

By: Fallon

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 61.033, Election Code, is amended to  
7 read as follows:

8 Sec. 61.033. ELIGIBILITY TO SERVE AS INTERPRETER. To be  
9 eligible to serve as an interpreter for the purpose of  
10 communicating with an election officer, a person must be a  
11 registered voter in this state [~~of the county in which the voter~~  
12 ~~needing the interpreter resides~~].

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. DEFINITION. In this subchapter,  
5 "compensation" means any monetary payment, goods, services,  
6 benefits, employment, political favors, acts of official  
7 discretion, or other form of consideration offered to another  
8 person in exchange for assisting voters.

9 SECTION 4. Section 64.031, Election Code, is amended to  
10 read as follows:

11 Sec. 64.031. ELIGIBILITY FOR ASSISTANCE. (a) A voter is  
12 eligible to receive assistance in marking the ballot, as provided  
13 by this subchapter, if the voter cannot prepare the ballot because  
14 of:

15 (1) a physical disability that renders the voter  
16 unable to mark the ballot [~~write~~] or see the ballot; or

17 (2) an inability to read the language in which the  
18 ballot is written.

19 (b) An election officer commits an offense if the election  
20 officer knowingly allows a voter who is ineligible for assistance  
21 under Subsection (a) to receive assistance.

22 (c) An offense under Subsection (b) is a Class A  
23 misdemeanor.

24 SECTION 5. Section 64.032, Election Code, is amended by  
25 amending Subsections (c) and (d) and adding Subsection (c-1) to  
26 read as follows:

27 (c) On the voter's request, the voter may be assisted by any

1 person selected by the voter other than:

2 (1) the voter's employer;

3 (2) [✓] an agent of the voter's employer;

4 (3) [~~✓~~] an officer or agent of a labor union to  
5 which the voter belongs;

6 (4) a candidate for office;

7 (5) a person previously convicted of an  
8 election-related offense;

9 (6) a person who is not an election judge or clerk and  
10 who receives or is offered or promised compensation for assisting  
11 voters; or

12 (c-1) Notwithstanding Subsection (c), on the voter's  
13 request, a voter may be assisted by a person who:

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

17 (2) physically lives in the same residence as the  
18 voter.

19 (d) If assistance is provided by a person of the voter's  
20 choice, an election officer shall enter the person's name and  
21 address on the poll list beside the voter's name and shall require  
22 the assistant to complete a voter assistance affidavit under  
23 Section 64.034.

24 SECTION 6. Section 64.034, Election Code, is amended to  
25 read as follows:

26 Sec. 64.034. VOTER ASSISTANCE AFFIDAVIT REQUIRED [OATH].

27 (a) Before a [A] person other than an election officer provides

1 ~~[selected to provide]~~ assistance to a voter, the person must  
2 complete, sign, and submit a voter assistance affidavit that  
3 includes:

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

6 (2) the nature of the relationship of the person to the  
7 voter;

8 (3) an affirmation that the person has never been  
9 convicted of an election-related offense;

10 (4) an affirmation that the person has not been  
11 compensated in any way or offered or promised any type of  
12 compensation, political favor, or official act of discretion to  
13 assist voters;

14 (5) an affirmation that the person did not approach  
15 the voter and offer assistance; and

16 (6) ~~[must take]~~ the following oath~~[, administered by~~  
17 ~~an election officer at the polling place, before providing~~  
18 ~~assistance]~~:

19 "I swear (or affirm) under penalty of law that all of the  
20 above information and affirmations are true and accurate, and that  
21 I will not suggest, by word, sign, or gesture, how the voter should  
22 vote; I will confine my assistance to answering the voter's  
23 questions, to stating propositions on the ballot, and to naming  
24 candidates and, if listed, their political parties; I will prepare  
25 the voter's ballot only as the voter specifically directs; and I am  
26 not the voter's employer, an agent of the voter's employer, ~~[or]~~ an  
27 officer or agent of a labor union to which the voter belongs, or a

1 candidate for office. I understand it is a criminal offense to  
2 provide false information or to in any way influence the  
3 independent choice of the voter."

4 (b) Before allowing a person other than an election officer  
5 to assist a voter, an election officer must review the voter  
6 assistance affidavit form and confirm that the form is complete and  
7 the assisting person is eligible to assist the voter under Section  
8 64.032, based on the answers provided.

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

12 (d) A person commits an offense if the person knowingly  
13 provides false information under this section. An offense under  
14 this subsection is a state jail felony.

15 (e) A person commits an offense if the person knowingly  
16 fails to submit a completed affidavit under this section. An  
17 offense under this subsection is a Class A misdemeanor.

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

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

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

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

27 (g) The secretary of state shall prescribe a form to

1 implement this section.

2 SECTION 7. Section [64.036](#), Election Code, is amended to  
3 read as follows:

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

7 (1) provides or offers to provide assistance to a  
8 voter who is not eligible for assistance;

9 (2) while assisting a voter prepares the voter's  
10 ballot in a way other than the way the voter directs or without  
11 direction from the voter;

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

14 (4) provides or offers to provide assistance to a  
15 voter who has not first requested assistance or selected the person  
16 to assist the voter.

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

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

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

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

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

27 (e) 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 8. Section 84.004(e), Election Code, is amended to  
10 read as follows:

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

13 SECTION 9. Section 84.0041, Election Code, is amended to  
14 read as follows:

15 Sec. 84.0041. FRAUDULENT USE OF [~~PROVIDING FALSE~~  
16 ~~INFORMATION ON~~] APPLICATION FOR BALLOT BY MAIL. (a) A person  
17 commits an offense if the person knowingly provides or causes false  
18 information to be provided on an application for an early voting  
19 ballot by mail.

20 (a-1) A person other than the voter commits an offense if  
21 the person knowingly alters a voter's application for ballot by  
22 mail or causes an application to be altered, without the voter's  
23 express consent. This offense does not apply to an early voting  
24 clerk or deputy early voting clerk who receives and marks an  
25 application for administrative purposes only.

26 (b) An offense under this section is a state jail felony  
27 [~~unless the person is the applicant, is related to the applicant~~

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

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

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

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

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

14 SECTION 10. Chapter 86, Election Code, is amended by adding  
15 Section 86.0061 to read as follows:

16 Sec. 86.0061. UNLAWFUL POSSESSION OF BALLOT. (a) A person  
17 commits an offense if the person knowingly possesses an official  
18 ballot or official carrier envelope provided under this code to  
19 another person. Unless the person possessed the ballot or carrier  
20 envelope with intent to defraud the voter or the election  
21 authority, this subsection does not apply to a person who, on the  
22 date of the possession:

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

26 (2) was registered to vote at and physically living in  
27 the same residence as the voter;



1           (3) possessed the ballot or carrier envelope solely  
2 for the temporary purpose of assisting a voter who was eligible for  
3 assistance under Section 64.031, did not commit an offense under  
4 Section 64.036, and fully complied with the requirements of Section  
5 86.010;

6           (4) was a deputy voter registrar who:

7                   (A) possessed a sealed carrier envelope for the  
8 sole purpose of depositing the carrier envelope in the mail;

9                   (B) met the qualifications of an assistant under  
10 Section 64.032; and

11                   (C) truthfully completed the affidavit required  
12 of an assistant on the certificate of the carrier envelope;

13           (5) was an early voting clerk, deputy early voting  
14 clerk, or other election officer;

15           (6) was an officer of the court, agent of law  
16 enforcement, or other individual authorized by a court who  
17 possessed a ballot or carrier envelope for the purpose of an  
18 election contest, criminal investigation, or proceeding in  
19 connection with an election; or

20           (7) was an employee of the United States Postal  
21 Service working in the normal course of the employee's authorized  
22 duties.

23           (b) An offense under Subsection (a) is a state jail felony.

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

27                   (1) the defendant was previously convicted of an

1 offense under this code;

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

4 (3) the defendant committed another offense under this  
5 section in the same election; or

6 (4) the defendant possessed the ballot or carrier  
7 envelope without the express consent of the voter.

8 (d) In the prosecution of an offense under this section:

9 (1) the prosecuting attorney is not required to negate  
10 the applicability of the provisions of Subsection (a)(1), (2), (3),  
11 or (4) in the charging instrument;

12 (2) the issue of the applicability of a provision of  
13 Subsection (a)(1), (2), (3), or (4) is not submitted to the jury  
14 unless evidence of that provision is admitted; and

15 (3) if the issue of the applicability of a provision of  
16 Subsection (a)(1), (2), (3), or (4) is submitted to the jury, the  
17 court shall charge that a reasonable doubt on the issue requires  
18 that the defendant be acquitted.

19 (e) A ballot returned in violation of this section may not  
20 be counted.

21 SECTION 11. Section 86.010, Election Code, is amended to  
22 read as follows:

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

1 (b) Assistance rendered under this section is limited to  
2 that authorized by this code at a polling place.

3 (c) The person assisting the voter must sign and complete a  
4 written affidavit [~~oath~~] prescribed by Section 64.034 that is part  
5 of the certificate on the official carrier envelope.

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

8 (e) Before accepting a ballot under this section, an early  
9 voting clerk must confirm the information provided under Subsection  
10 (c) following the procedure described by Section 64.034(b) [~~A~~  
11 ~~person who assists a voter to prepare a ballot to be voted by mail~~  
12 ~~shall enter the person's signature, printed name, and residence~~  
13 ~~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 provide the information on the official  
16 carrier envelope [~~as~~] required by Subsection (c) [~~(e)~~].

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

21 (h) Subsection (f) does not apply if the person is related  
22 to the applicant within the second degree by affinity or the third  
23 degree by consanguinity, as determined under Subchapter B, Chapter  
24 573, Government Code, or is registered to vote at and physically  
25 lives in the same residence [~~address~~] as the applicant.

26 (i) 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 SECTION 12. Section 86.0105, Election Code, is amended to  
9 read as follows:

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

13 (1) compensates or offers to compensate another person  
14 for collecting mail ballots or assisting voters [~~as provided by~~  
15 ~~Section 86.010,~~] as part of any performance-based compensation  
16 scheme based on the number of ballots collected or voters assisted  
17 or in which another person is presented with a quota of ballots to  
18 be collected or voters to be assisted [~~as provided by Section~~  
19 ~~86.010~~];

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

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

27 (b) Except as provided by Subsection (c), an offense under

1 this section is a Class A misdemeanor [~~punishable by:~~  
2 [~~(1) confinement in jail for a term of not more~~  
3 ~~than one year or less than 30 days; or~~  
4 [~~(2) confinement described by Subdivision (1) and~~  
5 ~~a fine not to exceed \$4,000]~~].

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

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

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

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

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

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

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

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

- 1 (1) the prohibition prescribed by Section 86.006(b);
- 2 (2) the conditions for delivery by common or contract
- 3 carrier prescribed by Sections 81.005 and 86.006;
- 4 (3) the requirements for the legal execution and
- 5 delivery of the carrier envelope, including the prohibition on
- 6 compensation for depositing carrier envelopes containing ballots
- 7 voted by other persons under Section 86.0105 [~~86.0052~~];
- 8 (4) the prohibition prescribed by Section 86.006(e);
- 9 and
- 10 (5) the offenses prescribed by Sections 86.0061
- 11 [~~86.006(f)~~] and 86.010(f).

12 SECTION 14. Section 87.041, Election Code, is amended by  
13 amending Subsections (b) and (e) and adding Subsection (g) to read  
14 as follows:

- 15 (b) A ballot may be accepted only if:
  - 16 (1) the carrier envelope certificate is properly
  - 17 executed in compliance with Sections 86.006 and 86.010;
  - 18 (2) neither the voter's signature on the ballot
  - 19 application nor the signature on the carrier envelope certificate
  - 20 is determined to have been executed by a person other than the
  - 21 voter, unless signed by a witness;
  - 22 (3) the voter's ballot application states a legal
  - 23 ground for early voting by mail;
  - 24 (4) the voter is registered to vote, if registration
  - 25 is required by law;
  - 26 (5) the address to which the ballot was mailed to the
  - 27 voter, as indicated by the application, was outside the voter's

1 county of residence, if the ground for early voting is absence from  
2 the county of residence;

3 (6) for a voter to whom a statement of residence form  
4 was required to be sent under Section 86.002(a), the statement of  
5 residence is returned in the carrier envelope and indicates that  
6 the voter satisfies the residence requirements prescribed by  
7 Section 63.0011; and

8 (7) the address to which the ballot was mailed to the  
9 voter is an address that is otherwise required by Sections 84.002  
10 and 86.003.

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

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

21 SECTION 15. Section 87.0431, Election Code, is amended to  
22 read as follows:

23 Sec. 87.0431. NOTICE OF REJECTED BALLOT. (a) Not later  
24 than the 10th day after election day, the presiding judge of the  
25 early voting ballot board shall deliver written notice of the  
26 reason for the rejection of a ballot to the voter at the residence  
27 address on the ballot application. If the ballot was transmitted to

1 the voter by e-mail under Subchapter C, Chapter 101, the presiding  
2 judge shall also provide the notice to the e-mail address to which  
3 the ballot was sent.

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

8 (1) the voter was deceased;

9 (2) the voter already voted in person in the same  
10 election;

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

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

15 (5) the carrier envelope certificate was improperly  
16 executed by an assistant.

17 SECTION 16. The following provisions of the Election Code  
18 are repealed:

19 (1) Sections 86.006(f), (g), (g-1), and (i); and

20 (2) Sections 86.0051 and 86.0052.

21 SECTION 17. The changes in law made by this Act apply only  
22 to an offense committed on or after the effective date of this Act.  
23 An offense committed before the effective date of this Act is  
24 governed by the law in effect on the date the offense was committed,  
25 and the former law is continued in effect for that purpose. For  
26 purposes of this section, an offense was committed before the  
27 effective date of this Act if any element of the offense occurred



1 before that date.

2 SECTION 18. This Act takes effect September 1, 2017.