

By: Hall

S.B. No. 1613

A BILL TO BE ENTITLED

AN ACT

relating to early voting ballots voted by mail; creating a criminal offense.

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

SECTION 1. Subchapter C, Chapter 52, Election Code, is amended by adding Section 52.076 to read as follows:

Sec. 52.076. IDENTIFYING CODE OR MICROCHIP FOR MAIL-IN BALLOTS. (a) Each early voting ballot voted by mail must include a unique barcode or microchip used to ensure that the ballot is only counted once.

(b) No record associating an individual voter with a barcode or microchip assigned to a ballot under this section may be created.

(c) The secretary of state by rule shall provide for the design and distribution of a unique barcode or microchip system in a manner that, to the greatest extent possible, prevents the unauthorized reproduction or misuse of mail ballots.

SECTION 2. Section 82.001(a), Election Code, is amended to read as follows:

(a) Subject to Subsection (b), a qualified voter is eligible for early voting by mail if the voter is unable ~~[expects]~~ to be present in ~~[absent from]~~ the county of the voter's residence on election day and during ~~[the regular hours for conducting early voting at the main early voting polling place for that part of]~~ the period for early voting by personal appearance ~~[remaining after the~~

1 ~~voter's early voting ballot application is submitted to the early~~
2 ~~voting clerk].~~

3 SECTION 3. Section 84.001(b), Election Code, is amended to
4 read as follows:

5 (b) An application must be in writing and signed by the
6 applicant. An electronic signature that is not hand drawn is not
7 permitted.

8 SECTION 4. Section 84.002(a), Election Code, is amended to
9 read as follows:

10 (a) An early voting ballot application must include:

11 (1) the applicant's name and the address at which the
12 applicant is registered to vote;

13 (1-a) a copy of one form of photo identification
14 listed in Section 63.0101(a);

15 (2) for an application for a ballot to be voted by mail
16 on the ground of absence from the county of residence, the address
17 outside the applicant's county of residence to which the ballot is
18 to be mailed;

19 (3) for an application for a ballot to be voted by mail
20 on the ground of [~~age or~~] disability, the address of the hospital,
21 nursing home or other long-term care facility, or retirement
22 center, or of a person related to the applicant within the second
23 degree by affinity or the third degree by consanguinity, as
24 determined under Chapter 573, Government Code, if the applicant is
25 living at that address and that address is different from the
26 address at which the applicant is registered to vote;

27 (4) [~~for an application for a ballot to be voted by~~

1 ~~mail on the ground of confinement in jail, the address of the jail~~
2 ~~or of a person related to the applicant within the degree described~~
3 ~~by Subdivision (3);~~

4 [~~5~~] for an application for a ballot to be voted by
5 mail on any ground, an indication of each election for which the
6 applicant is applying for a ballot; and

7 (5) [~~6~~] an indication of the ground of eligibility
8 for early voting.

9 SECTION 5. Section 84.011(a), Election Code, is amended to
10 read as follows:

11 (a) The officially prescribed application form for an early
12 voting ballot must include:

13 (1) immediately preceding the signature space the
14 statement: "I certify that the information given in this
15 application is true, and I understand that giving false information
16 in this application is a crime.";

17 (2) a statement informing the applicant of the
18 offenses prescribed by Sections 84.003 and 84.004;

19 (3) spaces for entering an applicant's voter
20 registration number and county election precinct of registration,
21 with a statement informing the applicant that failure to furnish
22 that information does not invalidate the application; and

23 (4) on an application for a ballot to be voted by mail:

24 (A) a space for an applicant applying on the
25 ground of absence from the county of residence to indicate the date
26 on or after which the applicant can receive mail at the address
27 outside the county;

1 (B) a space for indicating the fact that an
2 applicant whose application is signed by a witness cannot make the
3 applicant's mark and a space for indicating the relationship or
4 lack of relationship of the witness to the applicant;

5 (C) a space for entering an applicant's telephone
6 number, with a statement informing the applicant that failure to
7 furnish that information does not invalidate the application;

8 (D) a space or box for an applicant applying on
9 the ground of [~~age or~~] disability to indicate that the address to
10 which the ballot is to be mailed is the address of a facility or
11 relative described by Section 84.002(a)(3), if applicable;

12 ~~(E) [a space or box for an applicant applying on~~
13 ~~the ground of confinement in jail to indicate that the address to~~
14 ~~which the ballot is to be mailed is the address of a relative~~
15 ~~described by Section 84.002(a)(4), if applicable;~~

16 [~~(F)~~] a space for an applicant applying on the
17 ground of [~~age or~~] disability to indicate if the application is an
18 application under Section 86.0015;

19 (F) [~~(G)~~] spaces for entering the signature,
20 printed name, and residence address of any person assisting the
21 applicant;

22 (G) [~~(H)~~] a statement informing the applicant of
23 the condition prescribed by Section 81.005; and

24 (H) [~~(I)~~] a statement informing the applicant of
25 the requirement prescribed by Section 86.003(c).

26 SECTION 6. Subchapter A, Chapter 84, Election Code, is
27 amended by adding Sections 84.0111 and 84.015 to read as follows:

1 Sec. 84.0111. UNSOLICITED PROVISION OF OFFICIAL
2 APPLICATION FORM. A person may not mail or otherwise provide an
3 application form for an early voting ballot to a person who did not
4 solicit the form.

5 Sec. 84.015. BIPARTISAN TEAMS FOR ASSISTANCE OF CERTAIN
6 INDIVIDUALS. Notwithstanding any other law, each early voting
7 clerk shall create a bipartisan team to assist any individual
8 confined to a nursing home, hospital, or similar facility during
9 the early voting period and on election day with submitting an
10 application to vote by mail and with submitting a ballot voted by
11 mail.

12 SECTION 7. Section 86.001, Election Code, is amended by
13 adding Subsections (f), (h), (i), and (j) to read as follows:

14 (f) If the application does not include a copy of one form of
15 photo identification listed in Section 63.0101(a), the clerk shall
16 reject the application.

17 (h) The clerk may not mail or otherwise provide an early
18 voting ballot to a person who did not submit an application for a
19 ballot to be voted by mail.

20 (i) The clerk shall reject an application for a ballot to be
21 voted by mail if the clerk determines that the signature on the
22 application was executed by a person other than the voter, unless
23 the application was signed by a witness. In making the
24 determination, the clerk may compare the signature with any two or
25 more signatures of the voter made within the preceding six years and
26 on file with the county clerk or voter registrar.

27 (j) Before the clerk mails or provides a ballot to an

1 applicant, the clerk shall identify the unique barcode included on
2 the carrier envelope and make a record indicating that a carrier
3 envelope with the unique barcode was issued.

4 SECTION 8. Section 86.0015(a), Election Code, is amended to
5 read as follows:

6 (a) This section applies only to an application for a ballot
7 to be voted by mail that:

8 (1) indicates the ground of eligibility is [~~age or~~]
9 disability; and

10 (2) does not specify the election for which a ballot is
11 requested or has been marked by the applicant as an application for
12 more than one election.

13 SECTION 9. Section 86.003(c), Election Code, is amended to
14 read as follows:

15 (c) The address to which the balloting materials must be
16 addressed is the address at which the voter is registered to vote,
17 or the registered mailing address if different, unless the ground
18 for voting by mail is:

19 (1) absence from the county of residence, in which
20 case the address must be an address outside the voter's county of
21 residence; or

22 [~~confinement in jail, in which case the address~~
23 ~~must be the address of the jail or of a relative described by~~
24 ~~Section 84.002(a)(4), or~~

25 [~~(3) age or~~] disability and the voter is living at a
26 hospital, nursing home or other long-term care facility, or
27 retirement center, or with a relative described by Section

1 84.002(a)(3), in which case the address must be the address of that
2 facility or relative.

3 SECTION 10. Chapter 86, Election Code, is amended by adding
4 Section 86.0053 to read as follows:

5 Sec. 86.0053. WITNESS REQUIRED FOR BALLOTS VOTED BY MAIL.

6 (a) A ballot voted by mail in accordance with this chapter is not
7 valid unless:

8 (1) the voter signs the carrier envelope in the
9 presence of a witness or a notary public; and

10 (2) the witness or notary public signs the carrier
11 envelope.

12 (b) A person who serves as a witness must provide the
13 person's name, address, and telephone number on the carrier
14 envelope.

15 (c) A person may not serve as a witness for more than:

16 (1) one voter under this section who is not related to
17 the person within the second degree by affinity or third degree by
18 consanguinity, as determined under Subchapter B, Chapter 573,
19 Government Code; or

20 (2) five voters under this section who are related to
21 the person within the second degree by affinity or third degree by
22 consanguinity, as determined under Subchapter B, Chapter 573,
23 Government Code.

24 (d) The secretary of state shall adopt rules and prescribe
25 procedures as necessary to implement this section.

26 SECTION 11. Section 86.006(a-1), Election Code, is amended
27 to read as follows:

1 (a-1) The voter may deliver a marked ballot in person to the
2 early voting clerk's office only while the polls are open on
3 election day. A voter who delivers a marked ballot in person must
4 present an acceptable form of identification described by Section
5 63.0101. The ballot drop-off location at the early voting clerk's
6 office must be located in a secure setting and under 24-hour
7 security and video surveillance.

8 SECTION 12. Chapter 86, Election Code, is amended by adding
9 Section 86.0061 to read as follows:

10 Sec. 86.0061. PROHIBITION ON VOTE HARVESTING OF MAIL IN
11 BALLOTS. (a) A person commits an offense if the person knowingly
12 collects or possesses a ballot voted by mail or official carrier
13 envelope from a voter for the purpose of delivering votes for a
14 specific candidate or measure.

15 (b) An offense under this section is a felony of the third
16 degree punishable by imprisonment in the Texas Department of
17 Criminal Justice for a term not to exceed five years, a fine not to
18 exceed \$5,000, or both the imprisonment and the fine.

19 SECTION 13. Sections 86.007(a), (d), and (e), Election
20 Code, are amended to read as follows:

21 (a) Except as provided by Subsection (d), a marked ballot
22 voted by mail must arrive at the address on the carrier envelope[+]

23 [~~(1)~~] before the time the polls are required to close
24 on election day[~~, or~~

25 [~~(2) not later than 5 p.m. on the day after election~~
26 ~~day, if the carrier envelope was placed for delivery by mail or~~
27 ~~common or contract carrier before election day and bears a~~

1 ~~cancellation mark of a common or contract carrier or a courier~~
2 ~~indicating a time not later than 7 p.m. at the location of the~~
3 ~~election on election day].~~

4 (d) A marked ballot voted by mail that arrives after the
5 time prescribed by Subsection (a) shall be counted if:

6 (1) the ballot was cast from an address outside the
7 United States;

8 (2) the carrier envelope was placed for delivery
9 before the time the ballot is required to arrive under Subsection
10 (a) [~~(a)(1)~~]; and

11 (3) the ballot arrives at the address on the carrier
12 envelope not later than the fifth day after the date of the
13 election.

14 (e) A delivery under Subsection [~~(a)(2) or~~] (d) is timely,
15 except as otherwise provided by this title, if the carrier envelope
16 or, if applicable, the envelope containing the carrier envelope:

17 (1) is properly addressed with postage or handling
18 charges prepaid; and

19 (2) bears a cancellation mark of a recognized postal
20 service or a receipt mark of a common or contract carrier or a
21 courier indicating a time before the deadline.

22 SECTION 14. Section 86.011, Election Code, is amended by
23 amending Subsections (a), (b), and (c) and adding Subsection (a-1)
24 to read as follows:

25 (a) The early voting clerk shall determine whether the
26 return of a voter's official carrier envelope for a ballot voted by
27 mail is timely.

1 (a-1) The early voting clerk shall scan the unique barcode
2 on the official carrier envelope, make a record of the barcode, and
3 determine whether the unique barcode matches the barcode of an
4 official carrier envelope recorded under Section 86.001(j). The
5 clerk shall reject a carrier envelope with a barcode that:

6 (1) does not match the barcode of an official carrier
7 envelope recorded under Section 86.001(j); or

8 (2) matches a barcode of an official carrier envelope
9 that has already been received by the early voting clerk.

10 (b) If the return is timely and the carrier envelope is not
11 rejected under Subsection (a-1), the clerk shall enclose the
12 carrier envelope and the voter's early voting ballot application in
13 a jacket envelope. The clerk shall also include in the jacket
14 envelope:

15 (1) a copy of the voter's federal postcard application
16 if the ballot is voted under Chapter 101; and

17 (2) the signature cover sheet, if the ballot is voted
18 under Chapter 105.

19 (c) If the return is not timely or the carrier envelope is
20 rejected under Subsection (a-1), the clerk shall enter the time of
21 receipt on the carrier envelope and retain it for the period for
22 preserving the precinct election records. The clerk shall destroy
23 the unopened envelope and its contents after the preservation
24 period.

25 SECTION 15. Section 86.013, Election Code, is amended by
26 amending Subsection (b) and adding Subsection (h) to read as
27 follows:

1 (b) Spaces must appear on the reverse side of the official
2 carrier envelope for:

3 (1) indicating the identity and date of the election;
4 ~~[and]~~

5 (2) entering the signature, printed name, and
6 residence address of a person other than the voter who deposits the
7 carrier envelope in the mail or with a common or contract carrier;

8 (3) entering the signature, printed name, residence
9 address, and telephone number of the person who witnesses the voter
10 sign the carrier envelope under Section 86.0053; and

11 (4) placing the signature and seal of a notary public
12 who witnesses the voter sign the carrier envelope under Section
13 86.0053.

14 (h) Each official carrier envelope must include a unique
15 barcode that may be identified and recorded by the early voting
16 clerk under Sections 86.001(j) and 86.011(a-1).

17 SECTION 16. Chapter 86, Election Code, is amended by adding
18 Section 86.015 to read as follows:

19 Sec. 86.015. STATE ELECTION DATABASE. (a) The secretary of
20 state shall maintain a state election database that is available to
21 the public for review.

22 (b) Not later than 24 hours after the early voting clerk
23 receives an application to vote by mail, places an official ballot
24 in the mail, or receives a marked ballot voted by mail, the clerk
25 shall upload the following information to the state election
26 database:

27 (1) the name of the person who:

- 1 (A) provided an application to vote by mail;
2 (B) received an official ballot to be voted by
3 mail; or
4 (C) returned an official ballot voted by mail;
5 and
6 (2) the time and date that:
7 (A) the application was received;
8 (B) the official ballot was placed in the mail;
9 or
10 (C) the marked ballot voted by mail was received.
11 (c) The secretary of state shall adopt rules and prescribe
12 procedures as necessary to implement this section.

13 SECTION 17. Section [87.027](#), Election Code, is amended by
14 amending Subsection (i) and adding Subsection (i-1) to read as
15 follows:

16 (i) The signature verification committee shall compare the
17 signature on each carrier envelope certificate, except those signed
18 for a voter by a witness, with the signature on the voter's ballot
19 application and the voter's registration application to determine
20 whether the signatures are those of the voter. The committee may
21 also compare the signatures with any two or more signatures of the
22 voter made within the preceding six years and on file with the
23 county clerk or voter registrar to determine whether the signatures
24 are those of the voter. Except as provided by Subsection (1), a
25 determination under this subsection that the signatures are not
26 those of the voter must be made by a majority vote of the
27 committee's membership. The committee shall place the jacket

1 envelopes, carrier envelopes, and applications of voters whose
2 signatures are not those of the voter in separate containers from
3 those of voters whose signatures are those of the voter. The
4 committee chair shall deliver the sorted materials to the early
5 voting ballot board at the time specified by the board's presiding
6 judge.

7 (i-1) If the signature verification committee uses software
8 to compare signatures under Subsection (i), the software must have
9 a 95 percent rate of accuracy.

10 SECTION 18. Section 87.041, Election Code, is amended by
11 amending Subsections (b) and (e) and adding Subsection (e-1) to
12 read as follows:

13 (b) A ballot may be accepted only if:

14 (1) the carrier envelope certificate is properly
15 executed;

16 (2) neither the voter's signature on the ballot
17 application nor the signature on the carrier envelope certificate
18 is determined to have been executed by a person other than the
19 voter, unless signed by a witness;

20 (3) the voter's ballot application states a legal
21 ground for early voting by mail;

22 (4) the voter is registered to vote, if registration
23 is required by law;

24 (5) the address to which the ballot was mailed to the
25 voter, as indicated by the application, was outside the voter's
26 county of residence, if the ground for early voting is absence from
27 the county of residence;

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

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

9 (8) the carrier envelope is signed by a witness or
10 notary public as required under Section 86.0053.

11 (e) In making the determination under Subsection (b)(2),
12 the board shall compare the signature of the voter on the carrier
13 envelope certificate with the signature of the voter on the voter's
14 registration application submitted under Section 13.002. The board
15 may also compare the signatures with any two or more signatures of
16 the voter made within the preceding six years and on file with the
17 county clerk or voter registrar to determine whether the signatures
18 are those of the voter.

19 (e-1) If the board uses software to compare signatures under
20 Subsection (b)(2), the software must have a 95 percent rate of
21 accuracy.

22 SECTION 19. Section 87.062, Election Code, is amended by
23 adding Subsection (a-1) to read as follows:

24 (a-1) Before counting a ballot voted by mail, the early
25 voting ballot board shall identify the unique barcode or microchip
26 included on the ballot under Section 52.076, make a record
27 indicating that the board has counted a ballot with that barcode or

1 microchip, and compare the barcode or microchip to records of other
2 counted ballots. If the barcode or microchip on the ballot is the
3 same as a barcode or microchip recorded for a ballot that has
4 already been counted, the board may not count the ballot. Ballots
5 not counted under this section shall be placed in an envelope and
6 treated in the same manner as rejected ballots under Section
7 87.043.

8 SECTION 20. Section 87.103, Election Code, is amended by
9 adding Subsection (a-1) to read as follows:

10 (a-1) Before counting a ballot voted by mail, the unique
11 barcode or microchip included on each ballot under Section 52.076
12 must be identified, recorded, and compared to the barcode or
13 microchip records of other counted ballots. If the barcode or
14 microchip on the ballot is the same as a barcode or microchip
15 recorded for a ballot that has already been counted, the ballot may
16 not be counted. Ballots not counted under this section shall be
17 placed in an envelope and treated in the same manner as rejected
18 ballots under Section 87.043.

19 SECTION 21. The following sections of the Election Code are
20 repealed:

- 21 (1) Section 82.003;
- 22 (2) Section 82.004; and
- 23 (3) Section 84.009.

24 SECTION 22. The changes in law made by this Act apply only
25 to an application to vote an early voting ballot by mail submitted
26 on or after the effective date of this Act. An application to vote
27 an early voting ballot by mail submitted before the effective date

1 of this Act is governed by the law in effect when the application
2 was submitted, and the former law is continued in effect for that
3 purpose.

4 SECTION 23. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect September 1, 2021.