

NATIONAL LAWYERS GUILD
MILITARY LAW TASK FORCE



**California SB 1081 - Oppose
(Senate Appropriations Committee)**

**Senate Appropriations Committee
California State Capitol, Room 412
Sacramento CA 95814
via email: sapr@sen.ca.gov**

The Military Law Task Force of the National Lawyers Guild opposes California Senate Bill 1081, which would automatically register draft-age applicants for California driver's licenses with the U.S. Selective Service System (SSS) for a possible military draft.¹

We continue to believe that SB 1081 is bad policy and would likely result in violations of the Constitution of the state of California, as we explained in detail in our letter to the California Senate Transportation Committee opposing SB-1081.² We remain especially concerned by the sham “opt-out” procedure that would attempt to trick applicants for driver's licenses as young as age 16 into unwittingly signing confessions of a key element of a Federal crime, without due process, legal counsel, or Miranda warnings. This letter is intended to supplement those policy grounds for opposing SB-1081 with additional information concerning its fiscal impact.

SB 1081 misstates who is required to register with the SSS, and would require the Department of Motor Vehicles (DMV) to provide false information to applicants for driver's licenses and IDs. SB 1081 would impose incompatible and contradictory obligations on the DMV, with substantial fiscal impacts in litigation and operational costs.

SB 1081 would add a new Section 12801.3 to the California Vehicle Code, including the following requirement for notice to be provided by the Department of Motor Vehicles (DMV):

(b) (1) The department shall give notice to an applicant who is at least 16 years of age, but less than 26 years of age, that the applicant has a duty under federal law to register with the United States Selective Service System at 18 years of age.

(2) If the applicant is not registered within 30 days after reaching 18 years of age, they shall be informed that they still have an affirmative obligation under federal law to register with the United States Selective Service System before reaching 26 years of age.

-
1. “An act to amend Sections 12800 and 13000 of, and to add Section 12801.3 to, the Vehicle Code, relating to vehicles”, introduced by Senator Archuleta, February 12, 2024, <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB1081>.
 2. “MLTF statement opposing California SB 1081”, March 7, 2024, submitted through the Advocacy Portal and available at <<https://hasbrouck.org/draft/NLG-MLTF-California-SB1081-STRANS.pdf>>.

This notice required by SB 1081 is clearly and materially false and misleading.

In fact, a draft-aged individual is required to register with the SSS *only* if (a) they are a U.S. citizen and/or U.S. resident, as determined by their citizenship and immigration status including visa type and length of presence in the U.S., and (b) they were assigned male at birth.³

If SB 1081 is enacted, whether the DMV can be required to provide false and misleading information about Federal law to applicants for driver's licenses and IDs is likely to be the subject of litigation that would have fiscal impacts both in litigation costs and in administrative disruption if printed and online forms must be revised in response to legal judgments.

In addition, by falsely claiming that all applicants for California driver's licenses are required to register with the SSS, and failing to indicate the criteria for whether a draft-age individual is or is not required to register, SB 1081 obscures the data collection requirements as well as the administrative and fiscal burdens of requiring the DMV to determine which draft-age applicants for driver's licenses are, and which are not, required to register with the SSS.

SB 1081 would provide that, "the department shall transmit, in an electronic format, only the information necessary for registration of the applicant to the United States Selective Service System."

Since no information is "necessary" to register those who are not required to register with the SSS (and who, in fact, are not permitted to register with the SSS), SB 1081 would require the DMV to transmit to the SSS *only* information pertaining to those who are required to register with the SSS. To do so, without violating SB 1081 by transmitting information concerning individuals who are not required to register, the DMV would need to determine which applicants for driver's licenses or IDs are, and which are not, required to register with the SSS.

The consultant's analysis of SB 1081 prepared for the Senate Transportation Committee notes that, "To implement this bill the DMV will have to ask people about SSS registration if they identified as male and are in the appropriate age range."⁴

-
3. See SSS chart, "Selective Service - Who Must Register", <https://www.sss.gov/wp-content/uploads/2024/01/WhoMustRegisterChart_1-16-24-1.pdf>. The SSS has announced that it interprets the Military Selective Service Act and the Presidential proclamation ordering certain "males" to register with the Selective Service System (Proclamation 4771 of July 2, 1980) as applying to males as assigned at birth, without regard for current gender. "Selective Service bases the registration requirement on gender assigned at birth and not on gender identity or on gender reassignment. Individuals who are born male and changed their gender to female are still required to register. Individuals who are born female and changed their gender to male are not required to register.... Presidential Proclamation 4771 refers to 'males' who were 'born' on or after January 1, 1960. Thus, Selective Service interprets the MSSA as applying to gender at birth." SSS, "Frequently Asked Questions:... I'm a transgender/non-binary person. Am I required to register?", at <<https://www.sss.gov/faq/#who-needs-to-register>>. So far as we know, no court has reviewed, much less upheld, this interpretation of the MSSA or Proclamation 4771.
 4. "SB-1081 Vehicles: driver's license: selective service. (2023-2024), Bill Analysis, 04/08/24 - Senate Transportation", <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB1081>.

The consultant’s analysis suggests that, “if someone was assigned female at birth and identifies as male during licensing they would have to opt-out of the system and may fail to do so because of confusion over the requirements. In that case their registration information will be sent to the SSS. The SSS will compare the DMV records to other records they have access to from Social Security to ensure the person the DMV reported actually was assigned male at birth and must register, prior to registering the person. This prevents transgender people from being incorrectly registered.”

This analysis is based on an incorrect assumption that Social Security records indicate sex as assigned at birth. They do not. An individual can self-select the sex identification on their Social Security record, without being required to provide any medical or legal evidence with respect to the gender identifier on their record.⁵ Evidence of identity is required, but this could consist of a U.S. or foreign passport which – like a California driver’s license or ID – can contain a self-selected gender identifier which does not indicate sex as assigned at birth.⁶

If an individual was born outside the U.S., their birth may not be included in U.S. vital records and the gender identifier (if any – a growing number of other countries provide an “X” gender marker option on passports and other documents) on the identity documents they use to obtain a Social Security number may not correspond to their sex as assigned at birth.

In short, neither the California DMV, the SSS, the Social Security Administration, nor any other state or Federal agency necessarily has *any* information as to sex as assigned at birth.

It will *only* be possible for the DMV to determine which driver’s license and ID applicants are required to register with the SSS, in order to fulfill the mandate of SB 1081 that only the information required for registration be transmitted to the SSS, if the DMV interrogates each and every draft-age applicant – regardless of whether they request an M, F, or X license or ID – as to their sex as assigned at birth, and includes that information in DMV records.

This will require significant and costly changes to DMV forms and procedures. Since these costs are unrelated to driver licensing, they must be covered from the general fund.

Determining whether an individual is required to register with the SSS also requires detailed and intrusive inquiry into their immigration status. In particular, “Non-immigrant men living in the United States on a valid visa are not required to register for as long as they remain on a valid visa up until they turn 26.”⁷

5. See Social Security Administration, “How do I change the sex identification on my Social Security record?”, <<https://faq.ssa.gov/en-us/Topic/article/KA-01453>>.

6. Press statement from Antony J. Blinken, Secretary of State, March 31, 2022, “X Gender Marker Available on U.S. Passports Starting April 11”, <<https://www.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/>>; U.S. Department of State, Bureau of Consular Affairs, “Selecting Your Gender Marker”, <<https://travel.state.gov/content/travel/en/passports/need-passport/selecting-your-gender-marker.html>>.

7. SSS, “Immigrants & Dual Nationals”, <<https://www.sss.gov/register/immigrants/>>.

Non-immigrant applicants for driver's licenses who aren't required to register with the SSS include, among other categories of non-U.S. citizens, foreign tourists and visitors (who may be eligible to drive with a foreign license if they have one, but who may need and be eligible for a California license if they don't have one from their home country), students on F or M student visas (an especially large percentage of whom, of course, are of draft age), seasonal agricultural workers on H-2A visas, and citizens of American Samoa (who are U.S. nationals but not U.S. citizens, and who must register with the SSS only if they are "habitual" residents of the U.S.).⁸

The SSS falsely claims on its website that "We do not now, or in the past, collect or share any information which would indicate a man's immigration status, either documented or undocumented. Selective Service has no authority to collect such information, has no use for it, and it is irrelevant to the registration requirement. Consequently, there is no immigration data to share with anyone."⁹ But elsewhere on its website the SSS includes a detailed table of the documents which it requires, and does in fact collect, in order to determine whether an individual is or is not required (or allowed) to register or be registered with the SSS.¹⁰ These are the documents that the DMV would be required to collect, review, and record in order to be able to transmit information to the SSS only in relation to individuals who are required to register.

The costs of questioning each applicant for a driver's license or ID as to their immigration status, including the type of visa (if any) on which they are present in the U.S., and recording this data, must be assessed and included in the fiscal impact of SB 1081.

On the other hand, if the DMV were to transmit to the SSS information on all draft-age applicants for licenses or IDs, without regard to immigration status, (a) the DMV would violate the requirement of SB 1081 that only the information necessary for registration (i.e. pertaining to individuals who are required to register) be transmitted to the SSS, and (b) the SSS would have no way to determine which of those individuals to register except by obtaining information as to the immigration status of each draft-age applicant for a California license or ID.¹¹

In either case, the DMV would need to provide notice to all prospective applicants for California driver's licenses or IDs, particularly all non-U.S. citizens, that they will be required to provide information to the DMV and/or SSS as to their immigration status and visa type. The result would be to dissuade some individuals from applying for driver's licenses, with consequential costs to road safety measured in both dollars and lives.

Other Californians – particularly refugees already traumatized by wars in the places from which they have fled, or who have sought asylum in the U.S. from conscription used to raise armies to fight wars of aggression or other wars being waged in violation of international law –

8. "Selective Service - Who Must Register", <https://www.sss.gov/wp-content/uploads/2024/01/WhoMustRegisterChart_1-16-24-1.pdf>.
9. SSS, "Immigrants & Dual Nationals", <<https://www.sss.gov/register/immigrants/>>.
10. SSS, "List of Acceptable Documents", <<https://www.sss.gov/wp-content/uploads/2020/02/DocumentationList.pdf>>.
11. If the SSS were to register all driver's license applicants without regard for immigration status or sex as assigned at birth, and thus without regard for whether they are required to register, the result would be a less accurate Selective Service database that would be less useful for an actual draft, since it would include more individuals who are not required to register or eligible to be drafted

will be deterred from obtaining driver's licenses if they know that this will result in their being registered for a possible draft for a future U.S. war, again with costs in road safety.

But AB-60 – for good reasons – requires the DMV to issue licenses without regard to immigration status.¹² If SB 1081 is enacted, the DMV would be required to issue a license or ID to an otherwise-qualified applicant who is unable to provide evidence of their immigration status, but required to transmit information to the SSS only if it is necessary for registration.

These contradictory mandates within the Vehicle Code would result in substantial administrative confusion and costs, and likely in litigation that would result in additional costs.¹³

We oppose SB 1081, and we urge the Appropriations Committee not to advance SB 1081 from the suspense file. It's bad policy, and it would have substantial fiscal impact at the expense of other priorities for the DMV and the state. Even if start-up costs were reimbursed by the Federal government, continuing costs would have to come from the general fund.

Interrogating every draft-aged driver's license applicant about their immigration status and sex as assigned at birth, and defending discriminatory practices that would deter drivers from getting licenses, are not how California should be spending limited state funds.

Members of the MLTF would be happy to discuss these issues with you or your staff.

Respectfully submitted,

April 17, 2024

Military Law Task Force of the National Lawyers Guild
730 N. First St.
San Jose, CA 95112

telephone 619-463-2369

help@nlgmtf.org
https://nlgmtf.org

contact person: Edward Hasbrouck
(member, Steering Committee and Selective Service Committee)

12. California DMV, "AB 60 Driver's License", <<https://www.dmv.ca.gov/portal/driver-licenses-identification-cards/assembly-bill-ab-60-driver-licenses/>>.

13. Other states have enacted similar laws, but few of these laws have been tested in court, and these laws in other states could not have been tested against the greater protections for privacy, LGBTQ+ rights, and immigrants' rights in California law and the California Constitution. Almost all of these other state laws predate the ability to self-select the gender identifier on Social Security records, passports, and driver's licenses and to obtain a driver's license without evidence of immigration status.