

## **BILL ANALYSIS**

C.S.H.B. 4131  
By: Fallon  
Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that additional clarification regarding certain procedures and offenses for improper voter assistance and ballot manipulation would benefit the state. C.S.H.B. 4131 seeks to remedy this situation by outlining and clarifying the procedures for assisting voters, including related offenses.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4131 amends the Election Code to change the assistance a voter who cannot comprehend the language in which a ballot is printed may receive from an interpreter accompanying the voter to the voting station for the purpose of translating the ballot to the voter to assistance for such a voter that includes any activity, other than a general procedure or instruction by an election officer, in which a person communicates with a voter in the presence of a ballot regarding the voting of the ballot, aids a voter by reading or marking the ballot, or takes physical possession of a ballot voted by another person. The bill expands the conduct constituting the offense of unlawfully accepting or refusing to accept a voter to include knowingly permitting an unlawful vote or ineligible ballot to be cast in a manner that will be counted and increases the penalty for unlawfully accepting or refusing to accept a voter from a Class B misdemeanor to a Class A misdemeanor. The bill changes the nature of the physical disability causing a person to not be able to prepare a ballot that makes the person eligible to receive assistance in marking the ballot as provided by state law from such a physical disability that renders the voter unable to write or see to the inability to read or mark the ballot by reason of blindness, inability to read the language in which the ballot is written, or disability that is any physical impairment that renders a person unable to physically complete or cast a ballot.

C.S.H.B. 4131 establishes that a voter requesting assistance who indicates a valid reason for eligibility for that assistance is not required to provide further proof of eligibility for assistance in order to receive assistance. The bill requires an election officer, if assistance is provided by a person of the voter's choice, to require the assisting person to complete a voter assistance affidavit. The bill replaces a requirement for a person selected to provide assistance to a voter to take a certain oath with a requirement for a person other than an election officer to complete, sign, and submit a voter assistance affidavit before providing assistance to a voter. The bill sets

out the contents of such an affidavit, which contains that certain oath as revised by the bill, and requires an election officer, before allowing a person to assist a voter, to review that affidavit form and confirm that the form is complete, to note on the form the reason provided by the voter for eligibility for assistance, to confirm such eligibility based on the answers provided, to administer the oath to the assisting person, and to sign the voter assistance affidavit attesting that the officer has complied with these requirements. The bill creates Class A misdemeanor offenses for an election officer who knowingly fails to comply with any part of those requirements and for a person who knowingly omits information on a voter assistance affidavit. The bill creates a state jail felony offense for a person who knowingly provides false information on such an affidavit. The bill provides for an enhancement in the penalty for any such offense to the next higher category of offense, as applicable, if it is shown on trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another offense relating to the affidavit in the same election. The bill requires the secretary of state to prescribe a form to implement these provisions.

C.S.H.B. 4131 renames the offense of unlawful assistance, in regard to a voter, as unlawfully assisting or influencing a voter and specifies that, for purposes of the conduct constituting that offense whereby, while assisting a voter, the person knowingly prepares the voter's ballot without direction from the voter, the person so prepares the ballot without specific direction from the voter for each selection the assisting person marks on the ballot. The bill specifies that the conduct constituting that offense relating to assistance to a voter who has not requested assistance is both knowingly providing assistance to a voter who has not requested assistance and selecting the person to assist the voter. The bill expands the conduct of an election officer constituting unlawfully assisting or influencing a voter to include each action of an actor other than an election officer constituting such an offense. The bill increases the penalty for unlawfully assisting or influencing a voter committed by an actor who is not an election officer from a Class A misdemeanor to state jail felony. The bill enhances the penalty for unlawfully assisting or influencing a voter to the next applicable higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under the offense of unlawfully assisting or influencing a voter, under any other law, or under both that offense or the other law if the actor's conduct that constitutes the offense of unlawfully assisting or influencing a voter also constitutes an offense under any other law.

C.S.H.B. 4131 increases the penalty for the offense of unlawfully witnessing an application for more than one applicant from a Class B misdemeanor to a Class A misdemeanor. The bill renames the offense of providing false information on an application for an early voting ballot as fraudulent use of an application for ballot by mail, revises the conduct of knowingly providing false information on an application for an early voting ballot to specify that such application is instead an application for a ballot by mail, and expands the conduct constituting the offense to include a person intentionally causing false information to be provided on such an application, a person knowingly submitting such an application without the knowledge and authorization of the voter, or a person knowingly altering or providing information on a voter's application for ballot by mail without the voter's request. The bill removes certain circumstances under which the penalty is enhanced and enhances the penalty for the offense from a state jail felony to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill specifies that an offense involving a person knowingly altering or providing information on a voter's application for ballot by mail without the voter's request does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

C.S.H.B. 4131 increases from a Class B misdemeanor to a Class A misdemeanor the penalty for the offense involving an action relating to a carrier envelope by a person other than a voter and

makes certain revisions to requirements, exemptions, and the enhancement relating to that offense. The bill authorizes the prosecution of an actor under the carrier envelope offense, under any other law, or under both that offense or the other law if the actor's conduct that constitutes the carrier envelope offense also constitutes an offense under any other law.

C.S.H.B. 4131 makes certain revisions to the persons exempt from the offense involving the knowing possession of an official ballot or official carrier envelope provided to another person. The bill changes the penalty for such offense from a range of penalties based on the number of ballots or carrier envelopes possessed, enhanced depending on whether the actor had the consent of the relevant voters, to a Class A misdemeanor, enhanced to a third degree felony if the defendant possessed the ballot or carrier envelope without the request of the voter. The bill further increases the penalty for such offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, that the offense involved an individual 65 years of age or older, or that the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 4131 authorizes a voter with a disability who is physically unable to deposit a ballot voted by mail and the associated carrier envelope in the mail to select a person other than the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs to assist the voter by depositing a sealed carrier envelope in the mail. The bill requires an early voting clerk to confirm the information provided in the written affidavit completed by a person seeking to assist a voter following the procedure provided for voter assistance affidavits before accepting a ballot voted by mail for which assistance was provided. The bill specifies that the person subject to the offense of unlawfully assisting a voter voting a ballot by mail is the person who assists the voter and increases the penalty for such an offense from a Class A misdemeanor, with certain enhancements, to a state jail felony. The bill conditions the exception from the offense of unlawfully assisting a voter voting a ballot by mail on the basis of the person being registered to vote at the same address as the voter on the person also physically living in the same dwelling as the voter at the time of the event. The bill enhances the penalty for such an offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

C.S.H.B. 4131 repeals a provision establishing a criminal offense relating to compensating another to commit certain acts with a carrier envelope and designates the offense relating to compensation for assisting voters as paid vote harvesting activity and revises the conduct constituting that offense to prohibit the following: compensating or offering to compensate another person for collecting mail ballots or assisting voters as part of any performance-based compensation scheme based on the number of ballots collected or voters assisted or in which another person is presented with a quota of ballots to be collected or voters to be assisted; engaging in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of ballots collected or voters assisted; or accepting compensation or an offer of compensation for any such activity. The bill changes the penalty for such an offense from punishment by confinement or confinement and a fine to a Class A misdemeanor, except that the penalty is enhanced to next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election.

C.S.H.B. 4131 removes the prohibition against an early voting ballot board using a voter's signatures made within the preceding six years and on file with the voter registrar to determine that the signatures on a voter's application for an early voting ballot to be voted by mail and on the ballot's carrier envelope certificate are not those of the same person. The bill creates a Class A misdemeanor offense for a person who intentionally accepts a ballot or causes a ballot to be accepted for voting that does not meet the criteria for accepting a ballot. The bill requires the presiding judge of an early voting ballot board, not later than the 10th day after election day, to deliver written notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because the voter was deceased, the voter already voted in person in the same election, the signatures on the carrier envelope and ballot application were not executed by the same person, the carrier envelope certificate lacked a witness signature, or the carrier envelope certificate was improperly executed by an assistant.

C.S.H.B. 4131 repeals Section 86.0052, Election Code.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4131 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 61.033, Election Code, is amended to read as follows:

Sec. 61.033. ELIGIBILITY TO SERVE AS INTERPRETER. To be eligible to serve as an interpreter for the purpose of communicating with an election officer, a person must be a registered voter in this state [~~of the county in which the voter needing the interpreter resides~~].

No equivalent provision.

SECTION 2. Section 63.012, Election Code, is amended.

SECTION 3. Subchapter B, Chapter 64, Election Code, is amended by adding Section 64.030 to read as follows:

Sec. 64.030. DEFINITION. In this

#### HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 61.034, Election Code, is amended to read as follows:

Sec. 61.034. TRANSLATING BALLOT. If a voter cannot comprehend the language in which the ballot is printed, the voter may receive voting assistance under Section 64.031 [~~an interpreter may accompany the voter to the voting station for the purpose of translating the ballot to the voter~~].

SECTION 2. Same as introduced version.

No equivalent provision.

subchapter, "compensation" means any monetary payment, goods, services, benefits, employment, political favors, acts of official discretion, or other form of consideration offered to another person in exchange for assisting voters.

No equivalent provision.

SECTION 4. Section 64.031, Election Code, is amended to read as follows:  
Sec. 64.031. ELIGIBILITY FOR ASSISTANCE.

(a) A voter is eligible to receive assistance in marking the ballot, as provided by this subchapter, if the voter cannot prepare the ballot because of:

- (1) a physical disability that renders the voter unable to mark the ballot [~~write~~] or see the ballot; or
- (2) an inability to read the language in which the ballot is written.

(b) An election officer commits an offense if the election officer knowingly allows a voter who is ineligible for assistance under Subsection (a) to receive assistance.

(c) An offense under Subsection (b) is a Class A misdemeanor.

SECTION 5. Section 64.032, Election Code, is amended by amending Subsections (c) and (d) and adding Subsection (c-1) to read as follows:

- (c) On the voter's request,

SECTION 3. Subchapter B, Chapter 64, Election Code, is amended by adding Section 64.030 to read as follows:

Sec. 64.030. DEFINITIONS. In this subchapter:

(1) "Assistance" includes any activity, other than a general procedure or instruction by an election officer, in which a person:

(A) communicates with a voter in the presence of a ballot regarding the voting of the ballot;

(B) aids a voter by reading or marking the ballot; or

(C) takes physical possession of a ballot voted by another person.

(2) "Disability" means any physical impairment that renders a person unable to physically complete or cast a ballot.

SECTION 4. Section 64.031, Election Code, is amended to read as follows:

Sec. 64.031. VOTING [ELIGIBILITY FOR] ASSISTANCE FOR BLIND, DISABLED, OR ILLITERATE PERSON.

A voter who is unable to read or mark the ballot by reason of blindness, disability, or [is eligible to receive assistance in marking the ballot, as provided by this subchapter, if the voter cannot prepare the ballot because of:

[~~(1) a physical disability that renders the voter unable to write or see; or~~

[~~(2) an~~] inability to read the language in which the ballot is written is eligible for assistance as provided by this subchapter.

SECTION 5. Sections 64.032(c) and (d), Election Code, are amended to read as follows:

- (c) On the voter's request for assistance

the voter may be assisted by any person selected by the voter other than:

- (1) the voter's employer;
- (2) [;] an agent of the voter's employer;
- (3) [~~;~~] an officer or agent of a labor union to which the voter belongs;
- (4) a candidate for office;
- (5) a person previously convicted of an election-related offense;
- (6) a person who is not an election judge or clerk and who receives or is offered or promised compensation for assisting voters;

or  
(c-1) Notwithstanding Subsection (c), on the voter's request, a voter may be assisted by a person who:

- (1) is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code; or
- (2) physically lives in the same residence as the voter.

(d) If assistance is provided by a person of the voter's choice, an election officer shall enter the person's name and address on the poll list beside the voter's name and shall require the assistant to complete a voter assistance affidavit under Section 64.034.

SECTION 6. Section 64.034, Election Code, is amended to read as follows:

Sec. 64.034. VOTER ASSISTANCE AFFIDAVIT REQUIRED [OATH]. (a) Before a [A] person other than an election officer provides [selected to provide] assistance to a voter, the person must complete, sign, and submit a voter assistance affidavit that includes:

- (1) the assisting person's legal name, residence address, and date of birth;
- (2) the nature of the relationship of the person to the voter;
- (3) an affirmation that the person has never been convicted of an election-related offense;
- (4) an affirmation that the person has not been compensated in any way or offered or promised any type of compensation, political favor, or official act of discretion to

indicating a reason for eligibility listed under Section 64.031,

the voter may be assisted by any person selected by the voter other than the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs.

A voter is not required to provide further proof of eligibility for assistance in order to receive assistance.

(d) If assistance is provided by a person of the voter's choice, an election officer shall enter the person's name and address on the poll list beside the voter's name and shall require the assistant to complete a voter assistance affidavit under Section 64.034.

SECTION 6. Section 64.034, Election Code, is amended to read as follows:

Sec. 64.034. VOTER ASSISTANCE AFFIDAVIT [OATH]. (a)

Before a [A] person other than an election officer provides [selected to provide] assistance to a voter, the assisting person must complete, sign, and submit an affidavit that includes:

- (1) the assisting person's legal name, residence address, and date of birth;
- (2) the nature of the relationship of the person to the voter;
- (3) the reason for the voter's eligibility to receive assistance under Section 64.031;

(4) a disclosure of whether the assisting person has been compensated in any way or offered or promised any type of compensation, political favor, or official act

assist voters;

(5) an affirmation that the person did not approach the voter and offer assistance; and

(6) [~~must take~~] the following oath[, administered by an election officer at the polling place, before providing assistance]:

"I swear (or affirm) under penalty of law that all of the above information and affirmations are true and accurate, and that I will not suggest, by word, sign, or gesture, how the voter should vote;

I will confine my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;

I will prepare the voter's ballot only as the voter specifically directs; and I am not the voter's employer, an agent of the voter's employer, [ø] an officer or agent of a labor union to which the voter belongs, or a candidate for office.

I understand it is a criminal offense to provide false information

or to in any way influence the independent choice of the voter."

(b) Before allowing a person other than an election officer to assist a voter, an election officer must

review the voter assistance affidavit form and confirm that the form is complete and

the assisting person is eligible to assist the voter under Section 64.032, based on the answers provided.

(c) An election officer commits an offense if the officer knowingly fails to comply with any part of Subsection (b). An offense under this subsection is a Class A misdemeanor.

(d) A person commits an offense if the person knowingly provides false information under this section.

of discretion to assist voters; and

(5) [~~must take~~] the following oath, which must be administered by an election officer at the polling place, before providing assistance:

"I swear (or affirm) under penalty of law that all of the above information and affirmations are true and accurate, and that I will not suggest, by word, sign, or gesture, how the voter should vote nor communicate any opinion regarding any candidate, measure, or political party;

I will confine my assistance to answering the voter's questions about the process of casting the ballot, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;

I will prepare the voter's ballot only as the voter specifically directs; and I am not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs.

I understand it is a criminal offense to provide false information in this affidavit, to make any record of or divulge any information about how a voter has voted,

or to in any way influence the independent choice of the voter."

(b) Before allowing a person to assist a voter under Subsection (a), an election officer must:

(1) review the voter assistance affidavit form and confirm that the form is complete;

(2) note on the form the reason provided by the voter for eligibility for assistance under Section 64.031;

(3) confirm that the assisting person is eligible to assist the voter under Section 64.032 based on the answers provided;

(4) administer the oath to the assisting person; and

(5) sign the voter assistance affidavit attesting that the officer has complied with Subdivisions (1)-(4).

(c) An election officer commits an offense if the officer knowingly fails to comply with any part of Subsection (b). An offense under this subsection is a Class A misdemeanor.

(d) A person commits an offense if the person knowingly provides false information on a voter assistance affidavit.

An offense under this subsection is a state jail felony.

(e) A person commits an offense if the person knowingly fails to submit a completed affidavit under this section. An offense under this subsection is a Class A misdemeanor.

(f) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

(g) The secretary of state shall prescribe a form to implement this section.

SECTION 7. Section 64.036, Election Code, is amended to read as follows:

Sec. 64.036. UNLAWFULLY ASSISTING OR INFLUENCING A VOTER [~~UNLAWFUL ASSISTANCE~~]. (a) A person commits an offense if the person knowingly:

(1) provides or offers to provide assistance to a voter who is not eligible for assistance;

(2) while assisting a voter prepares the voter's ballot in a way other than the way the voter directs or without direction from the voter;

(3) while assisting a voter suggests by word, sign, or gesture how the voter should vote; or

(4) provides or offers to provide assistance to a voter who has not first requested assistance or selected the person to assist the voter.

(b) A person commits an offense if the person knowingly assists a voter in violation of Section 64.032 [~~64.032(e)~~].

(c) An election officer commits an offense if the officer knowingly permits a person to provide assistance:

(1) to a voter in violation of this section [~~who is not eligible for assistance~~]; or

(2) in violation of Section 64.032 [~~64.032(e)~~].

(d) An offense under this section is a state jail felony, unless the offense is committed

An offense under this subsection is a state jail felony.

(e) A person commits an offense if the person knowingly omits information on an affidavit under this section. An offense under this subsection is a Class A misdemeanor.

(f) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

(g) The secretary of state shall prescribe a form to implement this section.

SECTION 7. Section 64.036, Election Code, is amended to read as follows:

Sec. 64.036. UNLAWFULLY ASSISTING OR INFLUENCING A VOTER [~~UNLAWFUL ASSISTANCE~~]. (a) A person commits an offense if the person knowingly:

(1) provides assistance to a voter who is not blind, disabled, or unable to read or write [~~eligible for assistance~~];

(2) while assisting a voter prepares the voter's ballot in a way other than the way the voter directs or without specific direction from the voter for each selection the assisting person marks on the ballot;

(3) while assisting a voter suggests by word, sign, or gesture how the voter should vote; or

(4) provides assistance to a voter who has not requested assistance and [~~or~~] selected the person to assist the voter.

(b) A person commits an offense if the person knowingly assists a voter in violation of Section 64.032 [~~64.032(e)~~].

(c) An election officer commits an offense if the officer knowingly permits a person to provide assistance:

(1) to a voter in violation of this section [~~who is not eligible for assistance~~]; or

(2) in violation of Section 64.032 [~~64.032(e)~~].

(d) An offense under this section is a state jail felony, unless the offense is committed

under Subsection (c), in which case it is a Class A misdemeanor.

(e) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

SECTION 8. Section 84.004(e), Election Code, is amended.

SECTION 9. Section 84.0041, Election Code, is amended to read as follows:

Sec. 84.0041. FRAUDULENT USE OF [PROVIDING FALSE INFORMATION ON] APPLICATION FOR BALLOT BY MAIL. (a) A person commits an offense if the person knowingly provides or causes false information to be provided on an application for an early voting ballot by mail.

(a-1) A person other than the voter commits an offense if the person knowingly alters a voter's application for ballot by mail or causes an application to be altered, without the voter's express consent.

This offense does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

(b) 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~~

under Subsection (c), in which case it is a Class A misdemeanor.

(e) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 8. Same as introduced version.

SECTION 9. Section 84.0041, Election Code, is amended to read as follows:

Sec. 84.0041. FRAUDULENT USE OF [PROVIDING FALSE INFORMATION ON] APPLICATION FOR BALLOT BY MAIL. (a) A person commits an offense if the person:

(1) knowingly provides false information on an application for [an early voting] ballot by mail;

(2) intentionally causes false information to be provided on an application for ballot by mail;

(3) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or

(4) knowingly alters or provides information on a voter's application for ballot by mail without the voter's request.

(b) 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].~~

(c) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

No equivalent provision.

No equivalent provision.

~~event the offense is a Class A misdemeanor].~~

(c) An offense under Subsection (a)(4) does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

(d) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

SECTION 10. The heading to Section 86.0051, Election Code, is amended to read as follows:

Sec. 86.0051. UNLAWFUL CARRIER ENVELOPE ACTION BY PERSON OTHER THAN VOTER~~[-OFFENSES]~~.

SECTION 11. Section 86.0051, Election Code, is amended by amending Subsections (b), (d), and (e) and adding Subsection (f) to read as follows:

(b) A person other than the voter who assists a voter by depositing ~~[deposits]~~ the carrier envelope in the mail or with a common or contract carrier or who obtains the carrier envelope for that purpose must provide the information required to be provided on the certificate ~~[person's signature, printed name, and residence address]~~ on the reverse side of the envelope.

(d) An offense under this section is a Class A ~~[B]~~ misdemeanor, unless it is shown on the trial of an offense under this section that the person committed ~~[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) This section does ~~[Subsections (a) and (e) do]~~ not apply if the person is related to the voter ~~[applicant]~~ within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in ~~[is registered to vote at]~~ the same dwelling

SECTION 10. Chapter 86, Election Code, is amended by adding Section 86.0061 to read as follows:

Sec. 86.0061. UNLAWFUL POSSESSION OF BALLOT. (a) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another person. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the possession:

(1) was related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;

(2) was registered to vote at and physically living in the same residence as the voter;

(3) possessed the ballot or carrier envelope solely for the temporary purpose of assisting a voter who was eligible for assistance under Section 64.031, did not commit an offense under Section 64.036, and fully complied with the requirements of Section 86.010;

(4) was a deputy voter registrar who:

(A) possessed a sealed carrier envelope for the sole purpose of depositing the carrier envelope in the mail;

(B) met the qualifications of an assistant under Section 64.032; and

(C) truthfully completed the affidavit required of an assistant on the certificate of the carrier envelope;

(5) was an early voting clerk, deputy early voting clerk, or other election officer;

(6) was an officer of the court, agent of law

[address] as the voter at the time of the event [applicant].

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 12. Sections 86.006(f), (g), and (g-1), Election Code, are amended to read as follows:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another.

Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

(1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;

(2) physically living in [registered to vote at] the same dwelling [address] as the voter;

(3) an early voting clerk or a deputy early voting clerk;

(4) a person who possesses a ballot or [the] carrier envelope solely for the purpose of lawfully assisting a voter who was eligible for assistance under Section 86.010 and complied fully with:

(A) Section 86.010; and

(B) Section 86.0051, if assistance was provided only in order to deposit the envelope in the mail or with a common or contract carrier [and who provides the information required by Section 86.0051(b) in accordance with that section];

enforcement, or other individual authorized by a court who possessed a ballot or carrier envelope for the purpose of an election contest, criminal investigation, or proceeding in connection with an election;  
or

(7) was an employee of the United States Postal Service working in the normal course of the employee's authorized duties

(b) An offense under Subsection (a) is a state jail felony.

(c) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

- (1) the defendant was previously convicted of an offense under this code;
- (2) the offense involved an individual 65 years of age or older;
- (3) the defendant committed another offense under this section in the same election; or

(5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; or

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.

(g) An offense under Subsection (f) is a Class A misdemeanor unless the defendant possessed the ballot or carrier envelope without the request of the voter, in which case it is a felony of the third degree. If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both [:

~~{(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}.~~

(g-1) An offense under Subsection (g) is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

- (1) the defendant was previously convicted of an offense under this code;
- (2) the offense involved an individual 65 years of age or older; or
- (3) the defendant committed another offense under this section in the same election ~~[When ballots or carrier envelopes~~

~~are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the number of ballots or carrier envelopes aggregated in determining the grade of the offense].~~

(4) the defendant possessed the ballot or carrier envelope without the express consent of the voter.

(d) In the prosecution of an offense under this section:

(1) the prosecuting attorney is not required to negate the applicability of the provisions of Subsection (a)(1), (2), (3), or (4) in the charging instrument;

(2) the issue of the applicability of a provision of Subsection (a)(1), (2), (3), or (4) is not submitted to the jury unless evidence of that provision is admitted; and

(3) if the issue of the applicability of a provision of Subsection (a)(1), (2), (3), or (4) is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ballot returned in violation of this section may not be counted.

SECTION 11. Section 86.010, Election Code, is amended to read as follows:

Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY MAIL. (a) A voter casting a ballot by mail who would be eligible under Section 64.031 to receive assistance at a polling place may select a person as provided by Section 64.032(c) to assist the voter in preparing the ballot.

(b) Assistance rendered under this section is limited to that authorized by this code at a polling place.

(c) The person assisting the voter must sign and complete a written affidavit [oath] prescribed by Section 64.034 that is part of the certificate on the official carrier envelope.

(d) If a voter is assisted in violation of this section [~~Subsection (a) or (b)~~], the voter's ballot may not be counted.

(e) Before accepting a ballot under this

SECTION 13. Section 86.010, Election Code, is amended to read as follows:

Sec. 86.010. UNLAWFULLY ASSISTING VOTER VOTING BALLOT BY MAIL. (a) A voter casting a ballot by mail who would be eligible under Section 64.031 to receive assistance at a polling place may select a person as provided by Section 64.032(c) to assist the voter in preparing the ballot.

(b) Assistance rendered under this section is limited to that authorized by this code at a polling place, except that a voter with a disability who is physically unable to deposit the ballot and carrier envelope in the mail may also select a person as provided by Section 64.032(c) to assist the voter by depositing a sealed carrier envelope in the mail.

(c) The person assisting the voter must sign and complete a written affidavit [oath] prescribed by Section 64.034 that is part of the certificate on the official carrier envelope.

(d) If a voter is assisted in violation of this section [~~Subsection (a) or (b)~~], the voter's ballot may not be counted.

(e) Before accepting a ballot under this

section, an early voting clerk must confirm the information provided under Subsection (c) following the procedure described by Section 64.034(b) [A person who assists a voter to prepare a ballot to be voted by mail shall enter the person's signature, printed name, and residence address on the official carrier envelope of the voter].

(f) A person who assists a voter commits an offense if the person knowingly fails to provide the information on the official carrier envelope [as] required by Subsection (c) [(e)].

(g) 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) 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 and physically lives in the same residence [address] as the applicant.

(i) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

SECTION 12. Section 86.0105, Election Code, is amended.

SECTION 13. Section 86.013(d), Election Code, is amended to read as follows:

(d) The following textual material, as prescribed by the secretary of state, must be printed on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope when it

section, an early voting clerk must confirm the information provided under Subsection (c) following the procedure described by Section 64.034(b) [A person who assists a voter to prepare a ballot to be voted by mail shall enter the person's signature, printed name, and residence address on the official carrier envelope of the voter].

(f) A person who assists a voter commits an offense if the person knowingly fails to provide the information on the official carrier envelope [as] required by Subsection (c) [(e)].

(g) 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) Subsection (c) or (f) does not apply if the person is related to the voter [applicant] within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in [is registered to vote at] the same dwelling [address] as the voter at the time of the event [applicant].

(i) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

(j) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 14. Same as introduced version.

SECTION 15. Section 86.013(d), Election Code, is amended to read as follows:

(d) The following textual material, as prescribed by the secretary of state, must be printed on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope when it

is provided:

- (1) the prohibition prescribed by Section 86.006(b);
- (2) the conditions for delivery by common or contract carrier prescribed by Sections 81.005 and 86.006;
- (3) the requirements for the legal execution and delivery of the carrier envelope, including the prohibition on compensation for depositing carrier envelopes containing ballots voted by other persons under Section 86.0105 [86.0052];
- (4) the prohibition prescribed by Section 86.006(e); and
- (5) the offenses prescribed by Sections 86.0061 [86.006(f)] and 86.010(f).

SECTION 14. Section 87.041, Election Code, is amended.

SECTION 15. Section 87.0431, Election Code, is amended.

SECTION 16. The following provisions of the Election Code are repealed:

- (1) Sections 86.006(f), (g), (g-1), and (i); and
- (2) Sections 86.0051 and 86.0052.

SECTION 17. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 18. This Act takes effect September 1, 2017.

is provided:

- (1) the prohibition prescribed by Section 86.006(b);
- (2) the conditions for delivery by common or contract carrier prescribed by Sections 81.005 and 86.006;
- (3) the requirements for the legal execution and delivery of the carrier envelope, including the prohibition on compensation for depositing carrier envelopes containing ballots voted by other persons under Section 86.0105 [86.0052];
- (4) the prohibition prescribed by Section 86.006(e); and
- (5) the offenses prescribed by Sections 86.006(f) and 86.010(f).

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Section 86.0052, Election Code, is repealed.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.