

By: Shapiro

S.B. No. 1848

A BILL TO BE ENTITLED

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AN ACT

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
3 to 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 unless the person is related to the applicant within the second
6 degree by affinity or the third degree by consanguinity, as
7 determined under Subchapter B, Chapter 573, Government Code, or is
8 registered to vote at the same address as the applicant, in which
9 event the offense is a Class C misdemeanor.

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

5 (a) A marked ballot voted under this chapter must be
6 returned to the early voting clerk in the official carrier
7 envelope. The carrier envelope may be delivered in another
8 envelope and must be transported and delivered only by mail or by
9 common or contract carrier.

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

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

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

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

27 (4) an entity that requested that the election be

1 held, unless the delivery is a forwarding to the early voting clerk.

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

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

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

17 (2) registered to vote at the same address as the
18 voter;

19 (3) an early voting clerk or a deputy early voting
20 clerk;

21 (4) a person who possesses the carrier envelope in
22 order to deposit the envelope in the mail or with a common or
23 contract carrier and who provides the information required by
24 Section 86.0051(b) in accordance with that section;

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

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

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

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

11 (2) a Class A misdemeanor if the person possesses at
12 least 10 but fewer than 20 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 felony of the
15 third degree; or

16 (3) a state jail felony if the person possesses 20 or
17 more ballots or carrier envelopes unless the person possesses the
18 ballots or carrier envelopes without the consent of the voters, in
19 which event the offense is a felony of the second degree.

20 (h) A ballot returned in violation of this section may not
21 be counted. If the early voting clerk determines that the ballot
22 was returned in violation of this section, the clerk shall make a
23 notation on the carrier envelope and treat it as a ballot not timely
24 returned in accordance with Section 86.011(c). If the ballot is
25 returned before the end of the period for early voting by personal
26 appearance, the early voting clerk shall promptly mail or otherwise
27 deliver to the voter a written notice informing the voter that:

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

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

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

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

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

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

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

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

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

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

2 and

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

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

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

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

13 (3) the requirements for the legal execution and
14 delivery of the carrier envelope;

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

16 and

17 (5) the offenses prescribed by Sections 86.006(f) and
18 86.010(f).

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

22 (g) The secretary of state by rule shall require that a
23 notice informing voters of the telephone number established under
24 Section 31.0055 and the purpose of the telephone number be printed
25 on:

26 (1) the official carrier envelope; or

27 (2) an insert enclosed with the balloting materials

1 for voting by mail sent to the voter.

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

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

9 [~~(1) 72 hours after the time a ballot is mailed to the~~
10 ~~voter; or~~

11 [~~(2) 48 hours after the time a ballot is mailed to the~~
12 ~~voter if the mailing occurs on the fourth day before]~~ election day.

13 SECTION 16. Chapter 276, Election Code, is amended by
14 adding Section 276.010 to read as follows:

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

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

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

27 SECTION 17. Section 31.03(e), Penal Code, is amended to

1 read as follows:

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

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

6 (A) \$50; or

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

10 (2) a Class B misdemeanor if:

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

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

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

16 (B) the value of the property stolen is less
17 than:

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

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

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

26 (4) a state jail felony if:

27 (A) the value of the property stolen is \$1,500 or

1 more but less than \$20,000, or the property is less than 10 head of
2 cattle, horses, or exotic livestock or exotic fowl as defined by
3 Section 142.001, Agriculture Code, or any part thereof under the
4 value of \$20,000, or less than 100 head of sheep, swine, or goats or
5 any part thereof under the value of \$20,000;

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

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

10 (D) the value of the property stolen is less than
11 \$1,500 and the defendant has been previously convicted two or more
12 times of any grade of theft; or

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

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

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

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

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

27 (7) a felony of the first degree if the value of the

1 property stolen is \$200,000 or more.

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

4 (2) "Governmental record" means:

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

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

9 (C) a license, certificate, permit, seal, title,
10 letter of patent, or similar document issued by government, by
11 another state, or by the United States; ~~or~~

12 (D) a standard proof of motor vehicle liability
13 insurance form described by Section 601.081, Transportation Code, a
14 certificate of an insurance company described by Section 601.083 of
15 that code, a document purporting to be such a form or certificate
16 that is not issued by an insurer authorized to write motor vehicle
17 liability insurance in this state, an electronic submission in a
18 form described by Section 502.153(i), Transportation Code, or an
19 evidence of financial responsibility described by Section 601.053
20 of that code; or

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

22 SECTION 19. The changes in law made by this Act apply only
23 to an election for which the action ordering the election is taken
24 on or after the effective date of this Act. An election for which
25 the action ordering the election is taken before the effective date
26 of this Act is governed by the law in effect on the date that action
27 is taken, and the former law is continued in effect for this

1 purpose.

2 SECTION 20. This Act takes effect September 1, 2003.