

BILL ANALYSIS

C.S.H.B. 184
By: Goldman
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that mail ballots are particularly vulnerable to voting fraud and vote harvesting. The goal of C.S.H.B. 184 is to detect and prevent mail ballot voting fraud.

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 rulemaking authority is expressly granted to the secretary of state in SECTIONS 7 and 16 of this bill.

ANALYSIS

C.S.H.B. 184 amends the Election Code to create the Class A misdemeanor offense of election fraud for a person who knowingly or intentionally makes any effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process; to cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or to cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or any other official election-related form or document. The bill 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 defendant committed another such offense in the same election, or the offense involved a voter 65 years of age or older and the actor was not related to the voter within the second degree of affinity or the third degree by consanguinity or physically living in the same dwelling as the voter at the time of the event. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law. The bill exempts from application of an election fraud offense that involves a person knowingly or intentionally making any effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process a person who is related to the voter within the second degree by affinity or the third degree by consanguinity or was physically living in the same dwelling as the voter at the time of the event.

C.S.H.B. 184 expands the conduct that constitutes the offense of illegal voting to include knowingly marking or attempting to mark any portion of another person's ballot without specific direction from that person how to mark the ballot; clarifies that the conduct constituting illegal voting that involves knowingly marking or attempting to mark another person's ballot without the consent of that person applies to any portion of the ballot; and revises the conduct

constituting illegal voting that involves knowingly impersonating another person to vote or attempting to vote as the impersonated person to instead specify that a person commits such an offense if the person knowingly votes or attempts to vote a ballot belonging to another person, or by impersonating another person. The bill establishes a uniform 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 to elections involving a federal office. The bill establishes that an electronic signature is not permitted on an application for an early voting ballot to be voted by mail.

C.S.H.B. 184 renames the offense of providing false information on an application as fraudulent use of an 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, or a person knowingly and without the voter's authorization altering information provided by the voter on an application for ballot by mail. 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 for the offense is decreased to a Class A misdemeanor and specifies that an offense involving a person knowingly altering information provided by a voter on an application for ballot by mail without the voter's authorization does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

C.S.H.B. 184 requires an application for a ballot to be voted by mail submitted by telephonic facsimile machine or electronic transmission to be submitted by mail and received by the registrar not later than the fourth business day after the transmission by telephonic facsimile machine or electronic transmission is received for the application to be effective. The bill authorizes an applicant to submit a request for the cancellation of an application for a ballot to be voted by mail after the close of early voting by personal appearance by appearing in person and executing an affidavit that the applicant never requested a ballot to be voted by mail. The bill requires the early voting clerk to attach corresponding ballot materials, if available, to a request for the cancellation of an application for a ballot to be voted by mail if the application is canceled. The bill requires the early voting clerk, not later than the 30th day after election day, to deliver notice to the attorney general of cancellation requests received, including certified copies of cancellation requests, applications, and carrier envelopes, if available. The bill requires the attorney general to prescribe the form and manner of such a submission and requires the secretary of state to adopt rules as necessary to implement those prescribed requirements.

C.S.H.B. 184 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 and makes certain revisions to requirements, exemptions, and the enhancement relating to that offense. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 184 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. 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 applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 184 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 specifies that the person subject to the offense of unlawfully assisting a voter voting a ballot by mail is the person who assists the voter, expands the conduct that constitutes the offense to include failing to comply with the requirement to sign a written oath that is part of the certificate on the official carrier envelope, and increases the penalty for such an offense from a Class A misdemeanor, with certain enhancements, to a state jail felony. The bill replaces an exception from the offense of unlawfully assisting a voter voting a ballot by mail 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 applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 184 clarifies that the purpose for which a signature verification committee is required to 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 is to determine whether the signatures are those of the voter. The bill replaces the authorization for the signature verification committee to compare such signatures 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 county clerk or voter registrar to determine whether the signatures are those of the voter. The bill removes the prohibition against the committee using the registration application signature to determine that the signatures are not those of the same person. 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 county clerk, in addition to the board's existing authority to make such a comparison with signatures on file with the voter registrar, to determine whether the signatures are those of the voter. 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. The bill creates a Class A misdemeanor offense for a person who intentionally accepts a ballot for voting or causes a ballot to be accepted for voting that the person knows does not meet the requirements for the acceptance of an early voting ballot voted by mail.

C.S.H.B. 184 requires the early voting clerk, not later than the 30th day after election day, to deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because the voter was deceased, the voter already voted in person in the same election, the signatures on the carrier envelope and ballot application were not executed by the same person, the carrier envelope certificate lacked a witness signature, or the carrier envelope certificate was improperly executed by an assistant. The bill requires the attorney general to prescribe the form and manner of such a submission and requires the secretary of state to adopt rules as necessary to implement those prescribed requirements. The bill repeals provisions relating to early voting at a residential care facility.

C.S.H.B. 184 repeals the following provisions, as effective September 1, 2017:

- Section 86.003(e), Election Code
- Section 86.004(c), Election Code
- Chapter 107, Election Code
- Section 242.0181, Health and Safety Code
- Section 247.008, Health and Safety Code

EFFECTIVE DATE

December 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 184 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

SECTION 1. Section 64.012(a), Election Code, is amended.

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 in an election involving a federal office[; or

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

No equivalent provision.

SECTION 3. 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;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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 the voter's 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.

No equivalent provision.

(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 registrar not later than the fourth business day after the transmission by telephonic facsimile machine or electronic transmission is received.

No equivalent provision.

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.

No equivalent provision.

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.

No equivalent provision.

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.

No equivalent provision.

SECTION 4. The heading to Section 86.0051, Election Code, is amended.

SECTION 5. Section 86.0051, Election Code, is amended.

SECTION 6. Sections 86.006(f), (g), and (g-1), Election Code, are amended.

SECTION 7. Section 86.010, Election Code, is amended.

SECTION 8. 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 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 same person. Except as provided by Subsection (1), a determination under this subsection that the signatures are not those of the same person must be made

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 (e)~~], 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. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

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 (1), a determination under this subsection that the signatures are not those of the voter [~~same person~~] must be made by

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 same person in separate containers from those of voters whose signatures are those of the 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 9. Section 87.041(e), Election Code, is amended 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 same person [but may not use the signatures to determine that the signatures are not those of the same person].

SECTION 10. 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 presiding judge shall, not later than the 10th day after election day, deliver written notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because:

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.

SECTION 11. 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 registration application, ballot, or vote to be obtained or 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 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 the offense 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

- (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

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.

No equivalent provision.

SECTION 12. 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 on the date 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 13. This Act takes effect December 1, 2017.

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.

(e) Subsection (a)(1) does not apply if the person is 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 was physically living in the same dwelling as the voter at the time of the event.

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

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.