

- SUBJECT:** Prohibitions and penalties related to aiding others to vote by mail
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 5 ayes — Morrison, Johnson, Klick, Miller, Simmons
- 1 nay — Wu
- 1 absent — Miles
- WITNESSES:** For — Ross Hunt; B R “Skipper” Wallace, Republican County Chair’s Association; (*Registered, but not testifying*: Brent Connett, Texas Conservative Coalition; Jonathan Saenz, Texas Values)
- Against — Sondra Haltom, Empower the Vote Texas; Glen Maxey, Texas Democratic Party (*Registered, but did not testify*: Michael Cunningham, Texas State Building and Construction Trades Council; Kat Dean, and Matt Simpson, American Civil Liberties Union of Texas; Luis Figueroa, Mexican American Legal Defense and Educational Fund; James Gaston, Texas AFL-CIO)
- On — Robin Chandler, Disability Rights Texas; Keith Ingram, Texas Secretary of State Elections Division; Harry White, Office of the Attorney General
- BACKGROUND:** Election Code, ch. 86 provides for early voting by mail. It outlines the procedures through which voting by mail is carried out, prescribes the form of the mail ballot, ballot envelope, and carrier envelope, and creates offenses relating to voting by mail.
- Sec. 86.0051 governs offenses related to the carrier envelope of a mail-in ballot. It is an offense under sec. 86.0051(a) if a person acts who as a witness for a voter in signing the certificate on the carrier envelope knowingly fails to comply with the requirements for signing by a witness.
- It is an offense under sec. 86.0051(c) for a person who deposits the carrier envelope of another in the mail or with a common or contract carrier to knowingly fail to provide the person’s signature, printed name, and residence address on the reverse side of a carrier envelope. This offense is

a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) unless the person is convicted of an offense for providing unlawful assistance to the same voter in connection with the same ballot, in which case it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). It is not a defense that the voter voluntarily gave another person possession of the voter's carrier envelope. The offense does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity or is registered to vote at the same address as the applicant.

It is an offense under sec. 86.006(f) to knowingly possess a ballot or official carrier envelope provided to another person. The offense does not apply to a person who does not possess the ballot or carrier envelope with intent to defraud and:

- is related to the voter within the second degree by affinity or the third degree by consanguinity;
- is registered to vote at the same address as the voter;
- is an early voting clerk or a deputy early voting clerk;
- possesses the envelope to deposit in the mail or with a common or contract carrier and who provides a signature, printed name, and residence address in accordance with sec. 86.0051(b);
- is an employee of the U.S. Postal Service working in the normal course of authorized duties; or
- is a common or contract carrier working in the normal course of authorized duties if the ballot is sealed in an official carrier envelope with a delivery receipt for that particular carrier envelope.

Election Code, sec. 86.010 governs procedures for assisting a voter casting a ballot by mail. A person assisting a voter to prepare a mail-in ballot commits an offense if they knowingly fail to provide the person's signature, printed name, and residence address on the official carrier envelope of the voter. This offense does not apply if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, or is registered to vote at the same address as the applicant.

Election Code, sec. 86.013 prescribes the format of the official carrier envelope for a mail-in ballot. Certain prohibitions prescribed by Election Code, sec. 86 and the requirements for legal execution and delivery of the carrier envelope must be printed on the carrier envelope or on a separate sheet accompanying the carrier envelope.

DIGEST:

CSHB 148 would amend the Elections Code by prohibiting certain actions to aid a citizen in casting an early mail ballot and would enhance certain penalties.

The bill would prohibit a person under Election Code, sec. 86.0051 from depositing more than 10 carrier envelopes containing ballots of others in the mail or with a common or contract carrier. It would prohibit knowingly directing a person or compensating a person to engage in such conduct. This prohibition would not apply to a carrier envelope containing a ballot voted by a member of the U.S. armed forces or the spouse or dependent of a member. Notice of this prohibition would be required to be printed on the reverse side of the carrier envelope or on a separate sheet accompanying the carrier envelope.

Penalties. The offense for knowingly violating this prohibition or knowingly directing a person to engage in such conduct would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The offense for compensating a person to engage in such conduct would be a misdemeanor (up to one year and not less than 30 days in jail and/or a maximum fine of \$4,000), except that if it were shown on trial that the defendant was previously convicted under this section two or more times, it would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

The bill would amend Election Code sec. 86.0051 to make an offense created by that section a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would remove from the applicability of offenses under Election Code, secs. 86.0051 and 86.010 the exception for persons registered to vote at the same address as the voter.

It would add exceptions to the applicability of offenses under Elections Code, secs. 86.0051 and 86.006 for the employee of a state-licensed care facility or state-certified facility not subject to state licensure who was depositing a carrier envelope or providing voter assistance for a voter who resided in that facility in the normal course of the person's authorized duties. This exception would not apply to offenses under Election Code, sec. 86.0051(a).

It would be an affirmative defense to prosecution under Election Code, sec. 86.0051 and sec. 86.006 if the voter whose carrier envelope was possessed or deposited in violation of these sections requested assistance from the person and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 148 would deter people from collecting numerous early mail ballots, sometimes for compensation, a practice known as ballot or vote harvesting. Ballot harvesting is a problem throughout Texas and illegally interferes with the constitutional right of those who vote by mail. This problem should be prioritized, and the bill would make it clear that these behaviors were not acceptable and would be prosecuted.

Punishing repeat offenders with a state jail felony would be a reasonable and justified penalty. The right to vote is one of the most important constitutional rights citizens have, and people who interfere with or deny others that right should be strongly punished. Escalating the penalty to a felony would be a reasonable deterrent and punishment for a person who showed a lack of remorse and habitual behavior associated with violating this prohibition two or more times.

The requirement in the bill that the offenses be committed knowingly would protect those who may unwittingly mail ballots for friends and neighbors without knowing that they were violating the law. The bill would target ballot harvesters and persons familiar with election law who would use this knowledge to illegally affect the outcomes of elections.

The bill would protect people with disabilities and the elderly. Ballot harvesters target and prey upon these groups, and often influence or misdirect their ballots, effectively taking away their most important constitutional right. The bill would restrict the ability of ballot harvesters to engage in conduct that could affect the ability of a disabled or elderly person to cast a mail-in ballot. The bill would provide exceptions for caretakers to legitimately assist voters to cast their ballots.

CSHB 148 would prohibit what has become a loophole in the election law: the harvesting of large numbers of envelopes carrying ballots in an effort to affect the outcomes of elections. There is currently no limit on the

number of others' ballots one person can deliver over the course of an election. Ten ballots is a reasonable maximum that would criminalize a serious ballot-harvesting practice that the current law does not cover.

OPPONENTS
SAY:

CSHB 148 not only would be an unnecessary and ineffective deterrent to the alleged voting fraud it aims to prevent, but it would make it more difficult for people with disabilities and the elderly to vote.

These populations disproportionately vote by mail and often need assistance filling and mailing their ballots. By criminalizing the conduct of people who try to assist voters, the bill would have the effect of restricting voting assistance these populations may need.

The bill would make criminals of good Samaritans and neighbors. The prohibition against depositing more than 10 carrier envelopes would apply to people who had no intent to defraud, and honest, law-abiding citizens carrying the mail to the mailbox for their friends, neighbors, or roommates could be prosecuted under the provision. Placing an arbitrary limit on the number of envelopes one person could deposit in the mail, regardless of their intent to defraud, would accomplish little more than the criminalization of good citizens.

The enhancements created by the bill would not provide a disincentive to those who participate in or organize ballot-harvesting campaigns. Carrier envelopes already contain printed information about prohibited conduct and offenses under the Election Code and these do not deter whatever efforts there may be to fraudulently influence elections via ballot harvesting.

The creation of a new state jail felony under this section would be unnecessarily harsh and disproportionate. Current law provides reasonable penalties, including felonies for the most egregious acts. Imposing a state jail felony for compensating persons who engage in prohibited conduct would be unreasonable and unnecessarily waste state resources on the heightened demands of prosecuting and incarcerating these individuals for a felony rather than a misdemeanor.

CSHB 148 could deprive voters of rights under the federal Voting Rights Act. A voter who qualifies for assistance may ask certain people of their choice to assist them with the voting process. Under CSHB 148, a voter who asked a friend or neighbor to help with a mail-in ballot would be

denied this right if the friend or neighbor had already helped 10 others. A person who is considered trustworthy may be asked to assist more than 10 voters in one election. This would be an unacceptable denial of rights under the Voting Rights Act.

OTHER
OPPONENTS
SAY:

CSHB 148 is unnecessary because much of the fraudulent activity it intends to prevent is already illegal. The activity that constitutes ballot harvesting is already prohibited under provisions of the Election Code and other state and federal law. The offenses created by this bill would either be redundant or criminalize behavior that is not fraudulent and does not need to be prohibited.

NOTES:

CSHB 148 differs from the bill as filed by:

- removing penalty enhancements under Election Code, sec. 64.036(d) and sec. 86.010(g);
- changing the penalty enhancements for a Class B misdemeanor under Election Code, sec. 86.0051(d) from a state jail felony to a Class A misdemeanor, and removing the penalty enhancement for a state jail felony under this section;
- increasing the number of carrier envelopes a person may deposit for others from two to 10;
- adding the exception for carrier envelopes containing ballots voted by members of the Armed Forces or their spouses or dependents;
- adding language to provide an exception for an employee of state-certified or state-licensed care facilities;
- adding the affirmative defenses for caretakers;
- adding the requirement relating to language that must be printed on the carrier envelope; and
- adding offenses for knowingly directing others and for compensating others to engage in prohibited conduct.