

BILL ANALYSIS

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S.B. 2149
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Reports of widespread voter fraud inside nursing homes and state homes have raised concerns on the implications for election integrity in Texas. The voices of these voters risk being silenced as current law does not protect them. Mail-in ballots currently seek to create voting opportunities for disenfranchised voters who may be unable to physically go to polling places. Despite these efforts, voters are still disenfranchised. Nursing home and assisted living voters are being heavily influenced by the staff of these facilities. This undue influence causes their voices to be silenced. Votes of these individuals should be protected, and not manipulated by those on whom the residents rely upon for their wellbeing.

S.B. 2149 creates a process to ensure the voters in these facilities have their voices heard. Election judges shall serve in order to prevent the manipulation of these voters at a nursing home or assisted living facility where five or more mail-in ballot applications have been submitted from that facility. The judge shall deliver the ballot in-person to the voters in the facility. The voters shall mark and seal the ballot, the election judge shall sign as the witness, and then the judge shall deliver the ballots to the early voting clerk. Having the election judges serve over mail-in ballots for these facilities helps protect the voters from undue influence.

As proposed, S.B. 2149 amends current law relating to early in-person voting by voters who reside at a residential care facility.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas secretary of state in SECTION 3 (Section 107.017, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 86.003, Election Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Requires the balloting materials for voting by mail to be provided to the voter by mail, unless the ballot is delivered to a voter for early voting under Chapter 107, which is added by this bill. Prohibits a ballot provided by any other method from being counted.

(b) Requires that the balloting materials, subject to Subsection (c), be addressed to the applicable address specified in the voter's application. Prohibits the election officer providing the ballot from knowingly delivering the materials to an address other than that prescribed by this section. Makes a nonsubstantive change.

(e) Provides that a voter who makes an application to vote early by mail on the grounds of age or disability requesting that the ballot be sent to the address of a residential care facility, as defined by Chapter 107, is required to vote as provided by that chapter if five or more applications for ballots to be voted by mail are made by residents of the same facility who request that the ballots be sent to that facility.

SECTION 2. Amends Section 86.004, Election Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Creates an exception as provided by Subsection (c).

(c) Requires that an application to vote early by mail on the grounds of age or disability requesting that the ballot be sent to the address of a residential care facility, as defined by Chapter 107, to be held until the earlier of:

(1) the date on which five or more applications for ballots to be voted by mail made by residents of the same facility who request that the ballots be sent to that facility have been received, in which case ballots are prohibited from being mailed to the voters and voting is required to be conducted under Chapter 107; or

(2) the last day on which an application for a ballot to be voted by mail is authorized to be received, after which the ballot is required to promptly be mailed to the voter.

SECTION 3. Amends Subtitle B, Title 7, Election Code, by adding Chapter 107, as follows:

CHAPTER 107. EARLY VOTING AT A RESIDENTIAL CARE FACILITY

Sec. 107.001. PURPOSE. Provides that this chapter is enacted to facilitate voting in a hospital, nursing home, other long-term care facility, or retirement center in which a significant number of occupants, patients, or residents lack adequate transportation to an appropriate polling place, need assistance in voting, are 65 years of age or older or are disabled, or are indefinitely confined.

Sec. 107.002. DEFINITION. Defines "residential care facility."

Sec. 107.003. APPLICABILITY OF EARLY VOTING BY PERSONAL APPEARANCE PROVISIONS. Provides that to the extent applicable and not in conflict with this chapter, Chapter 85 (Conduct of Voting By Personal Appearance) applies to voting at a residential care facility under this chapter.

Sec. 107.004. EARLY VOTING AT RESIDENTIAL CARE FACILITY REQUIRED. Requires a voter residing in a residential care facility who has applied to vote early by mail on the grounds of age or disability and who requested that the ballot be sent to the address of the facility, to vote as provided by this chapter if five or more applications for ballots to be voted by mail were made by residents of the same facility who requested that the ballots be sent to the facility.

Sec. 107.005. ELECTION JUDGES; QUALIFICATIONS; OATH. (a) Requires that election judges be selected to serve at a residential care facility in the same manner as election judges are selected to serve at a polling place for early voting by personal appearance.

(b) Authorizes an election judge serving at a residential care facility to be a volunteer, an employee of the authority conducting the election, or compensated by the authority conducting the election in the same manner as an election judge for a polling place for early voting by personal appearance.

(c) Prohibits a person from serving as an election judge for a residential care facility if:

(1) at any time during the two years preceding the election, the person has been employed or retained at a residential care facility in the county where the person seeks to serve as an election judge; or

(2) the person is related to a person within the second degree by affinity or within the third degree by consanguinity, as determined under Chapter 573

(Degrees of Relationship; Nepotism Prohibitions), Government Code, who resides in a residential care facility and is a registered voter.

(d) Requires each individual appointed to serve as an election judge at a residential care facility, before beginning the duties of an election judge under this chapter, to sign and date a certain oath. Sets forth the required contents of the oath.

Sec. 107.006. VOTING LOCATION. (a) Requires the administrator of the residential care facility to make available an area located in a common area of the facility for the purposes of voting under this chapter. Requires that the area allow a voter to cast a secret ballot.

(b) Requires the facility administrator to allow posting of required notices during the period that voting is conducted under this chapter.

(c) Authorizes an election judge to enter the private room of a voter who requests that balloting materials be brought to the voter.

Sec. 107.007. NOTICE OF ELECTION IN RESIDENTIAL CARE FACILITY; DETERMINATION OF TIME FOR VOTING. (a) Requires the early voting clerk, if early voting at a residential care facility is required under this chapter, to give notice that early voting will occur at the facility and appoint election judges for the purpose of conducting voting under this chapter.

(b) Requires the election judges, not later than 5 p.m. on the sixth business day before election day, to, with the input of the administrator of the residential care facility, designate one or more times for voting to be conducted. Authorizes voting to be conducted not earlier than the fourth Monday before election day and not later than the Monday preceding election day.

(c) Requires an election judge for a residential care facility to post notice of the time or times for conducting the election at the facility as soon as practicable after determining the time and not later than the fifth day before the first day on which voting will be conducted at the facility.

(d) Requires the early voting clerk to maintain a public list of all residential care facilities in the clerk's jurisdiction at which voting is conducted under this chapter. Requires that the list be available on the website of the authority conducting the election or posted at the location where public notices are posted in the county courthouse or authority public building, as applicable, and for each facility state the name of the facility, the address of the facility, the dates and times for voting at the facility, and the names of the election judges for the facility.

Sec. 107.008. CONDUCT OF ELECTION. (a) Requires the early voting clerk, in an election conducted under this chapter, to deliver to the election judges for a residential care facility the balloting materials for any qualified voters who have requested a mail ballot for an election that would have been otherwise mailed to the voter at the facility under Chapter 86 (Conduct of Voting by Mail).

(b) Requires the election judges for a residential care facility to deliver the balloting materials to the voter at the facility.

(c) Requires the voter to mark and seal the ballot in the same manner as a voter voting under Chapter 86.

(d) Requires both election judges for the residential care facility to sign the carrier envelope as witnesses. Requires each election judge, in the space for the address of the witness, to write in "Residential Care Facility Election Judge."

(e) Requires the election judges to accept the carrier envelope and place the envelope in a secure bag or ballot container for transport to the early voting clerk's office.

(f) Requires that ballots voted at a residential care facility be processed for counting in the manner provided by Chapter 86 for a ballot voted by mail.

Sec. 107.009. VOTING BY ADDITIONAL QUALIFIED VOTERS. (a) Requires the early voting clerk to produce a list of all additional qualified voters who reside at a residential care facility where voting is conducted under this chapter.

(b) Requires the clerk to supply the election judges for the residential care facility with sufficient additional ballots and voting materials to allow any additional qualified voter who resides at the facility to vote under this chapter. Authorizes any registered voter who resides at the facility, during the voting period, to complete an application to request a mail ballot as if they were voting by mail. Requires an election judge for the facility to serve as a witness for any person who is unable to sign their name and authorizes the election judge to witness multiple applications.

(c) Requires an election judge for the residential care facility to accept a properly completed application for a ballot made under this section, and to provide a ballot to the voter. Requires the election judge to make a notation on an application that it was made under this section.

(d) Requires a voter who applies for a ballot under this section to vote in the manner provided by Section 107.008, except that the voter's ballot is required to be stored with the voter's application, and the voter's ballot is prohibited from being counted if the voter was not a qualified voter for the election as demonstrated from the information contained in the voter's application.

Sec. 107.010. RETENTION OF RECORDS. (a) Requires the election judges for the residential care facility to record the number of ballots voted. Requires both of the election judges for each facility and the early voting clerk to sign and attest to the number of ballots issued.

(b) Requires the election judges, on completion of voting under this chapter, to record the number of completed ballots, spoiled ballots, and unused returned ballots.

Sec. 107.011. PROOF OF IDENTIFICATION PRESENTED AT RESIDENTIAL CARE FACILITY. (a) Authorizes a voter voting under this chapter, notwithstanding Section 63.0101 (Documentation of Proof of Identification) or any other law, to submit a statement as proof of identification signed by both election judges for the residential care facility that contains the name and address of the voter and verifies that the voter is a resident of the facility and appears on the list of registered voters.

(b) Requires the election judges to enclose the statement in the carrier envelope.

Sec. 107.012. ASSISTING VOTER; NOTICE. (a) Authorizes the clerk, on written request to the early voting clerk by a relative of a registered voter in a residential care facility, to notify the relative of the time or times at which election judges will conduct voting at the facility. Authorizes the relative to be present at the facility while voting is conducted.

(b) Authorizes the following persons, on request of the voter, to assist a voter in marking the voter's ballot: an election judge or a person selected by the voter who is present for voting conducted at the residential care facility.

(c) Requires an election judge to seal a ballot if the voter receives assistance from a person who is not an election judge.

Sec. 107.013. SECURITY OF BALLOTS AND MATERIALS. (a) Requires the election judges for the facility, on completion of the voting each day on which voting is conducted at a residential care facility under this chapter, to seal the ballot envelopes and any absentee ballot applications inside a secure envelope and to seal the envelope and sign the seal. Requires the election judges to place the envelope inside a ballot bag or container.

(b) Requires the election judges, as soon as possible after conducting voting at a residential care facility, but not later than 18 hours after leaving the facility, to deliver the ballot bag or container to the early voting clerk.

Sec. 107.014. PROVISION OF MAIL BALLOT TO CERTAIN VOTERS. Requires the election judges for the facility, if a qualified voter residing at a residential care facility and seeking to vote at the facility under this chapter is not able to cast a ballot during any time when voting is conducted at the facility, to inform the early voting clerk. Requires the clerk to mail the ballot to the voter not later than the fourth day before election day.

Sec. 107.015. WATCHERS. (a) Authorizes a watcher, in an election held under this chapter, to observe the process of ballot distribution in the common areas of a residential care facility in a manner consistent with Chapter 33 (Watchers).

(b) Authorizes a political party entitled to have the names of its nominees placed on the general election ballot to appoint a watcher to accompany the election judges to a residential care facility.

(c) Requires a political party seeking to appoint a watcher to serve at a residential care facility to submit the name of the watcher to the county election officer of the county in which the facility is located, not later than the close of business on the last business day before the date the watcher seeks to observe the conduct of the election under this chapter.

(d) Requires a watcher to present the watcher's certificate of appointment to an election judge for the residential care facility on arrival at the facility.

Sec. 107.016. LIMITATIONS ON APPLICABILITY OF CHAPTER. (a) Provides that the early voting clerk is not required to send election judges to conduct an election at a residential care facility unless there are at least five registered voters who are residents of the facility.

(b) Provides that this chapter does not prevent a registered voter from voting early by personal appearance, voting on election day, or voting by mail from an address other than the residential care facility, including from the address of a family member designated under Section 84.002 (Contents of Application).

Sec. 107.017. RULES. Requires the Texas secretary of state to adopt rules and prescribe procedures for voting at a residential care facility in accordance with this chapter.

SECTION 4. Amends Subchapter A, Chapter 241, Health and Safety Code, by adding Section 241.0071, as follows:

Sec. 241.0071. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires a hospital to comply with Chapter 107, Election Code.

SECTION 5. Amends Subchapter A, Chapter 242, Health and Safety Code, by adding Section 242.0181, as follows:

Sec. 242.0181. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires an institution to comply with Chapter 107, Election Code.

SECTION 6. Amends Subchapter A, Chapter 246, Health and Safety Code, by adding Section 246.0041, as follows:

Sec. 246.0041. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires a continuing care facility to comply with Chapter 107, Election Code.

SECTION 7. Amends Subchapter A, Chapter 247, Health and Safety Code, by adding Section 247.008, as follows:

Sec. 247.008. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires an assisted living facility to comply with Chapter 107, Election Code.

SECTION 8. Amends Subchapter A, Chapter 248, Health and Safety Code, by adding Section 248.004, as follows:

Sec. 248.004. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires a special care facility to comply with Chapter 107, Election Code.

SECTION 9. Amends Chapter 105, Human Resources Code, by adding Section 105.004, as follows:

Sec. 105.004. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires an establishment to comply with Chapter 107, Election Code.

SECTION 10. Makes application of Sections 241.0071, 242.0181, 247.008, and 248.004, Health and Safety Code, as added by this Act, prospective.

SECTION 11. Effective date: September 1, 2017.