

BILL ANALYSIS

Senate Research Center

H.B. 54
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State Affairs
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Engrossed

DIGEST AND PURPOSE

H.B. 54 clarifies procedures for early voting by mail and implements provisions to prevent voting fraud. The bill provides criminal penalties for violation of voting fraud provisions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 14 (Section 86.013, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.012, Election Code, by adding Subsection (d), to define "election record."

SECTION 2. Amends Chapter 1, Election Code, by adding Sections 1.017, 1.018, and 1.019, as follows:

Sec. 1.017. **INELIGIBILITY NO DEFENSE TO PROSECUTION.** Provides that it is no defense to prosecution under this code that a person who receives an official ballot is ineligible to vote in the election for which the ballot is received.

Sec. 1.018. **APPLICABILITY OF PENAL CODE.** Provides that, in addition to Section 1.03 (Effect of Code), Penal Code, and to other titles of the Penal Code that may apply to this code, Title 4 (Inchoate Offenses), Penal Code, applies to offenses prescribed by this code.

Sec. 1.019. **REQUIRED EVIDENCE OR TESTIMONY.** (a) Authorizes a party to an offense under this code to be required to furnish evidence or testimony about the offense.

(b) Prohibits evidence or testimony required to be furnished under this section, or information directly or indirectly derived from that evidence or testimony, from being used against the party providing the evidence or testimony in a criminal case except for a prosecution of aggravated perjury or contempt.

SECTION 3. Amends Section 64.012(a), Election Code, to provide that a person commits an offense if the person knowingly marks or attempts to mark another person's ballot without the consent of that person.

SECTION 4. Amends Subchapter B, Chapter 64, Election Code, by adding Section 64.0321, as follows:

Sec. 64.0321. **DEFINITION.** Provides that for purposes of this subchapter and Sections 85.035 and 86.010, assisting a voter includes the following conduct by a person other than the voter that occurs 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.

SECTION 5. Amends Sections 64.036(a) and (d), Election Code, as follows:

(a) Provides that a person commits an offense if the person knowingly while assisting a voter prepares the voter's ballot without direction from the voter or provides assistance to a voter who has not requested assistance or selected the person to assist the voter.

(d) Provides that an offense under this section is a Class A, rather than B, misdemeanor.

SECTION 6. Amends Section 81.005, Election Code, as follows:

Sec. 81.005. COMMON OR CONTRACT CARRIER. (a) Prohibits a common or contract carrier from being used to perform an act in accordance with this title unless the carrier meets certain conditions, including routinely using certain receipts and complying with laws requiring the carrier to file an assumed name with each county in which the carrier receives or delivers parcels or with the secretary of state, as appropriate.

(b) Prohibits a common or contract carrier from being used to perform an act in accordance with this title if the carrier transports property as an incidental activity of a nontransportation business activity regardless of whether the carrier imposes a separate charge for the transportation.

SECTION 7. Amends Section 84.003, Election Code, as follows:

Sec. 84.003. New heading: SIGNING APPLICATION BY WITNESS; ASSISTING APPLICANT. (a) Created from existing text.

(b) Provides that a person who acts as a witness for an applicant for an early voting ballot application commits an offense if the person knowingly fails to comply with Section 1.011. Provides that a person who in the presence of the applicant otherwise assists an applicant in completing an early voting ballot application commits an offense if the person knowingly fails to comply with Section 1.011(d) in the same manner as a witness.

(c) Provides that an offense under this section is a Class A misdemeanor.

(d) Provides that Subsection (b) does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B (Relationships by Consanguinity or by Affinity), Chapter 573, Government Code, or is registered to vote at the same address as the applicant.

SECTION 8. Amends the heading to Section 84.004, Election Code, to read as follows:

Sec. 84.004. UNLAWFULLY WITNESSING APPLICATION FOR MORE THAN ONE APPLICANT.

SECTION 9. Amends Section 84.0041(b), Election Code, as follows:

(b) Provides that an offense under this section is a state jail felony unless the person is the applicant, is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or is registered to vote at the same address as the applicant, in which event the offense is a Class A misdemeanor.

SECTION 10. Amends Section 84.011(a), Election Code, to require the officially prescribed application form for an early voting ballot to include spaces for entering the signature, printed name, and residence address of any person assisting the applicant. Makes conforming changes.

SECTION 11. Amends Chapter 86, Election Code, by adding Section 86.0051, as follows:

Sec. 86.0051. CARRIER ENVELOPE ACTION BY PERSON OTHER THAN VOTER;

OFFENSES. (a) Provides that a person commits an offense if the person acts as a witness for a voter in signing the certificate on the carrier envelope and knowingly fails to comply with Section 1.011.

(b) Requires a person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier to provide the person's signature, printed name, and residence address on the reverse side of the envelope.

(c) Provides that a person commits an offense if the person knowingly violates Subsection (b). Provides that it is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope.

(d) Provides that an offense under this section is a Class B misdemeanor, unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a state jail felony.

(e) Provides that Subsections (a) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or is registered to vote at the same address as the applicant.

SECTION 12. Amends Section 86.006, Election Code, by amending Subsections (a), (d), and (e) and adding Subsections (f), (g), and (h), as follows:

(a) Authorizes the carrier envelope to be delivered in another envelope and to be transported and delivered only by mail or by common or contract carrier.

(d) Requires each carrier envelope that is delivered by a common or contract carrier to be accompanied by an individual delivery receipt for that particular carrier envelope that indicates the name and residence address of the individual who actually delivered the envelope to the carrier. Deletes an exception in the event a carrier does not routinely issue a receipt. Makes a nonsubstantive change.

(e) Prohibits carrier envelopes from being collected and stored at another location for subsequent delivery to the early voting clerk. Requires the secretary of state to prescribe appropriate procedures to implement this subsection and to provide accountability for the delivery of the carrier envelopes from the voting place to the early voting clerk.

(f) Provides that a person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Provides that, unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, it is an affirmative defense to prosecution under this subsection that the person, on the date of the offense, met certain criteria.

(g) Provides that an offense under Subsection (f) is:

(1) a Class B misdemeanor 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 event the offense is a state jail felony;

(2) a Class A misdemeanor 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 felony of the third degree; or

(3) 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 felony of the second degree.

(h) Redesignated from existing Subsection (e).

SECTION 13. Amends Section 86.010, Election Code, by amending Subsection (c) and adding Subsections (e), (f), (g), and (h), as follows:

(c) Requires the person assisting the voter to sign a written oath prescribed by Section 64.034 that is part of the certificate on the official carrier envelope.

(e) Requires a person who assists a voter to prepare a ballot to be voted by mail to enter the person's signature, printed name, and residence address on the official carrier envelope of the voter.

(f) Provides that a person commits an offense if the person knowingly fails to provide the information on the official carrier envelope as required by Subsection (e).

(g) Provides that an offense under this section is a Class A misdemeanor unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter, in which event the offense is a state jail felony.

(h) Provides that Subsection (f) does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or is registered to vote at the same address as the applicant.

SECTION 14. Amends Section 86.013, Election Code, by amending Subsections (b), (d), and (f) and adding Subsection (g), as follows:

(b) Requires spaces to appear on the reverse side of the official carrier envelope for indicating the identity and date of the election, and entering the signature, printed name, and residence address of a person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier.

(d) Requires certain textual material, as prescribed by the secretary of state, to be printed on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope when it is provided.

(f) Requires the oath of a person assisting a voter to be included on the official carrier envelope as part of the certificate prescribed by Subsection (c).

(g) Requires the secretary of state by rule to require that a notice informing voters of the telephone number established under Section 31.0055 and the purpose of the telephone number be printed on the official carrier envelope, or an insert enclosed with the balloting materials for voting by mail sent to the voter.

SECTION 15. Amends Section 87.121(f), Election Code, to provide that information on the roster for a person to whom an early voting mail ballot has been sent is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after election day. Deletes text outlining time guidelines for public inspection of the information.

SECTION 16. Amends Section 87.121, Election Code, by adding Subsection (h), to require that information on the roster for a person who votes an early voting ballot by mail be made available for public inspection not later than the day following the day the early voting clerk receives a ballot voted by mail.

SECTION 17. Amends Chapter 276, Election Code, by adding Section 276.010, as follows:

Sec. 276.010. UNLAWFUL BUYING AND SELLING OF BALLOTING MATERIALS.

(a) Provides that a person commits an offense if the person buys, offers to buy, sells, or offers to sell an official ballot, official ballot envelope, official carrier envelope, signed application for an early voting mail ballot, or any other original election record.

(b) Provides that this section does not apply to a person who executes a written contract for the procurement of election supplies necessary to conduct an election under Section 51.003.

(c) Provides that an offense under this section is a state jail felony unless a voter sells a ballot, ballot envelope, or carrier envelope that has been provided to the voter by government, in which event the offense is a Class B misdemeanor.

SECTION 18. Amends Section 31.03(e), Penal Code, to provide that, except as provided by Subsection (f), an offense under this section is a state jail felony if the property stolen is an official ballot or official carrier envelope for an election.

SECTION 19. Amends Section 37.01(2), Penal Code, to redefine "governmental record" to include an official ballot or other election record.

SECTION 20. Prohibits a district or county attorney, in the enforcement of the provisions of this Act, for the purpose of intimidating a group of voters, from prosecuting a person on account of the person's race, ethnicity, or age. Authorizes a violation of this section to be prosecuted under Section 36.03 (Coercion of Public Servant or Voter) or 39.03 (Official Oppression), Penal Code.

SECTION 21. Makes application of this Act prospective.

SECTION 22. Effective date: September 1, 2003.