

- SUBJECT:** Creating a third-degree felony for illegal voting by a non-U.S. citizen
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Cook, Craddick, Frullo, Geren, Harless, Hilderbran, Huberty, Smithee, Solomons
- 4 nays — Menendez, Gallego, Oliveira, Turner
- WITNESSES:** For — (*Registered, but did not testify:* David Carter; Rebecca Forest; Ann Hettinger)
- Against — (*Registered, but did not testify:* Bill Beardall, Equal Justice Center; Rebecca Bernhardt, Texas Criminal Justice Coalition; Bobbi K. Jones, United Methodist Bishops of Texas; Matthew Simpson, ACLU of Texas; Marvin Brooke; Amy Thompson)
- BACKGROUND:** Under Elections Code, sec. 64.012, a person who votes despite knowing that he or she is ineligible, knowingly votes multiple times, knowingly impersonates another voter, or knowingly marks another voter's ballot without the voter's consent commits a third-degree felony (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 (up to one year in jail and/or a maximum fine of \$4,000).
- DIGEST:** CSHB 804 would add sec. 64.013 to the Election Code and create an offense for a non-U.S. citizen who attempted to vote or successfully voted in an election in Texas. The offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). It would be an affirmative defense if an individual believed in good faith that he or she was a U.S. citizen.
- The bill would take effect September 1, 2011.
- SUPPORTERS SAY:** CSHB 804 would strengthen the election process by creating a criminal offense for a non-U.S. citizen who attempted or successfully committed voter fraud. The current law is too broad because prosecutors must prove that a person cast a ballot knowing that he or she was ineligible. The bill

would provide clear language that would better enable officials to prosecute individuals who harm our democratic process.

Illegal voting is a problem in Texas, and by creating a felony penalty, the bill would deter voter fraud and prevent ineligible voters from casting a ballot. The penalty created by CSHB 804 would track the penalty issued for illegal voting under current law. Voter fraud breeds distrust of government, drives honest citizens out of the democratic process, and could change the outcome of a tight election.

**OPPONENTS  
SAY:**

The unduly severe penalty under this bill would send a person to prison for up to 10 years for voting without holding U.S. citizenship. The prison system is filled with criminals who have committed violent acts, stolen property, or committed other heinous crimes. The level of punishment would be unreasonably disproportionate for the crime, as well as a poor use of the limited resources available to the law enforcement community and the Texas Department of Criminal Justice.

CSHB 804 would impose a stiffer penalty for a non-U.S. citizen who merely attempted to vote than for a citizen who willfully attempted to engage in voter fraud. Under the bill, the offense would be punished as a third-degree felony for a non-U.S. citizen, but the same offense for a U.S. citizen who attempted to cast multiple ballots would be punished as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). With no evidence of non-citizens voting illegally, this disparity has no rational justification.

CSHB 804 would create a chilling effect on voter participation for minority voters and have other negative implications that extended far beyond the ballot box. The bill would attempt to legislate against a perceived problem that does not exist because there has yet to be evidence presented of voter fraud committed by noncitizens.