or result in a monetary or tangible
16 benefit for any purpose.

17 SEC. 3. Section 18403 of the Elections Code is amended to
18 read:

19 18403. Any person other than an elections official or a member
20 of the precinct board who receives a voted ballot from a voter or
21 who examines or solicits the voter to show his or her voted ballot
22 is punishable by a fine not exceeding ten thousand dollars
23 (\$10,000), by imprisonment pursuant to subdivision (h) of Section

1 1170 of the Penal Code for 16 months or two or three years, or in
 2 a county jail not exceeding one year, or by both that fine and
 3 imprisonment. This section ~~shall~~ *does* not apply to persons
 4 returning a vote by mail ballot pursuant to Sections 3017 and ~~3021~~
 5 ~~or 3021~~, to persons assisting a voter pursuant to Section ~~14282~~
 6 *14282, or to persons examining or soliciting a voter to show a*
 7 *photograph or digital image of a ballot that has been distributed*
 8 *or shared pursuant to subdivision (b) of Section 14291.*

9 *SEC. 4. Section 18564 of the Elections Code is amended to*
 10 *read:*

11 18564. Any person is guilty of a felony, punishable by
 12 imprisonment pursuant to subdivision (h) of Section 1170 of the
 13 Penal Code for two, three, or four years who, before or during an
 14 election:

15 (a) Tampers with, interferes with, or attempts to interfere with,
 16 the correct operation of, or willfully damages in order to prevent
 17 the use of, any voting machine, voting device, voting system, vote
 18 tabulating device, or ballot tally software program source codes.

19 (b) Interferes or attempts to interfere with the secrecy of ~~voting~~
 20 *voting, except as provided in subdivision (b) of Section 14291, or*
 21 *ballot tally software program source codes.*

22 (c) Knowingly, and without authorization, makes or has in his
 23 or her possession a key to a voting machine that has been adopted
 24 and will be used in elections in this state.

25 (d) Willfully substitutes or attempts to substitute forged or
 26 counterfeit ballot tally software program source codes.

27 *SEC. 5. Section 18564.5 of the Elections Code is amended to*
 28 *read:*

29 18564.5. (a) The Secretary of State, Attorney General, and
 30 any local elections official in the county in which the act occurs,
 31 may bring a civil action against an individual, business, or other
 32 legal entity that commits any of the following acts before, during,
 33 or after an election:

34 (1) Tampers, interferes, or attempts to interfere with the correct
 35 operation of, or willfully damages in order to prevent the use of,
 36 any voting machine, voting device, voting system, vote tabulating
 37 device, or ballot tally software.

38 (2) Interferes or attempts to interfere with the secrecy of ~~voting~~
 39 *voting, except as provided in subdivision (b) of Section 14291, or*

1 interferes or attempts to interfere with ballot tally software program
2 source codes.

3 (3) Knowingly, and without authorization, gains access to or
4 provides another person or persons with access to a voting machine
5 for the purpose of committing one of the acts specified by this
6 section.

7 (4) Willfully substitutes or attempts to substitute forged,
8 counterfeit, or malicious ballot tally software program source
9 codes.

10 (5) Knowingly, and without authorization, inserts or causes the
11 insertion of uncertified hardware, software, or firmware, for
12 whatever purpose, into any voting machine, voting device, voting
13 system, vote tabulating device, or ballot tally software.

14 (6) Fails to notify the Secretary of State prior to any change in
15 hardware, software, or firmware to a voting machine, voting device,
16 voting system, or vote tabulating device, certified or conditionally
17 certified for use in this state.

18 (b) A civil action may be brought pursuant to this section for a
19 civil penalty not to exceed fifty thousand dollars (\$50,000) for
20 each act and for injunctive relief, if appropriate.

21 ~~SECTION 1. Section 12179.2 is added to the Government~~
22 ~~Code, to read:~~

23 ~~12179.2. (a) There is hereby created in the State Treasury the~~
24 ~~Civic Engagement Fund. The purpose of the Civic Engagement~~
25 ~~Fund is to provide oversight of committees filing reports under~~
26 ~~Section 85500 and to increase transparency in political campaigns,~~
27 ~~civic engagement, and voter registration and turnout. The Secretary~~
28 ~~of State shall deposit revenues received pursuant to subdivision~~
29 ~~(e) of Section 85500 into the Civic Engagement Fund. Upon~~
30 ~~appropriation by the Legislature, the Secretary of State shall~~
31 ~~allocate these funds for the costs of oversight of committees filing~~
32 ~~reports under Section 85500, to the Fair Political Practices~~
33 ~~Commission for the purpose of increasing transparency in political~~
34 ~~campaigns, and to local elections offices, through a competitive~~
35 ~~grant program, to increase voter registration and turnout.~~

36 ~~(b) Notwithstanding Section 10231.5, the Secretary of State~~
37 ~~shall report to the Legislature and to the Department of Finance~~
38 ~~by March 31 of each year on the allocation and use of fund moneys~~
39 ~~specified in subdivision (a). The Secretary of State shall also post~~
40 ~~this information on his or her Internet Web site.~~

1 ~~SEC. 2.~~ Section 85500 of the Government Code is amended
2 to read:

3 ~~85500. (a) In addition to any other report required by this title,~~
4 ~~a committee, including a political party committee, that is required~~
5 ~~to file reports pursuant to Section 84605 and that makes~~
6 ~~independent expenditures of one thousand dollars (\$1,000) or more~~
7 ~~during an election cycle in connection with a candidate for elective~~
8 ~~state office or state ballot measure, shall file online or electronically~~
9 ~~a report with the Secretary of State disclosing the making of the~~
10 ~~independent expenditure. This report shall disclose the same~~
11 ~~information required by subdivision (b) of Section 84204 and shall~~
12 ~~be filed within 24 hours of the time the independent expenditure~~
13 ~~is made.~~

14 ~~(b) An expenditure shall not be considered independent, and~~
15 ~~shall be treated as a contribution from the person making the~~
16 ~~expenditure to the candidate on whose behalf, or for whose benefit,~~
17 ~~the expenditure is made, if the expenditure is made under any of~~
18 ~~the following circumstances:~~

19 ~~(1) The expenditure is made with the cooperation of, or in~~
20 ~~consultation with, the candidate on whose behalf, or for whose~~
21 ~~benefit, the expenditure is made, or any controlled committee or~~
22 ~~any agent of the candidate.~~

23 ~~(2) The expenditure is made in concert with, or at the request~~
24 ~~or suggestion of, the candidate on whose behalf, or for whose~~
25 ~~benefit, the expenditure is made, or any controlled committee or~~
26 ~~any agent of the candidate.~~

27 ~~(3) The expenditure is made under any arrangement,~~
28 ~~coordination, or direction with respect to the candidate or the~~
29 ~~candidate's agent and the person making the expenditure.~~

30 ~~(c) (1) A committee subject to this section shall pay an annual~~
31 ~~reporting fee to the Secretary of State. The fee shall be charged as~~
32 ~~follows:~~

33 ~~(A) One hundred dollars (\$100) for a committee filing a report~~
34 ~~and declaring that it will spend less than one hundred thousand~~
35 ~~dollars (\$100,000) per two-year election cycle.~~

36 ~~(B) One thousand dollars (\$1,000) for a committee filing a report~~
37 ~~and declaring that it will spend less than two hundred fifty thousand~~
38 ~~dollars (\$250,000) per two-year election cycle.~~

1 ~~(C) Two thousand dollars (\$2,000) for a committee filing a~~
2 ~~report and declaring that it will spend less than five hundred~~
3 ~~thousand dollars (\$500,000) per two-year election cycle.~~

4 ~~(D) Ten thousand dollars (\$10,000) for a committee filing a~~
5 ~~report and declaring that it will spend less than one million dollars~~
6 ~~(\$1,000,000) per two-year election cycle.~~

7 ~~(E) Fifty thousand dollars (\$50,000) for a committee filing a~~
8 ~~report and declaring that it will spend less than ten million dollars~~
9 ~~(\$10,000,000) per two-year election cycle.~~

10 ~~(2) The annual reporting fee shall be paid within 5 days of the~~
11 ~~filing of the report pursuant to subdivision (a).~~

12 ~~(3) If a committee expends more than the declared amount, in~~
13 ~~the report filed in which the committee discloses that fact, it shall~~
14 ~~make a new declaration and pay the increased fee less the amount~~
15 ~~of the fee or fees already paid.~~

16 ~~(4) For purposes of this subdivision, “two-year election cycle”~~
17 ~~means the period of time between the immediately preceding~~
18 ~~statewide general election and the next statewide general election.~~

19 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
20 ~~Section 6 of Article XIII B of the California Constitution because~~
21 ~~the only costs that may be incurred by a local agency or school~~
22 ~~district will be incurred because this act creates a new crime or~~
23 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
24 ~~for a crime or infraction, within the meaning of Section 17556 of~~
25 ~~the Government Code, or changes the definition of a crime within~~
26 ~~the meaning of Section 6 of Article XIII B of the California~~
27 ~~Constitution.~~

28 ~~SEC. 4. The Legislature finds and declares that this bill furthers~~
29 ~~the purposes of the Political Reform Act of 1974 within the~~
30 ~~meaning of subdivision (a) of Section 81012 of the Government~~
31 ~~Code.~~