

By: Fallon

H.B. No. 4131

Substitute the following for H.B. No. 4131:

By: Laubenberg

C.S.H.B. No. 4131

A BILL TO BE ENTITLED

1 AN ACT

2 relating to assisting voters and other voting processes and  
3 procedures; creating criminal offenses; increasing criminal  
4 penalties.

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

6 SECTION 1. Section 61.034, Election Code, is amended to  
7 read as follows:

8 Sec. 61.034. TRANSLATING BALLOT. If a voter cannot  
9 comprehend the language in which the ballot is printed, the voter  
10 may receive voting assistance under Section 64.031 [~~an interpreter~~  
11 ~~may accompany the voter to the voting station for the purpose of~~  
12 ~~translating the ballot to the voter~~].

13 SECTION 2. Section 63.012, Election Code, is amended to  
14 read as follows:

15 Sec. 63.012. UNLAWFULLY ACCEPTING OR REFUSING TO ACCEPT  
16 VOTER. (a) An election officer commits an offense if the officer  
17 knowingly:

18 (1) permits an ineligible voter to vote other than as  
19 provided by Section 63.011; [~~or~~]

20 (2) permits an unlawful vote or ineligible ballot to  
21 be cast in a manner that will be counted; or

22 (3) refuses to accept a person for voting whose  
23 acceptance is required by this code.

24 (b) An offense under this section is a Class A [~~B~~]

1 misdemeanor.

2 SECTION 3. Subchapter B, Chapter 64, Election Code, is  
3 amended by adding Section 64.030 to read as follows:

4 Sec. 64.030. DEFINITIONS. In this subchapter:

5 (1) "Assistance" includes any activity, other than a  
6 general procedure or instruction by an election officer, in which a  
7 person:

8 (A) communicates with a voter in the presence of  
9 a ballot regarding the voting of the ballot;

10 (B) aids a voter by reading or marking the  
11 ballot; or

12 (C) takes physical possession of a ballot voted  
13 by another person.

14 (2) "Disability" means any physical impairment that  
15 renders a person unable to physically complete or cast a ballot.

16 SECTION 4. Section 64.031, Election Code, is amended to  
17 read as follows:

18 Sec. 64.031. VOTING [ELIGIBILITY FOR] ASSISTANCE FOR BLIND,  
19 DISABLED, OR ILLITERATE PERSON. A voter who is unable to read or  
20 mark the ballot by reason of blindness, disability, or [is eligible  
21 to receive assistance in marking the ballot, as provided by this  
22 subchapter, if the voter cannot prepare the ballot because of:

23 [~~(1)~~ a physical disability that renders the voter  
24 unable to write or see; or

25 [~~(2)~~ an] inability to read the language in which the  
26 ballot is written is eligible for assistance as provided by this  
27 subchapter.

1 SECTION 5. Sections 64.032(c) and (d), Election Code, are  
2 amended to read as follows:

3 (c) On the voter's request for assistance indicating a  
4 reason for eligibility listed under Section 64.031, the voter may  
5 be assisted by any person selected by the voter other than the  
6 voter's employer, an agent of the voter's employer, or an officer or  
7 agent of a labor union to which the voter belongs. A voter is not  
8 required to provide further proof of eligibility for assistance in  
9 order to receive assistance.

10 (d) If assistance is provided by a person of the voter's  
11 choice, an election officer shall enter the person's name and  
12 address on the poll list beside the voter's name and shall require  
13 the assistant to complete a voter assistance affidavit under  
14 Section 64.034.

15 SECTION 6. Section 64.034, Election Code, is amended to  
16 read as follows:

17 Sec. 64.034. VOTER ASSISTANCE AFFIDAVIT [~~OATH~~].

18 (a) Before a [A] person other than an election officer provides  
19 [selected to provide] assistance to a voter, the assisting person  
20 must complete, sign, and submit an affidavit that includes:

21 (1) the assisting person's legal name, residence  
22 address, and date of birth;

23 (2) the nature of the relationship of the person to the  
24 voter;

25 (3) the reason for the voter's eligibility to receive  
26 assistance under Section 64.031;

27 (4) a disclosure of whether the assisting person has

1 been compensated in any way or offered or promised any type of  
2 compensation, political favor, or official act of discretion to  
3 assist voters; and

4           (5) [~~must take~~] the following oath, which must be  
5 administered by an election officer at the polling place, before  
6 providing assistance:

7           "I swear (or affirm) under penalty of law that all of the  
8 above information and affirmations are true and accurate, and that  
9 I will not suggest, by word, sign, or gesture, how the voter should  
10 vote nor communicate any opinion regarding any candidate, measure,  
11 or political party; I will confine my assistance to answering the  
12 voter's questions about the process of casting the ballot, to  
13 stating propositions on the ballot, and to naming candidates and,  
14 if listed, their political parties; I will prepare the voter's  
15 ballot only as the voter specifically directs; and I am not the  
16 voter's employer, an agent of the voter's employer, or an officer or  
17 agent of a labor union to which the voter belongs. I understand it  
18 is a criminal offense to provide false information in this  
19 affidavit, to make any record of or divulge any information about  
20 how a voter has voted, or to in any way influence the independent  
21 choice of the voter."

22           (b) Before allowing a person to assist a voter under  
23 Subsection (a), an election officer must:

24                   (1) review the voter assistance affidavit form and  
25 confirm that the form is complete;

26                   (2) note on the form the reason provided by the voter  
27 for eligibility for assistance under Section 64.031;

1           (3) confirm that the assisting person is eligible to  
2 assist the voter under Section 64.032 based on the answers  
3 provided;

4           (4) administer the oath to the assisting person; and

5           (5) sign the voter assistance affidavit attesting that  
6 the officer has complied with Subdivisions (1)-(4).

7           (c) An election officer commits an offense if the officer  
8 knowingly fails to comply with any part of Subsection (b). An  
9 offense under this subsection is a Class A misdemeanor.

10           (d) A person commits an offense if the person knowingly  
11 provides false information on a voter assistance affidavit. An  
12 offense under this subsection is a state jail felony.

13           (e) A person commits an offense if the person knowingly  
14 omits information on an affidavit under this section. An offense  
15 under this subsection is a Class A misdemeanor.

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

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

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

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

25           (g) The secretary of state shall prescribe a form to  
26 implement this section.

27           SECTION 7. Section 64.036, Election Code, is amended to

1 read as follows:

2           Sec. 64.036. UNLAWFULLY ASSISTING OR INFLUENCING A VOTER  
3 ~~[UNLAWFUL ASSISTANCE]~~. (a) A person commits an offense if the  
4 person knowingly:

5           (1) provides assistance to a voter who is not blind,  
6 disabled, or unable to read or write ~~[eligible for assistance]~~;

7           (2) while assisting a voter prepares the voter's  
8 ballot in a way other than the way the voter directs or without  
9 specific direction from the voter for each selection the assisting  
10 person marks on the ballot;

11           (3) while assisting a voter suggests by word, sign, or  
12 gesture how the voter should vote; or

13           (4) provides assistance to a voter who has not  
14 requested assistance and ~~[or]~~ selected the person to assist the  
15 voter.

16           (b) A person commits an offense if the person knowingly  
17 assists a voter in violation of Section 64.032 ~~[64.032(c)]~~.

18           (c) An election officer commits an offense if the officer  
19 knowingly permits a person to provide assistance:

20           (1) to a voter in violation of this section ~~[who is not~~  
21 ~~eligible for assistance]~~; or

22           (2) in violation of Section 64.032 ~~[64.032(c)]~~.

23           (d) An offense under this section is a state jail felony,  
24 unless the offense is committed under Subsection (c), in which case  
25 it is a Class A misdemeanor.

26           (e) An offense under this section is increased to the next  
27 higher category of offense if it is shown on the trial of an offense

1 under this section that:

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

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

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

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

11 SECTION 8. Section 84.004(e), Election Code, is amended to  
12 read as follows:

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

15 SECTION 9. Section 84.0041, Election Code, is amended to  
16 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 SECTION 11. Section 86.0051, Election Code, is amended by  
24 amending Subsections (b), (d), and (e) and adding Subsection (f) to  
25 read as follows:

26 (b) A person other than the voter who assists a voter by  
27 depositing [~~deposits~~] the carrier envelope in the mail or with a



1 common or contract carrier or who obtains the carrier envelope for  
2 that purpose must provide the information required to be provided  
3 on the certificate [~~person's signature, printed name, and residence~~  
4 ~~address~~] on the reverse side of the envelope.

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

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

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

20 SECTION 12. Sections 86.006(f), (g), and (g-1), Election  
21 Code, are amended to read as follows:

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

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

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

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

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

12 (A) Section 86.010; and

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

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

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

24 (g) An offense under Subsection (f) is a Class A misdemeanor  
25 unless the defendant possessed the ballot or carrier envelope  
26 without the request of the voter, in which case it is a felony of the  
27 third degree. If conduct that constitutes an offense under this

1 section also constitutes an offense under any other law, the actor  
2 may be prosecuted under this section, the other law, or both [+

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

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

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

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

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

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

24 (3) the defendant committed another offense under this  
25 section in the same election [~~When ballots or carrier envelopes are~~  
26 ~~obtained in violation of this section pursuant to one scheme or~~  
27 ~~continuing course of conduct, whether from the same or several~~

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

4 SECTION 13. Section 86.010, Election Code, is amended to  
5 read as follows:

6 Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING 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 the voter by depositing a sealed  
16 carrier envelope in the mail.

17 (c) The person assisting the voter must sign and complete a  
18 written affidavit ~~[oath]~~ prescribed by Section 64.034 that is part  
19 of the certificate on the 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) Before accepting a ballot under this section, an early  
23 voting clerk must confirm the information provided under Subsection  
24 (c) following the procedure described by Section 64.034(b) ~~[A~~  
25 ~~person who assists a voter to prepare a ballot to be voted by mail~~  
26 ~~shall enter the person's signature, printed name, and residence~~  
27 ~~address on the official carrier envelope of the voter].~~

1 (f) A person who assists a voter commits an offense if the  
2 person knowingly fails to provide the information on the official  
3 carrier envelope [~~as~~] required by Subsection (c) [~~(e)~~].

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

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

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

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

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

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

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

26 SECTION 14. Section 86.0105, Election Code, is amended to  
27 read as follows:

1           Sec. 86.0105. PAID VOTE HARVESTING ACTIVITY [~~COMPENSATION~~  
2 ~~FOR ASSISTING VOTERS PROHIBITED~~]. (a) A person commits an offense  
3 if the person:

4           (1) compensates or offers to compensate another person  
5 for collecting mail ballots or assisting voters [~~as provided by~~  
6 ~~Section 86.010,~~] as part of any performance-based compensation  
7 scheme based on the number of ballots collected or voters assisted  
8 or in which another person is presented with a quota of ballots to  
9 be collected or voters to be assisted [~~as provided by Section~~  
10 ~~86.010~~];

11           (2) engages in another practice that causes another  
12 person's compensation from or employment status with the person to  
13 be dependent on the number of ballots collected or voters assisted  
14 [~~as provided by Section 86.010~~]; or

15           (3) [~~with knowledge that accepting compensation for~~  
16 ~~such activity is illegal,~~] accepts compensation or an offer of  
17 compensation for an activity described by Subdivision (1) or (2).

18           (b) Except as provided by Subsection (c), an offense under  
19 this section is a Class A misdemeanor [~~punishable by:~~

20           ~~(1) confinement in jail for a term of not more than~~  
21 ~~one year or less than 30 days, or~~

22           ~~(2) confinement described by Subdivision (1) and a~~  
23 ~~fine not to exceed \$4,000].~~

24           (c) An offense under this section is increased to the next  
25 higher category of offense [~~a state jail felony~~] if it is shown on  
26 the trial of an offense under this section that:

27           (1) the defendant was previously convicted of an

1 offense under this code;

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

4 (3) the defendant committed another offense [~~two or~~  
5 ~~more times~~] under this section in the same election.

6 (d) An officer, director, or other agent of an entity that  
7 commits an offense under this section is punishable for the  
8 offense.

9 (e) For purposes of this section, compensation means any  
10 form of monetary payment, goods, services, benefits, or promises or  
11 offers of employment, or any other form of consideration offered to  
12 another person in exchange for assisting voters.

13 SECTION 15. Section 86.013(d), Election Code, is amended to  
14 read as follows:

15 (d) The following textual material, as prescribed by the  
16 secretary of state, must be printed on the reverse side of the  
17 official carrier envelope or on a separate sheet accompanying the  
18 carrier envelope when it is provided:

19 (1) the prohibition prescribed by Section 86.006(b);

20 (2) the conditions for delivery by common or contract  
21 carrier prescribed by Sections 81.005 and 86.006;

22 (3) the requirements for the legal execution and  
23 delivery of the carrier envelope, including the prohibition on  
24 compensation for depositing carrier envelopes containing ballots  
25 voted by other persons under Section 86.0105 [~~86.0052~~];

26 (4) the prohibition prescribed by Section 86.006(e);

27 and

1 (5) the offenses prescribed by Sections 86.006(f) and  
2 86.010(f).

3 SECTION 16. Section 87.041, Election Code, is amended by  
4 amending Subsections (b) and (e) and adding Subsection (g) to read  
5 as follows:

6 (b) A ballot may be accepted only if:

7 (1) the carrier envelope certificate is properly  
8 executed in compliance with Sections 86.006 and 86.010;

9 (2) neither the voter's signature on the ballot  
10 application nor the signature on the carrier envelope certificate  
11 is determined to have been executed by a person other than the  
12 voter, unless signed by a witness;

13 (3) the voter's ballot application states a legal  
14 ground for early voting by mail;

15 (4) the voter is registered to vote, if registration  
16 is required by law;

17 (5) the address to which the ballot was mailed to the  
18 voter, as indicated by the application, was outside the voter's  
19 county of residence, if the ground for early voting is absence from  
20 the county of residence;

21 (6) for a voter to whom a statement of residence form  
22 was required to be sent under Section 86.002(a), the statement of  
23 residence is returned in the carrier envelope and indicates that  
24 the voter satisfies the residence requirements prescribed by  
25 Section 63.0011; and

26 (7) the address to which the ballot was mailed to the  
27 voter is an address that is otherwise required by Sections 84.002



1 and 86.003.

2 (e) In making the determination under Subsection (b)(2),  
3 the board may also compare the signatures with any two or more  
4 signatures of the voter made within the preceding six years and on  
5 file with the voter registrar to confirm that the signatures are  
6 those of the same person [~~but may not use the signatures to~~  
7 ~~determine that the signatures are not those of the same person~~].

8 (g) A person commits an offense if the person intentionally  
9 accepts a ballot or causes a ballot to be accepted for voting that  
10 does not meet the requirements of Subsection (b). An offense under  
11 this subsection is a Class A misdemeanor.

12 SECTION 17. Section 87.0431, Election Code, is amended to  
13 read as follows:

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

22 (b) The presiding judge shall, not later than the 10th day  
23 after election day, deliver written notice to the attorney general,  
24 including certified copies of the carrier envelope and  
25 corresponding ballot application, of any ballot rejected because:

26 (1) the voter was deceased;

27 (2) the voter already voted in person in the same

1 election;

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

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

6 (5) the carrier envelope certificate was improperly  
7 executed by an assistant.

8 SECTION 18. Section 86.0052, Election Code, is repealed.

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

17 SECTION 20. This Act takes effect September 1, 2017.