SENATE BILL NO. 660

Introduced by Senator Newman
(Coauthors: Assembly Members Low and Lorena Gonzalez)

February 19, 2021

An act to add Section 102.5 to the Elections Code, relating to elections.

LEGISLATIVE COUNSEL’S DIGEST


Existing law prohibits a person under 18 years of age from circulating a state or local initiative, referendum, or recall petition or nominating paper. Existing law makes it a misdemeanor to offer or give money or other valuable consideration to another in exchange for that person's signature on a state, county, municipal, or district initiative, referendum, or recall petition.

This bill would prohibit a person from paying money or providing any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition. The bill would impose a civil penalty for violations of that prohibition, equal to the greater of $25,000 or $50 times the number of signatures gathered in exchange for compensation.

The bill would authorize the Attorney General to bring a civil action for a violation, and it would also authorize a person, acting as a qui tam plaintiff, to bring a civil action for a violation and to share in the recovery, as provided. The bill would require specified portions of the proceeds of a civil action or settlement to be distributed to the Attorney General, the qui tam plaintiff, and the Secretary of State.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:
SECTION 1. (a) The Legislature hereby finds and declares that the communication of accurate information by signature gatherers is important to the integrity of the electoral process. The Legislature further finds and declares that signature gatherers frequently communicate inaccurate information to voters in order to obtain their signatures on petitions, and that deception undermines the integrity of the electoral process.

(b) It is the intent of the Legislature to do both of the following:

(1) Prohibit the compensation of signature gatherers in a manner that gives signature gatherers an incentive to deceive voters in order to obtain their signatures.

(2) Provide an enforcement mechanism that is applicable to anyone who in violation of this prohibition pays individual signature gatherers or pays, directly or indirectly, for signatures obtained from such individual signature gatherers in order to ensure compliance.

SEC. 2. Section 102.5 is added to the Elections Code, to read:

102.5. (a) It is unlawful for a person to pay money or provide any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition.

(b) A person who pays money or any other thing of value based on the number of signatures obtained on a state or local initiative, referendum, or recall petition shall be punished by a civil penalty equal to the greater of twenty-five thousand dollars ($25,000) or fifty dollars ($50) times the number of signatures gathered in exchange for compensation.

(c) If the Attorney General finds that a person has violated or is violating subdivision (a), the Attorney General may bring a civil action against that person.

(d) (1) A person may bring a civil action for a violation of subdivision (a) to recover the civil penalty described in subdivision (b). The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court and the Attorney General, taking into account the best interests of the parties involved and the public purposes behind this section. A claim for a violation of subdivision (a) shall not be waived or released by any private person, except if the action is part of a court-approved settlement of a civil action brought under this section.

(2) On the same day as the complaint is filed pursuant to paragraph (1), the qui tam plaintiff shall serve by mail with “return receipt requested” the Attorney General with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(3) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations of this section, the Attorney General may elect to intervene and proceed with the action.

(4) (A) (i) If the Attorney General initiates an action pursuant to subdivision (c), or assumes control of an action pursuant to paragraph (3), the office of the Attorney General shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim.

(ii) Moneys received by the Attorney General pursuant to clause (i) shall be deposited in the Petition Signature Fraud Account, which is hereby established in the General Fund. Moneys in the account shall be available, upon appropriation by the Legislature, for use by the Attorney General to support the Attorney General’s investigation and prosecution of fraud related to the initiative, referendum, or recall process, including violations of this section or of Chapter 7 (commencing with Section 18600) of Division 18.

(B) If a qui tam plaintiff initiates an action pursuant to paragraph (1), the qui tam plaintiff shall receive at least 17 percent, but not more than 50 percent, of the proceeds of the action or settlement of the claim, depending on the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(C) The portion of the recovery not distributed pursuant to subparagraphs (A) and (B) shall be deposited in the Petition Signature Fraud Voter Education Subaccount, which is hereby established in the Petition Signature Fraud Account. Moneys in the subaccount shall be available, upon appropriation by the Legislature, for use by the Secretary of State to support voter registration and education efforts.

(5) (A) If the state, through the Attorney General, or the qui tam plaintiff prevails in or settles an action under this section, the Attorney General and qui tam plaintiff shall each receive an amount for reasonable expenses that the court finds to have been reasonably incurred, plus reasonable costs and attorneys’ fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state.

(B) If the Attorney General does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys’ fees and expenses against the party that proceeded with the action if the defendant prevails.
in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(6) A qui tam plaintiff shall be entitled to all relief necessary to make themselves whole, if that qui tam plaintiff is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment because of lawful acts done by the qui tam plaintiff, or associated others, in furtherance of an action under this section or other efforts to stop one or more violations of this section.

(7) If a person brings an action under this subdivision, no other person may bring a related action based on the facts underlying the pending action.

(e) This section does not prohibit the payment for signature gathering not based, either directly or indirectly, on the number of signatures obtained on a state or local initiative, referendum, or recall petition.