

By: Hancock, et al.

S.B. No. 5

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prevention of fraud in the conduct of an election;
3 creating a criminal offense; increasing criminal penalties.

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

5 SECTION 1. Section 64.012(a), Election Code, is amended to
6 read as follows:

7 (a) A person commits an offense if the person:

8 (1) votes or attempts to vote in an election in which
9 the person knows the person is not eligible to vote;

10 (2) knowingly votes or attempts to vote more than once
11 in an election;

12 (3) knowingly [~~impersonates another person and~~] votes
13 or attempts to vote a ballot belonging to another person, or by
14 impersonating another [as the impersonated] person; or

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

18 SECTION 2. Section 66.058(a), Election Code, is amended to
19 read as follows:

20 (a) Except as otherwise provided by this code, the precinct
21 election records shall be preserved by the authority to whom they
22 are distributed[+]

23 [~~(1) in an election involving a federal office,~~] for
24 at least 22 months after election day [~~in accordance with federal~~

1 ~~law, or~~

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

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

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

9 (1) knowingly provides false information on an
10 application for [an early voting] ballot by mail;

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

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

15 (4) knowingly and without the voter's authorization
16 alters information provided by the voter on the voter's application
17 for ballot by mail.

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

24 (c) An offense under Subsection (a)(4) does not apply to an
25 early voting clerk or deputy early voting clerk who receives and
26 marks an application for administrative purposes only.

27 (d) An offense under this section is increased to the next

1 higher category of offense if it is shown on the trial of an offense
2 under this section that:

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

5 (2) the offense involved a voter 65 years of age or
6 older; or

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

9 SECTION 4. The heading to Section 86.0051, Election Code,
10 is amended to read as follows:

11 Sec. 86.0051. UNLAWFUL CARRIER ENVELOPE ACTION BY PERSON
12 OTHER THAN VOTER[~~, OFFENSES~~].

13 SECTION 5. Section 86.0051, Election Code, is amended by
14 amending Subsections (b), (d), and (e) and adding Subsection (f) to
15 read as follows:

16 (b) A person other than the voter who assists a voter by
17 depositing [~~deposits~~] the carrier envelope in the mail or with a
18 common or contract carrier or who obtains the carrier envelope for
19 that purpose must provide the person's signature, printed name, and
20 residence address on the reverse side of the envelope.

21 (d) An offense under this section is a Class A [~~B~~]
22 misdemeanor, unless it is shown on the trial of an offense under
23 this section that the person committed [~~is convicted of~~] an offense
24 under Section 64.036 for providing unlawful assistance to the same
25 voter in connection with the same ballot, in which event the offense
26 is a state jail felony.

27 (e) This section does [~~Subsections (a) and (c) do~~] not apply

1 if the person is related to the voter [~~applicant~~] within the second
2 degree by affinity or the third degree by consanguinity, as
3 determined under Subchapter B, Chapter 573, Government Code, or was
4 physically living in [~~is registered to vote at~~] the same dwelling
5 [~~address~~] as the voter at the time of the event [~~applicant~~].

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

9 SECTION 6. Sections 86.006(f), (g), and (g-1), Election
10 Code, are amended to read as follows:

11 (f) A person commits an offense if the person knowingly
12 possesses an official ballot or official carrier envelope provided
13 under this code to another. Unless the person possessed the ballot
14 or carrier envelope with intent to defraud the voter or the election
15 authority, this subsection does not apply to a person who, on the
16 date of the offense, was:

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

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

22 (3) an early voting clerk or a deputy early voting
23 clerk;

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

1 (A) Section 86.010; and

2 (B) Section 86.0051, if assistance was provided

3 in order to deposit the envelope in the mail or with a common or
4 contract carrier [~~and who provides the information required by~~
5 ~~Section 86.0051(b) in accordance with that section~~];

6 (5) an employee of the United States Postal Service
7 working in the normal course of the employee's authorized duties;
8 or

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

13 (g) An offense under Subsection (f) is a Class A misdemeanor
14 unless the defendant possessed the ballot or carrier envelope
15 without the request of the voter, in which case it is a felony of the
16 third degree. 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 [~~(1) a Class B misdemeanor if the person possesses at~~
20 ~~least one but fewer than 10 ballots or carrier envelopes unless the~~
21 ~~person possesses the ballots or carrier envelopes without the~~
22 ~~consent of the voters, in which event the offense is a state jail~~
23 ~~felony,~~

24 [~~(2) a Class A misdemeanor if the person possesses at~~
25 ~~least 10 but fewer than 20 ballots or carrier envelopes unless the~~
26 ~~person possesses the ballots or carrier envelopes without the~~
27 ~~consent of the voters, in which event the offense is a felony of the~~

1 ~~third degree; or~~

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

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

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

11 (2) the offense involved an individual 65 years of age
12 or older; or

13 (3) the defendant committed another offense under this
14 section in the same election [~~When ballots or carrier envelopes are~~
15 ~~obtained in violation of this section pursuant to one scheme or~~
16 ~~continuing course of conduct, whether from the same or several~~
17 ~~sources, the conduct may be considered as one offense and the number~~
18 ~~of ballots or carrier envelopes aggregated in determining the grade~~
19 ~~of the offense].~~

20 SECTION 7. Section 86.010, Election Code, is amended to
21 read as follows:

22 Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY
23 MAIL. (a) A voter casting a ballot by mail who would be eligible
24 under Section 64.031 to receive assistance at a polling place may
25 select a person as provided by Section 64.032(c) to assist the voter
26 in preparing the ballot.

27 (b) Assistance rendered under this section is limited to

1 that authorized by this code at a polling place, except that a voter
2 with a disability who is physically unable to deposit the ballot and
3 carrier envelope in the mail may also select a person as provided by
4 Section 64.032(c) to assist the voter by depositing a sealed
5 carrier envelope in the mail.

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

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

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

14 (f) A person who assists a voter commits an offense if the
15 person knowingly fails to comply with Subsections (c) and ~~[provide~~
16 ~~the information on the official carrier envelope as required by~~
17 ~~Subsection]~~ (e).

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

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

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

4 (1) the defendant was previously convicted of an
5 offense under this code;

6 (2) the offense involved a voter 65 years of age or
7 older; or

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

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

13 SECTION 8. Section 87.027(i), Election Code, is amended to
14 read as follows:

15 (i) The signature verification committee shall compare the
16 signature on each carrier envelope certificate, except those signed
17 for a voter by a witness, with the signature on the voter's ballot
18 application to determine whether the signatures are those of the
19 same person. The committee may also compare the signatures with any
20 two or more signatures of the voter made within the preceding six
21 years and on file with the county clerk or voter registrar [~~the~~
22 ~~signature on the voter's registration application to confirm that~~
23 ~~the signatures are those of the same person but may not use the~~
24 ~~registration application signature] to determine whether [~~that~~
25 the signatures are [~~not~~] those of the same person. Except as
26 provided by Subsection (1), a determination under this subsection
27 that the signatures are not those of the same person must be made by~~

1 a majority vote of the committee's membership. The committee shall
2 place the jacket envelopes, carrier envelopes, and applications of
3 voters whose signatures are not those of the same person in separate
4 containers from those of voters whose signatures are those of the
5 same person. The committee chair shall deliver the sorted
6 materials to the early voting ballot board at the time specified by
7 the board's presiding judge.

8 SECTION 9. Section 87.041(e), Election Code, is amended to
9 read as follows:

10 (e) In making the determination under Subsection (b)(2),
11 the board may also compare the signatures with any two or more
12 signatures of the voter made within the preceding six years and on
13 file with the county clerk or voter registrar to determine whether
14 ~~[confirm that]~~ the signatures are those of the same person ~~[but may~~
15 ~~not use the signatures to determine that the signatures are not~~
16 ~~those of the same person]~~.

17 SECTION 10. Section 87.0431, Election Code, is amended to
18 read as follows:

19 Sec. 87.0431. NOTICE OF REJECTED BALLOT. (a) Not later
20 than the 10th day after election day, the presiding judge of the
21 early voting ballot board shall deliver written notice of the
22 reason for the rejection of a ballot to the voter at the residence
23 address on the ballot application. If the ballot was transmitted to
24 the voter by e-mail under Subchapter C, Chapter 101, the presiding
25 judge shall also provide the notice to the e-mail address to which
26 the ballot was sent.

27 (b) The presiding judge shall, not later than the 30th day

1 after election day, deliver written notice to the attorney general,
2 including certified copies of the carrier envelope and
3 corresponding ballot application, of any ballot rejected because:

4 (1) the voter was deceased;

5 (2) the voter already voted in person in the same
6 election;

7 (3) the signatures on the carrier envelope and ballot
8 application were not executed by the same person;

9 (4) the carrier envelope certificate lacked a witness
10 signature; or

11 (5) the carrier envelope certificate was improperly
12 executed by an assistant.

13 SECTION 11. Chapter 276, Election Code, is amended by
14 adding Section 276.013 to read as follows:

15 Sec. 276.013. ELECTION FRAUD. (a) A person commits an
16 offense if the person knowingly or intentionally makes any effort
17 to:

18 (1) influence the independent exercise of the vote of
19 another in the presence of the ballot or during the voting process;

20 (2) cause a voter registration application, ballot, or
21 vote to be obtained or cast under false pretenses; or

22 (3) cause any intentionally misleading statement,
23 representation, or information to be provided:

24 (A) to an election official; or

25 (B) on an application for ballot by mail, carrier
26 envelope, or other official election-related form or document.

27 (b) An offense under this section is a Class A misdemeanor.

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

4 (1) the defendant was previously convicted of an
5 offense under this code;

6 (2) the offense involved a voter 65 years of age or
7 older; or

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

10 (d) If conduct that constitutes an offense under this
11 section also constitutes an offense under any other law, the actor
12 may be prosecuted under this section, the other law, or both.

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

21 SECTION 13. This Act takes effect December 1, 2017.