87R9538 MLH-D

By:  Bettencourt S.B. No. 1591

A BILL TO BE ENTITLED

AN ACT

relating to election watchers; increasing a criminal penalty.

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

SECTION 1.  Section 33.006(b), Election Code, is amended to read as follows:

(b)  A certificate of appointment must:

(1)  be in writing and signed by the appointing authority or, for an appointment for a write-in candidate under Section 33.004, by each of the voters making the appointment;

(2)  indicate the capacity in which the appointing authority is acting;

(3)  state the name, residence address, and voter registration number of the appointee and be signed by the appointee;

(4)  identify the election and the precinct polling place or other location at which the appointee is to serve; and

(5)  in an election on a measure, identify the measure if more than one is to be voted on and state which side of the measure the appointee represents[~~; and~~

[~~(6)  contain an affidavit executed by the appointee stating that the appointee will not have possession of a device capable of recording images or sound or that the appointee will disable or deactivate the device while serving as a watcher~~].

SECTION 2.  Section 33.007, Election Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a)  Each appointing authority may appoint not more than two watchers for each precinct polling place, meeting place for an early voting ballot board, meeting place for a signature verification committee, elections administrator's office, or central counting station involved in the election.

(e)  For the purpose of appointing watchers, "early voting polling place" and "polling place" include a location for in-person delivery of a ballot to be voted by mail under Section 86.006(a-1).

SECTION 3.  Section 33.051(c), Election Code, is amended to read as follows:

(c)  [~~A watcher may not be accepted for service if the watcher has possession of a device capable of recording images or sound unless the watcher agrees to disable or deactivate the device.~~] The presiding judge may inquire whether a watcher has possession of a [~~any prohibited~~] recording device before accepting the watcher for service.

SECTION 4.  Section 33.054(a), Election Code, is amended to read as follows:

(a)  A watcher serving at the meeting place of an early voting ballot board may be present at any time the board, or a person working on behalf of the board, is processing or counting ballots and until the board completes its duties. The watcher may serve during the hours the watcher chooses, except as provided by Subsection (b).

SECTION 5.  Subchapter C, Chapter 33, Election Code, is amended by adding Sections 33.0541 and 33.0551 to read as follows:

Sec. 33.0541.  HOURS OF SERVICE AT SIGNATURE VERIFICATION COMMITTEE MEETING. A watcher serving at the meeting place of a signature verification committee may be present at any time the committee is processing ballots and until the committee completes its duties. The watcher may serve during the hours the watcher chooses.

Sec. 33.0551.  HOURS OF SERVICE AT ELECTIONS ADMINISTRATOR'S OFFICE. A watcher serving at an elections administrator's office may be present only when the office is used for the purpose of processing or handling ballots. The watcher may serve during the hours the watcher chooses.

SECTION 6.  Section 33.056, Election Code, is amended by adding Subsections (a-1) and (e) and amending Subsection (d) to read as follows:

(a-1)  A watcher is entitled to sit or stand near enough to the member of an early voting ballot board or a signature verification committee who is performing a comparison under Section 87.041(b)(2) or 87.027(i) to verify that the signature on the carrier envelope certificate is that of the voter.

(d)  A watcher may not be prohibited from making written notes while on duty, including the name and contact information of a voter whose voting process may have involved a violation of election law. Before permitting a watcher who made written notes at a precinct polling place to leave while the polls are open, the presiding officer may require the watcher to leave the notes with another person on duty at the polling place, selected by the watcher, for retention until the watcher returns to duty.

(e)  If election activity begins at the location where a watcher is serving and moves to another location, the watcher may follow or accompany the election activity in a reasonable manner.

SECTION 7.  Section 33.061, Election Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

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

(c)  A peace officer or special peace officer appointed under Section 32.075 shall ensure that a watcher who is the victim of an offense under this section is given access to perform the watcher's duties under this chapter.

(d)  With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

(e)  An offense under Subsection (a) includes an action taken to distance or obstruct the view of a watcher in a way that makes observation reasonably ineffective.

(f)  Enforcement of social distancing recommendations is not a defense to an offense under this section.

SECTION 8.  Subchapter B, Chapter 43, Election Code, is amended by adding Section 43.0321 to read as follows:

Sec. 43.0321.  POLLING PLACES WITH MULTIPLE ROOMS. (a) The county clerk and commissioners court shall make a reasonable effort to ensure that a building in use as a polling place has all election activity conducted in a single room.

(b)  A polling place where election activity is conducted in more than one room is considered to be two separate polling places for purposes of Section 33.007.

SECTION 9.  Section 61.014, Election Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a)  A person, other than a watcher using the device solely to record images or sound as permitted under Subsection (b), may not use a wireless communication device within 100 feet of a voting station.

(b)  A person, other than a watcher who reasonably believes a voter is receiving unlawful assistance, may not use a [~~any~~] mechanical or electronic device to record [~~means of recording~~] images or sound that captures the activity [~~within 100 feet~~] of a voter at a voting station.

(b-1)  A recording made by a watcher under Subsection (b) may not capture or record any information on a voter's ballot.

SECTION 10.  Section 64.009, Election Code, is amended by adding Subsections (e) and (f) to read as follows:

(e)  If voting under this section occurs in a vehicle with opaque windows, a watcher may request that the windows be opened to allow the watcher to observe voting.

(f)  If voting under this section occurs for more than one voter in the same vehicle and that vehicle can accommodate more than five passengers, a watcher may enter the vehicle to observe voting.

SECTION 11.  Section 86.006, Election Code, is amended by adding Subsection (a-2) to read as follows:

(a-2)  A county may not have more than one location for in-person delivery of a marked ballot under this section.

SECTION 12.  Section 213.013(i), Election Code, is amended to read as follows:

(i)  On [~~No device capable of recording images or sound is allowed inside the room in which the recount is conducted, or in any hallway or corridor in the building in which the recount is conducted within 30 feet of the entrance to the room, while the recount is in progress unless the person entitled to be present at the recount agrees to disable or deactivate the device. However, on~~] request of a person entitled to appoint watchers to serve at the recount, the recount committee chair shall permit the person to photocopy under the chair's supervision any ballot, including any supporting materials, challenged by the person or person's watcher. The person must pay a reasonable charge for making the copies and, if no photocopying equipment is available, may supply that equipment at the person's expense. The person shall provide a copy on request to another person entitled to appoint watchers to serve at the recount.

SECTION 13.  The change in law made by this Act applies only to an offense committed under Section 33.061, Election Code, on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 14.  This Act takes effect September 1, 2021.