

BILL ANALYSIS

Senate Research Center

S.B. 5
By: Hancock et al.
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The State of Texas provides voting by mail accommodations for eligible individuals who are aged 65 years or older, disabled, out of the county on election day and during the period for early voting by personal appearance, or confined in jail but otherwise eligible.

Mail ballot voting is a prime target for illegal voting and election fraud, as evidenced by ongoing investigations in multiple Texas counties. Often, the victims of mail ballot fraud are the most vulnerable members of our communities—the elderly and the disabled. The right of every Texas voter to cast his or her ballot must be protected.

S.B. 5 provides enhanced protections for elderly and disabled voters, strengthens signature verification provisions, establishes new and enhanced penalties for convicted mail ballot fraud offenders, and creates notification requirements regarding rejected mail ballots. (Original Author's / Sponsor's Statement of Intent)

S.B. 5 amends current law relating to the prevention of fraud in the conduct of an election, creates a criminal offense, and increases criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas secretary of state in SECTION 7 (Section 84.037, Election Code) and SECTION 16 (Section 87.0431, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 64.012(a), Election Code, as follows:

(a) Provides that a person commits an offense if the person:

(1) and (2) makes no changes to these subdivisions;

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

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

SECTION 2. Amends Section 66.058(a), Election Code, as follows:

(a) Requires that the precinct election records, except as otherwise provided by this code, be preserved by the authority to whom they are distributed for at least 22 months after election day. Deletes existing text requiring that the precinct election records, except as otherwise provided by this code, be preserved by the authority to whom they are distributed, in an election involving a federal office, for at least 22 months after election day in accordance with law, or, in an election not involving a federal office for at least six

months after election day. Deletes existing designations of Subdivisions (1) and (2) and makes nonsubstantive changes.

SECTION 3. Amends Section 84.001(b), Election Code, to require that an application be in writing and signed by the applicant and provide that an electronic signature is not permitted.

SECTION 4. Amends Section 84.0041, Election Code, as follows:

Sec. 84.0041. New heading: FRAUDULENT USE OF APPLICATION FOR BALLOT BY MAIL. (a) Provides that a person commits an offense if the person:

(1) knowingly provides false information on an application for ballot by mail, rather than knowingly provides false information on an application for an early voting ballot. Creates this subdivision from existing text;

(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) Provides that an offense under this section is a state jail felony, rather than provides that an offense under this section is a state jail felony unless the person meets certain criteria.

(c) Provides that 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) Provides that 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 the defendant was previously convicted of an offense under this code, the offense involved a voter 65 years of age or older, or the defendant committed another offense under this section in the same election.

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

(b) Requires that an application be submitted to the early voting clerk by mail; common or contract carrier; subject to Subsection (b-1), telephonic facsimile machine, if a machine is available in the clerk's officer; or, subject to Subsection (b-1), electronic transmission of a scanned application containing an original signature.

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

SECTION 6. Amends Section 84.032(c), Election Code, as follows:

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

(1) makes no changes to this subdivision

(2) executing an affidavit that the applicant has not received the ballot to be voted by mail or never requested a ballot to be voted by mail.

SECTION 7. Amends Section 84.037, Election Code, as follows:

Sec. 84.037. PRESERVATION OF DOCUMENTS. (a) Creates this subsection from existing text. Requires the early voting clerk to preserve each cancellation request for the period for preserving the precinct election records. Requires the clerk, if the application is canceled, to attach it and the corresponding ballot materials, if available, to the cancellation request and preserve it with the request.

(b) Requires the early voting clerk as defined by Subchapter A (Early Voting Clerk), Chapter 83 (Officer Conducting Early Voting), to, not later than the 30th day after election day, deliver notice to the Texas attorney general (attorney general) of cancellation requests received, including certified copies of cancellation requests, applications, and carrier envelopes, if available.

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

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

(a) Deletes existing text requiring that the balloting materials for voting by mail be provided to the voter by mail, unless the ballot is delivered to a voter for early voting under Chapter 107.

(b) Prohibits the election officer providing the ballot from knowingly mailing, rather than delivering, the materials to an address other than that prescribed by this section (Method of Providing Ballot to Voter: Required Address).

SECTION 9. Amends Section 86.004(a), Election Code, as effective September 1, 2017, to require that, except as provided by Subsection (b) (relating to the required mailing date of balloting materials for a voter outside the United States), rather than Subsection (b) or (c), the balloting materials for voting by mail be mailed to a voter entitled to vote by mail not later than a certain day, except that if that mailing date is earlier than the 45th day before election day, the balloting materials be mailed not later than the 30th, rather than 38th, day before election day.

SECTION 10. Amends the heading to Section 86.0051, Election Code, to read as follows:

Sec. 86.0051. UNLAWFUL CARRIER ENVELOPE ACTION BY PERSON OTHER THAN VOTER.

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

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

(d) Provides that an offense under this section is a Class A misdemeanor, unless it is shown on the trial of an offense under this section that the person committed an offense under Section 64.036 (Unlawful Assistance) for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a state jail felony. Deletes existing text providing that an offense under this section is a Class 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.

(e) Provides that this section 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 (Relationships by Consanguinity or by Affinity), Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, or was physically living in the same dwelling as the voter at the time of the event. Deletes existing text providing that Subsections (a) (relating to creating an offense for acting as a witness for a voter in signing the certificate on the carrier envelope and knowingly failing to comply with a certain section) and (c) (relating to creating an offense for knowingly violating Subsection (b) and providing that it is not a defense to an offense that the voter voluntarily gave another person possession of the voter's carrier envelope) 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.

(f) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 12. Amends Sections 86.006(f), (g), and (g-1), Election Code, as follows:

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

(1) makes no changes to this subdivision;

(2) physically living in the same dwelling as the voter, rather than registered to vote at the same address as the voter;

(3) makes no changes to this subdivision;

(4) a person who possesses a ballot or carrier envelope solely for the purpose of lawfully assisting a voter who was eligible for assistance under Section 86.010 (Assisting Voter) and complied fully with Section 86.010 and Section 86.0051, if assistance was provided in order to deposit the envelope in the mail or with a common or contract carrier, rather than a person who possesses the carrier envelope 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) and (6) makes no changes to these subdivisions.

(g) Provides that 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. Authorizes the actor, if conduct that constitutes an offense under this section (Method of Returning Marked Ballot) also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both. Deletes existing text providing that an offense under Subsection (f) constitutes a certain category of offense depending on certain circumstances.

(g-1) Provides that 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 the defendant was previously convicted of an offense under this code, the offense involved an individual 65 years of age or older, or the defendant committed another offense under this section in the same election. Deletes existing text authorizing certain conduct, when ballots or carrier envelopes are obtained in violation of this section pursuant to one scheme or continuing course of conduct, to be considered as one offense and the number of ballots or carrier envelopes aggregated in determining the grade of the offense.

SECTION 13. Amends Section 86.010, Election Code, as follows:

Sec. 86.010. New heading: UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY MAIL. (a) Makes no changes to this subsection.

(b) Provides that 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 is authorized to also select a person as provided by Section 64.032(c) (relating to authorizing the voter to be assisted by any person selected by the voter other than certain persons) to assist the voter by depositing a sealed carrier envelope in the mail.

(c) Makes no changes to this subsection.

(d) Changes a reference to Subsection (a) (relating to the eligibility of certain persons to select a certain person to assist the voter in preparing the ballot) or (b) to this section.

(e) Makes no changes to this subsection.

(f) Provides that a person who assists a voter commits an offense if the person knowingly fails to comply with Subsections (c) (relating to requiring the person assisting the voter to sign a certain written oath) and (e) (relating to requiring a person who assists a voter to enter certain information on the official carrier envelope of the voter), rather than provides that a person commits an offense if the person knowingly fails to provide the information on the official carrier envelope as required by Subsection (e).

(g) Provides that an offense under this section is a state jail felony, rather than 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) Provides that Subsection (f) does not apply if the person is related to the voter, rather than the 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 the same dwelling as the voter at the time of the event, rather than is registered to vote at the same address as the applicant.

(i) Provides that 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 the defendant was previously convicted of an offense under this code, the offense involved an individual 65 years of age or older, or the defendant committed another offense under this section in the same election.

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

SECTION 14. Amends Section 87.027(i), Election Code, as follows:

(i) Changes references to same person to voter. Authorizes the signature verification committee (committee) to compare the signatures on each carrier envelope certificate (certificate) 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, rather than compare the signatures on each certificate with the signature on the voter's registration application to confirm that the signatures are

those of the same person but prohibits the committee from using the registration application signature to determine that the signatures are not those of the same person.

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

(e) Authorizes the early voting ballot board (board), in making the determination under Subsection (b)(2) (relating to authorizing the ballot to be accepted only with certain signatures on the ballot application or certificate), to 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 the signatures are those of the voter, rather than authorizes the board to compare the signatures with any two or more signatures of the voter made within the preceding six years and on file with the voter registrar to confirm that the signatures are those of the same person but prohibits the board from using the signatures to determine that the signatures are not those of the same person.

(g) Provides that 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) (relating to certain criteria making a ballot acceptable). Provides that an offense under this subsection is a Class A misdemeanor.

SECTION 16. Amends Section 87.0431, Election Code, as follows:

Sec. 87.0431. NOTICE OF REJECTED BALLOT. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Requires the early voting clerk to, 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 of certain circumstances.

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

SECTION 17. Amends Chapter 276, Election Code, by adding Section 276.013, as follows:

Sec. 276.013. ELECTION FRAUD. (a) Provides that 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 to an election official or on an application for ballot by mail, carrier envelope, or other official election-related form or document.

(b) Provides that an offense under this section is a Class A misdemeanor.

(c) Provides that 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 the defendant was previously convicted of an offense under this code, the offense involved an individual 65 years of age or older, and the actor does not meet certain criteria, or the defendant committed another offense under this section in the same election.

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

SECTION 18. Repealers, effective September 1, 2017: Sections 86.003(e), Section 86.004(c), and Chapter 107, Election Code.

Repealers, effective September 1, 2017: Sections 242.0181 and 247.008, Health and Safety Code.

SECTION 19. Makes application of this Act prospective.

SECTION 20. Effective date: December 1, 2017.