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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. \_\_\_\_\_

BY: *Ray Adams*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (3) the defendant committed another offense under this

1 section in the same election.

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

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

7 (1) mail;

8 (2) common or contract carrier;

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

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

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

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

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

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

26 (2) executing an affidavit that the applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (d) An offense under this section is a Class A ~~[B]~~  
20 misdemeanor, unless it is shown on the trial of an offense under  
21 this section that the person committed ~~[is convicted of]~~ an offense  
22 under Section 64.036 for providing unlawful assistance to the same  
23 voter in connection with the same ballot, in which event the offense  
24 is a state jail felony.

25 (e) This section does ~~[Subsections (a) and (c) do]~~ not  
26 apply if the person is related to the voter ~~[applicant]~~ within the  
27 second degree by affinity or the third degree by consanguinity, as  
28 determined under Subchapter B, Chapter 573, Government Code, or was  
29 physically living in ~~[is registered to vote at]~~ the same dwelling  
30 ~~[address]~~ as the voter at the time of the event ~~[applicant]~~.

31 (f) If conduct that constitutes an offense under this

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

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

5 (f) A person commits an offense if the person knowingly  
6 possesses an official ballot or official carrier envelope provided  
7 under this code to another. Unless the person possessed the ballot  
8 or carrier envelope with intent to defraud the voter or the election  
9 authority, this subsection does not apply to a person who, on the  
10 date of the offense, was:

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

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

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

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

22 (A) Section 86.010; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (1) the voter was deceased;

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

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

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

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

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

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

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

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

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

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

5                   (A) to an election official; or

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

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

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

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

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

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

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

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

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

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

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

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

30                   (3) Chapter 107, Election Code;

31                   (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.