

BILL ANALYSIS

C.S.H.B. 4331
By: Jetton
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised over reported incidences of paid vote harvesting, in which an individual is compensated to directly interact with one or more voters in connection with a ballot with the intention of delivering votes for a specific candidate or measure. There have been calls to clamp down on this activity in efforts to deter voter fraud and restore confidence in the integrity of elections in Texas. C.S.H.B. 4331 seeks to address this issue by creating an offense for paid vote harvesting.

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. 4331 amends the Election Code to create the third degree felony offense of paid vote harvesting for a person who knowingly does the following:

- directly or through a third party, provides or offers to provide vote harvesting services in exchange for compensation or other benefit, including benefits to a party whose welfare is of interest to the person;
- directly or through a third party, provides or offers to provide compensation or other benefit to a person, or to another party whose welfare is of interest to the person, in exchange for the vote harvesting services; or
- collects or possesses a ballot voted by mail or official carrier envelope from a voter in connection with the vote harvesting services.

The bill exempts from application of the offense acts promoting a candidate or measure that do not involve direct interaction with an application for ballot by mail, in the presence of the voter, or a voter's official ballot, ballot voted by mail, or carrier envelope. The bill sets out the conditions under which compensation in exchange for the vote harvesting services is inferred and defines "vote harvesting services" as direct interaction with one or more voters in connection with an official ballot, a ballot voted by mail, or an application for ballot by mail, intended to deliver votes for a specific candidate or measure. If conduct constituting the offense also constitutes an offense under any other law, the actor may be prosecuted for either offense or both offenses.

C.S.H.B. 4331 makes a person who commits the offense liable to any candidate harmed by the vote harvesting services for damages and penalties in an amount that includes the following:

- the amount of any compensation paid to or received by the person in exchange for the vote harvesting services;
- the fair market value of any benefit given or received in exchange for the services;
- a penalty in the amount of \$25,000;
- reasonable attorney's fees, court costs, witness fees, and deposition fees; and
- any of the litigant's reported campaign expenditures and fees and expenses incurred by the litigant in filing and securing a place on the ballot, if the litigant shows that the number of voters contacted by the vote harvesting services exceeds the number of votes by which the litigant lost the election.

The bill establishes that a candidate is considered harmed if the candidate can demonstrate that the person was a candidate for office, the liable party committed the offense, and another candidate seeking the same office received a vote attributable to the offense, regardless of whether the other candidate knowingly participated in the vote harvesting services. The bill makes a person who commits the offense and is found liable for damages arising from the vote harvesting services jointly liable with any other defendant for the entire amount of damages.

C.S.H.B. 4331 establishes that the cause of action is cumulative to any other remedy provided by common law or statute, but excludes the action from applicability of the expedited actions process created by Rule 169, Texas Rules of Civil Procedure, and statutory provisions relating to actions involving the exercise of certain constitutional rights. The bill authorizes the cause of action to be brought in the county where any part of the vote harvesting services occurred.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4331 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision included in the original applying the bill's provisions beginning with an application for a ballot to be voted by mail for an election held on or after January 1, 2022.