

BILL ANALYSIS

C.S.H.B. 54
By: Wolens
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, prosecutors may have difficulty effectively prosecuting those who unduly influence an election. Many voters, such as the elderly and infirm, are homebound and unable to vote at regular polling places on election day. In recent elections, certain individuals have unlawfully assisted these voters with completing early voting ballot applications and with marking and delivering their ballots. Some individuals have also engaged in the buying and selling of mail ballots to alter election outcomes. CSHB 54 adds provisions relating to certain early voting by mail procedures and to the prevention of voting fraud generally; providing criminal penalties.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Secretary of State in SECTION 14 (Section 86.013 , Election Code) of this bill.

ANALYSIS

CSHB 54 amends provisions in the Election Code and Penal Code relating to election fraud and early voting by mail procedures.

Unlawful Assistance:

CSHB 54 provides that a person who knowingly marks or attempts to mark another person's ballot without the consent of that person commits an offense. (Section 64.012, Election Code) The bill provides that a person who knowingly assists a voter prepare the voter's ballot without direction from the voter or who knowingly provides assistance to a voter who has not requested assistance or who has not selected that person to assist commits a Class A misdemeanor. The bill raises the offense for a person who otherwise unlawfully assists a voter from a Class B to a Class A misdemeanor. (Section 64.036, Election Code)

Witnesses to Applications and Voting:

The bill provides that a person who acts as a witness to an application for early voting by mail (application) or who otherwise assists an applicant in completing an application commits a Class A misdemeanor if the person, in the presence of the applicants, knowingly fails to follow provisions related to the signing of documents by a witness. A person who violates these provisions who is related to the applicant within the second degree by affinity or the third degree by consanguinity (closely related) or who is registered to vote at the same address as the applicant commits a Class C misdemeanor. (Section 84.003, Election Code) The bill clarifies that provisions relating to the unlawful witnessing of an application apply when the unlawful witnessing is for more than one applicant (Section 84.004, Election Code)

CSHB 54 provides that a person who acts as a witness for a voter in signing the certificate on the carrier envelope and who knowingly fails to properly sign the document commits a Class B misdemeanor. The bill provides that a person other than the voter who knowingly deposits the carrier envelop in the mail or with a common or contract carrier (carrier) and who does not provide the person's signature, printed name,

and residence address on the reverse side of the envelope commits a Class B misdemeanor. The bill provides that a person who violates these provisions who is also convicted of unlawfully assisting the same voter in connection with the same ballot commits a state jail felony. (Section 86.0051, Election Code)

The bill increases the offense for providing false information on an application to a state jail felony from a Class A misdemeanor unless the person who commits the offense is the applicant, is closely related to the applicant, or is registered to vote at the same address as the applicant, in which cases the offense remains a Class A misdemeanor. (Section 84.0041, Election Code)

Handling of Ballots and Carrier Envelopes:

CSHB 54 authorizes carrier envelopes containing official marked envelopes to be transported and delivered, rather than just delivered, only by mail or by carrier. (Section 86.006, Election Code) The bill requires carriers who transport and deliver materials associated with early voting to routinely use receipts and to comply with laws relating to the filing of an assumed name. The bill sets forth the requirements for the receipts. The bill prohibits the use of carriers who transport property as an incidental activity of a nontransportation business activity regardless of whether the carrier imposes a separate charge for the transportation. (Section 81.005, Election Code)

The bill requires that the receipt accompanying a carrier envelope delivered by a carrier indicate the name and residence address of the individual who actually delivered the envelope to the carrier, in addition to the date, hour, and address at which the carrier envelope was received by the carrier. The bill adds carrier envelopes originating from an office, rather than just the headquarters, of a political party or candidate in the election to those a carrier is prohibited from delivering. (Section 86.006, Election Code)

Possession and Storage of Ballots and Carrier Envelopes:

The bill prohibits carrier envelopes from being collected and stored at another location for subsequent delivery to the clerk. The bill provides that a person who knowingly possesses an official ballot or carrier envelope provided to another commits an offense. The bill provides that a person who knowingly possesses at least one but fewer than 10 official ballots or carrier envelopes provided to another commits a Class B misdemeanor. A person who violates these provisions without the consent of the voters commits a state jail felony. The bill provides that a person who possesses at least 10 but fewer than 20 official ballots or carrier envelopes provided to another commits a Class A misdemeanor. A person who violates these provisions without the consent of the voters commits a felony of the third degree. The bill provides that the offense for possession of 20 or more official ballots or carrier envelopes provided to another is a state jail felony or a felony of the second degree if the person does not have the consent of the voters. The bill provides an affirmative defense to prosecution for these offenses for specified individuals, unless the person intended to defraud the voter or the election authority. The bill authorizes the secretary of state to prescribe procedures for the accountability of carrier envelopes. (Sections 86.006, Election Code)

Printed Information Required to Appear on Applications and Carrier Envelopes:

CSHB 54 adds offenses relating to the witnessing of an application and spaces for entering the signature, printed name, and residence address of any person assisting the applicant to the items which must appear on the application. (Section 84.011, Election Code)

The bill adds spaces for entering the signature, printed name, and residence address of a person other than the voter who deposits the carrier envelope in the mail or with a carrier to the items which must appear on the reverse side of the official carrier envelope. (Section 86.013, Election Code) The bill requires a person who assists a voter to prepare a ballot to be voted by mail to complete these spaces. The bill provides that a person who knowingly fails to provide this information commits a Class A misdemeanor unless the person is also convicted of unlawfully assisting the same voter, in which case the person commits a state jail felony. (Section 86.010, Election Code) The bill provides that a person other than the voter who deposits the carrier envelope in the mail or with a carrier and who knowingly fails to complete these spaces commits a Class B misdemeanor. The bill provides that is a not a defense to this offense that the voter voluntarily gave another person possession of the voter's carrier envelope and provides that a person who violates this provision who is also convicted of unlawfully assisting the same voter in connection with the same ballot

commits a state jail felony. (Section 86.0051, Election Code)

The bill provides that the oath of a person assisting a voter must be included on the official carrier envelope as part of the certificate accompanying the marked ballot. The bill also requires specific provisions and offenses relating to the collection and storage of carrier envelopes and the assistance oath to appear on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope. The bill requires the secretary of state, by rule, to require that a notice informing voters of the telephone number for and purpose of the Voting Rights Hotline be printed on the official carrier envelope or on an insert enclosed with the balloting materials for voting by mail sent to the voter. (Section 86.013, Election Code)

Buying, Selling, and Theft of Ballots:

CSHB 54 provides that a person who buys, offers to buy, sells, or offers to sell an official ballot, official ballot envelope, official carrier envelope, signed application, or any other original election record commits a state jail felony. The bill provides that a voter who sells a ballot, ballot envelope, or carrier envelope that has been provided to the voter by the government commits a Class B misdemeanor. The bill provides an exception to the violation of these provisions for a person who executes a written contract for the procurement of election supplies necessary to conduct an election. (Section 276.010, Election Code) The bill provides that theft of an official ballot or official carrier envelope for an election is a state jail felony. (Section 31.03, Penal Code)

Date for Release of Voter Information:

The bill modifies the public review date for information on persons to whom ballots have been sent to the first business day after election day. (Section 87.121, Election Code)

Aid to Prosecution

CSHB 54 defines the terms “election record” and “assisting a voter.” (Sections 1.012 and 64.0321, Election Code; Section 37.01, Penal Code) The bill provides that ineligibility to vote is no defense to prosecution for violation of the Election Code. The bill provides that sections of the Penal Code relating to inchoate offenses also apply to offenses prescribed by the Election Code. The bill provides that a party to an offense under the Election Code may be required to furnish evidence or testimony about the offense and prohibits this evidence or testimony, or information directly or indirectly derived from that evidence or testimony from being used against the party providing the evidence or testimony in a criminal case except for a prosecution of aggravated perjury or contempt. (Sections 1.017-1.019, Election Code)

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Volunteer Deputy Early Voting Assistants:

CSHB 54 modifies the original by removing provisions relating to the Volunteer Deputy Early Voting Assistants.

Unlawful Assistance:

CSHB 54 modifies the original by adding a definition for assisting a voter and by adding provisions relating to furnishing evidence or testimony about an offense under the Election Code. The bill modifies the original by raising the offense for unlawful assistance of a voter. The substitute removes the more stringent offense for unlawful assistance of a voter casting an early voting ballot by mail. The substitute reduces the offense for a person who assists a voter and knowingly fails to provide the required information on an official carrier envelope but removes the less stringent penalty for specified individuals who violate this provision.

Handling of Official Ballots and Carrier Envelopes:

The substitute modifies the original by adding provisions relating to carrier envelope action by a person

other than a voter and adding provisions relating to requirements for a common or contract carrier. The substitute adds the requirement that delivery receipts for carrier envelopes indicate the name and address of the individual who actually delivered the envelope to the carrier and deletes the exception to receipt requirements for carriers who do not routinely issue a receipt. The substitute also removes the requirement that a receipt for delivery of an official ballot or carrier envelope show payment for delivery by the voter. The substitute adds the prohibition of delivery by carrier of carrier envelopes that originate from an office, rather than only the headquarters, of a political party or a candidate in the election. The substitute removes the provisions specifying who is authorized to collect or receive applications or carrier envelopes for submission and delivery.

Possession and Storage of Ballots and Carrier Envelopes:

The substitute modifies the original by reducing the offense for possessing at least one but fewer than 10 ballots or carrier envelopes. The substitute adds a person who possesses an official carrier envelope in order to deposit the envelope in the mail or with a carrier and who provides the required information to those with an affirmative defenses to prosecution for knowingly possessing an official ballot or carrier envelope provided to another.

Printed Information Required to Appear on Applications and Carrier Envelopes:

The substitute modifies the original by adding spaces for entering the signature, printed name, and residence address of a person other than the voter who deposits the carrier envelope in the mail or with a carrier to the items that must appear on the reverse side of the official carrier envelope. The substitute adds provisions requiring the secretary of state by rule to require information relating to the Voting Rights Hotline to be printed on carrier envelopes or accompanying materials.

Buying, Selling, and Theft of Ballots:

The substitute adds the provision that the theft of an official ballot or official carrier envelope for an election is a state jail felony. The substitute modifies the exception to the offense for unlawfully buying or selling election materials by providing an exception for a person who executes a written contract for the procurement of election supplies necessary to conduct an election, rather than only providing an exception when the sale is part of a contract to which one party is a government.