

- SUBJECT:** Increased penalties for criminal offenses involving an election
- COMMITTEE:** Elections — committee substituted recommended
- VOTE:** 4 ayes — Denny, Bohac, Anderson, T. Smith
- 0 nays
- 3 absent — Anchia, Hughes, J. Jones
- WITNESSES:** For — Tina Benkiser, Republican Party of Texas; (*Registered, but did not testify*: Frank Reilly, Republican Party of Texas)
- Against — (*Registered, but did not testify*: Mike Lavigne, Texas Democratic Party; Suzy Woodford, Common Cause Texas)
- On — Elizabeth Winn, Secretary of State's Office
- BACKGROUND:** Under current law, Election Code, sec. 86.006(g), relating to returning a marked ballot by mail, establishes that an offense is:
- a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if a person possesses at least one but fewer than 10 ballots or carrier envelopes without the consent of the voters, in which event the offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000);
 - a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the person possesses at least 10 but fewer than 20 ballots or carrier envelopes unless the person possesses the ballots without the consent of the voters, in which event the offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000); or
 - a state jail felony if the person possesses 20 or more ballots or carrier envelopes, unless the person possesses the ballots without the consent of the voters, in which event the offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

Election Code, sec. 64.036, describes actions that constitute the unlawful assistance of voters, which is a class A misdemeanor.

Under Election Code, sec. 86.010, which governs assisting a voter casting a ballot by mail, a person commits an offense if that person knowingly fails to provide information on the official carrier envelope as required. An offense 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.

DIGEST:

CSHB 3207 would amend Election Code, sec. 64.036(d), pertaining to unlawfully assisting a voter, to increase the criminal penalty from a class A misdemeanor to a third-degree felony.

The bill would change standards and penalties in Election Code, sec. 86.006(g), on returning marked ballots by mail, to:

- a class A misdemeanor, if a person possessed or had possessed at least one, but fewer than three, ballots or carrier envelopes during an election cycle, unless the person possessed them without the consent of the voters, in which event the offense would be a third-degree felony;
- a felony of the third degree, if the person possessed or had possessed three or more ballots or carrier envelopes during an election cycle, unless the person possessed the ballots or envelopes without the consent of the voters, in which case the offense would be a second-degree felony.

The bill would increase penalties in Election Code, sec. 86.010(g), to state that unlawfully assisting a voter casting a ballot by mail would be a third-degree felony, increased from a class A misdemeanor in current law, unless the person assisting the voter was convicted of an offense under sec. 64.036 for providing unlawful assistance to the same voter, in which case the offense would be a second-degree felony, instead of the present state jail felony.

The bill would take effect September 1, 2005, and would apply only to an offense committed on or after that date. An offense would be considered committed before the effective date if any element of the offense was committed prior to September 1, 2005.

SUPPORTERS
SAY:

CSHB 3207 would increase penalties for the offenses of unlawfully assisting a voter and collecting or possessing mail ballots of other voters. Allegations of fraud in these two areas have continued to rise. Although the elderly, disabled, and severely ill are most often the direct victims of this type of voter fraud, every voter is compromised by such illegal conduct.

Last November, there were numerous reports of illegal "vote harvesting," especially with shut-ins. In these instances, vote thieves offer to help an individual voter but actually steal the person's ballot. These operatives routinely sell votes to candidates and charge for each mail-in ballot.

Traditionally, voter fraud has been considered a low-risk crime in Texas, and thus, the penalties are so low as to make prosecutions rare. By increasing penalties for most of these offenses to a felony, this bill would give greater incentive to prosecutors to pursue such cases. The bill would not affect affirmative defenses to prosecution, such as being related to the voter or registered to vote at the same address as the voter. Individuals willing to violate our elections' process so blatantly, however, should go to prison.

Election fraud is not a partisan issue. A poll among voters determined that 82 percent believe that controls should be in place to stop voter fraud. This bill would help restore faith in our voting processes.

OPPONENTS
SAY:

CSHB 3207 would be part of an overall effort to scare people out of conducting mail ballot programs. By increasing penalties surrounding possession of mail ballots to felonies, this bill could thwart early voting programs that offer a legitimate service, particularly to the elderly and disabled—and even could discourage assistance with family members. While there is increased talk of voter fraud, there are no facts substantiating such reports.

This bill would seem to contradict the penalty provisions of HB 2405 by Keel, which passed the House on May 3 and would make directing the return of a marked mail ballot with the knowledge that the voter was not entitled to such a ballot a class C misdemeanor (maximum fine of \$500).

NOTES:

The committee substitute would modify the bill as introduced to conform to a Legislative Council draft and would substitute the effective date from immediate effect to September 1, 2005.

HB 2405 by Keel, which would establish a class C misdemeanor for directing the return of marked mail ballot with the knowledge that the voter was not entitled to such a ballot, passed the House on May 3 and has been referred to the Senate State Affairs Committee. HB 1994 by Talton, which would make assisting more than one voter with a mail ballot in the same election a class B misdemeanor, was reported favorably as substituted by the Elections Committee on April 20.