

SUBJECT: Possessing another person's official ballot or official carrier envelope

COMMITTEE: Elections —favorable, without amendment

VOTE: 7 ayes — Berman, Bohac, England, Anchia, Burnam, Farias, C. Howard
0 nays

WITNESSES: For — (*Registered, but did not testify*: Ken Bailey, Texas Democratic Party; Nathanael Isaacson, People for the American Way; Garland Pruitt; Sonia Santana, ACLU-Texas)

Against — (*Registered, but did not testify*: Linda Rogers, Texas Republican County Chair Association)

On — (*Registered, but did not testify*: Jay Dyer, Office of the Secretary of State)

BACKGROUND: Election Code, ch. 86 governs conduct for voting by mail. Sec. 86.006 stipulates that a marked ballot must be returned to the early voting clerk in the official carrier envelope, but the carrier envelope may be put in another envelope. It must be either mailed or delivered by common or contract carrier. Carrier envelopes may not be collected and stored at another location for subsequent delivery to the early voting clerk.

Under sec. 86.006(f), a person commits an offense if the person knowingly possesses an official ballot or carrier envelope belonging to someone else. If a person has fewer than 10 ballots or envelopes in the person's possession, it is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). If the person possesses between 10 and 20 ballots or envelopes, it is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Possessing more than 20 ballots or envelopes is a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) unless it is without the consent of the voters, in which case it is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

Unless the person intends to defraud the voter or the election authority, it is an affirmative defense to prosecution if the person was:

- closely related to the voter;
- registered to vote at the same address as the voter;
- an early voting clerk or deputy;
- someone who possesses the envelope in order to mail it and has provided his or her name, signature and address on the envelope;
- a U.S. postal service worker performing authorized duties; or
- a common or contract carrier performing authorized duties, if the ballot is in a sealed carrier envelope accompanied by a delivery receipt.

DIGEST: HB 1987 would revise Election Code, sec. 86.006(f) to stipulate that if a person possessed the official ballot or carrier envelope of another, the current affirmative defenses to prosecution instead would constitute exceptions to the offense.

The bill would take effect September 1, 2007, and would apply to an offense committed on or after that date.

SUPPORTERS SAY: HB 1987 would decriminalize conduct that essentially already is sanctioned by the state because it is an affirmative defense to prosecution. Current law was intended for those who cross the line in helping people with their mail-in ballots. However, some people, including the elderly and disabled, depend on family members, community volunteers and neighbors to help them cast mail-in ballots, and it should be lawful for them to do so.

Rather than an affirmative defense to prosecution after charges have been filed, the exceptions should prevent prosecution in the first place by excluding from the offense certain categories of persons who assist voters or innocently possess ballots or carrier envelopes. Those who possess ballots or carrier envelopes with intent to defraud the voter or election authorities still would be subject to prosecution. Officials of both major political parties support this proposed change in the law.

In 2003, the 78th Legislature enacted HB 54 by Wolens, which tightened the law governing voting by mail from home. This type of voting is vulnerable to fraud because it is out of the public view. Organized fraud can occur in nursing homes and assisted-living facilities. People who harvest mail-in ballots, sometimes called vote brokers, know that sometimes the secret to winning elections is bringing in the homebound

vote. However, it should not be illegal for a close family member or a neighbor who provides volunteer assistance to help a homebound voter. Whoever mails the ballot for the voter or deposits it with a common carrier still would have to provide the required identifying information. The bill would not weaken current law because penalties for unlawfully assisting a voter still would be in force.

**OPPONENTS
SAY:**

HB 1987 would shift the presumption from an affirmative defense to a complete exemption for certain persons who possess the ballot or carrier envelope of another. The presumption should be that possessing another person's ballot or carrier envelope is an offense unless proven otherwise, rather than entirely excluding certain persons from the offense.