

BILL ANALYSIS

Senate Research Center
83R15112 ATP-D

H.B. 148
By: Burkett et al. (Paxton)
State Affairs
5/7/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is currently no limit to the number of times a person may act as courier for mail-in ballots in a given election and interested parties contend that some couriers may provide unlawful assistance, unlawful witness, or electioneer to voters in the process of acting as a courier in the presence of an active ballot. In certain localities, interested parties have noted that couriers may receive per-ballot compensation to collect mail-in ballots from eligible voters and posting them on behalf of those voters. This practice is referred to as "voter harvesting."

H.B. 148 seeks to set penalties for the offense of voter harvesting and related offenses.

H.B. 148 amends current law relating to aid provided to certain voters, and provides criminal penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 86.0051, Election Code, by adding Subsections (b-1) and (f) and amending Subsections (c), (d), and (e), as follows:

(b-1) Prohibits a person to whom Section 86.006(f)(4) (relating to providing that a person does not commit an offense if the person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier who provides certain information) applies from depositing in the mail or with a common or contract carrier more than 10 carrier envelopes containing ballots voted by other persons in an election. Provides that this subsection does not apply to a carrier envelope containing a ballot voted by a member of the armed forces of the United States or the spouse or dependent of a member.

(c) Provides that a person commits an offense if the person knowingly violates Subsection (b) (relating to requiring a person other than the voter who deposits the carrier envelope in the mail or with a common contract carrier to provide the person's signature, printed name, and residence address on the reverse side of the envelope) or (b-1) or knowingly directs a person to engage in conduct that violates Subsection (b-1).

(d) Provides that an offense under this section is a Class A misdemeanor, rather than a Class B misdemeanor, unless the person is convicted of an offense under Section 64.036 (Unlawful Assistance) for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a state jail felony.

(e) Provides that Subsections (a) (relating to providing that a person commits an offense if the person acts as a witness for a voter in signing the certificate on the carrier envelope and knowingly fails to comply with Section 1.011 (Signing Document By Witness)) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B

(Relationships by Consanguinity or by Affinity), Chapter 573, Government Code. Provides that Subsection (c) does not apply to an employee of a state licensed care facility or state-certified facility not subject to state licensure where the voter resides who is working in the normal course of the employee's authorized duties. Deletes existing text providing that Subsections (a) and (c) do not apply if the person is registered to vote at the same address as the applicant.

(f) Provides that it is an affirmative defense to prosecution for an offense under this section that the person deposited carrier envelopes containing ballots voted by another person if the voter requested assistance from the person in depositing the envelope and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

SECTION 2. Amends Chapter 86, Election Code, by adding Section 86.0052, as follows:

Sec. 86.0052. COMPENSATION OF ANOTHER FOR COLLECTING BALLOTING MATERIALS PROHIBITED. (a) Provides that a person commits an offense if the person compensates another person to engage in conduct prohibited by Section 86.0051(b-1).

(b) Provides that, except as provided by Subsection (c), an offense under this section is a misdemeanor punishable by:

(1) confinement in jail for a term of not more than one year or less than 30 days; or

(2) confinement described by Subdivision (1) and a fine not to exceed \$4,000.

(c) Provides that an offense under this section is a state jail felony if it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section.

SECTION 3. Amends Section 86.006, Election Code, by amending Subsection (f) and adding Subsection (j), as follows:

(f) Provides that a person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Provides that, unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

(1)-(4) Makes no change to these subdivisions;

(5)-(6) Makes nonsubstantive changes to these subdivisions; or

(7) an employee of a state licensed care facility or state-certified facility not subject to state licensure where the voter resides who is working in the normal course of the employee's authorized duties.

(j) Provides that it is an affirmative defense to prosecution for an offense under Subsection (f) that the person possessed an official ballot or official carrier envelope provided to a voter, other than the person, if the voter requested assistance from the person and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

SECTION 4. Amends Section 86.010(h), Election Code, as follows:

(h) Provides that Subsection (f) (relating to providing that a person commits an offense if the person knowingly fails to provide certain information on the carrier envelope) does

not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code. Deletes existing text providing that Subsection (f) does not apply if the person is registered to vote at the same address as the applicant.

SECTION 5. Amends Section 86.013(d), Election Code, as follows:

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

(1)-(2) Makes no change to these subdivisions;

(3) the requirements for the legal execution and delivery of the carrier envelope, including the limitation on depositing carrier envelopes containing ballots voted by other persons prescribed by Section 86.0051(b-1); and

(4)-(5) Makes no change to these subdivisions.

SECTION 6. Provides that the changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 7. Effective date: September 1, 2013.