

By: Schofield

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; increasing a criminal penalty.

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

5 SECTION 1. Section 84.003(b), Election Code, is amended to
6 read as follows:

7 (b) A person who acts as a witness for an applicant for an
8 early voting ballot application commits an offense if the person
9 knowingly fails to comply with Section 1.011. A person who [~~in the~~
10 ~~presence of the applicant~~] otherwise assists an applicant in
11 completing an early voting ballot application commits an offense if
12 the person knowingly fails to comply with Section 1.011(d) in the
13 same manner as a witness.

14 SECTION 2. Section 84.004(e), Election Code, is amended to
15 read as follows:

16 (e) An offense under this section is a Class A ~~Class B~~
17 misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

22 SECTION 4. Section 84.007(c), Election Code, is amended to
23 read as follows:

24 (c) An [~~Except as provided by Section 86.0015(b), an~~]
25 application may be submitted at any time in the year of the election
26 for which a ballot is requested, but not later than the close of
27 regular business in the early voting clerk's office or 12 noon,

1 whichever is later, on the 11th day before election day unless that
2 day is a Saturday, Sunday, or legal state or national holiday, in
3 which case the last day is the first preceding regular business day.

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

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

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

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

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

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

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

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

27 (C) a space for entering an applicant's telephone

1 number, with a statement informing the applicant that failure to
2 furnish that information does not invalidate the application;

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

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

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

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

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

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

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

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

1 ~~86.0015(b)]~~.

2 SECTION 7. Section 86.004(a), Election Code, as effective
3 September 1, 2017, is amended to read as follows:

4 (a) Except as provided by Subsection (b) or (c), the
5 balloting materials for voting by mail shall be mailed to a voter
6 entitled to vote by mail not later than the seventh calendar day
7 after the later of the date the clerk accepts the voter's
8 application for a ballot to be voted by mail or the date the ballots
9 become available for mailing, except that if that mailing date is
10 earlier than the 45th day before election day, the balloting
11 materials shall be mailed not later than the 30th [~~38th~~] day before
12 election day.

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

15 Sec. 86.0051. UNLAWFUL MAIL BALLOT ACTIVITY [~~CARRIER~~
16 ~~ENVELOPE ACTION~~] BY PERSON OTHER THAN VOTER[~~, OFFENSES~~]. (a) A
17 person commits an offense if the person acts as a witness for a
18 voter in signing the certificate on the carrier envelope and
19 knowingly fails to comply with Section 1.011.

20 (b) A person other than the voter who deposits the carrier
21 envelope in the mail or with a common or contract carrier, or who
22 obtains the carrier envelope for that purpose, must provide the
23 information required on the certificate [~~person's signature,~~
24 ~~printed name, and residence address~~] on the reverse side of the
25 envelope.

26 (c) A person commits an offense if the person knowingly
27 violates Subsection (b). It is not a defense to an offense under

1 this subsection that the voter voluntarily gave another person
2 possession of the voter's carrier envelope.

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

10 (1) the defendant was previously convicted of an
11 offense under this code;

12 (2) the offense involved a voter 65 years of age or
13 older; or

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

16 (f) If conduct that constitutes an offense under this
17 section also constitutes an offense under any other law, the actor
18 may be prosecuted under this section, the other law, or both.

19 SECTION 9. Sections 86.006(f), (g), and (g-1), Election
20 Code, are amended to read as follows:

21 (f) A person commits an offense if the person knowingly
22 possesses an official ballot or official carrier envelope provided
23 under this code to another. Unless the person possessed the ballot
24 or carrier envelope with intent to defraud the voter or the election
25 authority, this subsection does not apply to a person who, on the
26 date of the offense, was:

27 (1) related to the voter within the second degree by

1 affinity or the third degree by consanguinity, as determined under
2 Subchapter B, Chapter 573, Government Code;

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

5 (3) an early voting clerk or a deputy early voting
6 clerk;

7 (4) a person who possesses a ballot or ~~[the]~~ carrier
8 envelope solely for the purpose of lawfully assisting a voter who
9 was eligible for assistance under Section 86.010, and:

10 (A) complied fully with Section 86.010; and

11 (B) complied fully with Section 86.0051, if
12 assistance was provided only in order to deposit the envelope in the
13 mail or with a common or contract carrier ~~[and who provides the~~
14 ~~information required by Section 86.0051(b) in accordance with that~~
15 ~~section]~~;

16 (5) an employee of the United States Postal Service
17 working in the normal course of the employee's authorized
18 duties; or

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

23 (g) An offense under Subsection (f) is a Class A misdemeanor
24 unless person possessed the ballot or carrier envelope without the
25 request of the voter, in which case, it is a felony of the third
26 degree. If conduct that constitutes an offense under this section
27 also constitutes an offense under any other law, the actor may be

1 prosecuted under this section, the other law, or both. [+

2 ~~(1) a Class B misdemeanor if the person possesses at~~
3 ~~least one but fewer than 10 ballots or carrier envelopes unless the~~
4 ~~person possesses the ballots or carrier envelopes without the~~
5 ~~consent of the voters, in which event the offense is a state jail~~
6 ~~felony;~~

7 ~~(2) a Class A misdemeanor if the person possesses at~~
8 ~~least 10 but fewer than 20 ballots or carrier envelopes unless the~~
9 ~~person possesses the ballots or carrier envelopes without the~~
10 ~~consent of the voters, in which event the offense is a felony of the~~
11 ~~third degree; or~~

12 ~~(3) a state jail felony if the person possesses 20 or~~
13 ~~more ballots or carrier envelopes unless the person possesses the~~
14 ~~ballots or carrier envelopes without the consent of the voters, in~~
15 ~~which event the offense is a felony of the second degree.~~

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

19 (1) the defendant was previously convicted of an
20 offense under this code;

21 (2) the offense involved an individual 65 years of age
22 or older; or

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

25 ~~[When ballots or carrier envelopes are obtained in~~
26 ~~violation of this section pursuant to one scheme or continuing~~
27 ~~course of conduct, whether from the same or several sources, the~~

1 ~~conduct may be considered as one offense and the number of ballots~~
2 ~~or carrier envelopes aggregated in determining the grade of the~~
3 ~~offense.]~~

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

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

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

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

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

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

25 (f) A person who assists a voter commits an offense if the
26 person knowingly fails to provide the information on the official
27 carrier envelope ~~as~~ required by Subsection (e).

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 is physically living in
9 [~~registered to vote at~~] the same dwelling [~~address~~] as the voter
10 [~~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 any
3 two or more signatures of the voter made within the preceding six
4 years and on file with the general custodian of election records or
5 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 person.
16 The committee chair shall deliver the sorted materials to the early
17 voting ballot board at the time specified by the board's presiding
18 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. Section 107.004, Election Code, as effective
2 September 1, 2017, is amended by adding subsection (a-1) as
3 follows:

4 (a-1) If a facility on the list provided by the secretary of
5 state has more than one and fewer than five requests for a ballot by
6 mail, the early voting clerk may provide the balloting materials by
7 the methods described in this chapter, or by mail not later than the
8 15th day before Election Day.

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

11 Sec. 107.005. ELECTION JUDGES; QUALIFICATIONS; OATH. (a)
12 Additional election judges shall be selected to serve at a
13 residential care facility in the same manner as election judges are
14 selected to serve at a polling place for early voting by personal
15 appearance under Chapter ~~85 32~~. The county chair of each political
16 party holding a primary in the county shall indicate on the list of
17 names of persons whether a person is willing to serve as an election
18 judge under this chapter. The election judges assigned to serve at
19 a residential care facility must include one member from each
20 party's list if the county chair has submitted a list.

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

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

27 (d) During the hours that voting is being conducted at a

1 residential care facility, sections applicable to electioneering
2 or political activity at a polling place apply, including but not
3 limited to Sections 61.001, 61.003, 61.006, 61.008, 61.010, 85.036,
4 85.037, 86.0051 and 86.010. A person may be present in the
5 residential care facility during the hours when voting is being
6 conducted if the person is an employee or other person attending to
7 the business of the residential care facility, or is related to a
8 resident within the second degree by affinity or the third degree by
9 consanguinity, as determined under Subchapter B, Chapter 573,
10 Government Code, so long as the person does not engage in
11 electioneering or influencing a voter. A relative related to a
12 voter within the second degree by affinity or the third degree by
13 consanguinity, as determined under Subchapter B, Chapter 573,
14 Government Code may assist their relative in voting if the voter
15 qualifies for assistance.

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

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

24 (f) At any time during the year and regardless of whether
25 five or more voters at a residential care facility have requested
26 ballots to be voted by mail, the early voting clerk may post notice
27 of the dates on which voting will be conducted at the facility under

1 this chapter for each election. ~~If the early voting clerk posts~~
2 ~~notice under this subsection, the names of the election judges and~~
3 ~~the hours during which voting will be conducted must be posted at~~
4 ~~least 48 hours before voting is conducted at the facility,~~
5 ~~notwithstanding Subsection (c).~~

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

8 Sec. 107.009. VOTING BY ADDITIONAL QUALIFIED VOTERS. If
9 during the voting at the residential care facility, a voter who has
10 not applied for a mail ballot expresses the desire to vote by mail,
11 the judges shall provide the voter with a ballot by mail
12 application. The judges shall deliver the application to the early
13 voting clerk the same day. If the application is received on or
14 before the deadline to receive mail ballot applications, the early
15 voting clerk shall prepare and provide ballot materials for any
16 eligible voter to the judges to return to the facility and provide
17 the ballot materials to the voter to vote.

18 ~~(a) The early voting clerk shall produce a list of all~~
19 ~~additional qualified voters who reside and are registered to vote~~
20 ~~at a residential care facility where voting is conducted under this~~
21 ~~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 must~~
5 ~~accept a properly completed application for a ballot made under~~
6 ~~this section, and shall provide a ballot to the voter. The election~~
7 ~~judge shall make a notation on an application that it was made under~~
8 ~~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 18. 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 requires
25 assistance in one of the required languages of the county, the
26 election judge may contact the early voting clerk and request that a
27 translator translate the ballot and/or balloting materials over the

1 phone or the voter may provide their own translator to translate in
2 the presence of the election judges.

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

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

7 ~~(1) voting in person on election day, or~~

8 ~~(2) voting by mail.~~

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

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

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

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

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

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

27 SECTION 20. Sections 86.0015, 107.011, and 107.014(e) (as

1 effective September 1, 2017), Election Code, are repealed.

2 SECTION 21. (a) The changes in law made by this Act in
3 amending Sections 84.003, 84004(e), 84.0041, 86.0051, 86.006,
4 86.010, and 107.006(d))(as effective September 1, 2017), Election
5 Code, apply only to an offense committed on or after the effective
6 date of this Act. An offense committed before the effective date of
7 this Act is governed by the law in effect when the offense was
8 committed, and the former law is continued in effect for that
9 purpose. For purposes of this section, an offense was committed
10 before the effective date of this Act if any element of the offense
11 occurred before that date.

12 (b) The changes in law made by this Act in amending Sections
13 84.007, 84.011, and 84.038, Election Code, and repealing Section
14 86.0015, Election Code, apply only to an application for a ballot to
15 be voted by mail received on or after January 1, 2018.

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