

By: Wolens, Denny, Madden, et al.

H.B. No. 54

A BILL TO BE ENTITLED

AN ACT

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relating to certain early voting by mail procedures and to the prevention of voting fraud generally; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.012, Election Code, is amended by adding Subsection (d) to read as follows:

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

(2) anything required by law to be kept by others for information of government under this code; or

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

SECTION 2. Chapter 1, Election Code, is amended by adding Sections 1.017, 1.018, and 1.019 to read as follows:

Sec. 1.017. INELIGIBILITY NO DEFENSE TO PROSECUTION. It is no defense to prosecution under this code that a person who receives an official ballot is ineligible to vote in the election for which the ballot is received.

Sec. 1.018. APPLICABILITY OF PENAL CODE. In addition to Section 1.03, Penal Code, and to other titles of the Penal Code that may apply to this code, Title 4, Penal Code, applies to offenses

1 prescribed by this code.

2 Sec. 1.019. REQUIRED EVIDENCE OR TESTIMONY. (a) A party to
3 an offense under this code may be required to furnish evidence or
4 testimony about the offense.

5 (b) Evidence or testimony required to be furnished under
6 this section, or information directly or indirectly derived from
7 that evidence or testimony, may not be used against the party
8 providing the evidence or testimony in a criminal case except for a
9 prosecution of aggravated perjury or contempt.

10 SECTION 3. Section 64.012(a), Election Code, is amended to
11 read as follows:

12 (a) A person commits an offense if the person:

13 (1) votes or attempts to vote in an election in which
14 the person knows the person is not eligible to vote;

15 (2) knowingly votes or attempts to vote more than once
16 in an election; ~~or~~

17 (3) knowingly impersonates another person and votes or
18 attempts to vote as the impersonated person; or

19 (4) knowingly marks or attempts to mark another
20 person's ballot without the consent of that person.

21 SECTION 4. Subchapter B, Chapter 64, Election Code, is
22 amended by adding Section 64.0321 to read as follows:

23 Sec. 64.0321. DEFINITION. For purposes of this subchapter
24 and Sections 85.035 and 86.010, assisting a voter includes the
25 following conduct by a person other than the voter that occurs while
26 the person is in the presence of the voter's ballot or carrier
27 envelope:

- 1 (1) reading the ballot to the voter;
- 2 (2) directing the voter to read the ballot;
- 3 (3) marking the voter's ballot; or
- 4 (4) directing the voter to mark the ballot.

5 SECTION 5. Sections 64.036(a) and (d), Election Code, are
6 amended to read as follows:

7 (a) A person commits an offense if the person knowingly:

8 (1) provides assistance to a voter who is not eligible
9 for assistance;

10 (2) while assisting a voter prepares the voter's
11 ballot in a way other than the way the voter directs or without
12 direction from the voter; ~~[or]~~

13 (3) while assisting a voter suggests by word, sign, or
14 gesture how the voter should vote; or

15 (4) provides assistance to a voter who has not
16 requested assistance or selected the person to assist the voter.

17 (d) An offense under this section is a Class A [~~B~~]
18 misdemeanor.

19 SECTION 6. Section 81.005, Election Code, is amended to
20 read as follows:

21 Sec. 81.005. COMMON OR CONTRACT CARRIER. (a) A common or
22 contract carrier may not be used to perform an act in accordance
23 with this title unless the carrier:

24 (1) is a bona fide, for profit carrier, the primary
25 business of which is transporting or delivering property for
26 compensation and the business practices of which are reasonable and
27 prudent according to the usual standards for the business in which

1 it is engaged;

2 (2) routinely uses receipts that:

3 (A) permit the carrier to retrieve a receipt or
4 information contained in a receipt;

5 (B) provide space for the name and residence
6 address of a person who delivers a parcel to the carrier; and

7 (C) provide space for the date, time, and address
8 at which parcels are received by the carrier; and

9 (3) complies with laws requiring the carrier to file
10 an assumed name with each county in which the carrier receives or
11 delivers parcels or with the secretary of state, as appropriate.

12 (b) A common or contract carrier may not be used to perform
13 an act in accordance with this title if the carrier transports
14 property as an incidental activity of a nontransportation business
15 activity regardless of whether the carrier imposes a separate
16 charge for the transportation.

17 SECTION 7. Section 84.003, Election Code, is amended to
18 read as follows:

19 Sec. 84.003. SIGNING APPLICATION BY WITNESS; ASSISTING
20 APPLICANT. (a) An early voting ballot application signed for the
21 applicant by a witness other than the early voting clerk or a deputy
22 must indicate the witness's relationship to the applicant or, if
23 unrelated, indicate that fact.

24 (b) A person who acts as a witness for an applicant for an
25 early voting ballot application commits an offense if the person
26 knowingly fails to comply with Section 1.011. A person who in the
27 presence of the applicant otherwise assists an applicant in

1 completing an early voting ballot application commits an offense if
2 the person knowingly fails to comply with Section 1.011(d) in the
3 same manner as a witness.

4 (c) An offense under this section is a Class A misdemeanor.

5 (d) Subsection (b) does not apply if the person is related
6 to the applicant within the second degree by affinity or the third
7 degree by consanguinity, as determined under Subchapter B, Chapter
8 573, Government Code, or is registered to vote at the same address
9 as the applicant.

10 SECTION 8. The heading to Section 84.004, Election Code, is
11 amended to read as follows:

12 Sec. 84.004. UNLAWFULLY WITNESSING APPLICATION FOR MORE
13 THAN ONE APPLICANT.

14 SECTION 9. Section 84.0041(b), Election Code, is amended to
15 read as follows:

16 (b) An offense under this section is a state jail felony
17 unless the person is the applicant, is related to the applicant
18 within the second degree by affinity or the third degree by
19 consanguinity, as determined under Subchapter B, Chapter 573,
20 Government Code, or is registered to vote at the same address as the
21 applicant, in which event the offense is a Class A misdemeanor.

22 SECTION 10. Section 84.011(a), Election Code, is amended to
23 read as follows:

24 (a) The officially prescribed application form for an early
25 voting ballot must include:

26 (1) immediately preceding the signature space the
27 statement: "I certify that the information given in this

1 application is true, and I understand that giving false information
2 in this application is a crime.";

3 (2) a statement informing the applicant of the
4 offenses [~~offense~~] prescribed by Sections 84.003 and [~~Section~~]
5 84.004;

6 (3) spaces for entering an applicant's voter
7 registration number and county election precinct of registration,
8 with a statement informing the applicant that failure to furnish
9 that information does not invalidate the application; and

10 (4) on an application for a ballot to be voted by mail:

11 (A) a space for an applicant applying on the
12 ground of absence from the county of residence to indicate the date
13 on or after which the applicant can receive mail at the address
14 outside the county;

15 (B) a space for indicating the fact that an
16 applicant whose application is signed by a witness cannot make the
17 applicant's mark and a space for indicating the relationship or
18 lack of relationship of the witness to the applicant;

19 (C) a space for entering an applicant's telephone
20 number, with a statement informing the applicant that failure to
21 furnish that information does not invalidate the application;

22 (D) a space or box for an applicant applying on
23 the ground of age or disability to indicate that the address to
24 which the ballot is to be mailed is the address of a facility or
25 relative described by Section 84.002(a)(3), if applicable;

26 (E) a space or box for an applicant applying on
27 the ground of confinement in jail to indicate that the address to

1 which the ballot is to be mailed is the address of a relative
2 described by Section 84.002(a)(4), if applicable;

3 (F) spaces [~~a space~~] for entering the signature,
4 printed name, and residence address of any person assisting the
5 applicant;

6 (G) a statement informing the applicant of the
7 condition prescribed by Section 81.005; and

8 (H) a statement informing the applicant of the
9 requirement prescribed by Section 86.003(c).

10 SECTION 11. Chapter 86, Election Code, is amended by adding
11 Section 86.0051 to read as follows:

12 Sec. 86.0051. CARRIER ENVELOPE ACTION BY PERSON OTHER THAN
13 VOTER; OFFENSES. (a) A person commits an offense if the person
14 acts as a witness for a voter in signing the certificate on the
15 carrier envelope and knowingly fails to comply with Section 1.011.

16 (b) A person other than the voter who deposits the carrier
17 envelope in the mail or with a common or contract carrier must
18 provide the person's signature, printed name, and residence address
19 on the reverse side of the envelope.

20 (c) A person commits an offense if the person knowingly
21 violates Subsection (b). It is not a defense to an offense under
22 this subsection that the voter voluntarily gave another person
23 possession of the voter's carrier envelope.

24 (d) An offense under this section is a Class B misdemeanor,
25 unless the person is convicted of an offense under Section 64.036
26 for providing unlawful assistance to the same voter in connection
27 with the same ballot, in which event the offense is a state jail

1 felony.

2 (e) Subsections (a) and (c) do not apply if the person is
3 related to the applicant within the second degree by affinity or the
4 third degree by consanguinity, as determined under Subchapter B,
5 Chapter 573, Government Code, or is registered to vote at the same
6 address as the applicant.

7 SECTION 12. Section 86.006, Election Code, is amended by
8 amending Subsections (a), (d), and (e) and adding Subsections (f),
9 (g), and (h) to read as follows:

10 (a) A marked ballot voted under this chapter must be
11 returned to the early voting clerk in the official carrier
12 envelope. The carrier envelope may be delivered in another
13 envelope and must be transported and delivered only by mail or by
14 common or contract carrier.

15 (d) Each carrier envelope that is delivered by a common or
16 contract carrier must be accompanied by an individual delivery
17 receipt for that particular carrier envelope that indicates the
18 name and residence address of the individual who actually delivered
19 the envelope to the carrier and the date, hour, and address at which
20 the carrier envelope was received by the carrier [~~unless the~~
21 ~~carrier does not routinely issue a receipt, in which case the~~
22 ~~secretary of state shall prescribe appropriate procedures for~~
23 ~~accounting for the delivery~~]. A delivery of carrier envelopes is
24 prohibited by a common or contract carrier if the delivery
25 originates from the address of:

26 (1) an office [~~the headquarters~~] of a political party
27 or a candidate in the election;

1 (2) a candidate in the election unless the address is
2 the residence of the early voter;

3 (3) a specific-purpose or general-purpose political
4 committee involved in the election; or

5 (4) an entity that requested that the election be
6 held, unless the delivery is a forwarding to the early voting clerk.

7 (e) Carrier envelopes may not be collected and stored at
8 another location for subsequent delivery to the early voting clerk.
9 The secretary of state shall prescribe appropriate procedures to
10 implement this subsection and to provide accountability for the
11 delivery of the carrier envelopes from the voting place to the early
12 voting clerk.

13 (f) A person commits an offense if the person knowingly
14 possesses an official ballot or official carrier envelope provided
15 under this code to another. Unless the person possessed the ballot
16 or carrier envelope with intent to defraud the voter or the election
17 authority, it is an affirmative defense to prosecution under this
18 subsection that the person, on the date of the offense, was:

19 (1) related to the voter within the second degree by
20 affinity or the third degree by consanguinity, as determined under
21 Subchapter B, Chapter 573, Government Code;

22 (2) registered to vote at the same address as the
23 voter;

24 (3) an early voting clerk or a deputy early voting
25 clerk;

26 (4) a person who possesses the carrier envelope in
27 order to deposit the envelope in the mail or with a common or

1 contract carrier and who provides the information required by
2 Section 86.0051(b) in accordance with that section;

3 (5) an employee of the United States Postal Service
4 working in the normal course of the employee's authorized duties;
5 or

6 (6) a common or contract carrier working in the normal
7 course of the carrier's authorized duties if the official ballot is
8 sealed in an official carrier envelope that is accompanied by an
9 individual delivery receipt for that particular carrier envelope.

10 (g) An offense under Subsection (f) is:

11 (1) a Class B misdemeanor if the person possesses at
12 least one but fewer than 10 ballots or carrier envelopes unless the
13 person possesses the ballots or carrier envelopes without the
14 consent of the voters, in which event the offense is a state jail
15 felony;

16 (2) a Class A misdemeanor if the person possesses at
17 least 10 but fewer than 20 ballots or carrier envelopes unless the
18 person possesses the ballots or carrier envelopes without the
19 consent of the voters, in which event the offense is a felony of the
20 third degree; or

21 (3) a state jail felony if the person possesses 20 or
22 more ballots or carrier envelopes unless the person possesses the
23 ballots or carrier envelopes without the consent of the voters, in
24 which event the offense is a felony of the second degree.

25 (h) A ballot returned in violation of this section may not
26 be counted. If the early voting clerk determines that the ballot
27 was returned in violation of this section, the clerk shall make a

1 notation on the carrier envelope and treat it as a ballot not timely
2 returned in accordance with Section 86.011(c). If the ballot is
3 returned before the end of the period for early voting by personal
4 appearance, the early voting clerk shall promptly mail or otherwise
5 deliver to the voter a written notice informing the voter that:

6 (1) the voter's ballot will not be counted because of a
7 violation of this code; and

8 (2) the voter may vote if otherwise eligible at an
9 early voting polling place or the election day precinct polling
10 place on presentation of the notice.

11 SECTION 13. Section 86.010, Election Code, is amended by
12 amending Subsection (c) and adding Subsections (e), (f), (g), and
13 (h) to read as follows:

14 (c) The person assisting the voter must sign a written oath
15 prescribed by Section 64.034 that is part of the certificate on the
16 official carrier envelope.

17 (e) A person who assists a voter to prepare a ballot to be
18 voted by mail shall enter the person's signature, printed name, and
19 residence address on the official carrier envelope of the voter.

20 (f) A person commits an offense if the person knowingly
21 fails to provide the information on the official carrier envelope
22 as required by Subsection (e).

23 (g) An offense under this section is a Class A misdemeanor
24 unless the person is convicted of an offense under Section 64.036
25 for providing unlawful assistance to the same voter, in which event
26 the offense is a state jail felony.

27 (h) Subsection (f) does not apply if the person is related

1 to the applicant within the second degree by affinity or the third
2 degree by consanguinity, as determined under Subchapter B, Chapter
3 573, Government Code, or is registered to vote at the same address
4 as the applicant.

5 SECTION 14. Section 86.013, Election Code, is amended by
6 amending Subsections (b), (d), and (f) and adding Subsection (g) to
7 read as follows:

8 (b) Spaces [~~for indicating the identity and date of the~~
9 ~~election~~] must appear on the reverse side of the official carrier
10 envelope for:

11 (1) indicating the identity and date of the election;
12 and

13 (2) entering the signature, printed name, and
14 residence address of a person other than the voter who deposits the
15 carrier envelope in the mail or with a common or contract carrier.

16 (d) The following textual material, as prescribed by the
17 secretary of state, must be printed on the reverse side of the
18 official carrier envelope or on a separate sheet accompanying the
19 carrier envelope when it is provided:

20 (1) the prohibition prescribed by Section 86.006(b);

21 (2) the conditions for delivery by common or contract
22 carrier prescribed by Sections 81.005 and 86.006; [~~and~~]

23 (3) the requirements for the legal execution and
24 delivery of the carrier envelope;

25 (4) the prohibition prescribed by Section 86.006(e);

26 and

27 (5) the offenses prescribed by Sections 86.006(f) and

1 86.010(f).

2 (f) The oath of a person assisting a voter must be included
3 on the official carrier envelope as part of the certificate
4 prescribed by Subsection (c).

5 (g) The secretary of state by rule shall require that a
6 notice informing voters of the telephone number established under
7 Section 31.0055 and the purpose of the telephone number be printed
8 on:

9 (1) the official carrier envelope; or

10 (2) an insert enclosed with the balloting materials
11 for voting by mail sent to the voter.

12 SECTION 15. Section 87.121(f), Election Code, is amended to
13 read as follows:

14 (f) Information on the roster for a person to whom an early
15 voting mail ballot has been sent is not available for public
16 inspection, except to the voter seeking to verify that the
17 information pertaining to the voter is accurate, until the first
18 business day after [+

19 ~~[(1) 72 hours after the time a ballot is mailed to the~~
20 ~~voter, or~~

21 ~~[(2) 48 hours after the time a ballot is mailed to the~~
22 ~~voter if the mailing occurs on the fourth day before] election day.~~

23 SECTION 16. Section 87.121, Election Code, is amended by
24 adding Subsection (h) to read as follows:

25 (h) Information on the roster for a person who votes an
26 early voting ballot by mail shall be made available for public
27 inspection not later than the day following the day the early voting

1 clerk receives a ballot voted by mail.

2 SECTION 17. Chapter 276, Election Code, is amended by
3 adding Section 276.010 to read as follows:

4 Sec. 276.010. UNLAWFUL BUYING AND SELLING OF BALLOTING
5 MATERIALS. (a) A person commits an offense if the person buys,
6 offers to buy, sells, or offers to sell an official ballot, official
7 ballot envelope, official carrier envelope, signed application for
8 an early voting mail ballot, or any other original election record.

9 (b) This section does not apply to a person who executes a
10 written contract for the procurement of election supplies necessary
11 to conduct an election under Section 51.003.

12 (c) An offense under this section is a state jail felony
13 unless a voter sells a ballot, ballot envelope, or carrier envelope
14 that has been provided to the voter by government, in which event
15 the offense is a Class B misdemeanor.

16 SECTION 18. Section 31.03(e), Penal Code, is amended to
17 read as follows:

18 (e) Except as provided by Subsection (f), an offense under
19 this section is:

20 (1) a Class C misdemeanor if the value of the property
21 stolen is less than:

22 (A) \$50; or

23 (B) \$20 and the defendant obtained the property
24 by issuing or passing a check or similar sight order in a manner
25 described by Section 31.06;

26 (2) a Class B misdemeanor if:

27 (A) the value of the property stolen is:

1 (i) \$50 or more but less than \$500; or

2 (ii) \$20 or more but less than \$500 and the
3 defendant obtained the property by issuing or passing a check or
4 similar sight order in a manner described by Section 31.06; or

5 (B) the value of the property stolen is less
6 than:

7 (i) \$50 and the defendant has previously
8 been convicted of any grade of theft; or

9 (ii) \$20, the defendant has previously been
10 convicted of any grade of theft, and the defendant obtained the
11 property by issuing or passing a check or similar sight order in a
12 manner described by Section 31.06;

13 (3) a Class A misdemeanor if the value of the property
14 stolen is \$500 or more but less than \$1,500;

15 (4) a state jail felony if:

16 (A) the value of the property stolen is \$1,500 or
17 more but less than \$20,000, or the property is less than 10 head of
18 cattle, horses, or exotic livestock or exotic fowl as defined by
19 Section 142.001, Agriculture Code, or any part thereof under the
20 value of \$20,000, or less than 100 head of sheep, swine, or goats or
21 any part thereof under the value of \$20,000;

22 (B) regardless of value, the property is stolen
23 from the person of another or from a human corpse or grave;

24 (C) the property stolen is a firearm, as defined
25 by Section 46.01; ~~or~~

26 (D) the value of the property stolen is less than
27 \$1,500 and the defendant has been previously convicted two or more

1 times of any grade of theft; or

2 (E) the property stolen is an official ballot or
3 official carrier envelope for an election;

4 (5) a felony of the third degree if the value of the
5 property stolen is \$20,000 or more but less than \$100,000, or the
6 property is:

7 (A) 10 or more head of cattle, horses, or exotic
8 livestock or exotic fowl as defined by Section 142.001, Agriculture
9 Code, stolen during a single transaction and having an aggregate
10 value of less than \$100,000; or

11 (B) 100 or more head of sheep, swine, or goats
12 stolen during a single transaction and having an aggregate value of
13 less than \$100,000;

14 (6) a felony of the second degree if the value of the
15 property stolen is \$100,000 or more but less than \$200,000; or

16 (7) a felony of the first degree if the value of the
17 property stolen is \$200,000 or more.

18 SECTION 19. Section 37.01(2), Penal Code, is amended to
19 read as follows:

20 (2) "Governmental record" means:

21 (A) anything belonging to, received by, or kept
22 by government for information, including a court record;

23 (B) anything required by law to be kept by others
24 for information of government;

25 (C) a license, certificate, permit, seal, title,
26 letter of patent, or similar document issued by government, by
27 another state, or by the United States; [~~or~~]

1 (D) a standard proof of motor vehicle liability
2 insurance form described by Section 601.081, Transportation Code, a
3 certificate of an insurance company described by Section 601.083 of
4 that code, a document purporting to be such a form or certificate
5 that is not issued by an insurer authorized to write motor vehicle
6 liability insurance in this state, an electronic submission in a
7 form described by Section 502.153(i), Transportation Code, or an
8 evidence of financial responsibility described by Section 601.053
9 of that code; or

10 (E) an official ballot or other election record.

11 SECTION 20. In the enforcement of the provisions of this
12 Act, a district or county attorney may not, for the purpose of
13 intimidating a group of voters, prosecute a person on account of the
14 person's race, ethnicity, or age. A violation of this section may
15 be prosecuted under Section 36.03 or 39.03, Penal Code.

16 SECTION 21. The changes in law made by this Act apply only
17 to an election for which the action ordering the election is taken
18 on or after the effective date of this Act. An election for which
19 the action ordering the election is taken before the effective date
20 of this Act is governed by the law in effect on the date that action
21 is taken, and the former law is continued in effect for this
22 purpose.

23 SECTION 22. This Act takes effect September 1, 2003.