

By: Birdwell, et al.

S.B. No. 21

A BILL TO BE ENTITLED

AN ACT

relating to the qualifications, duties, and limitations of Texas delegates to a convention called under Article V of the United States Constitution; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle Z, Title 3, Government Code, is amended by adding Chapter 393 to read as follows:

CHAPTER 393. DELEGATES TO FEDERAL ARTICLE V CONVENTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternate delegate" means an individual appointed under Section 393.051 to represent this state as an alternate delegate at an Article V convention.

(2) "Article V convention" means a convention called by the United States Congress under Article V of the United States Constitution.

(3) "Delegate" means:

(A) an individual appointed under Section 393.051 to represent this state as a delegate at an Article V convention; or

(B) an alternate delegate who fills a vacancy in the office of the alternate delegate's paired delegate.

(4) "Unauthorized vote" means a vote cast by a delegate or alternate delegate at an Article V convention that:

1 (A) is contrary to the instructions adopted under
2 Section 393.101 in effect at the time the vote is taken;

3 (B) exceeds the scope or subject matter of the
4 Article V convention as authorized by the legislature in the
5 application to the United States Congress to call the convention if
6 the legislature made an application to call the convention; or

7 (C) exceeds the scope or subject matter of the
8 Article V convention if the legislature did not make an application
9 to the United States Congress to call the convention.

10 Sec. 393.002. RULES AND PROCEDURES. (a) The legislature
11 by concurrent resolution shall provide the rules and procedures
12 necessary to implement this chapter.

13 (b) A legislative action relating to the appointment or
14 recall of a delegate or alternate delegate, the filling of a vacancy
15 in the office of a delegate or alternate delegate, or the
16 determination of an unauthorized vote may be accomplished through a
17 resolution adopted by the house that takes the action.

18 SUBCHAPTER B. DELEGATES AND ALTERNATE DELEGATES

19 Sec. 393.051. APPOINTMENT. (a) As soon as possible
20 following the calling of an Article V convention, the legislature
21 shall appoint delegates and alternate delegates to the convention
22 as provided by Subsection (b) or (c), as applicable.

23 (b) Except as provided by Subsection (c), the legislature
24 shall appoint five delegates and five alternate delegates to the
25 Article V convention as follows:

26 (1) the house of representatives shall appoint three
27 members of the house as delegates and three members of the house as

1 alternate delegates; and

2 (2) the senate shall appoint two members of the senate
3 as delegates and two members of the senate as alternate delegates.

4 (c) If the number of delegates allocated to represent the
5 state at the Article V convention is determined by Congress or by
6 agreement among the states to be a number other than five, the
7 legislature shall appoint the allocated number of delegates and an
8 equal number of alternate delegates as follows:

9 (1) if the allocated number of delegates is an odd
10 number:

11 (A) the house of representatives shall appoint a
12 number of members of the house as delegates that is equal to
13 three-fifths of the allocated number or as close to that proportion
14 as possible and the same number of members of the house as alternate
15 delegates; and

16 (B) the senate shall appoint a number of members
17 of the senate as delegates that is equal to two-fifths of the
18 allocated number or as close to that proportion as possible and the
19 same number of members of the senate as alternate delegates; and

20 (2) if the allocated number of delegates is an even
21 number:

22 (A) the house of representatives shall appoint a
23 number of members of the house as delegates that is equal to
24 one-half of the allocated number and the same number of members of
25 the house as alternate delegates; and

26 (B) the senate shall appoint a number of members
27 of the senate as delegates that is equal to one-half of the

1 allocated number and the same number of members of the senate as
2 alternate delegates.

3 (d) Service as a delegate or alternate delegate by a member
4 of the legislature is an additional duty of the member's
5 legislative office.

6 (e) The appointing house shall pair each alternate delegate
7 with a delegate at the time each appointment is made.

8 Sec. 393.052. VACANCY. (a) An alternate delegate
9 automatically fills a vacancy in the office of the alternate
10 delegate's paired delegate unless the office of the alternate
11 delegate is simultaneously vacated.

12 (b) Except as provided by Subsection (a), the house that
13 appointed a delegate or alternate delegate shall fill a vacancy in
14 the office of the delegate or alternate delegate as soon as possible
15 after the vacancy occurs.

16 Sec. 393.053. RECALL. (a) The house that appointed a
17 delegate or alternate delegate may recall the delegate or alternate
18 delegate.

19 (b) A vacancy created by the recall of a delegate or
20 alternate delegate shall be filled in the manner provided by
21 Section 393.052.

22 Sec. 393.054. COMPENSATION; REIMBURSEMENT OF EXPENSES.

23 (a) A delegate or alternate delegate is not entitled to
24 compensation for service as a delegate or alternate delegate.

25 (b) A delegate or alternate delegate is entitled to
26 reimbursement for necessary expenses incurred in performance of
27 official duties, subject to any applicable limitation on

1 reimbursement provided by general law or the General Appropriations
2 Act.

3 Sec. 393.055. OATH. (a) An individual appointed as a
4 delegate or alternate delegate must take the following oath before
5 voting or taking an action as a delegate or alternate delegate of
6 this state: "I do solemnly swear (or affirm) that to the best of my
7 abilities, I will, as a delegate (or alternate delegate) to the
8 Article V convention, act according to the limits of the authority
9 granted to me as a delegate or alternate delegate by Texas law, will
10 not consider or vote to approve an amendment to the United States
11 Constitution not authorized by the Texas Legislature in its
12 application to the United States Congress to call this convention
13 or an amendment outside the scope of this convention if the Texas
14 Legislature did not make an application to the United States
15 Congress to call this convention, and will faithfully abide by and
16 execute the instructions to delegates or alternate delegates
17 adopted by the Texas Legislature."

18 (b) Each delegate and alternate delegate must file the
19 executed oath with the secretary of state.

20 Sec. 393.056. PROHIBITION ON ACCEPTANCE OF BENEFIT. A
21 delegate or alternate delegate may not accept a gift, a loan, food
22 or beverages, entertainment, lodging, transportation, or another
23 benefit from a person, including a corporation, nonprofit
24 organization, or individual, if that person is required to register
25 as a lobbyist under Chapter 305 or under other law.

26 SUBCHAPTER C. DUTIES OF DELEGATES AND ALTERNATE DELEGATES

27 Sec. 393.101. INSTRUCTIONS TO DELEGATES AND ALTERNATE

1 DELEGATES. (a) At the time delegates and alternate delegates are
2 appointed, the legislature by joint resolution shall adopt
3 instructions to the delegates and alternate delegates to govern the
4 actions of those officers at the Article V convention.

5 (b) The legislature may not adopt instructions for an
6 Article V convention called following an application by the
7 legislature to the United States Congress for the convention that
8 authorize a delegate or alternate delegate to consider or vote to
9 approve an amendment to the United States Constitution that is not
10 authorized by the legislature in its application for the
11 convention.

12 (c) The legislature by joint resolution may amend the
13 instructions at any time.

14 Sec. 393.102. DUTY OF ALTERNATE DELEGATE. An alternate
15 delegate shall act in the place of the alternate delegate's paired
16 delegate when the delegate is absent from the convention.

17 Sec. 393.103. UNAUTHORIZED VOTE. (a) A delegate or
18 alternate delegate may not cast an unauthorized vote.

19 (b) Except as provided by Section 393.104, the
20 determination that a vote is an unauthorized vote for purposes of
21 this section may only be made by the house that appointed the
22 delegate or alternate delegate who cast the vote.

23 (c) A vote determined to be an unauthorized vote is invalid.

24 (d) A delegate or alternate delegate who casts a vote
25 determined to be an unauthorized vote is disqualified to continue
26 to serve as a delegate or alternate delegate. A vacancy in the
27 office of a delegate or alternate delegate created by the

1 disqualification of the delegate or alternate delegate shall be
2 filled in the manner provided by Section 393.052.

3 (e) The presiding officer of the house that determined that
4 a delegate or alternate delegate has cast an unauthorized vote
5 shall promptly notify the head of the state delegation and the
6 presiding officer of the Article V convention that the delegate or
7 alternate delegate has cast an unauthorized vote and is
8 disqualified to serve as a delegate or alternate delegate.

9 Sec. 393.104. OVERSIGHT COMMITTEE. (a) The legislature
10 shall appoint an Article V Oversight Committee at the time
11 delegates and alternate delegates are appointed under Section
12 393.051.

13 (b) The committee consists of the following 10 members:

- 14 (1) the lieutenant governor;
15 (2) the speaker of the house of representatives;
16 (3) the chair of the senate state affairs committee;
17 (4) the chair of the house state affairs committee;
18 (5) three members of the senate appointed by the
19 lieutenant governor; and

20 (6) three members of the house of representatives
21 appointed by the speaker of the house of representatives.

22 (c) The lieutenant governor and the speaker of the house of
23 representatives are joint chairs of the committee.

24 (d) If the legislature is not convened in regular or special
25 session at any time during which an Article V convention is
26 convened, the members of the committee shall:

- 27 (1) meet at the call of either joint chair at the State

1 Capitol; and

2 (2) determine whether a vote cast by a delegate or
3 alternate delegate is an unauthorized vote for the purposes of
4 Section 393.103.

5 (e) A vote cast by a delegate or alternate delegate is an
6 unauthorized vote for the purposes of Section 393.103 if seven or
7 more members of the committee determine by committee vote that the
8 vote cast was an unauthorized vote.

9 (f) The committee is not authorized to take any action when
10 the legislature is convened in regular or special session.

11 Sec. 393.105. CRIMINAL PENALTY. (a) A delegate or
12 alternate delegate commits an offense if the delegate or alternate
13 delegate knowingly casts an unauthorized vote.

14 (b) An offense under this section is a state jail felony.

15 (c) A judge granting community supervision to a defendant
16 convicted of an offense under this section shall require as a
17 condition of community supervision that the defendant submit to not
18 less than 10 days of confinement in county jail. If a sentence of
19 confinement is imposed on the revocation of community supervision,
20 the term of confinement served under this subsection may not be
21 credited toward completion of the sentence imposed.

22 SECTION 2. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2017.