

By: Schofield, White, Laubenberg, et al.

H.B. No. 47

Substitute the following for H.B. No. 47:

By: Swanson

C.S.H.B. No. 47

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the prevention of fraud in the conduct of early voting
3 by mail; creating criminal offenses; increasing criminal
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 66.058, Election Code, is amended by
7 amending Subsection (a) and adding Subsection (i) to read as
8 follows:

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

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

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

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

21 SECTION 2. Section 84.003(b), Election Code, is amended to
22 read as follows:

23 (b) A person who acts as a witness for an applicant for an
24 early voting ballot application commits an offense if the person

1 knowingly fails to comply with Section 1.011. A person who [~~in the~~
2 ~~presence of the applicant~~] otherwise assists an applicant in
3 completing an early voting ballot application commits an offense if
4 the person knowingly fails to comply with Section 1.011(d) in the
5 same manner as a witness.

6 SECTION 3. Section 84.004(e), Election Code, is amended to
7 read as follows:

8 (e) An offense under this section is a Class A [~~B~~]
9 misdemeanor.

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

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

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

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

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

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

23 (b) Except as provided by Subsection (c), an [~~An~~] offense
24 under this section is a state jail felony [~~unless the person is the~~
25 ~~applicant, is related to the applicant within the second degree by~~
26 ~~affinity or the third degree by consanguinity, as determined under~~
27 ~~Subchapter B, Chapter 573, Government Code, or is registered to~~

1 ~~vote at the same address as the applicant, in which event the~~
2 ~~offense is a Class A misdemeanor].~~

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

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

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

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

12 SECTION 5. Section 86.004(a), Election Code, as effective
13 September 1, 2017, is amended to read as follows:

14 (a) Except as provided by Subsection (b) or (c), the
15 balloting materials for voting by mail shall be mailed to a voter
16 entitled to vote by mail not later than the seventh calendar day
17 after the later of the date the clerk accepts the voter's
18 application for a ballot to be voted by mail or the date the ballots
19 become available for mailing, except that if that mailing date is
20 earlier than the 45th day before election day, the balloting
21 materials shall be mailed not later than the 30th [~~38th~~] day before
22 election day.

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

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

27 SECTION 7. Sections 86.0051(b), (d), and (e), Election

1 Code, are amended to read as follows:

2 (b) A person other than the voter who deposits the carrier
3 envelope in the mail or with a common or contract carrier, or who
4 obtains the carrier envelope for that purpose, must provide the
5 information required to be provided on the certificate [~~person's~~
6 ~~signature, printed name, and residence address~~] on the reverse side
7 of the envelope.

8 (d) An offense under this section is a Class A [~~B~~]
9 misdemeanor, unless the person is convicted of an offense under
10 Section 64.036 for providing unlawful assistance to the same voter
11 in connection with the same ballot, in which event the offense is a
12 [~~state jail~~] felony of the third degree. An offense under this
13 section is increased to the next higher category of offense if it is
14 shown on the trial of an offense under this section that:

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

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

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

21 (e) If conduct that constitutes an offense under this
22 section also constitutes an offense under any other law, the actor
23 may be prosecuted under this section, the other law, or both
24 [~~Subsections (a) and (c) do not apply if the person is related to~~
25 ~~the applicant within the second degree by affinity or the third~~
26 ~~degree by consanguinity, as determined under Subchapter B, Chapter~~
27 ~~573, Government Code, or is registered to vote at the same address~~

1 ~~as the applicant].~~

2 SECTION 8. Sections 86.006(f), (g), and (g-1), Election
3 Code, are amended to read as follows:

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

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

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

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

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

21 (A) Section 86.010; and

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

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

1 or

2 (6) a common or contract carrier working in the normal
3 course of the carrier's authorized duties if the official ballot is
4 sealed in an official carrier envelope that is accompanied by an
5 individual delivery receipt for that particular carrier envelope.

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

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

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

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

26 (g-1) An offense under Subsection (g) is increased to the
27 next higher category of offense if it is shown on the trial of an

1 offense under this section that:

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

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

6 (3) the defendant committed another offense under this
7 section in the same election [~~When ballots or carrier envelopes are~~
8 ~~obtained in violation of this section pursuant to one scheme or~~
9 ~~continuing course of conduct, whether from the same or several~~
10 ~~sources, the conduct may be considered as one offense and the number~~
11 ~~of ballots or carrier envelopes aggregated in determining the grade~~
12 ~~of the offense].~~

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

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

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

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

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

1 (g) An offense under this section is a [~~Class A misdemeanor~~
2 ~~unless the person is convicted of an offense under Section 64.036~~
3 ~~for providing unlawful assistance to the same voter, in which event~~
4 ~~the offense is a~~] state jail felony.

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

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

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

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

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

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

23 SECTION 11. Section 87.027(i), Election Code, is amended to
24 read as follows:

25 (i) The signature verification committee shall compare the
26 signature on each carrier envelope certificate, except those signed
27 for a voter by a witness, with the signature on the voter's ballot

1 application to determine whether the signatures are those of the
2 same person. The committee may also compare the signatures with
3 any two or more signatures of the voter made within the preceding
4 six years and on file with the general custodian of election records
5 or voter registrar [~~the signature on the voter's registration~~
6 ~~application~~] to confirm that the signatures are those of the same
7 person and may [~~but may not~~] use the signatures [~~registration~~
8 ~~application signature~~] to determine that the signatures are not
9 those of the same person. Except as provided by Subsection (1), a
10 determination under this subsection that the signatures are not
11 those of the same person must be made by a majority vote of the
12 committee's membership. The committee shall place the jacket
13 envelopes, carrier envelopes, and applications of voters whose
14 signatures are not those of the same person in separate containers
15 from those of voters whose signatures are those of the same
16 person. The committee chair shall deliver the sorted materials to
17 the early voting ballot board at the time specified by the board's
18 presiding judge.

19 SECTION 12. Section 87.041(e), Election Code, is amended to
20 read as follows:

21 (e) In making the determination under Subsection (b)(2),
22 the board may also compare the signatures with any two or more
23 signatures of the voter made within the preceding six years and on
24 file with the general custodian of election records or voter
25 registrar to determine if [~~confirm that~~] the signatures are those
26 of the same person [~~but may not use the signatures to determine that~~
27 ~~the signatures are not those of the same person~~].

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

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

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

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

11 (1) [7] must vote as provided by this chapter if five or
12 more applications for ballots to be voted by mail were made by
13 residents of the same facility who requested that the ballots be
14 sent to the facility; and

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

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

22 (a) Additional election judges shall be selected to serve at
23 a residential care facility in the same manner as election officers
24 [~~judges~~] are selected to serve at a polling place for early voting
25 by personal appearance [~~under Chapter 32~~]. For the general
26 election for state and county officers, the election judges shall
27 be selected in the manner provided for election officers under

1 Section 85.009. The county chair of a political party shall
2 indicate on the list of names of persons whether a person is willing
3 to serve as an election judge under this chapter.

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

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

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

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

17 (1) conducting the election under this chapter;

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

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

24 (f) A person described by Subsection (e)(3) may be chosen to
25 assist a voter in accordance with Section 64.032(c).

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

1 follows:

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

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

- 15 (1) the name of the facility;
16 (2) the address of the facility; and
17 (3) the dates and times for voting at the facility[+
18 ~~and~~
19 [~~(4) the names of the election judges for the~~
20 ~~facility~~].

21 (f) At any time during the year and regardless of whether
22 five or more voters at a residential care facility have requested
23 ballots to be voted by mail, the early voting clerk may post notice
24 of the dates on which voting will be conducted at the facility under
25 this chapter for each election. [~~If the early voting clerk posts~~
26 ~~notice under this subsection, the names of the election judges and~~
27 ~~the hours during which voting will be conducted must be posted at~~

1 ~~least 48 hours before voting is conducted at the facility,~~
2 ~~notwithstanding Subsection (c).]~~

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

5 Sec. 107.009. VOTING BY ADDITIONAL QUALIFIED VOTERS. A
6 qualified voter who resides and is registered to vote at a
7 residential care facility where voting is conducted under this
8 chapter may, while voting is being conducted, communicate to an
9 election judge that the person has not completed an application for
10 a ballot to be voted by mail but would like to vote by mail. The
11 election judges shall provide the person with a ballot by mail
12 application. The voter may complete the application and return it
13 to the election judges, who shall deliver the application to the
14 early voting clerk on the same day. If the application is received
15 before the deadline to receive mail ballot applications, the early
16 voting clerk shall prepare and provide ballot materials for the
17 voter, and the judges shall return to the facility to provide the
18 voter with the ballot materials. [~~(a) The early voting clerk~~
19 ~~shall produce a list of all additional qualified voters who reside~~
20 ~~and are registered to vote at a residential care facility where~~
21 ~~voting is conducted under this chapter.~~

22 [~~(b) The clerk shall supply the election judges for the~~
23 ~~residential care facility with sufficient additional ballots and~~
24 ~~voting materials to allow any additional qualified voter who~~
25 ~~resides at the facility to vote under this chapter. During the~~
26 ~~voting period, any registered voter who resides at the facility may~~
27 ~~complete an application to request a mail ballot as if they were~~

1 ~~voting by mail. An election judge for the facility shall serve as a~~
2 ~~witness for any person who is unable to sign their name and may~~
3 ~~witness multiple applications.~~

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

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

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

19 ~~[(f) The secretary of state may prescribe an application for~~
20 ~~a voter to request a ballot under Subsection (b).]~~

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

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

27 (1) an election judge may contact the early voting

1 clerk to request that a translator translate the ballot or
2 balloting materials over the phone; or

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

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

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

13 [~~(1)~~] voting in person on election day[~~, or~~

14 [~~(2) voting by mail~~].

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

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

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

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

1 including by hospitalization, +

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

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

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

8 SECTION 22. The changes in law made by this Act apply only
9 to an offense committed on or after the effective date of this Act.
10 An offense committed before the effective date of this Act is
11 governed by the law in effect when the offense was committed, and
12 the former law is continued in effect for that purpose. For
13 purposes of this section, an offense was committed before the
14 effective date of this Act if any element of the offense occurred
15 before that date.

16 SECTION 23. This Act takes effect January 1, 2018.