

BILL ANALYSIS

C.S.H.B. 4133
By: Fallon
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties point to reports that individuals have attempted to fraudulently influence the outcome of certain elections through the destruction of records, reporting of false statements, copying of voter information, and other unlawful activities in suggesting that such behavior needs to be deterred. C.S.H.B. 4133 seeks to provide such a deterrent by specifying certain voting fraud activities and their appropriate penalties.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4133 amends the Election Code to create a Class B misdemeanor offense for a person who intentionally destroys or causes the destruction of election records required to be preserved due to a pending election contest or criminal investigation or proceeding in connection with an election to which the records pertain except that the penalty for that offense is enhanced to a state jail felony if the records a person destroys or causes to be destroyed are subject to a preservation request from a law enforcement agency. The bill prohibits the custodian of records, if a preservation request has been issued by a law enforcement agency, from destroying the records before receiving written permission from that law enforcement agency.

C.S.H.B. 4133 clarifies the applicability of certain Penal Code provisions to offenses prescribed by the Election Code by specifying that all provisions of Titles 1, 2, 3, and 4 of the Penal Code are applicable to the prescribed Election Code offenses.

C.S.H.B. 4133 increases the penalty for the offense of making a false statement on a voter registration application from a Class B misdemeanor to a state jail felony and expands the conduct constituting that offense to include knowingly causing a false statement to be made on a registration application. The bill repeals the provision establishing that such an offense is considered to be perjury and restricting prosecution of the offense to prosecution under the Election Code.

C.S.H.B. 4133 creates a state jail felony offense for a person who copies or otherwise records voter information obtained from a registration application, including two or more of the following pieces of information belonging to a voter: an address, a phone number, a date of birth,

or any part of a social security number or driver's license number. The bill creates a state jail felony offense for a person who knowingly possesses, sells, offers to sell, buys, or offers to buy voter information copied from such an application. The bill exempts from the application of these offenses an employee of a registrar or other governmental agency who copies, records, or possesses the information for official administrative or law enforcement purposes.

C.S.H.B. 4133 revises the requirement that a voter registrar execute and deliver an affidavit stating relevant facts to the applicable county or district attorney if the registrar determines that a person who is not a registered voter voted in an election by making that determination applicable instead to all persons who are not eligible voters who voted in an election, adding as a determination triggering the execution and delivery of such affidavit the registrar's determination that voter registration fraud or voting fraud may have occurred in an election, and including the attorney general and the secretary of state as recipients of each such affidavit. The bill requires the registrar to preserve any election records applicable to such unlawful voting for at least six months after the date required under statutory provisions regarding the preservation period for precinct election records, unless otherwise instructed by the attorney general and the county or district attorney.

C.S.H.B. 4133 requires the secretary of state, if the secretary determines that a voter on the statewide computerized voter registration list is deceased or has been excused or disqualified from jury service because the voter is not a citizen, to send notice of that determination to the attorney general.

C.S.H.B. 4133 expands the conduct that constitutes the offense of illegal voting to include knowingly marking or attempting to mark another person's ballot without specific direction from that person how to mark the ballot and revises the conduct constituting illegal voting that involves knowingly impersonating another person to vote or attempting to vote as the impersonated person to instead specify that a person commits such an offense if the person knowingly votes or attempts to vote a ballot belonging to another person, or by impersonating another person. The bill specifies that, for the purposes of the offense of illegal voting involving a person who votes or attempts to vote in an election in which the person knows the person is not eligible to vote, it is sufficient to establish that the person had knowledge of the person's ineligibility to vote if the person was aware of the facts or circumstances causing the person's ineligibility under the Election Code. The bill establishes that it is not a defense to prosecution for the offense of illegal voting that the ballot was not finally counted. The bill decreases the penalty for an offense of illegal voting other than an attempt from a second degree felony to a third degree felony but establishes that the penalty for an offense of illegal voting is increased to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the defendant committed another illegal voting offense in the same election, or, if the defendant is being charged as a party to the offense, the offense involves a voter 65 years of age or older.

C.S.H.B. 4133 increases from six months to 12 months the preservation period for precinct election records for an election not involving a federal office. The bill increases the penalty for the offense of unlawful participation in political party affairs from a Class C misdemeanor to a Class A misdemeanor.

C.S.H.B. 4133 requires a district clerk to deliver a copy of the judgment in an election contest and any findings of fact or conclusions of law to the attorney general. The bill requires the clerk, on request from the attorney general, to deliver copies of any portion of the record for use in a criminal investigation.

C.S.H.B. 4133 replaces the requirement for a county or district attorney investigating criminal conduct in connection with an election to deliver notice of the investigation to the secretary of state not later than the 30th day after the date on which the attorney begins the investigation with a requirement for a peace officer or county or district attorney, not later than the 30th day after

the date on which the officer or attorney receives a complaint of an Election Code offense punishable as a Class B misdemeanor or higher, to deliver notice of the complaint to the secretary of state and the attorney general. The bill requires such notice to include a copy of the complaint, in addition to a statement on whether a criminal investigation is being conducted and the date on which the election that is the subject of the complaint was held, and includes the attorney general among the persons whose release of such information relating to a criminal investigation triggers the authorization for the secretary of state to disclose that information.

C.S.H.B. 4133 requires an indictment or information for an Election Code offense to be presented not later than five years after the date of the commission of the offense. The bill creates the second degree felony offense of obstruction of an election investigation or proceeding for a person who, with intent to influence a witness or prospective witness in an investigation or proceeding brought under the Election Code, offers a benefit to, intimidates, harms, or threatens to harm a witness or prospective witness; instructs or encourages a witness or prospective witness to give a false statement or testimony or withhold or make unavailable any testimony, information, or evidence; or instructs or encourages a witness or prospective witness to elude legal process summoning the witness to testify or supply evidence or to be absent from a legal proceeding to which the witness has been legally summoned.

C.S.H.B. 4133 creates the Class A misdemeanor offense of election fraud for a person who knowingly or intentionally makes any effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process; cause a voter registration application, ballot, or vote to be obtained or cast under false pretenses; cause any false or intentionally misleading statement, representation, or information to be provided to an election official or on an election-related form, petition, statement, oath, affirmation, or official document; or subvert the election process in order to obtain a benefit or to benefit another person, candidate, or political party. The bill increases the penalty for an offense of election fraud to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed separate election fraud in the same election. The bill authorizes an actor who engages in conduct constituting the offense of election fraud that also constitutes an offense under any other law to be prosecuted under the bill's provisions relating to the offense of election fraud, the other law, or both.

C.S.H.B. 4133 repeals Sections 13.007(c) and 15.028(b), Election Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4133 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 1.013, Election Code, is amended to read as follows:

Sec. 1.013. DESTRUCTION OF RECORDS. (a) After expiration of the prescribed period for preserving voted ballots, election returns, other election records, or other records that are preserved

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 1.013, Election Code, is amended to read as follows:

Sec. 1.013. DESTRUCTION OF RECORDS. (a) After expiration of the prescribed period for preserving voted ballots, election returns, other election records, or other records that are preserved

under this code, the records may be destroyed or otherwise disposed of unless, at the expiration of the preservation period, an election contest or a criminal investigation or proceeding in connection with an election to which the records pertain is pending. In that case, the records shall be preserved until the contest, investigation, or proceeding is completed and the judgment, if any, becomes final.

(b) A person commits an offense if a person intentionally destroys or causes the destruction of election records required to be preserved under Subsection (a).

(c) Except as provided by Subsection (d), an offense under Subsection (b) is a Class B misdemeanor.

(d) An offense under Subsection (b) in which a person destroys or causes destruction of records subject to a preservation request from a law enforcement agency is a state jail felony.

SECTION 2. Section 1.018, Election Code, is amended.

No equivalent provision.

SECTION 3. Sections 13.007(a) and (b), Election Code, are amended.

SECTION 4. Subchapter A, Chapter 13, Election Code, is amended by adding Section 13.009 to read as follows:

Sec. 13.009. MISUSE OF VOTER REGISTRATION INFORMATION. (a) A person commits an offense if the person copies or otherwise records voter information obtained from a registration application, including two or more of the following pieces of information belonging to a voter:

under this code, the records may be destroyed or otherwise disposed of unless, at the expiration of the preservation period, an election contest or a criminal investigation or proceeding in connection with an election to which the records pertain is pending. In that case, the records shall be preserved until the contest, investigation, or proceeding is completed and the judgment, if any, becomes final. If a preservation request has been issued by a law enforcement agency, the custodian of records may not destroy the records before receiving written permission from that law enforcement agency.

(b) A person commits an offense if a person intentionally destroys or causes the destruction of election records required to be preserved under Subsection (a).

(c) Except as provided by Subsection (d), an offense under Subsection (b) is a Class B misdemeanor.

(d) An offense under Subsection (b) in which a person destroys or causes destruction of records subject to a preservation request from a law enforcement agency is a state jail felony.

SECTION 2. Same as introduced version.

SECTION 3. The heading to Section 13.007, Election Code, is amended to read as follows:

Sec. 13.007. FALSE STATEMENT ON REGISTRATION APPLICATION.

SECTION 4. Same as introduced version.

SECTION 5. Subchapter A, Chapter 13, Election Code, is amended by adding Section 13.009 to read as follows:

Sec. 13.009. MISUSE OF VOTER REGISTRATION INFORMATION. (a) A person commits an offense if the person copies or otherwise records voter information obtained from a registration application, including two or more of the following pieces of information belonging to a voter:

- (1) an address;
- (2) a phone number;
- (3) a date of birth; or
- (4) any part of a:
 - (A) social security number; or
 - (B) driver's license number.
- (b) A person commits an offense if the person knowingly possesses, sells, offers to sell, buys, or offers to buy voter information copied from an application described by Subsection (a).

SECTION 5. Section 15.028(a), Election Code, is amended to read as follows:

- (a) If the registrar determines that a person who is not an eligible [a-registered] voter voted in an election, or determines that voter registration fraud or voting fraud occurred in an election, the registrar shall execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts. Unless instructed otherwise by the attorney general or the county or district attorney, the registrar shall preserve any election records applicable to the offense for at least six months after the date required by Section 66.058.

SECTION 6. Section 18.068(a), Election Code, is amended to read as follows:

- (a) The secretary of state shall quarterly compare the information received under Section 16.001 of this code and ~~Sections~~ [Section] 62.113 and 62.114, Government Code, to the statewide computerized voter registration list. If the secretary determines that a voter on the registration list is deceased or has been excused or disqualified from jury service because the voter is not a citizen or not a resident of the county, the secretary shall send notice of the determination to the voter registrar of the counties considered appropriate by the secretary and refer the matter for criminal

- (1) an address;
- (2) a phone number;
- (3) a date of birth; or
- (4) any part of a:
 - (A) social security number; or
 - (B) driver's license number.
- (b) A person commits an offense if the person knowingly possesses, sells, offers to sell, buys, or offers to buy voter information copied from an application described by Subsection (a).
- (c) This section does not apply to an employee of a registrar or other governmental agency who copies, records, or possesses the information for official administrative or law enforcement purposes.
- (d) An offense under this section is a state jail felony.

SECTION 6. Section 15.028(a), Election Code, is amended to read as follows:

- (a) If the registrar determines that a person who is not an eligible [a-registered] voter voted in an election, or determines that voter registration fraud or voting fraud may have occurred in an election, the registrar shall execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts. Unless otherwise instructed by the attorney general and the county or district attorney, the registrar shall preserve any election records applicable to the offense for at least six months after the date required by Section 66.058.

SECTION 7. Section 18.068(a), Election Code, is amended to read as follows:

- (a) The secretary of state shall quarterly compare the information received under Section 16.001 of this code and Section 62.113, Government Code, to the statewide computerized voter registration list. If the secretary determines that a voter on the registration list is deceased or has been excused or disqualified from jury service because the voter is not a citizen, the secretary shall send notice of the determination to the voter registrar of the counties considered appropriate by the secretary and to the attorney general.

investigation under Section 31.006 if records indicate that a person may have violated Section 13.007 or 64.012.

SECTION 7. Section 64.012, Election Code, is amended by amending Subsection (a) and adding Subsections (c), (d), and (e) to read as follows:

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

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

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

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

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

(c) It is sufficient for the purposes of Subsection (a)(1) to establish that the person had knowledge of the person's ineligibility to vote if the person was aware of the facts or circumstances causing the person's ineligibility under this code.

(d) It is not a defense to prosecution that the ballot was not finally counted.

(e) 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:

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

(2) if the defendant is being charged as a party to the offense, the offense involves a voter 65 years of age or older; or

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

SECTION 8. Section 66.058(a), Election Code, is amended.

SECTION 8. Section 64.012, Election Code, is amended to read as follows:
Sec. 64.012. ILLEGAL VOTING.

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

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

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

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

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

(b) An offense under this section is a felony of the third [second] degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony.

(c) It is sufficient for the purposes of Subsection (a)(1) to establish that the person had knowledge of the person's ineligibility to vote if the person was aware of the facts or circumstances causing the person's ineligibility under this code.

(d) It is not a defense to prosecution that the ballot was not finally counted.

(e) 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:

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

(2) if the defendant is being charged as a party to the offense, the offense involves a voter 65 years of age or older; or

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

SECTION 9. Same as introduced version.

SECTION 9. Section 162.014(b), Election Code, is amended.

SECTION 10. Section 231.008, Election Code, is amended.

SECTION 11. Section 273.001(e), Election Code, is amended to read as follows:

(e) Not later than the 30th day after the date on which a county or district attorney begins an investigation under this section, the county or district attorney shall deliver notice of the investigation to the secretary of state and the attorney general.

The notice must include a statement that a criminal investigation is being conducted and the date on which the election that is the subject of the investigation was held. The secretary of state may disclose information relating to a criminal investigation received under this subsection only if the county or district attorney or the attorney general has disclosed the information or would be required by law to disclose the information.

SECTION 12. Subchapter B, Chapter 273, Election Code, is amended by adding Section 273.025 to read as follows:

Sec. 273.025. LIMITATIONS. (a) An indictment for or information related to a felony or misdemeanor under this code must be presented not later than five years after the date of the commission of the offense.

(b) In an election where an investigation is being conducted under this code, the election records must be preserved by the election authority until the later of:

(1) the time prescribed by this code to preserve the records; or

(2) the period of limitation prescribed by Subsection (a).

SECTION 13. Chapter 276, Election Code, is amended by adding Sections 276.002 and 276.011 to read as follows:

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Section 273.001(e), Election Code, is amended to read as follows:

(e) Not later than the 30th day after the date on which a peace officer or county or district attorney receives a complaint of an offense under this code punishable as a Class B misdemeanor or higher [begins an investigation under this section], the officer or county or district attorney shall deliver notice of the complaint [investigation] to the secretary of state and the attorney general. The notice must include a copy of the complaint, a statement on whether [that] a criminal investigation is being conducted, and the date on which the election that is the subject of the complaint [investigation] was held. The secretary of state may disclose information relating to a criminal investigation received under this subsection only if the county or district attorney or the attorney general has disclosed the information or would be required by law to disclose the information.

SECTION 13. Subchapter B, Chapter 273, Election Code, is amended by adding Section 273.025 to read as follows:

Sec. 273.025. LIMITATIONS. An indictment or information for an offense under this code must be presented not later than five years after the date of the commission of the offense.

SECTION 14. Chapter 276, Election Code, is amended by adding Sections 276.002 and 276.011 to read as follows:

Sec. 276.002. OBSTRUCTION OF ELECTION INVESTIGATION OR PROCEEDING.

Sec. 276.011. ELECTION FRAUD. (a) A person commits an offense if the person knowingly or intentionally makes any effort to:

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

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

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

(A) to an election official; or

(B) on an election-related:

(i) form;

(ii) petition;

(iii) statement;

(iv) oath;

(v) affirmation; or

(vi) official document; or

(4) subvert the election process in order to obtain a benefit or to benefit another person, candidate, or political party.

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

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

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

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

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

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

SECTION 14. Sections 13.007(c) and 15.028(b), Election Code, are repealed.

SECTION 15. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An

Sec. 276.002. OBSTRUCTION OF ELECTION INVESTIGATION OR PROCEEDING.

Sec. 276.011. ELECTION FRAUD. (a) 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 registration application, ballot, or vote to be obtained or cast under false pretenses;

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

(A) to an election official; or

(B) on an election-related:

(i) form;

(ii) petition;

(iii) statement;

(iv) oath;

(v) affirmation; or

(vi) official document; or

(4) subvert the election process in order to obtain a benefit or to benefit another person, candidate, or political party.

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

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

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

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

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

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

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 16. This Act takes effect September 1, 2017.

SECTION 17. Same as introduced version.