

BILL ANALYSIS

Senate Research Center
88R6179 MPF-D

S.B. 2
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State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2 makes two important changes. First, it clarifies the mens rea standard for illegal voting. Second, it returns the penalty for illegal voting from a misdemeanor to a second degree felony, which was the penalty prior to 2021.

For almost all crimes, ignorance of the law is not a defense. Requiring that the prosecution prove a defendant's personal knowledge of a specific law makes a crime almost impossible to prosecute. In 2021, however, the Court of Criminal Appeals held in *Mason v. Texas* that for the crime of illegal voting the defendant not only had to know that he or she was a felon, or non-citizen, or other status that rendered him or her ineligible to vote, but also had to know that the circumstance made it illegal for that person to vote.

S.B. 2 clarifies that you have to know the circumstance, but not that you have to know the law.

During the Second Called Session of the 87th Legislature, the House of Representatives amended S.B. 1 to change illegal voting from a second degree felony to a Class A misdemeanor. Illegal voting has been a felony for almost 50 years, and S.B. 2 returns this offense to a second degree felony. These offenses are serious and should be treated as such.

As proposed, S.B. 2 amends current law relating to conduct constituting the criminal offense of illegal voting and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 64.012(a) and (b), Election Code, as follows:

(a) Provides that a person commits an offense if the person knowingly or intentionally:

(1) votes or attempts to vote in an election in which the person knows of a particular circumstance that makes the person not eligible to vote; or

(2)-(5) makes no changes to these subdivisions.

(b) Provides that an offense under this Section 64.012 (Illegal Voting) is a felony of the second degree unless the person is convicted of an attempt. Provides that the offense is a state jail felony in that case. Deletes existing text providing that an offense under this section is a Class A misdemeanor.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2023.