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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO._____ BY: Gary Oldham

Amend S.B. No. 5 (house committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 64.012(a), Election Code, is amended to read as follows:

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

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

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

(3) knowingly [~~impersonates another person and~~] votes or attempts to vote a ballot belonging to another person, or by impersonating another [~~as the impersonated~~] person; or

(4) knowingly marks or attempts to mark any portion of another person's ballot without the consent of that person, or without specific direction from that person how to mark the ballot.

SECTION 2. Section 66.058(a), Election Code, is amended to read as follows:

(a) Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed[~~:~~

[~~(1) in an election involving a federal office,~~] for at least 22 months after election day [~~in accordance with federal law; or~~

[~~(2) in an election not involving a federal office, for at least six months after election day~~].

SECTION 3. Section 84.001(b), Election Code, is amended to read as follows:

(b) An application must be in writing and signed by the applicant. An electronic signature is not permitted.

SECTION 4. Section 84.0041, Election Code, is amended to read as follows:

Sec. 84.0041. FRAUDULENT USE OF [~~PROVIDING FALSE INFORMATION ON~~] APPLICATION FOR BALLOT BY MAIL. (a) A person commits an offense if the person:

(1) knowingly provides false information on an application for [~~an early voting~~] ballot by mail;

(2) intentionally causes false information to be provided on an application for ballot by mail;

(3) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or

(4) knowingly and without the voter's authorization alters information provided by the voter on an application for ballot by mail.

(b) An offense under this section is a state jail felony [~~unless the person is the applicant, 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, or is registered to vote at the same address as the applicant, in which event the offense is a Class A misdemeanor~~].

(c) An offense under Subsection (a)(4) does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

(d) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this

section in the same election.

SECTION 5. Section 84.007, Election Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) An application must be submitted to the early voting clerk by:

(1) mail;

(2) common or contract carrier;

(3) subject to Subsection (b-1), telephonic facsimile machine, if a machine is available in the clerk's office; or

(4) subject to Subsection (b-1), electronic transmission of a scanned application containing an original signature.

(b-1) For an application for ballot by mail submitted by telephonic facsimile machine or electronic transmission to be effective, the application also must be submitted by mail and be received by the early voting clerk not later than the fourth business day after the transmission by telephonic facsimile machine or electronic transmission is received.

SECTION 6. Section 84.032(c), Election Code, is amended to read as follows:

(c) An applicant may submit a request after the close of early voting by personal appearance by appearing in person and:

(1) returning the ballot to be voted by mail to the early voting clerk; or

(2) executing an affidavit that the applicant:

(A) has not received the ballot to be voted by mail; or

(B) never requested a ballot to be voted by mail.

SECTION 7. Section 84.037, Election Code, is amended to read as follows:

Sec. 84.037. PRESERVATION OF DOCUMENTS. (a) The early voting clerk shall preserve each cancellation request for the period for preserving the precinct election records. If the application is canceled, the clerk shall attach it and the corresponding ballot materials, if available, to the cancellation request and preserve it with the request.

(b) The early voting clerk shall, not later than the 30th day after election day, deliver notice to the attorney general of cancellation requests received, including certified copies of cancellation requests, applications, and carrier envelopes, if available.

(c) The attorney general shall prescribe the form and manner of submission under Subsection (b). The secretary of state shall adopt rules as necessary to implement the requirements prescribed under this subsection.

SECTION 8. Sections 86.003(a) and (b), Election Code, as effective September 1, 2017, are amended to read as follows:

(a) The balloting materials for voting by mail shall be provided to the voter by mail [~~, unless the ballot is delivered to a voter for early voting under Chapter 107~~]. A ballot provided by any other method may not be counted.

(b) Subject to Subsection (c), the balloting materials shall be addressed to the applicable address specified in the voter's application. The election officer providing the ballot may not knowingly mail [~~deliver~~] the materials to an address other than that prescribed by this section.

SECTION 9. Section 86.004(a), Election Code, as effective September 1, 2017, is amended to read as follows:

(a) Except as provided by Subsection (b) [~~or (c)~~], the balloting materials for voting by mail shall be mailed to a voter entitled to vote by mail not later than the seventh calendar day

after the later of the date the clerk accepts the voter's application for a ballot to be voted by mail or the date the ballots become available for mailing, except that if that mailing date is earlier than the 45th day before election day, the balloting materials shall be mailed not later than the 38th day before election day.

SECTION 10. The heading to Section 86.0051, Election Code, is amended to read as follows:

Sec. 86.0051. UNLAWFUL CARRIER ENVELOPE ACTION BY PERSON OTHER THAN VOTER[~~, OFFENSES~~].

SECTION 11. Section 86.0051, Election Code, is amended by amending Subsections (b), (d), and (e) and adding Subsection (f) to read as follows:

(b) A person other than the voter who assists a voter by depositing [~~deposits~~] the carrier envelope in the mail or with a common or contract carrier or who obtains the carrier envelope for that purpose must provide the person's signature, printed name, and residence address on the reverse side of the envelope.

(d) An offense under this section is a Class A [~~B~~] misdemeanor, unless it is shown on the trial of an offense under this section that the person committed [~~is convicted of~~] an offense under Section 64.036 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) This section does [~~Subsections (a) and (c) do~~] not apply if the person is related to the voter [~~applicant~~] within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in [~~is registered to vote at~~] the same dwelling [~~address~~] as the voter at the time of the event [~~applicant~~].

(f) If conduct that constitutes an offense under this

section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 12. Sections 86.006(f), (g), and (g-1), Election Code, are amended to read as follows:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. 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) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;

(2) physically living in [~~registered to vote at~~] the same dwelling [~~address~~] as the voter;

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

(4) a person who possesses a ballot or [~~the~~] carrier envelope solely for the purpose of lawfully assisting a voter who was eligible for assistance under Section 86.010 and complied fully with:

(A) Section 86.010; and

(B) Section 86.0051, if assistance was provided in order to deposit the envelope in the mail or with a common or contract carrier [~~and who provides the information required by Section 86.0051(b) in accordance with that section~~];

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

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is

sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.

(g) An offense under Subsection (f) is a Class A misdemeanor unless the defendant possessed the ballot or carrier envelope without the request of the voter, in which case it is a felony of the third degree. If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both [~~:~~

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

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

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

(g-1) An offense under Subsection (g) is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved an individual 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election [~~When ballots or carrier envelopes are~~

~~obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the number of ballots or carrier envelopes aggregated in determining the grade of the offense~~].

SECTION 13. Section 86.010, Election Code, is amended to read as follows:

Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY MAIL. (a) A voter casting a ballot by mail who would be eligible under Section 64.031 to receive assistance at a polling place may select a person as provided by Section 64.032(c) to assist the voter in preparing the ballot.

(b) Assistance rendered under this section is limited to that authorized by this code at a polling place, except that a voter with a disability who is physically unable to deposit the ballot and carrier envelope in the mail may also select a person as provided by Section 64.032(c) to assist the voter by depositing a sealed carrier envelope in the mail.

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

(d) If a voter is assisted in violation of this section [~~Subsection (a) or (b)~~], the voter's ballot may not be counted.

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

(f) A person who assists a voter commits an offense if the person knowingly fails to comply with Subsections (c) and [~~provide the information on the official carrier envelope as required by Subsection~~] (e).

(g) An offense under this section is a [~~Class A misdemeanor~~

~~unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter, in which event the offense is a~~] state jail felony.

(h) Subsection (f) does not apply if the person is related to the voter [~~applicant~~] within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in [~~is registered to vote at~~] the same dwelling [~~address~~] as the voter at the time of the event [~~applicant~~].

(i) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

(j) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 14. Section 87.027(i), Election Code, is amended to read as follows:

(i) The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter's ballot application to determine whether the signatures are those of the voter [~~same person~~]. The committee may also compare the signatures with any two or more signatures of the voter made within the preceding six years and on file with the county clerk or voter registrar [~~the signature on the voter's registration application to~~

~~confirm that the signatures are those of the same person but may not use the registration application signature~~] to determine whether [~~that~~] the signatures are [~~not~~] those of the voter [~~same person~~]. Except as provided by Subsection (l), a determination under this subsection that the signatures are not those of the voter [~~same person~~] must be made by a majority vote of the committee's membership. The committee shall place the jacket envelopes, carrier envelopes, and applications of voters whose signatures are not those of the voter [~~same person~~] in separate containers from those of voters whose signatures are those of the voter [~~same person~~]. The committee chair shall deliver the sorted materials to the early voting ballot board at the time specified by the board's presiding judge.

SECTION 15. Section 87.041, Election Code, is amended by amending Subsection (e) and adding Subsection (g) to read as follows:

(e) In making the determination under Subsection (b)(2), the board may also compare the signatures with any two or more signatures of the voter made within the preceding six years and on file with the county clerk or voter registrar to determine whether [~~confirm that~~] the signatures are those of the voter [~~same person but may not use the signatures to determine that the signatures are not those of the same person~~].

(g) A person commits an offense if the person intentionally accepts a ballot for voting or causes a ballot to be accepted for voting that the person knows does not meet the requirements of Subsection (b). An offense under this subsection is a Class A misdemeanor.

SECTION 16. Section 87.0431, Election Code, is amended to read as follows:

Sec. 87.0431. NOTICE OF REJECTED BALLOT. (a) Not later

than the 10th day after election day, the presiding judge of the early voting ballot board shall deliver written notice of the reason for the rejection of a ballot to the voter at the residence address on the ballot application. If the ballot was transmitted to the voter by e-mail under Subchapter C, Chapter 101, the presiding judge shall also provide the notice to the e-mail address to which the ballot was sent.

(b) The early voting clerk shall, not later than the 30th day after election day, deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because:

(1) the voter was deceased;

(2) the voter already voted in person in the same election;

(3) the signatures on the carrier envelope and ballot application were not executed by the same person;

(4) the carrier envelope certificate lacked a witness signature; or

(5) the carrier envelope certificate was improperly executed by an assistant.

(c) The attorney general shall prescribe the form and manner of submission under Subsection (b). The secretary of state shall adopt rules as necessary to implement the requirements prescribed under this subsection.

SECTION 17. Chapter 276, Election Code, is amended by adding Section 276.013 to read as follows:

Sec. 276.013. ELECTION FRAUD. (a) A person commits an offense if the person knowingly or intentionally makes any effort to:

(1) influence the independent exercise of the vote of another in the presence of the ballot or during the voting process;

(2) cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or

(3) cause any intentionally misleading statement, representation, or information to be provided:

(A) to an election official; or

(B) on an application for ballot by mail, carrier envelope, or any other official election-related form or document.

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

(c) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older, and the actor was not:

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

(B) physically living in the same dwelling as the voter at the time of the event; or

(3) the defendant committed another offense under this section in the same election.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 18. The following provisions of law, as effective September 1, 2017, are repealed:

(1) Section 86.003(e), Election Code;

(2) Section 86.004(c), Election Code;

(3) Chapter 107, Election Code;

(4) Section 242.0181, Health and Safety Code; and

1 (5) Section 247.008, Health and Safety Code.

2 SECTION 19. The changes in law made by this Act apply only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 governed by the law in effect on the date the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this section, an offense was committed before the
8 effective date of this Act if any element of the offense occurred
9 before that date.

10 SECTION 20. This Act takes effect December 1, 2017.