

Date of Hearing: July 7, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 660 (Newman) – As Amended June 23, 2021

Policy Committee:	Elections	Vote:	5 - 1
	Judiciary		8 - 3

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill prohibits a person who is paid to gather signatures on an initiative, referendum or recall petition from being paid on a per-signature basis. Specifically, this bill:

- 1) Makes it 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.
- 2) Subjects violators of this prohibition to a civil penalty equal to the greater of \$25,000 or \$50 for every signature gathered in exchange for compensation.
- 3) Allows the Attorney General or an individual to bring a civil action to enforce the prohibition and to recover the civil penalty. Provides an individual bringing such an action to be referred to as the “qui tam plaintiff.”
- 4) Provides an action brought by a qui tam plaintiff may not be dismissed except with the written consent of the court and the Attorney General, taking into account the best interests of the parties involved and the stated public purpose of the bill. Provides a claim for a violation may not be waived or released by any private person, except if the action is part of a court-approved settlement.
- 5) Requires the qui tam plaintiff to serve the Attorney General with a copy of the complaint and a written disclosure of substantially all material evidence and information the plaintiff possesses, as specified. Allows the Attorney General, within 60 days of receipt, to intervene and proceed with the action.
- 6) Requires the proceeds of an action brought under this bill, or of a settlement of such an action, to be distributed as follows:
 - a) If the Attorney General initiates the action or assumes control of an action originally brought by a qui tam plaintiff, as specified, the Attorney General receives 33% of the proceeds, with those moneys deposited in the newly created Petition Signature Fraud Account (PSFA). Provides that the funds in that account are available, upon appropriation by the Legislature, to support the Attorney General’s investigation and prosecution of fraud.
 - b) If a qui tam plaintiff initiates the action, the qui tam plaintiff receives between 17% and 50% 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 to the Attorney General or the qui tam plaintiff, as specified above, is deposited in the newly created Petition Signature Fraud Voter Education Subaccount (SFVE subaccount), which is established within the account. Provides that funds in the Subaccount are available upon appropriation by the Legislature for use by the Secretary of State (SOS) to support voter registration and education efforts.
- 7) Authorizes an award of reasonable attorneys' fees and expenses for the defendant and against a qui tam plaintiff who proceeded with the action if the defendant prevails in the action, the Attorney General does not intervene, and the court finds that the claim was clearly frivolous, clearly vexatious or brought primarily for purposes of harassment.
- 8) Clarifies the bill 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.

FISCAL EFFECT:

- 1) Department of Justice costs of \$340,000 in fiscal year 2021-22, and \$588,000 annually thereafter, to implement the provisions of the bill (General Fund). Costs will be offset by penalty revenue, the magnitude of which is unknown (PSFA).
- 2) Workload cost pressures of an unknown amount to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations.
- 3) Potential increased penalty revenue for the SOS to support voter registration and education efforts (SFVE subaccount).

COMMENTS:

- 1) **Purpose.** This bill removes the financial incentive for individuals to obtain as many signatures in their time working as possible, encouraging potentially dishonest or otherwise fraudulent methods to ensure a higher payout.
- 2) **Background.** According to information from the National Conference on State Legislatures, California is one of 24 states (along with the United States Virgin Islands) that allows voters through the initiative to propose laws, constitutional amendments, or both through a petition process. California is one of 23 states (along with the United States Virgin Islands) that allows voters through the referendum process to petition to demand a popular vote on a new law passed by the Legislature. Nineteen states (including California) and the District of Columbia permit state officers to be removed from office before the end of the term of office through the recall process.

At least six states (Arizona, Florida, Montana, North Dakota, Oregon, and South Dakota)

limit the ability of initiative or referendum proponents to pay signature gatherers on a per-signature basis. Nebraska repealed a state law in 2015 that prohibited petition circulators from being paid on a per-signature basis. Wyoming repealed a state law that restricted initiative proponents from paying signature gatherers on a per-signature basis in 2015, and repealed a law prohibiting payments on a per-signature basis for referendum petitions in 2018.

Laws to ban per-signature payments in at least six other states (Colorado, Idaho, Maine, Mississippi, Ohio and Washington) have been invalidated by courts. Alaska does not ban payments that are made on a per-signature basis, but prohibits any such payment that is greater than \$1 per signature.

In 1988, the United States Supreme Court unanimously ruled that a Colorado prohibition against the use of paid circulators for initiative petitions violated the First Amendment's right of free speech. Eleven years later, the Supreme Court examined a Colorado law that provided a number of other restrictions on the signature collection process for ballot initiatives. In that case, the court ruled that there must be a compelling state interest to justify any restrictions on initiative petition circulation.

Although the United States Supreme Court has not ruled on the constitutionality of payment for signature collection on a per-signature basis, a number of federal courts have considered challenges to such laws, with the courts reaching different conclusions. In light of the differing opinions reached by various federal courts, it is unclear whether this bill, if enacted, would be upheld in a court challenge.