

SUBJECT: Enhancing penalties for fraud in early voting by mail

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Denny, Howard, Bohac, Harper-Brown, Uresti

0 nays

2 absent — Deshotel, Coleman

WITNESSES: For — Chuck Noll, Harris County District Attorney's Office; Richard Pegues; J.R. Perez; Ben Stool, Dallas County Criminal District Attorney's Office; (*On committee substitute:*) Pat Carlson, Tarrant County Republican Party; Mary Ann Collins; Ann Hubener; June Rentmeester; Bruce Sherbet; (*Registered but did not testify:*) George Kelemen, American Association of Retired Persons

Against — George Hammerlein, Harris County Tax Office

On — Rene Diaz, Republican Party of Texas; Elizabeth Hanshaw Winn, Secretary of State's Office; Gail Turley, County and District Clerks' Association of Texas; Rep. Terri Hodge; Molly Beth Malcolm, Texas Democratic Party; (*Registered but did not testify:*) Charlotte Kramer; Jesse Lewis, Republican Party of Texas

BACKGROUND: Election Code, sec. 64.012(a) defines illegal voting as:

- voting or attempting to vote in an election in which the person knows that he or she is not eligible to vote;
- knowingly voting or attempting to vote more than once in an election; or
- knowingly impersonating another person and voting or attempting to vote as that person.

Illegal voting is a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to \$10,000) unless the person is convicted of an attempt, in which case it is a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000).

Election Code, sec. 64.032(c) allows a voter to request assistance from any person other than the voter's employer or agent or an officer or agent of a labor union to which the voter belongs. A person commits an offense by violating this section or by knowingly assisting a voter who is not eligible for assistance; preparing the voter's ballot in a way other than the voter directs; or suggesting by word, sign, or gesture how the voter should vote. An election officer commits an offense by knowingly allowing a person to provide assistance to a voter who is not eligible for assistance or by allowing a person to violate sec. 64.032(c). Unlawful assistance is a Class B misdemeanor, punishable by up to 180 days in jail and/or a maximum fine of \$2,000.

Any qualified voter may vote early in person. Under Election Code, chapter 82, a qualified voter may vote early by mail if the voter:

- expects to be absent from the county of residence on election day;
- has a disability, sickness, or physical condition that prevents voting on election day;
- is over 65 years of age; or
- is confined in jail.

Election Code, chapter 84 stipulates procedures for applying for an early-voting ballot. The application must be in writing and signed by the applicant. It need not be on an official form, but a form used for this purpose must be one furnished by the early voting clerk. A witness may sign an application but must indicate his or her relationship to the applicant. A person may witness only one early-voting ballot application unless the person is an early voting clerk or deputy or is related to the additional applicants. It is a Class B misdemeanor to witness an application unlawfully and a Class A misdemeanor to provide false information on an application.

Election Code, chapter 86 sets forth guidelines for voting by mail, including the application for a ballot to be voted by mail, the ballot, the ballot envelope, the carrier envelope, and requirements for assisting a voter.

DIGEST: **Penalties for offenses.** CSHB 54 would define conduct that constitutes assisting a voter while the person is in the presence of the voter's ballot or carrier envelope:

- reading the ballot to the voter;
- directing the voter to read the ballot;
- marking the voter's ballot; or
- directing the voter to mark the ballot.

The bill would expand the offense of illegal voting to include knowingly marking or attempting to mark another person's ballot without the person's consent. It would specify additional ways of unlawfully assisting a voter, including preparing a voter's ballot without direction from the voter and providing assistance that a voter has not requested. The penalty for this offense would be increased to a Class A misdemeanor.

CSHB 54 would require that the oath of assistance be part of the certificate on the carrier envelope and would require a person who directly assists a voter in preparing a ballot to sign and print his or her name and residence address. Failure to do so would be a Class A misdemeanor, unless the person also committed unlawful assistance, in which case it would be a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.

A witness who, in the presence of the voter, assisted the voter with an application for early voting by mail would have to follow the same requirements as those relating to documents that can be witnessed. If an applicant could not sign the application because of a physical disability or illiteracy or could not affix his or her mark on the application, the witness would have to state that fact on the document.

The witness would have to sign the document, print his or her name near the signature, and provide a residence address. A witness who was an election officer would have to state his or her official title. An offense under these provisions would be a Class A misdemeanor, unless the person was related closely to the applicant or was registered to vote at the same address as the applicant, in which case it would be a Class C misdemeanor, punishable by a maximum fine of \$500.

CSHB 54 would increase the penalty for knowingly providing false information on an application from a Class A misdemeanor to a state jail felony, unless the person was the applicant, a close relative, or a registered

voter at the same address as the applicant, in which case the offense would remain a Class A misdemeanor.

Aid to prosecution. CSHB 54 would make the offense of tampering with a governmental record explicitly applicable to election records; make an attempt to commit any criminal offense under the Election Code an offense; and make conspiracy to commit an election offense a crime. The bill would define “election record” and place the definition in the Penal Code. A party to an Election Code offense could be required to furnish evidence or testimony about the offense. It would not be a defense to prosecution that a person who received an official ballot was not eligible to vote in the election.

Handling carrier envelopes and ballots. A person who witnessed a signature on a carrier envelope for a mail ballot would have to put his or her signature, printed name, and residence address on the envelope. A person other than the voter who put the carrier envelope in the mail or gave it to a common or contract carrier would have to provide his or her signature, printed name, and residence address on the envelope. If a voter voluntarily gave the person a carrier envelope, the person would commit an offense by not providing his or her signature, printed name, and residence address on the envelope. The offense would be a Class B misdemeanor unless the person also committed unlawful assistance, in which case it would be a state jail felony.

Each carrier envelope delivered by a common or contract carrier would have to have a receipt with the name and address of the person who actually delivered the envelope to the carrier. The bill would specify that an envelope could not originate from the office of a political party or candidate, rather than the party’s or candidate’s headquarters, as in current law.

Possession of ballots and carrier envelopes. CSHB 54 would prohibit anyone from collecting and storing carrier envelopes. The Secretary of State’s Office would have to prescribe procedures to provide accountability for the delivery of the envelopes to the early voting clerk. Except for certain people, no one could possess another person’s ballot or carrier envelope. Unless the person had intent to defraud the voter or the election authority, a person could possess the ballot or envelope lawfully if the person was:

- someone who put his or her name and address on the carrier envelope as the person who would deposit the envelope in the mail or with a common or contract carrier;
- closely related to the voter;
- registered to vote at the same address;
- an early voting clerk or deputy;
- a U.S. postal worker in the normal course of his or her duties; or
- a common or contract carrier that routinely issues receipts.

Violations of these provisions would range from a Class B misdemeanor up to a second-degree felony (punishable by two to 20 years in prison and an optional fine of up to \$10,000), depending on the number of ballots possessed and whether or not the possession was with the voter's consent.

Official application. CSHB 54 would require spaces on the application for an early-voting ballot for the signature, printed name, and address of the person (other than the voter) who helps to complete the application. The application also would have to provide notices of possible offenses.

Official carrier envelope. The bill would require spaces on the envelope for the signature, printed name, and address of the person (other than the voter) who puts a carrier envelope in the mail or gives it to a carrier for delivery. Notices of possible offenses would have to be on the envelope, as well as the Voting Rights Hotline telephone number at the Secretary of State's Office.

Buying, selling, and theft of ballots. The bill would prohibit anyone from buying, offering to buy, selling, or offering to sell an official ballot, ballot envelope, carrier envelope, signed application for an early-voting mail ballot, or any other election record. It would exempt authorized government officials and party chairs who must purchase balloting materials to run elections. An offense under this provision would be a state jail felony, except that a voter who sold his or her ballot would commit a Class B misdemeanor. Theft of a ballot or carrier envelope would be a state jail felony.

CSHB 54 would prohibit the release of early voting information on individual voters until after election day.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: Voting is one of the most cherished rights of Americans, and the state should not tolerate abuse of voting rights. CSHB 54 would offer the same protection to homebound voters that voters at the polling place receive. The Election Code is clear on what constitutes proper and improper procedure in the polling place, but the law governing absentee voting by mail (homebound voting) needs to be tightened, and oversight needs to be stricter. By its nature, mail-in voting from home is out of the public view and therefore is vulnerable to fraud.

The bill would make it easier to punish bad actors by increasing penalties for fraud and by clarifying what constitutes unlawful behavior. This clarification would assist prosecutors as well as people working to increase voter participation. Alleged irregularities are difficult to prosecute because it is hard to identify people who interfere with voters' mail ballots. Currently, it is not against the law to collect and sell voting-by-mail ballots. Bribery statutes do not apply in these circumstances.

Current election law does not define clearly what constitutes assisting a voter. CSHB 54 would set forth this definition and would specify what a person must do to comply. It would create new tracking abilities by requiring people who witness and assist voters to provide their names and addresses. It would not prohibit anyone from assisting a voter but would ensure that a homebound voter's vote was delivered safely to the elections administrator. It would not alter common practice significantly. Volunteers still could work in their neighborhoods and communities and could assist voters in person. However, CSHB 54 would remove anonymity from this process.

Anyone still could mail or send a preprinted application for a mail-in ballot to any voter. The bill would not alter the ability to send direct-mail material to voters. The requirements of CSHB 54 would apply only to in-person, face-to-face interaction.

Helping a family member or another person to vote is not illegal. However, organized fraud that can occur in nursing homes and assisted living facilities is serious, and allegations of this are common throughout the country. Such behavior is an affront to democracy. The people who harvest mail-in ballots, sometimes called vote brokers, know that sometimes the secret to winning elections is bringing in the homebound vote.

Current law prohibits the release of the names and addresses of people who receive mail-in ballots for 72 hours after the ballots are mailed. However, vote brokers still can use lists of these voters to intercept ballots at the mailbox and steal them, or to show up at people's houses and offer to help them vote their ballots. Most often, vote brokers visit senior citizens and persuade them to vote a certain way or to allow someone else to mark their ballots. If a voter reports to officials that a campaign worker came into the home and unduly influenced the voter or took the voter's ballot to be mailed, almost no means exist to track down the campaign worker.

The bill would not preclude any local government from offering training. The Secretary of State's Office has early voting materials that could be used for this purpose. Until the state can allocate sufficient resources to hire election workers who are screened and trained, CSHB 54 offers the best solution and is superior to the status quo.

OPPONENTS SAY: CSHB 54 could disenfranchise certain voters and suppress voting by making time-worn behavior illegal. Some residents, especially minority and elderly residents, depend on community volunteers and neighbors to help them vote. This bill would curtail election volunteerism, because people would be less likely to want to provide this assistance in their communities if they perceived that a single misstep could result in a criminal act. Also, not all neighborhood leaders would be aware of the stricter requirements set forth in the bill, and they could find themselves involved in criminal allegations even though their intentions were good.

OTHER OPPONENTS SAY: The bill would require no training for workers who assist voters. That provision should be a key component of election reform.

NOTES: The committee substitute made many changes to the original bill, including removing provisions relating to volunteer deputy early-voting assistants; adding a definition of assisting a voter; and adding provisions relating to carrier envelope action by a person other than the voter and requirements for a common or contact carrier. The substitute added the prohibition against delivery of envelopes that originated from an office of a political party or of a candidate in an election.

HB 54
House Research Organization
page 8

CSHB 54 would modify the original bill by reducing the offense for possessing at least one but fewer than 10 ballots or envelopes. The substitute would add two “safe harbors” for an affirmative defense to prosecution for possessing someone else’s ballot or envelope.

The substitute also would require spaces for entering certain information on the official carrier envelope and added a requirement that the number of the secretary of state’s Voting Rights Hotline be printed on carrier envelopes or accompanying materials.

CSHB 54 also added the provision making theft of an official ballot or carrier envelope a state jail felony.