

By Senator Silver

38-1299-98

1                                   A bill to be entitled  
2           An act relating to the Florida Election Code;  
3           amending s. 97.021, F.S.; providing a  
4           definition; amending s. 101.62, F.S.; providing  
5           procedures for requesting absentee ballots;  
6           amending s. 101.64, F.S.; modifying the form  
7           for the secrecy envelope for absentee ballots;  
8           amending s. 101.65, F.S.; modifying the  
9           instructions to absentee electors; amending s.  
10          104.012, F.S.; increasing the criminal penalty  
11          for certain acts relating to registration of  
12          voters; amending s. 104.013, F.S.; increasing  
13          the criminal penalty for unauthorized use or  
14          destruction of a voter registration  
15          identification card; amending s. 104.031, F.S.;  
16          increasing the criminal penalty for false  
17          declaration to secure assistance in preparing a  
18          ballot; creating s. 104.042, F.S.; providing a  
19          criminal penalty for perpetrating or aiding in  
20          the perpetration of any fraud or misconduct in  
21          connection with an absentee ballot; creating s.  
22          104.043, F.S.; providing an inference with  
23          respect to the possession of an altered or  
24          fraudulent absentee ballot; amending s.  
25          104.045, F.S.; increasing the criminal penalty  
26          for vote selling; amending s. 104.051, F.S.;  
27          increasing the criminal penalty for corrupt  
28          practices; amending s. 104.0515, F.S.;  
29          increasing the criminal penalty for  
30          interference with or deprivation of voting  
31          rights; amending s. 104.061, F.S.; increasing

1 the criminal penalty for corruptly influencing  
2 voting; amending s. 104.081, F.S.; increasing  
3 the criminal penalty for threats of employers  
4 to control employees' votes; amending s.  
5 104.185, F.S.; increasing the criminal penalty  
6 for signing a petition more than once;  
7 providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

11 Section 1. Present subsections (12) through (30) of  
12 section 97.021, Florida Statutes, are redesignated as  
13 subsections (13) through (31), respectively, and a new  
14 subsection (12) is added to that section to read:

15 97.021 Definitions.--For the purposes of this code,  
16 except where the context clearly indicates otherwise, the  
17 term:

18 (12) "Legal residence" means the residence for which  
19 the elector has filed for a homestead, and if no homestead has  
20 been claimed by the elector, the residence where the elector  
21 has continuously resided for at least 90 days prior to the  
22 registration day for the election in which the elector will  
23 vote.

24 Section 2. Subsection (1) of section 101.62, Florida  
25 Statutes, is amended to read:

26 101.62 Request for absentee ballots.--

27 (1) The supervisor may accept a request for an  
28 absentee ballot only from an elector, which may be made only  
29 by mail or in person or for an elector from any person  
30 designated by such elector. The request for an absentee ballot  
31 by mail may be honored only if the elector provides

1 documentation establishing that he or she will be physically  
2 unable to vote on the scheduled election date for one of the  
3 following reasons:

4 (a) Infirmity, illness, or advanced age prevents the  
5 elector from attending the polls;

6 (b) It is necessary that the elector be absent from  
7 the precinct of his or her residence during the hours the  
8 polls are open for voting on election day;

9 (c) The elector is an inspector, a poll worker, a  
10 deputy voting-machine custodian, a deputy sheriff, a  
11 supervisor of elections, or a deputy supervisor who is  
12 assigned to a precinct different from that in which he or she  
13 is registered;

14 (d) Because of the tenets of the elector's religion,  
15 he or she cannot attend the polls on the date of the general,  
16 special, or primary election;

17 (e) The elector has changed his or her permanent  
18 residency to another county in this state within the time  
19 period during which the registration books are closed for the  
20 election (such an elector may vote only for national and  
21 statewide offices and statewide issues);

22 (f) The elector has changed his or her permanent  
23 residency to another state and is unable under the laws of  
24 such state to vote in the general election (such an elector  
25 may vote only for President and Vice President).

26  
27 The request for an absentee ballot made by the elector in  
28 person shall be honored if the elector will be absent from the  
29 precinct of his or her residence during the hours the polls  
30 are open for voting on election day, and the voter agrees to  
31 vote in person prior to the election. One request shall be

1 deemed sufficient to receive an absentee ballot for all  
2 elections ~~that~~ ~~which~~ are held within a calendar year, unless  
3 the elector or the elector's designee indicates at the time  
4 the request is made the elections for which the elector  
5 desires to receive an absentee ballot. Such request may be  
6 considered canceled when any first-class mail sent by the  
7 supervisor to the elector is returned as undeliverable. ~~Such~~  
8 ~~request may be made in person, by mail, or by telephone.~~

9 Section 3. Section 101.64, Florida Statutes, is  
10 amended to read:

11 101.64 Delivery of absentee ballots; envelopes;  
12 form.--

13 (1) The supervisor shall enclose with each absentee  
14 ballot two envelopes: a secrecy envelope, into which the  
15 absent elector shall enclose his or her marked ballot; and a  
16 mailing envelope, into which the absent elector shall then  
17 place the secrecy envelope, which shall be addressed to the  
18 supervisor and also bear on the back side a certificate in  
19 substantially the following form:

20  
21 Note: Please Read Instructions Carefully Before  
22 Marking Ballot and Completing Voter's Certificate.

23 VOTER'S CERTIFICATE

24 I, ...(print name)..., do solemnly swear or affirm that  
25 I am a qualified elector in this election, that I am unable to  
26 attend the polls on election day because of a reason set forth  
27 in s. 101.62(1), and that I have not and will not vote more  
28 than one ballot in this election. I understand that failure  
29 to sign this certificate and have my signature witnessed will  
30 invalidate my ballot.

31 ...(Voter's Signature)...

1  
2 Note: Your Signature Must Be Witnessed By Two Witnesses ~~One~~  
3 ~~Witness~~ 18 Years of Age or Older as provided in Item 7. of the  
4 Instruction Sheet.

5  
6 I swear or affirm that the elector signed this Voter's  
7 Certificate in my presence.  
8 ... (Signature of Witnesses ~~Witness~~)...  
9 ... (Address)... ... (City/State)...

10  
11 (2) The certificate shall be arranged on the back of  
12 the mailing envelope so that the lines for the signatures of  
13 the absent elector and the attesting witnesses ~~witness~~ are  
14 across the seal of the envelope; however, no statement shall  
15 appear on the envelope which indicates that a signature of the  
16 voter or witness must cross the seal of the envelope. The  
17 absent elector and the attesting witnesses ~~witness~~ shall  
18 execute the certificate on the envelope. The witnesses shall  
19 print their names next to their signatures and shall also list  
20 their voter's registration number or driver's license number  
21 for identification purposes on the certificate. The failure to  
22 provide all this information invalidates the absentee ballot.

23 Section 4. Section 101.65, Florida Statutes, is  
24 amended to read:

25 101.65 Instructions to absent electors.--The  
26 supervisor shall enclose with each absentee ballot separate  
27 printed instructions in substantially the following form:

28  
29 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

30 1. VERY IMPORTANT. In order to ensure that your  
31 absentee ballot will be counted, it should be completed and

1 returned as soon as possible so that it can reach the  
2 supervisor of elections of the county in which your precinct  
3 is located no later than 7 p.m. on the day of the election.  
4 2. Mark your ballot in secret as instructed on the  
5 ballot.  
6 3. Place your marked ballot in the enclosed secrecy  
7 envelope.  
8 4. Insert the secrecy envelope into the enclosed  
9 mailing envelope which is addressed to the supervisor.  
10 5. Seal the mailing envelope and completely fill out  
11 the Voter's Certificate on the back of the mailing envelope.  
12 6. VERY IMPORTANT. Sign your name on the line above  
13 "(Voter's Signature)."  
14 7. VERY IMPORTANT. In order for your absentee ballot  
15 to be counted, it must include the signature and address of  
16 two witnesses ~~a witness~~ 18 years of age or older affixed to  
17 the Voter's Certificate. These witnesses must also print their  
18 names next to their signatures and list their voter's  
19 registration number or driver's license number for  
20 identification on the certificate.No candidate may serve as  
21 an attesting witness.  
22 8. Mail, deliver, or have delivered the completed  
23 mailing envelope. Be sure there is sufficient postage if  
24 mailed.  
25 9. VERY IMPORTANT. Any person perpetrating or  
26 attempting to perpetrate or aid in the perpetration of any  
27 fraud in connection with an absentee ballot is guilty of a  
28 felony and can be imprisoned for up to 5 years.  
29 Section 5. Section 104.012, Florida Statutes, is  
30 amended to read:  
31

1           104.012 Consideration for registration; interference  
2 with registration; soliciting registrations for compensation;  
3 alteration of registration application.--

4           (1) Any person who gives anything of value that is  
5 redeemable in cash to any person in consideration for his or  
6 her becoming a registered voter commits a felony ~~misdemeanor~~  
7 of the third ~~first~~ degree, punishable as provided in s.  
8 775.082, ~~or~~ s. 775.083, or s. 775.084. This section shall not  
9 be interpreted, however, to exclude such services as  
10 transportation to the place of registration or baby-sitting in  
11 connection with the absence of an elector from home for  
12 registering.

13           (2) A person who by bribery, menace, threat, or other  
14 corruption, directly or indirectly, influences, deceives, or  
15 deters or attempts to influence, deceive, or deter any person  
16 in the free exercise of that person's right to register to  
17 vote at any time, upon the first conviction, commits a felony  
18 ~~misdemeanor~~ of the third ~~first~~ degree, punishable as provided  
19 in s. 775.082, ~~or~~ s. 775.083, or s. 775.084, and, upon any  
20 subsequent conviction, commits a felony of the second ~~third~~  
21 degree, punishable as provided in s. 775.082, s. 775.083, or  
22 s. 775.084.

23           (3) A person may not solicit or pay another person to  
24 solicit voter registrations for compensation that is based  
25 upon the number of registrations obtained. A person who  
26 violates the provisions of this subsection commits a felony  
27 ~~misdemeanor~~ of the third ~~first~~ degree, punishable as provided  
28 in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

29           (4) A person who alters the voter registration  
30 application of any other person, without the other person's  
31 knowledge and consent, commits a felony ~~misdemeanor~~ of the

1 ~~third first~~ degree, punishable as provided in s. 775.082, ~~or~~  
2 s. 775.083, or s. 775.084.

3 Section 6. Section 104.013, Florida Statutes, is  
4 amended to read:

5 104.013 Unauthorized use, possession, or destruction  
6 of voter registration identification card.--

7 (1) It is unlawful for any person knowingly to have in  
8 his or her possession any blank, forged, stolen, fictitious,  
9 counterfeit, or unlawfully issued voter registration  
10 identification card unless possession by such person has been  
11 duly authorized by the supervisor.

12 (2) It is unlawful for any person to barter, trade,  
13 sell, or give away a voter registration identification card  
14 unless said person has been duly authorized to issue a  
15 registration identification card.

16 (3) It is unlawful for any person willfully to destroy  
17 or deface the registration identification card of a duly  
18 registered voter.

19 (4) Any person who violates any of the provisions of  
20 this section commits a ~~felony misdemeanor~~ of the ~~third first~~  
21 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083,  
22 or s. 775.084.

23 Section 7. Section 104.031, Florida Statutes, is  
24 amended to read:

25 104.031 False declaration to secure assistance in  
26 preparing ballot.--Any person who makes a false declaration  
27 for assistance in voting, or in the preparation of his or her  
28 ballot, in any election is guilty of a ~~felony misdemeanor~~ of  
29 the ~~third first~~ degree, punishable as provided in s. 775.082,  
30 ~~or~~ s. 775.083, or s. 775.084.

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1           Section 8. Section 104.042, Florida Statutes, is  
2 created to read:

3           104.042 Fraud or misconduct in connection with an  
4 absentee ballot.--Any person perpetrating or attempting to  
5 perpetrate or aid in the perpetration of any fraud or  
6 misconduct in connection with an absentee ballot is guilty of  
7 a felony of the third degree, punishable as provided in s.  
8 775.082, s. 775.083, or s. 775.084. Conduct prohibited by this  
9 section includes, but is not limited to, false witnessing of  
10 an absentee ballot, obtaining an absentee ballot from election  
11 authorities through misrepresentation or false promises,  
12 unlawful possession of an unopened envelope containing an  
13 absentee ballot, willful interference without authority in the  
14 delivery by election officials of an absentee ballot to a  
15 voter, and using a false address to allow registration or  
16 voting in an election in which that person would not otherwise  
17 be eligible to vote.

18           Section 9. Section 104.043, Florida Statutes, is  
19 created to read:

20           104.043 Presumption if in possession of altered or  
21 fraudulent absentee ballot.--Proof of possession of an altered  
22 or fraudulent absentee ballot, unless satisfactorily  
23 explained, gives rise to an inference that the person in  
24 possession had knowledge of the alteration or fraud.

25           Section 10. Section 104.045, Florida Statutes, is  
26 amended to read:

27           104.045 Vote selling.--Any person who:

28           (1) Corruptly offers to vote for or against, or to  
29 refrain from voting for or against, any candidate in any  
30 election in return for pecuniary or other benefit; or

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1           (2) Accepts a pecuniary or other benefit in exchange  
2 for a promise to vote for or against, or to refrain from  
3 voting for or against, any candidate in any election,  
4  
5 is guilty of a ~~felony misdemeanor~~ of the third first degree,  
6 punishable as provided in s. 775.082, ~~or s. 775.083, or s.~~  
7 775.084.

8           Section 11. Section 104.051, Florida Statutes, is  
9 amended to read:

10           104.051 Violations; neglect of duty; corrupt  
11 practices.--

12           (1) Any official who willfully violates any of the  
13 provisions of this election code shall be excluded from the  
14 polls. Any election official who is excluded shall be replaced  
15 as provided in this code.

16           (2) Any official who willfully refuses or willfully  
17 neglects to perform his or her duties as prescribed by this  
18 election code is guilty of a misdemeanor of the first degree,  
19 punishable as provided in s. 775.082 or s. 775.083.

20           (3) Any official who performs his or her duty as  
21 prescribed by this election code fraudulently or corruptly is  
22 guilty of a felony of the third degree, punishable as provided  
23 in s. 775.082, s. 775.083, or s. 775.084.

24           (4) Any supervisor, deputy supervisor, or election  
25 employee who attempts to influence or interfere with any  
26 elector voting a ballot is guilty of a ~~felony misdemeanor~~ of  
27 the third first degree, punishable as provided in s. 775.082,  
28 ~~or s. 775.083, or s. 775.084~~.

29           Section 12. Section 104.0515, Florida Statutes, is  
30 amended to read:

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1           104.0515 Voting rights; deprivation of, or  
2 interference with, prohibited; penalty.--

3           (1) All citizens of this state who are otherwise  
4 qualified by law to vote at any election by the people in this  
5 state or in any district, county, city, town, municipality,  
6 school district, or other subdivision of this state shall be  
7 entitled and allowed to vote at all such elections without  
8 distinction according to race, color, or previous condition of  
9 servitude, notwithstanding any law, ordinance, regulation,  
10 custom, or usage to the contrary.

11           (2) No person acting under color of law shall:

12           (a) In determining whether any individual is qualified  
13 under law to vote in any election, apply any standard,  
14 practice, or procedure different from the standards,  
15 practices, or procedures applied under law to other  
16 individuals within the same political subdivision who have  
17 been found to be qualified to vote; or

18           (b) Deny the right of any individual to vote in any  
19 election because of an error or omission on any record or  
20 paper relating to any application, registration, or other act  
21 requisite to voting, if such error or omission is not material  
22 in determining whether such individual is qualified under law  
23 to vote in such election. This paragraph shall apply to  
24 absentee ballots only if there is a pattern or history of  
25 discrimination on the basis of race, color, or previous  
26 condition of servitude in regard to absentee ballots.

27           (3) No person, whether acting under color of law or  
28 otherwise, shall intimidate, threaten, or coerce, or attempt  
29 to intimidate, threaten, or coerce, any other person for the  
30 purpose of interfering with the right of such other person to  
31 vote or not to vote as that person may choose, or for the

1 purpose of causing such other person to vote for, or not vote  
2 for, any candidate for any office at any general, special, or  
3 primary election held solely or in part for the purpose of  
4 selecting or electing any such candidate.

5 (4) No voting qualification or prerequisite to voting,  
6 and no standard, practice, or procedure, shall be imposed or  
7 applied by any political subdivision of this state to deny or  
8 abridge the right of any citizen to vote on account of race or  
9 color.

10 (5) Any person who violates the provisions of this  
11 section is guilty of a felony misdemeanor of the third first  
12 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083,  
13 or s. 775.084.

14 Section 13. Section 104.061, Florida Statutes, is  
15 amended to read:

16 104.061 Corruptly influencing voting.--

17 (1) Whoever by bribery, menace, threat, or other  
18 corruption whatsoever, either directly or indirectly, attempts  
19 to influence, deceive, or deter any elector in voting or  
20 interferes with him or her in the free exercise of the  
21 elector's right to vote at any election is guilty of a felony  
22 ~~misdemeanor~~ of the third first degree, punishable as provided  
23 in s. 775.082, ~~or~~ s. 775.083, or s. 775.084 for the first  
24 conviction, and a felony of the second third degree,  
25 punishable as provided in s. 775.082, s. 775.083, or s.  
26 775.084, for any subsequent conviction.

27 (2) No person shall directly or indirectly give or  
28 promise anything of value to another intending thereby to buy  
29 that person's or another's vote or to corruptly influence that  
30 person or another in casting his or her vote. Any person who  
31 violates this subsection is guilty of a felony of the third

1 degree, punishable as provided in s. 775.082, s. 775.083, or  
2 s. 775.084. However, this subsection shall not apply to the  
3 serving of food to be consumed at a political rally or meeting  
4 or to any item of nominal value which is used as a political  
5 advertisement, including a campaign message designed to be  
6 worn by a person.

7 Section 14. Section 104.081, Florida Statutes, is  
8 amended to read:

9 104.081 Threats of employers to control votes of  
10 employees.--It shall be unlawful for any person having one or  
11 more persons in his or her service as employees to discharge  
12 or threaten to discharge any employee in his or her service  
13 for voting or not voting in any election, state, county, or  
14 municipal, for any candidate or measure submitted to a vote of  
15 the people. Any person who violates the provisions of this  
16 section is guilty of a felony misdemeanor of the third first  
17 degree, punishable as provided in s. 775.082, or s. 775.083,  
18 or s. 775.084.

19 Section 15. Section 104.185, Florida Statutes, is  
20 amended to read:

21 104.185 Petitions; knowingly signing more than once;  
22 signing another person's name or a fictitious name.--

23 (1) A person who knowingly signs a petition or  
24 petitions for a candidate, a minor political party, or an  
25 issue more than one time commits a felony misdemeanor of the  
26 third first degree, punishable as provided in s. 775.082, or  
27 s. 775.083, or s. 775.084.

28 (2) A person who signs another person's name or a  
29 fictitious name to any petition to secure ballot position for  
30 a candidate, a minor political party, or an issue commits a  
31

1 felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as  
2 provided in s. 775.082, ~~or~~ s. 775.083, ~~or~~ s. 775.084.

3 Section 16. This act shall take effect July 1, 1998.  
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6 SENATE SUMMARY

7 Amends various sections of the Florida Election Code.  
8 Provides procedures for requesting absentee ballots, and  
9 modifies the form for the secrecy envelope for such  
10 ballots. Modifies the instructions to absentee electors.  
11 Increases the criminal penalty for violations or  
12 provisions of the code including unlawful acts relating  
13 to registration of voters, unauthorized use or  
14 destruction of a voter registration identification card,  
15 false declarations to secure assistance in preparing a  
16 ballot, perpetrating or aiding in the perpetration of any  
17 fraud or misconduct in connection with an absentee  
18 ballot, vote selling, specified corrupt practices,  
19 interference with or deprivation of voting rights,  
20 corruptly influencing voting, and threats to employees.  
21 (See bill for details.)  
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