

- SUBJECT:** Illegal possession of another person's ballot to be voted by mail
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 7 ayes — Taylor, Berman, Branch, Burkett, Farias, Isaac, P. King
2 nays — Hernandez Luna, Veasey
- WITNESSES:** For — Luis Sepulveda; (*Registered, but did not testify:* Mary Beaver; Brent Connett, Texas Conservative Coalition; Carlene Denman; Charles Denman; Rosemary Edwards; Robert Green; Melinda Kinley; Barbara Lloyd; Joseph Lloyd; Shirley Markley; Judith Marie McClellan; Sharon Sneed; Colleen Vera, Kingstreet Patriots True Vote Initiative; Skipper Wallace, Texas Republican County Chairmans Association; Dean Wright, New Revolution Now Institute)

Against — None

On — (*Registered, but did not testify:* Elizabeth Hanshaw Winn, Secretary of State)
- BACKGROUND:** Election Code, ch. 86 governs the procedures for the conduct of voting by mail. Sec. 86.006 sets forth the method of returning marked ballots voted by mail. A marked ballot voted by mail must be returned to the early voting clerk in the official carrier envelope. The carrier envelope may be delivered in another envelope and must be transported and delivered only by mail or by common or contract carrier.

A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided to another. A person who possesses a ballot or carrier envelope with intent to defraud the voter or the election authority commits an offense.

An offense is:
 - a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), if the person possesses at least one but fewer than 10 ballots or carrier envelopes, unless the person possesses the ballots

or carrier envelopes without the consent of the voters, in which case the offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000);

- a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), if the person possesses at least 10 but fewer than 20 ballots or carrier envelopes, unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000); or
- a state-jail felony, if the person possesses 20 or more ballots or carrier envelopes, unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

DIGEST:

CSHB 2449 would stipulate that when official ballots or carrier envelopes were obtained in violation of current law governing the return of marked mail ballots pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct could be considered as one offense and the number of ballots or carrier envelopes aggregated in determining the grade of offense.

The bill would take effect September 1, 2011, would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2449 would be an important tool in combating fraud in voting by mail. It would allow an investigative authority to use the aggregate amount of ballots or carrier envelopes a person unlawfully had in their possession over a period of days as one act of conduct.

When conducting election fraud investigations, authorities must find a certain number of ballots in the possession of the vote harvester at one time so that they can be charged with an offense. A vote harvester has to be in possession of 20 or more ballots to be charged with a felony; otherwise, it is a misdemeanor. The smart ones know not to have more than 19 ballots or carrier envelopes in their possession to avoid felony charges should they get caught.

Harvesting ballots to be voted by mail is a problem in nursing facilities, but many elderly people living at home also are targeted and confronted by vote harvesters offering to “help” them with their ballots to be mailed.

Many people do not know that this is not legal and think these people offering to help them with their ballots are being good Samaritans when in reality they are nefarious characters attempting to unlawfully obtain another person's mail ballot for money.

**OPPONENTS
SAY:**

The bill would not address mistakes and human error. Elderly and disabled individuals, especially those in assisted living facilities and nursing homes, rely on assistance with voting. This could have unintended consequences for those who were lawfully assisting a voter if they unknowingly were in violation of the law and ended up being charged with a serious crime.