

By: Fallon

H.B. No. 4133

Substitute the following for H.B. No. 4133:

By: Laubenberg

C.S.H.B. No. 4133

A BILL TO BE ENTITLED

1 AN ACT
2 relating to investigation and prosecution of certain election
3 offenses; creating a criminal offense; increasing criminal
4 penalties.

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

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

8 Sec. 1.013. DESTRUCTION OF RECORDS. (a) After expiration of
9 the prescribed period for preserving voted ballots, election
10 returns, other election records, or other records that are
11 preserved under this code, the records may be destroyed or
12 otherwise disposed of unless, at the expiration of the preservation
13 period, an election contest or a criminal investigation or
14 proceeding in connection with an election to which the records
15 pertain is pending. In that case, the records shall be preserved
16 until the contest, investigation, or proceeding is completed and
17 the judgment, if any, becomes final. If a preservation request has
18 been issued by a law enforcement agency, the custodian of records
19 may not destroy the records before receiving written permission
20 from that law enforcement agency.

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

24 (c) Except as provided by Subsection (d), an offense under

1 Subsection (b) is a Class B misdemeanor.

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

5 SECTION 2. Section 1.018, Election Code, is amended to read
6 as follows:

7 Sec. 1.018. APPLICABILITY OF PENAL CODE. Titles 1 through 4
8 ~~[In addition to Section 1.03, Penal Code, and to other titles of the~~
9 ~~Penal Code that may apply to this code, Title 4]~~, Penal Code, apply
10 ~~[applies]~~ to offenses prescribed by this code.

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

13 Sec. 13.007. FALSE STATEMENT ON REGISTRATION APPLICATION.

14 SECTION 4. Sections 13.007(a) and (b), Election Code, are
15 amended to read as follows:

16 (a) A person commits an offense if the person knowingly
17 makes a false statement or requests, commands, or attempts to
18 induce another person to make a false statement or causes a false
19 statement to be made on a registration application.

20 (b) An offense under this section is a state jail felony
21 ~~[Class B misdemeanor]~~.

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

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

1 information belonging to a voter:

2 (1) an address;

3 (2) a phone number;

4 (3) a date of birth; or

5 (4) any part of a:

6 (A) social security number; or

7 (B) driver's license number.

8 (b) A person commits an offense if the person knowingly
9 possesses, sells, offers to sell, buys, or offers to buy voter
10 information copied from an application described by Subsection (a).

11 (c) This section does not apply to an employee of a
12 registrar or other governmental agency who copies, records, or
13 possesses the information for official administrative or law
14 enforcement purposes.

15 (d) An offense under this section is a state jail felony.

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

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

1 date required by Section 66.058.

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

4 (a) The secretary of state shall quarterly compare the
5 information received under Section 16.001 of this code and Section
6 62.113, Government Code, to the statewide computerized voter
7 registration list. If the secretary determines that a voter on the
8 registration list is deceased or has been excused or disqualified
9 from jury service because the voter is not a citizen, the secretary
10 shall send notice of the determination to the voter registrar of the
11 counties considered appropriate by the secretary and to the
12 attorney general.

13 SECTION 8. Section 64.012, Election Code, is amended to
14 read as follows:

15 Sec. 64.012. ILLEGAL VOTING. (a) A person commits an
16 offense if the person:

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

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

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

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

27 (b) An offense under this section is a felony of the third

1 ~~[second]~~ degree unless the person is convicted of an attempt. In
2 that case, the offense is a state jail felony.

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

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

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

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

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

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

18 SECTION 9. Section 66.058(a), Election Code, is amended to
19 read as follows:

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

23 (1) in an election involving a federal office, for at
24 least 22 months after election day in accordance with federal law;
25 or

26 (2) in an election not involving a federal office, for
27 at least 12 ~~[six]~~ months after election day.

1 SECTION 10. Section 162.014(b), Election Code, is amended
2 to read as follows:

3 (b) An offense under this section is a Class A [~~Class C~~]
4 misdemeanor.

5 SECTION 11. Section 231.008, Election Code, is amended by
6 adding Subsection (f) to read as follows:

7 (f) The clerk shall deliver a copy of the judgment and any
8 findings of fact or conclusions of law to the attorney general, and
9 upon request from the attorney general, shall deliver copies of any
10 portion of the record for use in a criminal investigation.

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

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

27 SECTION 13. Subchapter B, Chapter 273, Election Code, is

1 amended by adding Section 273.025 to read as follows:

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

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

7 Sec. 276.002. OBSTRUCTION OF ELECTION INVESTIGATION OR
8 PROCEEDING. (a) A person commits an offense if the person, with
9 intent to influence a witness or prospective witness in an
10 investigation or proceeding brought under this code:

11 (1) offers a benefit to, intimidates, harms, or
12 threatens to harm a witness or prospective witness;

13 (2) instructs or encourages a witness or prospective
14 witness to give a false statement or testimony or withhold or make
15 unavailable any testimony, information, or evidence; or

16 (3) instructs or encourages a witness or prospective
17 witness:

18 (A) to elude legal process summoning the witness
19 to testify or supply evidence; or

20 (B) to be absent from a legal proceeding to which
21 the witness has been legally summoned.

22 (b) An offense under this section is a felony of the second
23 degree.

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

27 (1) influence the independent exercise of the vote of

1 another in the presence of the ballot or during the voting process;

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

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

6 (A) to an election official; or

7 (B) on an election-related:

8 (i) form;

9 (ii) petition;

10 (iii) statement;

11 (iv) oath;

12 (v) affirmation; or

13 (vi) official document; or

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

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

18 (c) An offense under this section is increased to the next
19 higher category of offense if it is shown on the trial of the
20 offense 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 (d) 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 SECTION 15. Sections 13.007(c) and 15.028(b), Election
4 Code, are repealed.

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

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