

By: Fallon

H.B. No. 4133

A BILL TO BE ENTITLED

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

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

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

7 Sec. 1.013. DESTRUCTION OF RECORDS. (a) After expiration of
8 the prescribed period for preserving voted ballots, election
9 returns, other election records, or other records that are
10 preserved under this code, the records may be destroyed or
11 otherwise disposed of unless, at the expiration of the preservation
12 period, an election contest or a criminal investigation or
13 proceeding in connection with an election to which the records
14 pertain is pending. In that case, the records shall be preserved
15 until the contest, investigation, or proceeding is completed and
16 the judgment, if any, becomes final.

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

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

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

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

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

7 SECTION 3. Sections 13.007(a) and (b), Election Code, are
8 amended to read as follows:

9 (a) A person commits an offense if the person knowingly
10 makes a false statement or requests, commands, or attempts to
11 induce another person to make a false statement or causes a false
12 statement to be made on a registration application.

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

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

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

- 22 (1) an address;
23 (2) a phone number;
24 (3) a date of birth; or
25 (4) any part of a:
26 (A) social security number; or
27 (B) driver's license number.

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

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

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

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

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

1 matter for criminal investigation under Section 31.006 if records
2 indicate that a person may have violated Section 13.007 or 64.012.

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

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

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

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

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

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

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

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

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

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

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

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

5 SECTION 8. Section 66.058(a), Election Code, is amended to
6 read as follows:

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

10 (1) in an election involving a federal office, for at
11 least 22 months after election day in accordance with federal law;
12 or

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

15 SECTION 9. Section 162.014(b), Election Code, is amended to
16 read as follows:

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

19 SECTION 10. Section 231.008, Election Code, is amended by
20 adding Subsection (f) to read as follows:

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

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

27 (e) Not later than the 30th day after the date on which a

1 county or district attorney begins an investigation under this
2 section, the county or district attorney shall deliver notice of
3 the investigation to the secretary of state and the attorney
4 general. The notice must include a statement that a criminal
5 investigation is being conducted and the date on which the election
6 that is the subject of the investigation was held. The secretary of
7 state may disclose information relating to a criminal investigation
8 received under this subsection only if the county or district
9 attorney or the attorney general has disclosed the information or
10 would be required by law to disclose the information.

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

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

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

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

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

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

26 Sec. 276.002. OBSTRUCTION OF ELECTION INVESTIGATION OR
27 PROCEEDING. (a) A person commits an offense if the person, with

1 intent to influence a witness or prospective witness in an
2 investigation or proceeding brought under this code:

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

5 (2) instructs or encourages a witness or prospective
6 witness to give a false statement or testimony or withhold or make
7 unavailable any testimony, information, or evidence; or

8 (3) instructs or encourages a witness or prospective
9 witness:

10 (A) to elude legal process summoning the witness
11 to testify or supply evidence; or

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

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

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

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

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

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

25 (A) to an election official; or

26 (B) on an election-related:

27 (i) form;

- 1 (ii) petition;
- 2 (iii) statement;
- 3 (iv) oath;
- 4 (v) affirmation; or
- 5 (vi) official document; or

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

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

10 (c) An offense under this section is increased to the next
11 higher category of offense if it is shown on the trial of the
12 offense 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 (d) If conduct that constitutes an offense under this
20 section also constitutes an offense under any other law, the actor
21 may be prosecuted under this section, the other law, or both.

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

24 SECTION 15. The changes in law made by this Act apply only
25 to an offense committed on or after the effective date of this Act.
26 An offense committed before the effective date of this Act is
27 governed by the law in effect on the date the offense was committed,

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

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