The Military Law Task Force of the National Lawyers Guild continues to oppose California Senate Bill 1081 as amended, for the same reasons we opposed this bill as introduced, and for additional reasons related to the amendments.  

SB 1081 would automatically register draft-age applicants for California driver’s licenses with the U.S. Selective Service System (SSS) for a possible military draft.

The Military Law Task Force (MLTF) is a standing national committee, headquartered in California, of the National Lawyers Guild (NLG).

By resolution adopted at our national convention in 2019, the NLG “declares its opposition to… draft registration…, to the poverty draft resulting from the denial of job opportunities in the civilian economy, resulting in the channeling of poor and minority youth into the military, [and] to the law… that automatically registers men over 18 with Selective Service when they apply for driver’s licenses or identification cards.”

The NLG and the MLTF oppose the current draft registration requirement and the current criminal and civil penalties for non-registration as unconstitutional. We oppose reinstatement of any form of military draft, and we support the Selective Service Repeal Act.

Our major objections to SB 1081, both as introduced and as amended, are as follows:

1. **The Senate amendments to SB 1081 make it worse than the original bill.**

SB 1081 was amended in the Senate to provide that it “does not apply to a driver’s license issued to a person who is unable to submit satisfactory proof that the applicant’s presence in the United States is authorized under federal law.”

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1. For more details regarding our continuing objections to SB 1081 as introduced, see our letters to the Senate Transportation Committee at <https://hasbrouck.org/draft/NLG-MLTF-California-SB1081-STRANS.pdf> (March 7, 2024) and to the Senate Appropriations Committee at <https://hasbrouck.org/draft/NLG-MLTF-California-SB1081-SAPPR.pdf> (April 17, 2024), also submitted and available through the legislature’s advocacy portal.

In order to comply with this provision, and to exclude these individuals from automatic registration with the SSS, the California Department of Motor Vehicles (DMV) would need to keep records of which applicants for driver’s licenses are unable to submit proof of authorized presence in the U.S. This would undermine the goal of AB 60, which was to enable Californians to obtain driver’s licenses without having the DMV ask about or keep records of immigration status. AB 60 prohibits the DMV from keeping records of immigration status, but the Senate amendment to SB 1081 would require the DMV to keep records of immigration status in order to determine which applicants are excluded from automatic registration with the SSS.

2. **SB 1081 would require the DMV to give materially false and misleading information about Selective Service law to applicants for driver’s licenses.**

SB 1081 would provide that “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.”

This “notice” would misstate Federal law. By doing so, it would seriously mislead applicants for driver’s licenses about their rights and duties under Federal law, with potentially serious civil, criminal, and -- in the event of a military draft -- life or death consequences.

Contrary to the false claim in the notice required by SB 1081, not all draft-age individuals who are eligible to apply for California driver’s licenses have a duty to register with the SSS.

Only those individuals who (a) were assigned male at birth (regardless of current gender or the self-selected gender marker on their driver’s license or other state or Federal documents or records) and (b) are either U.S. citizens or “immigrants” (a category that excludes holders of “non-immigrant” visas including foreign students and H-1 visa holders) are required or permitted to register or be registered with the SSS.

The fact that SB 1081 itself grossly misstates Federal law should be a cautionary warning that state officials, including DMV staff, are neither qualified nor trained to provide legal advice about the Military Selective Service Act or the civil or criminal implications of signing a driver’s license application acknowledging receiving a notice about duties under Federal law.

3. **Regardless of whether registration with the SSS is “opt-in” or “opt-out”, questioning by the DMV of applicants for driver’s licenses (as young as age 16) about registration with the SSS violates their right to due process, Miranda rights, right to counsel, and protection against self-incrimination.**

Individuals – and, if they are minors, their parents or guardians – making decisions about Selective Service registration are entitled to Constitutional due process, none of which is provided when they are registered with the SSS through a driver’s license application.
Enforcement of Federal law should be carried out by Federal courts, where defendants are entitled to these rights.

As experts in Selective Service law, we know that it is complex and often misunderstood. Individuals’ actions – such as being registered with the SSS, or signing a driver’s license application that includes a statement acknowledging receipt of a notice that could be considered an admission of an essential element of the criminal offense of “knowing” failure to register with the SSS if required to do so -- can have significant, non-obvious, permanent consequences.

Decisions about Selective Service registration should not be made before age 18. Individuals with questions about Selective Service law should consult a qualified lawyer or draft counselor -- not DMV staff whose expertise is in California motor vehicle licensing.

If the Federal government believes that certain nonregistrants have acted “knowingly and willfully” in violation of Federal law, the proper action is to (1) charge them with a Federal crime, (2) give them their day in court and the opportunity to contest both the factual allegations against them and the Constitutionality of the registration requirement, on its face and as applied; and (3) present evidence sufficient to prove to a jury, beyond a reasonable doubt, each of the elements of that crime including that their failure to register was “knowing and willful”.

4. The collateral consequences of nonregistration with the SSS are exaggerated.

Nonregistration with the SSS is neither a criminal offense nor grounds for collateral civil penalties, such as denial of Federal employment or delay of naturalization, unless there is evidence that failure to register with the SSS was “knowing and willful”. There is rarely any such evidence, and few individuals are deemed ineligible for Federal employment on this basis.

According to a notice published in the Federal Register in February 2024 by the Office of Personnel Management (OPM), which handles appeals of denial or termination of Federal employment on the basis of nonregistration with the SSS, “For cases received by OPM to adjudicate, approximately one percent of these individuals are removed or denied employment per year on average over the past three years.” In other words, 99 times out of 100, nonregistrants are able to get or keep Federal jobs if they know to submit a declaration of lack of knowledge and/or willfulness and appeal any initial adverse decision to OPM.

As for delay in naturalization as U.S. citizens, U.S. Citizenship and Immigration Services (USCIS) treats “knowing and willful” nonregistration during the previous five years as evidence of a lack of “attachment to the Constitution” which provides a basis for denial of naturalization. But, “USCIS will allow the applicant an opportunity to show that he did not knowingly or willfully fail to register.” In almost all cases the sole evidence with respect to knowledge and willfulness is the applicant’s declaration that they did not know they were required to register.

3. 89 Federal Register 8356-8357, February 7, 2024.
Delay of naturalization for “knowing and willful” failure to register with the SSS is rare.

The Federal law which formerly required registration with the SSS as a qualification for Federal student aid was repealed in 2020. The California law which formerly required registration with the SSS as a qualification for Cal Grants was repealed in 2021. The trend has been away from linking registration with the SSS to unrelated state or Federal programs. SB 1081 would go against that trend by linking registration with the SSS to driver’s licenses.

5. **SB 1081 is not needed to inform draft-age Californians about Selective Service registration or to give them an opportunity to register with the SSS.**

In 2023, the DMV entered into a memorandum of understanding to transmit monthly lists of all draft-age male applicants for California driver’s licenses or IDs to the SSS.

Since the start of 2024, without the need for SB 1081, the DMV has been sending the SSS the name, birthdate, and address of each draft-age male applicant for a license or ID. The SSS can, and already does, send notices — at SSS and not DMV expense — to inform these men of the registration requirement and offer them a chance to register.

SB 1081 would be particularly gratuitous if it were amended to provide for registration of driver’s license applicants with the SSS on an “opt-in” basis. The hundreds of thousands of “warning letters” sent by the SSS each year already provide recipients with the opportunity to “opt in” to registration with the SSS, if they are required to register and wish to do so.

6. **Determining which applicants for driver’s licenses are required to register with the SSS would be complex, costly, and undermine other policy goals.**

As noted above and detailed in our earlier letter to the Senate Appropriations Committee, not all draft-age individuals who are eligible to apply for California driver’s licenses have a duty to register with the SSS. Whether an individual is required to register with the SSS depends on sex as assigned at birth and, if they aren’t a U.S. citizen, on their immigration and visa status.

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This information is not currently collected by the DMV or included in DMV records.

California residents can self-select the gender marker (M, F, or X) on their driver’s license and in DMV records, regardless of their sex as assigned at birth.

California residents can obtain a driver’s license regardless of whether they hold an “immigrant” or “non-immigrant” visa, and without being asked for, or providing any information to the DMV about, their immigration status or the type of visa, if any, they hold.

So far as we can tell, neither the DMV nor the legislature has yet considered the implications of the applicability of the Selective Service registration requirement to some draft-age individuals, but not others, or assessed the costs of determining which draft-age applicants for driver’s licenses are, and which are not, required or permitted to register with the SSS.

On its face, SB 1081 would require the DMV to make such determinations and, therefore, would implicitly require the DMV to collect and record the information needed to do so.

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 required to register with the SSS.

In order to fulfill this mandate of SB 1081, the DMV would incur substantial costs in modifying forms, databases, and procedures; in staff training and public education about the new questions on application forms; and in staff time to answer questions about Selective Service.

For the DMV to collect information about citizenship, immigration status, and visa type would undermine the goals of AB 60, which was intended to separate driver licensing from questioning about immigration status. And for the DMV to collect information about sex as assigned at birth would undermine the goals of the law empowering Californians to self-select the gender marker (M, F, or X) on their driver’s license, regardless of sex as assigned at birth.

If, on the other hand, the DMV doesn’t collect or record this additional information – information collected solely for purposes of enforcement of the Military Selective Service Act, and not for any purpose related to driver licensing – than (a) the DMV will violate the mandate of SB 1081 that information be transmitted to the SSS only to the extent that it is needed to register those required to register with the SSS, and (b) the result will be that many California binary person. Am I required to register?”, at <https://www.sss.gov/faq/#who-needs-to-register>.
residents who are not eligible to be drafted or required to register with the SSS will be wrongly added to the SSS registration list to be used to send induction notices in the event of a draft.

By adding tens of thousands of draft-ineligible Californians to the SSS registration list – including trans and non-binary individuals who were not assigned male at birth, and foreign students and H-1 visa holders who are considered “non-immigrant” U.S. residents -- SB 1081 would render the SSS registration database less accurate or fit for purpose.

This would inevitably alarm, confuse, and/or intimidate individuals who are not U.S. citizens and/or who were not assigned male at birth, but who will automatically be mis-registered with the SSS. Notices that non-immigrants have been registered for the draft as a result of applying for driver’s licenses will deter others non-U.S. citizens from applying for driver’s licenses.

We urge the legislature to reject SB 1081. Leave the enforcement or nonenforcement of Federal criminal laws to Federal law enforcement authorities and Federal courts.

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

Respectfully submitted,

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