

BILL ANALYSIS

C.S.H.B. 47
By: Schofield
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that mail ballot fraud continues to jeopardize the security of elections across Texas. C.S.H.B. 47 seeks to address this issue by clarifying certain mail ballot procedures and increasing penalties for mail ballot offenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 47 amends the Election Code to establish a uniform 22-month period for the preservation of precinct election records by the authority to whom they are distributed by removing a provision setting the minimum preservation period for an election not involving a federal office at six months and by removing the specification that the 22-month preservation period applies only to elections involving a federal office. The bill specifies that such precinct election records include all ballot envelopes and carrier envelopes returned by a voter voting early by mail or at a residential care facility. The bill removes from the conditions under which certain persons who assist an applicant in completing an early voting ballot application commit an offense by knowingly failing to comply with certain requirements for signing the application in the same manner as a witness the specification that such a person is in the presence of the applicant. The bill increases the penalty for the offense of unlawfully witnessing an application for more than one applicant from a Class B misdemeanor to a Class A misdemeanor.

C.S.H.B. 47 renames the offense of providing false information on an application as fraudulent use of application for ballot by mail, revises the conduct of knowingly providing false information on an application for an early voting ballot to specify that such application is instead an application for a ballot by mail, and expands the conduct constituting the offense to include a person intentionally causing false information to be provided on such an application, a person knowingly submitting such an application without the knowledge and authorization of the voter, and a person knowingly altering or providing information on a voter's application for ballot by mail without the voter's request. The bill enhances the penalty for the offense from a state jail felony to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill removes certain circumstances under which the penalty is decreased to a Class A

misdemeanor.

C.S.H.B. 47 changes from not later than the 38th day before election day to not later than the 30th day before election day the deadline by which the balloting materials for early voting by mail are required to be mailed to a voter entitled to vote by mail if the statutory mailing date for such materials is earlier than the 45th day before election day. The bill increases from a Class B misdemeanor to a Class A misdemeanor the penalty for the offense involving an action relating to a carrier envelope by a person other than a voter, renames that offense as unlawful mail ballot activity by person other than voter, and makes certain revisions to requirements and to an enhancement relating to that offense. The bill further enhances the penalty for the offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that offense and the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law. The bill removes as exceptions to the application of the offense that the actor is related to the applicant within the second degree by affinity or the third degree by consanguinity and that the actor is registered to vote at the same address as the applicant.

C.S.H.B. 47 makes certain revisions to the persons exempt from the offense involving the knowing possession of an official ballot or official carrier envelope provided to another person and exempts from that offense a person who, on the date of the offense, possesses a ballot or carrier envelope solely for the purpose of lawfully assisting a voter who is eligible for assistance and who complied fully with statutory provisions relating to such assistance and to the offense of unlawful mail ballot activity by person other than voter, if assistance was provided only in order to deposit the envelope in the mail or with a common or contract carrier. The bill changes the penalty for such an offense from a range of penalties based on the number of ballots or carrier envelopes possessed, enhanced depending on whether the actor had the consent of the relevant voters, to a Class A misdemeanor, enhanced to a third degree felony if the defendant possessed the ballot or carrier envelope without the request of the voter. The bill further enhances the penalty for such an offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved an individual 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that offense and the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 47 authorizes a voter with a disability who is physically unable to deposit a ballot voted by mail and the associated carrier envelope in the mail to select a person other than the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs to assist the voter by depositing a sealed carrier envelope in the mail. The bill renames the offense of assisting voter as unlawfully assisting voter voting ballot by mail, increases the penalty for the offense from a Class A misdemeanor, with certain enhancements, to a state jail felony, and replaces an exception to the application of the offense that is based on the person being registered to vote at the same address as the applicant with an exception that is based on the person physically living in the same dwelling as the voter at the time of the event. The bill enhances the penalty for such an offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that offense and the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 47 replaces the authorization for a signature verification committee to compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, and the signature on the voter's ballot application with the signature on the voter's registration

application to confirm that the signatures are those of the same person with an authorization for the committee to compare such signatures with any two or more signatures of the voter made within the preceding six years and on file with the general custodian of election records or voter registrar to make such confirmation. The bill replaces the prohibition against the committee using the registration application signature to determine that the signatures are not those of the same person with an authorization for the committee to use the signatures on file to make such determination. The bill authorizes the early voting ballot board to compare a voter's signature on a ballot application or carrier envelope certificate with two or more signatures of the voter made within the preceding six years and on file with the general custodian of election records, in addition to the board's existing authority to make such a comparison with signatures on file with the voter registrar, to determine if the signatures are those of the same person. The bill removes the prohibition against the board using such signatures on file to determine that the signatures are not those of the same person.

C.S.H.B. 47 authorizes a voter residing in a residential care facility who has applied to vote early by mail on the grounds of age or disability and who requested that the ballot be sent to the address of the facility to vote as provided by provisions relating to early voting at a residential facility at the discretion of the early voting clerk if fewer than five applications for ballots to be voted by mail were made by residents of the same facility who requested that the ballots be sent to the facility. The bill requires the election judges selected to serve at a residential care facility for the general election for state and county officers to be selected in the manner provided for election officers for such an election. The bill replaces the authorization for an election judge to enter the private room of a voter who requests that balloting materials be brought to the voter with an authorization for both election judges to concurrently enter the private room of a voter contingent on the voter making such a request. The bill specifies that Election Code provisions concerning electioneering apply to a residential care facility during the hours that voting is conducted at the facility. The bill authorizes a person who is not a resident of the facility and who is conducting the election, who is an employee or other person attending to the business of the residential care facility, or who is related to a resident within the second degree by affinity or the third degree by consanguinity to be present in the residential care facility during the hours when voting is being conducted so long as the person does not engage in attempting to electioneer or influence a voter. The bill authorizes a relative related to a voter within the second degree by affinity or the third degree by consanguinity to be chosen to assist the relative in voting. The bill transfers the duty to designate one or more times for voting to be conducted at the residential care facility from the election judges to the early voting clerk. The bill changes the earliest day voting may be conducted at a residential care facility from the 29th day before election day to the 38th day before election day. The bill removes the requirement for the list of all residential care facilities maintained by the early voting clerk to state for each facility in the clerk's jurisdiction at which voting is conducted the names of the election judges for the facility and removes the requirement for the names of the election judges and the hours during which voting will be conducted to be posted at least 48 hours before voting is conducted at the residential care facility if the early voting clerk posts notice of the election at the facility. The bill removes certain provisions relating to voting by additional qualified voters at a residential care facility and authorizes a qualified voter who resides and is registered to vote at a residential care facility where voting is conducted, while voting is being conducted, to communicate to an election judge that the person has not completed an application for a ballot to be voted by mail but would like to vote by mail. The bill requires the election judges to provide the person with a ballot by mail application. The bill authorizes the voter to complete the application and return it to the election judges and requires the election judges to deliver the application to the early voting clerk the same day. The bill requires the early voting clerk, if the application is received before the deadline to receive mail ballot applications, to prepare and provide ballot materials for the voter and requires the judges to return to the facility to provide the voter with the ballot materials.

C.S.H.B. 47 authorizes an election judge selected to serve at a residential care facility, if a voter cannot comprehend the language in which the ballot or balloting materials are printed, to contact

the early voting clerk and request that a translator translate the ballot or balloting materials over the phone and authorizes the voter to use an interpreter who may translate the ballot or balloting materials in the presence of the election judges. The bill removes an authorization for any registered voter who did not cast a ballot at the residential care facility to cast a ballot by mail or in person on election day and instead authorizes any registered voter who was required to vote at the residential care facility who did not cast a ballot at the facility and who did not make a request to vote by mail to cast a vote in person on election day. The bill authorizes the election judges selected to serve at a residential care facility, if one or more voters who requested a ballot by mail are not present during the scheduled time for early voting to be conducted at the residential care facility, to request that the early voting clerk arrange a suitable time for the judges to return to conduct voting. The bill removes the requirement for an election judge to leave a ballot package for a voter who requested a ballot to be voted by mail and was not present during the scheduled time for early voting at the residential care facility and is expected to return to the residential care facility before the deadline for returning a ballot by mail. The bill removes the authorization for an election judge to personally deliver a ballot package to a known temporary address of a voter who requested a ballot to be voted by mail and is temporarily located at another location, including by hospitalization. The bill repeals provisions as effective September 1, 2017, relating to the authorization for a voter voting at a residential care facility to submit a statement meeting certain requirements as proof of identification for voting purposes and provisions making statutory provisions relating to early voting by personal appearance applicable to voting at a residential care facility.

C.S.H.B. 47 repeals the following provisions of the Election Code, as effective September 1, 2017:

- Section 107.003
- Section 107.011
- Section 107.014(e)

EFFECTIVE DATE

January 1, 2018.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 47 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 66.058, Election Code, is amended by amending Subsection (a) and adding Subsection (i) 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].~~

(i) Notwithstanding Section 66.002, for purposes of this section, "precinct election records" includes all ballot envelopes and carrier envelopes returned by a voter voting under Chapter 86 or Chapter 107.

SECTION 1. Section 84.003(b), Election Code, is amended.

SECTION 2. Same as introduced version.

SECTION 2. Section 84.004(e), Election Code, is amended.

SECTION 3. Substantially the same as introduced version.

SECTION 3. Section 84.0041, Election Code, is amended to read as follows:

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:

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;

(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;

(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

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

(4) knowingly alters or provides information on a voter's application for ballot by mail without the voter's request.

(4) knowingly alters or provides information on a voter's application for ballot by mail without the voter's request.

(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].~~

(b) Except as provided by Subsection (c), an [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 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:

(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;

(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

(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.

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

SECTION 4. Section 84.007(c), Election

No equivalent provision.

Code, is amended to read as follows:

(c) ~~An [Except as provided by Section 86.0015(b), an]~~ application may be submitted at any time in the year of the election for which a ballot is requested, but not later than the close of regular business in the early voting clerk's office or 12 noon, whichever is later, on the 11th day before election day unless that day is a Saturday, Sunday, or legal state or national holiday, in which case the last day is the first preceding regular business day.

SECTION 5. Section 84.011(a), Election Code, is amended to read as follows:

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

(1) immediately preceding the signature space the statement: "I certify that the information given in this application is true, and I understand that giving false information in this application is a crime.";

(2) a statement informing the applicant of the offenses prescribed by Sections 84.003 and 84.004;

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

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

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

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

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

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

No equivalent provision.

(E) a space or box for an applicant applying on the ground of confinement in jail to indicate that the address to which the ballot is to be mailed is the address of a relative described by Section 84.002(a)(4), if applicable;

~~(F) [a space for an applicant applying on the ground of age or disability to indicate if the application is an application under Section 86.0015];~~

~~[(G)]~~ spaces for entering the signature, printed name, and residence address of any person assisting the applicant;

(G) ~~[(H)]~~ a statement informing the applicant of the condition prescribed by Section 81.005; and

(H) ~~[(I)]~~ a statement informing the applicant of the requirement prescribed by Section 86.003(c).

SECTION 6. Section 84.038, Election Code, is amended to read as follows:

Sec. 84.038. CANCELLATION EFFECTIVE FOR SINGLE ELECTION. The cancellation of an application for a ballot to be voted by mail under Section 84.032(c), (d), or (e) is effective for a single ballot only and does not cancel the application with respect to a subsequent election, including a subsequent election to which the same application applies under Section 84.001(e) ~~[or 86.0015(b)]~~.

SECTION 7. Section 86.004(a), Election Code, as effective September 1, 2017, is amended.

No equivalent provision.

SECTION 8. Section 86.0051, Election Code, is amended to read as follows:

Sec. 86.0051. UNLAWFUL MAIL BALLOT ACTIVITY ~~[CARRIER ENVELOPE ACTION]~~ BY PERSON OTHER THAN VOTER~~[-OFFENSES]~~.

(a) 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

No equivalent provision.

SECTION 5. Same as introduced version.

SECTION 6. The heading to Section 86.0051, Election Code, is amended to read as follows:

Sec. 86.0051. UNLAWFUL MAIL BALLOT ACTIVITY ~~[CARRIER ENVELOPE ACTION]~~ BY PERSON OTHER THAN VOTER~~[-OFFENSES]~~.

SECTION 7. Sections 86.0051(b), (d), and (e), Election Code, are amended to read as follows:

with Section 1.011.

(b) A person other than the voter who 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 information required on the certificate [~~person's signature, printed name, and residence address~~] on the reverse side of the envelope.

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

(d) An offense under this section is a Class A [~~Class B~~] misdemeanor, unless the person commits [~~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 of the third degree. 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.

(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 9. 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

(b) A person other than the voter who 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 information required to be provided on the certificate [~~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 the person 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 of the third degree. 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.

(e) 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 [~~Subsections (a) 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, Chapter 573, Government Code, or is registered to vote at the same address as the applicant~~].

SECTION 8. 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:

(A) complied fully with Section 86.010; and

(B) complied fully with Section 86.0051, if assistance was provided only 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 person 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

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 only 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 this 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.]~~

~~No equivalent provision.~~

SECTION 10. Section 86.010, Election Code, is amended to read as follows:

Sec. 86.010. UNLAWFULLY ASSISTING VOTER WITH 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 by depositing a sealed carrier envelope in the mail.

(c) The person assisting the voter must sign

~~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 9. The heading to Section 86.010, Election Code, is amended to read as follows:

Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY MAIL.

SECTION 10. Section 86.010, Election Code, is amended by amending Subsections (b), (d), (g), and (h) and adding Subsections (i) and (j) to read as follows:

(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.

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 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 is physically living in [~~registered to vote at~~] the same dwelling [~~address~~] as the voter [~~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 11. Section 87.027(i), Election Code, is amended.

SECTION 12. Section 87.041(e), Election Code, is amended.

SECTION 13. Section 107.004, Election

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

(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 11. Same as introduced version.

SECTION 12. Same as introduced version.

No equivalent provision.

Code, as effective September 1, 2017, is amended by adding subsection (a-1) as follows:

(a-1) If a facility on the list provided by the secretary of state has more than one and fewer than five requests for a ballot by mail, the early voting clerk may provide the balloting materials by the methods described in this chapter, or by mail not later than the 15th day before Election Day.

No equivalent provision.

No equivalent provision.

SECTION 14. Section 107.005 (a), Election Code, as effective September 1, 2017, is amended to read as follows:

Sec. 107.005. ELECTION JUDGES; QUALIFICATIONS; OATH. (a) Additional election judges shall be selected to serve at a residential care facility in the same manner as election judges are selected to serve at a polling place for early voting by personal appearance under Chapter ~~85.32~~. The county chair of each political party holding a primary in the county shall indicate on the list of names of persons whether a person is willing to serve as an election judge under this chapter. The election judges assigned to serve at a

SECTION 13. The heading to Section 107.004, Election Code, as effective September 1, 2017, is amended to read as follows:

Sec. 107.004. EARLY VOTING AT RESIDENTIAL CARE FACILITY [REQUIRED].

SECTION 14. Section 107.004(a), Election Code, as effective September 1, 2017, is amended to read as follows:

(a) A voter residing in a residential care facility who has applied to vote early by mail on the grounds of age or disability and who requested that the ballot be sent to the address of the facility:

(1)[;] must vote as provided by this chapter if five or more applications for ballots to be voted by mail were made by residents of the same facility who requested that the ballots be sent to the facility; and

(2) may vote as provided by this chapter, at the discretion of the early voting clerk, if fewer than five applications for ballots to be voted by mail were made by residents of the same facility who requested that the ballots be sent to the facility.

SECTION 15. Section 107.005(a), Election Code, as effective September 1, 2017, is amended to read as follows:

(a) Additional election judges shall be selected to serve at a residential care facility in the same manner as election officers ~~judges~~ are selected to serve at a polling place for early voting by personal appearance ~~[under Chapter 32]~~. For the general election for state and county officers, the election judges shall be selected in the manner provided for election officers under Section 85.009. The county chair of a political party shall indicate on the list of names of persons whether a person is willing to serve as an election judge under

residential care facility must include one member from each party's list if the county chair has submitted a list.

SECTION 15. Section 107.006, Election Code, as effective September 1, 2017, is amended By amending Subsection (c) and adding Subsection (d) to read as follows:

(c) ~~An election judge~~ Both election judges may enter the private room of a voter who requests that balloting materials be brought to the voter.

(d) During the hours that voting is being conducted at a residential care facility, sections applicable to electioneering or political activity at a polling place apply, including but not limited to Sections 61.001, 61.003, 61.006, 61.008, 61.010, 85.036, 85.037, 86.0051 and 86.010. A person may be present in the residential care facility during the hours when voting is being conducted if the person is an employee or other person attending to the business of the residential care facility, or is related to a resident within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, so long as the person does not engage in electioneering or influencing a voter. A relative related to a voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code may assist their relative in voting if the voter qualifies for assistance.

this chapter.

SECTION 16. Section 107.006, Election Code, as effective September 1, 2017, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) ~~If [An election judge may enter the private room of]~~ a voter ~~[who]~~ requests that balloting materials be brought to the voter, both election judges may concurrently enter the private room of the voter.

(d) During the hours voting is conducted at a residential care facility, all laws under this code concerning electioneering apply to the facility.

(e) A person who is not a resident of the residential care facility may not be present at the facility during the hours voting is being conducted at the facility, unless the person is:

(1) conducting the election under this chapter;

(2) an employee of the facility or otherwise attending to the business of the facility; or

(3) related to a resident of the facility within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, and is not attempting to electioneer or influence a voter.

(f) A person described by Subsection (e)(3)

may be chosen to assist a voter in accordance with Section 64.032(c).

SECTION 16. Section 107.007 (b) and (f), Election Code, as effective September 1, 2017, is amended to read as follows:

(b) Not later than 5 p.m. on the sixth business day before election day, the ~~election judges~~early voting clerk shall, with the input of the administrator of the residential care facility, designate one or more times for voting to be conducted. Voting may be conducted not earlier than the 38th day before election day and not later than the fourth day preceding election day.

(f) At any time during the year and regardless of whether five or more voters at a residential care facility have requested ballots to be voted by mail, the early voting clerk may post notice of the dates on which voting will be conducted at the facility under this chapter for each election. ~~If the early voting clerk posts notice under this subsection, the names of the election judges and the hours during which voting will be conducted must be posted at least 48 hours before voting is conducted at the facility, notwithstanding Subsection (c).~~

SECTION 17. Section 107.009, Election Code, as effective September 1, 2017, is amended to read as follows:

Sec. 107.009. VOTING BY ADDITIONAL QUALIFIED VOTERS. If during the voting at the residential care facility, a voter who has not applied for a mail ballot expresses the desire to vote by mail, the judges shall provide the voter with a ballot by mail application. The judges shall

SECTION 17. Sections 107.007(b), (d), and (f), Election Code, as effective September 1, 2017, are amended to read as follows:

(b) Not later than 5 p.m. on the sixth business day before election day, the early voting clerk ~~[election judges]~~ shall, with the input of the administrator of the residential care facility, designate one or more times for voting to be conducted. Voting may be conducted not earlier than the 38th ~~[29th]~~ day before election day and not later than the fourth day preceding election day.

(d) The early voting clerk shall maintain a public list of all residential care facilities in the clerk's jurisdiction at which voting is conducted under this chapter. The list must be available on the website of the authority conducting the election or posted at the location where public notices are posted in the county courthouse or authority public building, as applicable, and for each facility state:

- (1) the name of the facility;
- (2) the address of the facility; and
- (3) the dates and times for voting at the facility; ~~and~~
- ~~[(4) the names of the election judges for the facility].~~

(f) At any time during the year and regardless of whether five or more voters at a residential care facility have requested ballots to be voted by mail, the early voting clerk may post notice of the dates on which voting will be conducted at the facility under this chapter for each election. ~~[If the early voting clerk posts notice under this subsection, the names of the election judges and the hours during which voting will be conducted must be posted at least 48 hours before voting is conducted at the facility, notwithstanding Subsection (c).]~~

SECTION 18. Section 107.009, Election Code, as effective September 1, 2017, is amended to read as follows:

Sec. 107.009. VOTING BY ADDITIONAL QUALIFIED VOTERS. A qualified voter who resides and is registered to vote at a residential care facility where voting is conducted under this chapter may, while voting is being conducted, communicate to an election judge that the person has not

deliver the application to the early voting clerk the same day. If the application is received on or before the deadline to receive mail ballot applications, the early voting clerk shall prepare and provide ballot materials for any eligible voter to the judges to return to the facility and provide the ballot materials to the voter to vote.

~~(a) The early voting clerk shall produce a list of all additional qualified voters who reside and are registered to vote at a residential care facility where voting is conducted under this chapter.~~

~~(b) The clerk shall supply the election judges for the residential care facility with sufficient additional ballots and voting materials to allow any additional qualified voter who resides at the facility to vote under this chapter. During the voting period, any registered voter who resides at the facility may complete an application to request a mail ballot as if they were voting by mail. An election judge for the facility shall serve as a witness for any person who is unable to sign their name and may witness multiple applications.~~

~~(c) An election judge for the residential care facility must accept a properly completed application for a ballot made under this section, and shall provide a ballot to the voter. The election judge shall make a notation on an application that it was made under this section.~~

~~(d) A voter who applies for a ballot under this section shall vote in the manner provided by Section 107.008, except that the voter's ballot must be stored with the voter's application, and the voter's ballot may not be counted if the voter was not a qualified voter for the election as demonstrated from the information contained in the voter's application.~~

~~(e) An election judge at the residential care facility may assist and witness a ballot received by a voter who resides at the facility and is not registered to vote at the facility while the election judge is present at the facility.~~

~~(f) The secretary of state may prescribe an~~

completed an application for a ballot to be voted by mail but would like to vote by mail. The election judges shall provide the person with a ballot by mail application. The voter may complete the application and return it to the election judges, who shall deliver the application to the early voting clerk on the same day. If the application is received before the deadline to receive mail ballot applications, the early voting clerk shall prepare and provide ballot materials for the voter, and the judges shall return to the facility to provide the voter with the ballot materials.

~~[(a) The early voting clerk shall produce a list of all additional qualified voters who reside and are registered to vote at a residential care facility where voting is conducted under this chapter.~~

~~[(b) The clerk shall supply the election judges for the residential care facility with sufficient additional ballots and voting materials to allow any additional qualified voter who resides at the facility to vote under this chapter. During the voting period, any registered voter who resides at the facility may complete an application to request a mail ballot as if they were voting by mail. An election judge for the facility shall serve as a witness for any person who is unable to sign their name and may witness multiple applications.~~

~~[(c) An election judge for the residential care facility must accept a properly completed application for a ballot made under this section, and shall provide a ballot to the voter. The election judge shall make a notation on an application that it was made under this section.~~

~~[(d) A voter who applies for a ballot under this section shall vote in the manner provided by Section 107.008, except that the voter's ballot must be stored with the voter's application, and the voter's ballot may not be counted if the voter was not a qualified voter for the election as demonstrated from the information contained in the voter's application.~~

~~[(e) An election judge at the residential care facility may assist and witness a ballot received by a voter who resides at the facility and is not registered to vote at the facility while the election judge is present at the facility.~~

~~[(f) The secretary of state may prescribe an~~

~~application for a voter to request a ballot under Subsection (b).~~

SECTION 18. Section 107.012(b), Election Code, as effective September 1, 2017, is amended to read as follows:

(b) A voter may receive assistance in the same manner as provided by Subchapter B, Chapter 64. If the voter requires assistance in one of the required languages of the county, the election judge may contact the early voting clerk and request that a translator translate the ballot and/or balloting materials over the phone or the voter may provide their own translator to translate in the presence of the election judges.

SECTION 19. Section 107.014(b), (c) and (d), Election Code, as effective September 1, 2017, are amended to read as follows:

(b) Any registered voter who did not cast a ballot at the residential care facility may cast a ballot by:

- (1) voting in person on election day; or
- (2) voting by mail.

(c) If one or more voters who requested a ballot by mail are not present during the scheduled time for early voting at the residential care facility, both election judges may arrange a suitable time to return to conduct voting, in accordance with Section 107.007(b). An election judge shall leave a ballot package for a voter who:

~~(1) requested a ballot to be voted by mail and was not present during the scheduled time for early voting at the residential care facility; and~~

~~(2) is expected to return to the residential care facility before the deadline for returning a ballot by mail.~~

(d) If a voter who requested a ballot to be voted by mail under this chapter is temporarily located at another location, including by hospitalization:

(1) the early voting clerk may mail the ballot to the voter's temporary address, if known; or

~~application for a voter to request a ballot under Subsection (b).]~~

SECTION 19. Section 107.012(b), Election Code, as effective September 1, 2017, is amended to read as follows:

(b) A voter may receive assistance in the same manner as provided by Subchapter B, Chapter 64. If the voter cannot comprehend the language in which the ballot or balloting materials are printed:

(1) an election judge may contact the early voting clerk to request that a translator translate the ballot or balloting materials over the phone; or

(2) the voter may use an interpreter in accordance with Section 61.032, who may translate the ballot or balloting materials in the presence of the election judges.

SECTION 20. Sections 107.014(b), (c), and (d), Election Code, as effective September 1, 2017, are amended to read as follows:

(b) Any registered voter who was required to vote at the residential care facility under Section 107.004(a)(1) who did not cast a ballot at the ~~[residential care]~~ facility and who did not make a request under Section 107.009 may cast a ballot by:

- ~~[(1)] voting in person on election day;~~
- ~~[(2)] voting by mail.~~

(c) If one or more voters who requested a ballot by mail are not present during the scheduled time for voting to be conducted at the residential care facility, the election judges may request that the early voting clerk, in accordance with Section 107.007(b), arrange a suitable time for the judges to return to conduct voting [An election judge shall leave a ballot package for a voter who:

~~[(1) requested a ballot to be voted by mail and was not present during the scheduled time for early voting at the residential care facility; and~~

~~[(2) is expected to return to the residential care facility before the deadline for returning a ballot by mail].~~

(d) If a voter who requested a ballot to be voted by mail under this chapter is temporarily located at another location, including by hospitalization,

[(1)] the early voting clerk may mail the ballot to the voter's temporary address, if known;

(2) the election judge may personally deliver the ballot package to the voter's temporary address, if known.

SECTION 20. Sections 86.0015, 107.011, and 107.014(e)(as effective September 1, 2017), Election Code, are repealed.

SECTION 21. (a) The changes in law made by this Act in amending Sections 84.003, 84.004(e), 84.0041, 86.0051, 86.006, 86.010, and 107.006(d) (as effective September 1, 2017), Election Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. 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.

(b) The changes in law made by this Act in amending Sections 84.007, 84.011, and 84.038, Election Code, and repealing Section 86.0015, Election Code, apply only to an application for a ballot to be voted by mail received on or after January 1, 2018.

SECTION 22. This Act takes effect December 1, 2017.

~~[(2) the election judge may personally deliver the ballot package to the voter's temporary address, if known].~~

SECTION 21. Sections 107.003, 107.011, and 107.014(e), Election Code, as effective September 1, 2017, are repealed.

SECTION 22. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. 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 23. This Act takes effect January 1, 2018.