

1-1 By: Hancock, et al. S.B. No. 5
1-2 (In the Senate - Filed July 17, 2017; July 20, 2017, read
1-3 first time and referred to Committee on State Affairs;
1-4 July 23, 2017, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; July 23, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Huffman	X		
1-9	Hughes	X		
1-10	Birdwell	X		
1-11	Creighton	X		
1-12	Estes	X		
1-13	Lucio	X		
1-14	Nelson	X		
1-15	Schwertner	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the prevention of fraud in the conduct of an election;
1-20 creating a criminal offense; increasing criminal penalties.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 64.012(a), Election Code, is amended to
1-23 read as follows:

1-24 (a) A person commits an offense if the person:

1-25 (1) votes or attempts to vote in an election in which
1-26 the person knows the person is not eligible to vote;

1-27 (2) knowingly votes or attempts to vote more than once
1-28 in an election;

1-29 (3) knowingly ~~[impersonates another person and]~~ votes
1-30 or attempts to vote a ballot belonging to another person, or by
1-31 impersonating another [as the impersonated] person; or

1-32 (4) knowingly marks or attempts to mark any portion of
1-33 another person's ballot without the consent of that person, or
1-34 without specific direction from that person how to mark the ballot.

1-35 SECTION 2. Section 66.058(a), Election Code, is amended to
1-36 read as follows:

1-37 (a) Except as otherwise provided by this code, the precinct
1-38 election records shall be preserved by the authority to whom they
1-39 are distributed~~+~~

1-40 ~~[(1) in an election involving a federal office,]~~ for
1-41 at least 22 months after election day, in accordance with federal
1-42 law in an election involving a federal office~~[, or~~

1-43 ~~[(2) in an election not involving a federal office,~~
1-44 ~~for at least six months after election day].~~

1-45 SECTION 3. Section 84.0041, Election Code, is amended to
1-46 read as follows:

1-47 Sec. 84.0041. FRAUDULENT USE OF [PROVIDING FALSE
1-48 INFORMATION ON] APPLICATION FOR BALLOT BY MAIL. (a) A person
1-49 commits an offense if the person:

1-50 (1) knowingly provides false information on an
1-51 application for ~~[an early voting]~~ ballot by mail;

1-52 (2) intentionally causes false information to be
1-53 provided on an application for ballot by mail;

1-54 (3) knowingly submits an application for ballot by
1-55 mail without the knowledge and authorization of the voter; or

1-56 (4) knowingly and without the voter's authorization
1-57 alters information provided by the voter on the voter's application
1-58 for ballot by mail.

1-59 (b) An offense under this section is a state jail felony
1-60 ~~[unless the person is the applicant, is related to the applicant~~
1-61 ~~within the second degree by affinity or the third degree by~~

2-1 ~~consanguinity, as determined under Subchapter B, Chapter 573,~~
 2-2 ~~Government Code, or is registered to vote at the same address as the~~
 2-3 ~~applicant, in which event the offense is a Class A misdemeanor].~~

2-4 (c) An offense under Subsection (a)(4) does not apply to an
 2-5 early voting clerk or deputy early voting clerk who receives and
 2-6 marks an application for administrative purposes only.

2-7 (d) An offense under this section is increased to the next
 2-8 higher category of offense if it is shown on the trial of an offense
 2-9 under this section that:

2-10 (1) the defendant was previously convicted of an
 2-11 offense under this code;

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

2-14 (3) the defendant committed another offense under this
 2-15 section in the same election.

2-16 SECTION 4. The heading to Section 86.0051, Election Code,
 2-17 is amended to read as follows:

2-18 Sec. 86.0051. UNLAWFUL CARRIER ENVELOPE ACTION BY PERSON
 2-19 OTHER THAN VOTER[~~, OFFENSES~~].

2-20 SECTION 5. Section 86.0051, Election Code, is amended by
 2-21 amending Subsections (b), (d), and (e) and adding Subsection (f) to
 2-22 read as follows:

2-23 (b) A person other than the voter who assists a voter by
 2-24 depositing [~~deposits~~] the carrier envelope in the mail or with a
 2-25 common or contract carrier or who obtains the carrier envelope for
 2-26 that purpose must provide the person's signature, printed name, and
 2-27 residence address on the reverse side of the envelope.

2-28 (d) An offense under this section is a Class A [~~B~~]
 2-29 misdemeanor, unless it is shown on the trial of an offense under
 2-30 this section that the person committed [~~is convicted of~~] an offense
 2-31 under Section 64.036 for providing unlawful assistance to the same
 2-32 voter in connection with the same ballot, in which event the offense
 2-33 is a state jail felony.

2-34 (e) This section does [~~Subsections (a) and (c) do~~] not apply
 2-35 if the person is related to the voter [~~applicant~~] within the second
 2-36 degree by affinity or the third degree by consanguinity, as
 2-37 determined under Subchapter B, Chapter 573, Government Code, or was
 2-38 physically living in [~~is registered to vote at~~] the same dwelling
 2-39 [~~address~~] as the voter at the time of the event [~~applicant~~].

2-40 (f) If conduct that constitutes an offense under this
 2-41 section also constitutes an offense under any other law, the actor
 2-42 may be prosecuted under this section, the other law, or both.

2-43 SECTION 6. Sections 86.006(f), (g), and (g-1), Election
 2-44 Code, are amended to read as follows:

2-45 (f) A person commits an offense if the person knowingly
 2-46 possesses an official ballot or official carrier envelope provided
 2-47 under this code to another. Unless the person possessed the ballot
 2-48 or carrier envelope with intent to defraud the voter or the election
 2-49 authority, this subsection does not apply to a person who, on the
 2-50 date of the offense, was:

2-51 (1) related to the voter within the second degree by
 2-52 affinity or the third degree by consanguinity, as determined under
 2-53 Subchapter B, Chapter 573, Government Code;

2-54 (2) physically living in [~~registered to vote at~~] the
 2-55 same dwelling [~~address~~] as the voter;

2-56 (3) an early voting clerk or a deputy early voting
 2-57 clerk;

2-58 (4) a person who possesses a ballot or [~~the~~] carrier
 2-59 envelope solely for the purpose of lawfully assisting a voter who
 2-60 was eligible for assistance under Section 86.010 and complied fully
 2-61 with:

2-62 (A) Section 86.010; and

2-63 (B) Section 86.0051, if assistance was provided
 2-64 in order to deposit the envelope in the mail or with a common or
 2-65 contract carrier [~~and who provides the information required by~~
 2-66 Section 86.0051(b) in accordance with that section];

2-67 (5) an employee of the United States Postal Service
 2-68 working in the normal course of the employee's authorized duties;
 2-69 or

3-1 (6) a common or contract carrier working in the normal
 3-2 course of the carrier's authorized duties if the official ballot is
 3-3 sealed in an official carrier envelope that is accompanied by an
 3-4 individual delivery receipt for that particular carrier envelope.

3-5 (g) An offense under Subsection (f) is a Class A misdemeanor
 3-6 unless the defendant possessed the ballot or carrier envelope
 3-7 without the request of the voter, in which case it is a felony of the
 3-8 third degree. If conduct that constitutes an offense under this
 3-9 section also constitutes an offense under any other law, the actor
 3-10 may be prosecuted under this section, the other law, or both[+]

3-11 [~~(1) a Class B misdemeanor if the person possesses at
 3-12 least one but fewer than 10 ballots or carrier envelopes unless the
 3-13 person possesses the ballots or carrier envelopes without the
 3-14 consent of the voters, in which event the offense is a state jail
 3-15 felony;~~

3-16 [~~(2) a Class A misdemeanor if the person possesses at
 3-17 least 10 but fewer than 20 ballots or carrier envelopes unless the
 3-18 person possesses the ballots or carrier envelopes without the
 3-19 consent of the voters, in which event the offense is a felony of the
 3-20 third degree; or~~

3-21 [~~(3) a state jail felony if the person possesses 20 or
 3-22 more ballots or carrier envelopes unless the person possesses the
 3-23 ballots or carrier envelopes without the consent of the voters, in
 3-24 which event the offense is a felony of the second degree].~~

3-25 (g-1) An offense under Subsection (g) is increased to the
 3-26 next higher category of offense if it is shown on the trial of an
 3-27 offense under this section that:

3-28 (1) the defendant was previously convicted of an
 3-29 offense under this code;

3-30 (2) the offense involved an individual 65 years of age
 3-31 or older; or

3-32 (3) the defendant committed another offense under this
 3-33 section in the same election [~~When ballots or carrier envelopes are
 3-34 obtained in violation of this section pursuant to one scheme or
 3-35 continuing course of conduct, whether from the same or several
 3-36 sources, the conduct may be considered as one offense and the number
 3-37 of ballots or carrier envelopes aggregated in determining the grade
 3-38 of the offense].~~

3-39 SECTION 7. Section 86.010, Election Code, is amended to
 3-40 read as follows:

3-41 Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY
 3-42 MAIL. (a) A voter casting a ballot by mail who would be eligible
 3-43 under Section 64.031 to receive assistance at a polling place may
 3-44 select a person as provided by Section 64.032(c) to assist the voter
 3-45 in preparing the ballot.

3-46 (b) Assistance rendered under this section is limited to
 3-47 that authorized by this code at a polling place, except that a voter
 3-48 with a disability who is physically unable to deposit the ballot and
 3-49 carrier envelope in the mail may also select a person as provided by
 3-50 Section 64.032(c) to assist the voter by depositing a sealed
 3-51 carrier envelope in the mail.

3-52 (c) The person assisting the voter must sign a written oath
 3-53 prescribed by Section 64.034 that is part of the certificate on the
 3-54 official carrier envelope.

3-55 (d) If a voter is assisted in violation of this section
 3-56 [~~Subsection (a) or (b)~~], the voter's ballot may not be counted.

3-57 (e) A person who assists a voter to prepare a ballot to be
 3-58 voted by mail shall enter the person's signature, printed name, and
 3-59 residence address on the official carrier envelope of the voter.

3-60 (f) A person who assists a voter commits an offense if the
 3-61 person knowingly fails to comply with Subsections (c) and [~~provide~~
 3-62 ~~the information on the official carrier envelope as required by~~
 3-63 ~~Subsection]~~ (e).

3-64 (g) An offense under this section is a [~~Class A misdemeanor~~
 3-65 ~~unless the person is convicted of an offense under Section 64.036~~
 3-66 ~~for providing unlawful assistance to the same voter, in which event~~
 3-67 ~~the offense is a]~~ state jail felony.

3-68 (h) Subsection (f) does not apply if the person is related
 3-69 to the voter [~~applicant~~] within the second degree by affinity or the

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

4-5 (i) An offense under this section is increased to the next
 4-6 higher category of offense if it is shown on the trial of an offense
 4-7 under this section that:

4-8 (1) the defendant was previously convicted of an
 4-9 offense under this code;

4-10 (2) the offense involved a voter 65 years of age or
 4-11 older; or

4-12 (3) the defendant committed another offense under this
 4-13 section in the same election.

4-14 (j) If conduct that constitutes an offense under this
 4-15 section also constitutes an offense under any other law, the actor
 4-16 may be prosecuted under this section, the other law, or both.

4-17 SECTION 8. Section 87.027(i), Election Code, is amended to
 4-18 read as follows:

4-19 (i) The signature verification committee shall compare the
 4-20 signature on each carrier envelope certificate, except those signed
 4-21 for a voter by a witness, with the signature on the voter's ballot
 4-22 application to determine whether the signatures are those of the
 4-23 same person. The committee may also compare the signatures with any
 4-24 two or more signatures of the voter made within the preceding six
 4-25 years and on file with the county clerk or voter registrar [the
 4-26 signature on the voter's registration application to confirm that
 4-27 the signatures are those of the same person but may not use the
 4-28 registration application signature] to determine whether [that]
 4-29 the signatures are [not] those of the same person. Except as
 4-30 provided by Subsection (1), a determination under this subsection
 4-31 that the signatures are not those of the same person must be made by
 4-32 a majority vote of the committee's membership. The committee shall
 4-33 place the jacket envelopes, carrier envelopes, and applications of
 4-34 voters whose signatures are not those of the same person in separate
 4-35 containers from those of voters whose signatures are those of the
 4-36 same person. The committee chair shall deliver the sorted
 4-37 materials to the early voting ballot board at the time specified by
 4-38 the board's presiding judge.

4-39 SECTION 9. Section 87.041(e), Election Code, is amended to
 4-40 read as follows:

4-41 (e) In making the determination under Subsection (b)(2),
 4-42 the board may also compare the signatures with any two or more
 4-43 signatures of the voter made within the preceding six years and on
 4-44 file with the county clerk or voter registrar to determine whether
 4-45 [confirm that] the signatures are those of the same person [but may
 4-46 not use the signatures to determine that the signatures are not
 4-47 those of the same person].

4-48 SECTION 10. Section 87.0431, Election Code, is amended to
 4-49 read as follows:

4-50 Sec. 87.0431. NOTICE OF REJECTED BALLOT. (a) Not later
 4-51 than the 10th day after election day, the presiding judge of the
 4-52 early voting ballot board shall deliver written notice of the
 4-53 reason for the rejection of a ballot to the voter at the residence
 4-54 address on the ballot application. If the ballot was transmitted to
 4-55 the voter by e-mail under Subchapter C, Chapter 101, the presiding
 4-56 judge shall also provide the notice to the e-mail address to which
 4-57 the ballot was sent.

4-58 (b) The presiding judge shall, not later than the 10th day
 4-59 after election day, deliver written notice to the attorney general,
 4-60 including certified copies of the carrier envelope and
 4-61 corresponding ballot application, of any ballot rejected because:

4-62 (1) the voter was deceased;

4-63 (2) the voter already voted in person in the same
 4-64 election;

4-65 (3) the signatures on the carrier envelope and ballot
 4-66 application were not executed by the same person;

4-67 (4) the carrier envelope certificate lacked a witness
 4-68 signature; or

4-69 (5) the carrier envelope certificate was improperly

5-1 executed by an assistant.

5-2 SECTION 11. Chapter 276, Election Code, is amended by
5-3 adding Section 276.013 to read as follows:

5-4 Sec. 276.013. ELECTION FRAUD. (a) A person commits an
5-5 offense if the person knowingly or intentionally makes any effort
5-6 to:

5-7 (1) influence the independent exercise of the vote of
5-8 another in the presence of the ballot or during the voting process;

5-9 (2) cause a voter registration application, ballot, or
5-10 vote to be obtained or cast under false pretenses; or

5-11 (3) cause any intentionally misleading statement,
5-12 representation, or information to be provided:

5-13 (A) to an election official; or

5-14 (B) on an application for ballot by mail, carrier
5-15 envelope, or other official election-related form or document.

5-16 (b) An offense under this section is a Class A misdemeanor.

5-17 (c) An offense under this section is increased to the next
5-18 higher category of offense if it is shown on the trial of the
5-19 offense that:

5-20 (1) the defendant was previously convicted of an
5-21 offense under this code;

5-22 (2) the offense involved a voter 65 years of age or
5-23 older; or

5-24 (3) the defendant committed another offense under this
5-25 section in the same election.

5-26 (d) If conduct that constitutes an offense under this
5-27 section also constitutes an offense under any other law, the actor
5-28 may be prosecuted under this section, the other law, or both.

5-29 SECTION 12. The changes in law made by this Act apply only
5-30 to an offense committed on or after the effective date of this Act.
5-31 An offense committed before the effective date of this Act is
5-32 governed by the law in effect on the date the offense was committed,
5-33 and the former law is continued in effect for that purpose. For
5-34 purposes of this section, an offense was committed before the
5-35 effective date of this Act if any element of the offense occurred
5-36 before that date.

5-37 SECTION 13. This Act takes effect December 1, 2017.

5-38 * * * * *