

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

SB 1081 (Archuleta) – As Amended May 16, 2024

SENATE VOTE: 24-2

SUBJECT: Vehicles: driver's license: selective service

SUMMARY: Requires a person who is required to register for the United States Selective Service System (SSS) and who submits an application for a California driver's license or identification card to be deemed to have consented to register, unless the applicant declines consent. Specifically, **this bill:**

- 1) Requires a person who is required to be registered under the Military Selective Service Act and who submits an application for a driver's license, identification card, or renewal to be deemed to have consented to registration with the SSS unless they indicate otherwise.
- 2) Requires the Department of Motor Vehicles (DMV) to transmit only the information necessary for the registration of the applicant to the SSS unless the applicant opts-out.
- 3) Requires the DMV to give notice to an applicant between 16 and 26 years of age and has a duty under federal law to register with the SSS at 18 years of age. If they are already over the age of 18 they will be informed of their affirmative obligation under federal law to register before reaching 26 years of age.
- 4) Requires the DMV to notify an applicant that their signature on a driver's license, identification card, or renewal application constitutes consent to the DMV forwarding the applicant's information to the SSS to register them, or register them once they reach 18 years of age, unless they decline to consent by checking the "Don't Register" box on the application.
- 5) Requires the DMV to notify the applicant that refusal to consent is not grounds for denial of an application or renewal of a driver's license or identification card. This notice shall be in English, Spanish, and any other language the DMV determines.
- 6) Prohibits the DMV from compiling, developing, or maintaining a list of applicants who declined to grant the DMV authority to transmit their information to the SSS unless it is necessary for the administration and operation of the DMV. If such a list is necessary, prohibits the DMV from distributing or making it available to any entity.
- 7) Requires each application for an original or renewal of an identification card or driver's license to contain the information required to register the applicant with the SSS.
- 8) Provides an exemption for driver's license applicants who are unable to submit satisfactory proof of their presence in the United States as authorized under federal law.

- 9) Requires the DMV to initiate efforts to obtain federal funds to implement this bill and makes implementation of this bill contingent on the DMV's receipt of a sufficient amount of funds to pay for initial startup implementation costs.
- 10) Stipulates this bill will only become operative upon completion of DMV's Digital eXperience Platform project or on January 1, 2027, whichever is later.

EXISTING LAW:

Existing federal law:

- 1) The Military Selective Service Act of 1948 requires every male citizen of the United States and every other male person residing in the United States between the ages of 18 and 26 to register for SSS. (50 United States Code 3802(a))
- 2) Exempts lawful non-immigrant residents (such as people on visas), seasonal agricultural workers, and individuals with medical issues that prevent them from leaving a location.
- 3) Requires SSS registration as a prerequisite for most federal jobs. (5 Code of Federal Regulations 300.704)

Existing state law:

- 1) Establishes a REAL ID or driver's license to mean a driver's license or identification card that has been issued by a state that has been certified by the Department of Homeland Security to be in compliance with the requirements of the Real ID Act of 2005 (Public Law 109-13) and the regulations adopted pursuant to the act. (Vehicle Code 681)
- 2) States that a governing board of a school district should, but is not required to, make every reasonable effort to appoint a selective service registrar for each high school who is tasked with helping pupils subject to the Military Selective Service Act register. (Education Code (EDC) 35041.3)
- 3) Requires each public postsecondary educational institution to make every reasonable effort to inform all male applicants for undergraduate admission of their obligation to register with the SSS. (EDC 66500)
- 4) Requires all state agencies to cooperate with the SSS in efforts to publicize the necessity of, and requirements for, compliance with the Military Selective Service Act. Any actions to implement this requirement must be mutually agreed to by the state agency and the SSS and costs must be reimbursed by the SSS. (Government Code 7593.1)

FISCAL EFFECT: According to the Senate Appropriations Committee, "Unknown, likely significant one-time DMV implementation costs in a future fiscal year, contingent upon the receipt of federal funding to partially offset implementation costs. One-time costs are primarily related to IT systems upgrades for identifying applicants between the age of 16 and 26, modifying online forms to accommodate additional disclosures, providing for the opt-out, and additional data collection and transmission capabilities.

Staff notes that DMV is currently undertaking an Enterprise Modernization Project (the Digital eXperience Project, or DXP), which is scheduled to be complete at the end of 2025-26, and the bill delays implementation until completion of the DXP or January 1, 2027, whichever is later. DMV indicates that IT costs related to the bill cannot be predicted because its functionalities are currently under development. (Federal Fund)

Unknown, potentially significant ongoing annual DMV costs for additional printing and mailing costs related to the expanded forms in multiple languages, for increases in field office and call center staff time regarding the requirements in the bill, and for ongoing data transmission to the SSS. Ongoing costs are likely to be a General Fund obligation because the Motor Vehicle Account is an ineligible fund source for these activities.”

COMMENTS:

Selective service. The SSS is an independent federal agency tasked with maintaining information on male residents in the United States potentially subject to military conscription. Federal law requires men between the ages of 18 and 26 to register with the SSS, with a few limited exceptions. This system would be the data source used for any random or skills-based conscriptions in the event of Presidential and Congressional action to authorize a military draft.

Risks of noncompliance. Failure to register for the SSS is a felony punishable by up to five years in prison and a \$250,000 fine. The SSS annually refers names of non-registrants to the Department of Justice for possible investigation and prosecution, though no prosecutions have occurred for noncompliance since 1986. The greater risk of noncompliance is an inability for someone to access certain benefits.

The U.S Citizenship and Immigration Services makes registration with SSS a condition for U.S. citizenship. If the eligible person is under the age of 26 they will be denied naturalization unless they register. If they are between the age of 26 and 31 they are too old to register and must wait until age 32 before proceeding with naturalization unless they are able to present sworn declarations that failing to register for SSS was not due to willfully avoiding the requirement.

The Selective Service registration requirement to access federal student aid ended in 2022. Currently several state student aid programs still require SSS registration, but California does not. Most federal employment, security clearance for contractors, and access to some federal job training all require SSS registration. Demonstrating that the failure to register was not willful can be sufficient to avoid this requirement. For example, according to the Federal Office of Personnel Management, only 1% of cases of non-registrants they adjudicate result in denial of federal employment. However this process takes time and an employer may simply move onto the next applicant rather than seek a waiver.

Registration rates are dropping. The national Selective Service registration rate was 84% of eligible people according to the 2022 SSS annual report to Congress, a 5% decrease from the previous year. This decrease was likely driven by the recent removal of the SSS registration requirement to receive federal student aid. Mirroring the change in federal law, the California Legislature has removed the requirement for SSS registration for state student financial aid. This method of registration historically accounted for up to 20% of all annual registrations. Therefore, the SSS expects the registration rate to further decrease.

In 2022, over half of all electronic registrations (which account for ~95% of all registrations) came from programs enacted through driver's license legislation at the state level. As of October 2023, the SSS estimates that only 75% of eligible Californians have registered. Other large states, such as New York, Texas, and Florida that have implemented driver's license enrollment legislation see rates of enrollment over 90%.

What does California do? Existing state law requires all state agencies to cooperate with the SSS to publicize requirements for SSS registration and compliance. DMV entered into a memorandum of understanding with the SSS in 1990 and since then has provided a quarterly file to the SSS with personal information of self-identified men aged 18 to 26 who apply for an original driver's license or identification card. Neither the DMV nor the SSS automatically register individuals under current practice. Instead, the SSS can use the DMV's list to mail notices alerting individuals who have not yet registered of their obligation and provide information on how to do so. California also requires public postsecondary educational institutions to make every reasonable effort to inform all male applicants for undergraduate admission of their obligation to register with the SSS.

What do other states do? Only 10 states, including California, currently do not have some kind of driver's license SSS registration requirement. 28 states employ automatic SSS registration for males between ages of 18 and 26 in order to obtain or renew their driver's license. Only four states and Washington D.C. have an opt-out component like this bill would require, and eight states have opt-in requirements.

Impact on the DMV. This bill expands the DMV's responsibilities and would require it to update its information technology systems, implement additional procedures to register eligible applicants, and train staff.

The Legislative Analyst's Office predicts the Motor Vehicle Account (MVA), the primary funding source for the DMV and the California Highway Patrol) is rapidly heading for insolvency and recently recommended the Legislature set a high bar for considering approval of any proposals that create additional MVA cost pressures. In order to defray some of these costs, implementation of this bill is contingent upon the receipt of federal funds to pay for all of the initial startup and implementation costs. According to the DMV, this bill would require DMV to apply for federal funding for these activities and currently the DMV does not have staff that apply for federal grants. In addition, ongoing operational costs for the system would be funded by the state. This bill also includes language delaying operation until completion of the Digital eXperience Platform project or on January 1, 2027, whichever is later, in order to defray cost pressures.

Gender discrimination. Opponents have raised concerns about the constitutionality of this bill, and the SSS overall, as it only applies to those assigned male at birth. This argument has actually been tested in court. A case in 2019 in the Southern District of Texas declared that requiring men but disallowing women to register for the draft was unconstitutional, but that ruling was reversed by the Fifth Circuit court and the Supreme Court declined to review the ruling because of ongoing discussions in Congress around removing the male-only requirement. Discussions in Congress continue with a provision in the annual defense policy bill which would require both men and women to register with SSS. The question of whether such a requirement would be in violation of California's constitution has not been tested, but there was a requirement for many

years for SSS registration to access state student aid. If those provisions were legal then it seems likely this bill would be as well.

Another concern opponents have raised is how this system will impact transgender individuals. Federal law The Military Selective Service Act applies to all people assigned male at birth regardless of their current gender identity. This creates concerns of accidentally “outing” transgender individuals, devaluing their chosen gender, or potentially causing transgender people to be incorrectly registered. This bill is written in a gender-neutral way so that if Congress expands the registration requirement to all genders in the future, this bill will follow suit.

Undocumented men. California has enacted legislation to ensure undocumented immigrants can obtain legal identification cards and driver’s licenses. Undocumented men are required to sign up for the selective service, and so this bill would require the DMV to transmit their information to the SSS. According to the SSS website, they do not collect or share any information that would indicate a man’s immigration status, either documented or undocumented.

An amendment made in the Senate created an exemption in this bill to exclude AB 60 license applicants. While this amendment was meant to protect undocumented immigrants from their information being shared with SSS, opponents of this bill argue that there is an unintended consequence. AB 60 (Alejo), Chapter 524, Statutes of 2013 prohibits the DMV from creating a list of immigrants who are unable to provide satisfactory proof of their presence in the United States. The implementation of this bill may require the DMV to create a list of driver’s license holders who are undocumented in order to determine which applicants are excluded from SSS registration under this bill. Additionally, as undocumented immigrants are required to register with SSS, they would not be able to do so through the mechanism in this bill.

Opt-outs and incrimination. Opponents of this bill raise concerns that by the DMV providing notice to individuals of their obligation to register with SSS and requiring individuals to opt-out, the state would essentially be gathering evidence of knowing and willful violations of federal law. This bill includes privacy protections that direct the DMV to not maintain a list of applicants who declined to register, unless it is necessary for administration. If such a list is developed, this bill forbids the DMV from sharing it with any other entity. The opponents of this bill point out that a federal subpoena would overrule this provision and potentially leave these list vulnerable to prosecutors. Several other opt-out states don’t have privacy protections similar to this bill and according to SSS, there has been no attempt to prosecute anyone. Doing so would incentivize those states to quickly alter their laws to remove their requirements and would undercut the SSS’s efforts to reach 100% registration.

This bill is more flexible than the policies of many other states, which tie licensure to SSS registration. The opt-out approach in this bill is likely to result in increased SSS registration rates, as it is harder to opt-in than opt-out. Voter registration in California uses a similar opt-out approach.

According to the author, “California currently has one of the lowest rates of eligible residents who have signed up for the Selective Service System. As of October 2023, the Selective Service System estimates that only 74.6% of eligible Californians have registered. If they do not register by the age of 26, young men permanently become ineligible for federal jobs and federal job training programs including those funded by the Workforce Innovation and Opportunity Act. Failure to register may additionally cause delays in citizenship applications for immigrants who

have not registered. When people choose to not sign up for the Selective Service, they often do so without being aware of the potential risks of failing to register. It is time for California to join the over forty states and five U.S. territories that have passed laws tying Selective Service registration to driver's license applications."

According to supporters of this bill, "California currently has one of the nation's lowest rates of eligible residents who have signed up for the Selective Service. As of October 2023, the Selective Service System estimates that only 74.6% of eligible Californians have registered. In contrast, other large states including New York, Texas, and Florida that have implemented driver's license enrollment see enrollment rates of over 90%. When people choose not to sign up for the Selective Service, they often do so without being aware of the potential future risks to themselves by failing to register. California must take action to ensure that our residents do not disproportionately make themselves ineligible for jobs and benefits due to our inability to enroll people through the DMV process."

According to opponents, "AJSOCAL opposes the bill as SB 1081 directs a state agency to transmit peoples' personal information to the federal government, which would be a significant concern for the immigrant community, especially those who are undocumented. There's an estimated number of over 460,000 undocumented Asian immigrants in California, and statistics show that Southeast Asians are deported at the highest number compared to any other immigrant groups. As California passed various measures to protect immigrants, we must continue ensuring sensitive personal information, such as a person's immigration status, is not easily transmitted to the federal government and agencies, with the possibility that a federal subpoena could override protections passed by the state legislature."

Committee concerns. Federal law requires men between 18 and 26 to register with the SSS including immigrants, dual nationals, conscientious objectors, and hospitalized, incarcerated or disabled men, with very limited exceptions. There is a difference between exemption from registration and classification in the event of a national emergency. Selective Service does not have authority to pre-classify men for service if there is not an active draft. For example, if a draft is authorized and a conscientious objector is called, they would have the opportunity to file a claim for exemption from military service based upon their religious or moral objection to war. Similarly, if a disabled man would not qualify for military service, they are still required to register with SSS and would submit a claim for exemption from service in the event of a draft.

This bill includes an opt-out option and if selected by an individual, would be evidence of knowing and willful violations of federal law. This bill includes privacy protections prohibiting the DMV from creating a list of individuals who opt out of SSS registration, though this can be overridden with a federal subpoena. The committee is concerned that this bill provides a confusing opt out option that could put individuals in legal peril rather than joining the other 28 states that have an automatic SSS registration tied to the driver's license application. Individuals would still be allowed to file for an exemption from military service as established by federal law.

Committee amendments. The author agreed to amend the bill to remove the opt-out option so that an applicant who applies for a driver's license, identification card, or renewal who is less than 26 years of age automatically authorizes the DMV to register the applicant with SSS. These amendments alleviate the committee concerns described above.

Previous and related legislations: AB 82 (Garcia) of 2015 was substantially similar to this bill and passed out of this committee 15-1, but was vetoed by Governor Brown.

AB 2201 (Chávez) of 2014 would have required SSS registration by eligible males in order to obtain a driver's license. The bill was held on the Senate Appropriations Committee suspense file.

SB 251 (Correa) of 2011 would have required the DMV to allow eligible males to consent to SSS registration while applying for a driver's license. The bill was held on the Senate Appropriations Committee suspense file.

AB 1661 (Cook) of 2007 would have required the DMV to allow eligible males to consent to SSS registration while applying for a driver's license. The bill was held on the Assembly Appropriations Committee suspense file.

SB 1276 (Speier) of 2002 would have required the DMV to allow eligible males to consent to SSS registration while applying for a driver's license. The bill was held on the Senate Appropriations Committee suspense file.

SB 557 (Deddeh) Chapter 496, Statutes of 1989 required all state agencies to cooperate with the SSS in efforts to publicize the necessity of, and requirements for, compliance with the Military Selective Service Act.

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion, Department of California
Amvets, Department of California
Military Officers Association of America, California Council of Chapters

Opposition

ACLU California Action
Asian Americans Advancing Justice Southern California
California Immigrant Policy Center
Center on Conscience & War
Committee Opposed to Militarism and The Draft
Courage California
Friends Committee on Legislation of California
Indivisible CA StateStrong
Long Beach Area Peace Network
Lutheran Office of Public Policy - California
Military Law Task Force of The National Lawyers Guild
Peace and Freedom Party of California
San Jose Peace and Justice Center
Santa Barbara Friends Meeting

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