

HOUSE JOURNAL

SEVENTY-FOURTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-SEVENTH DAY — FRIDAY, MAY 19, 1995

The house met at 12:05 p.m. and was called to order by the speaker pro tempore.

The roll of the house was called and a quorum was announced present (Record 468).

Present — Mr. Speaker; Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Absent, Excused — Brady; Carona; Conley; Hawley; Park; Price; Rabuck; Sadler; Staples; Turner, S.

Absent — Rodriguez.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for today because of important business:

Hawley on motion of Serna.

(Rodriguez now present)

On motion of Representative Rodriguez and by unanimous consent, all members who were granted leaves of absence on the previous legislative day were granted leaves for this legislative day.

RULES SUSPENDED

Representative Rodriguez moved to suspend all necessary rules in order to take up and consider at this time, on third reading and final passage, the bills on the local and consent bills calendars which were considered on the previous legislative day.

The motion prevailed without objection.

LOCAL AND CONSENT BILLS CALENDARS ON THIRD READING

The following bills which were considered on second reading on the previous legislative day on the local and consent bills calendars were laid before the house, read third time, and passed by a voice vote (members registering votes are shown following bill number):

HB 3237**SB 96****SB 118****SB 133****SB 149****SB 182****SB 209****SB 212****SB 255****SB 291****SB 397****SB 406****SB 413****SB 533****SB 544** (Chisum, Corte, Heflin, Kubiak, Patterson, and Talton - no)**SB 570****SB 597****SB 598****SB 645****SB 646****SB 702****SB 714** (Heflin - no)**SB 737** (Finnell - no)**SB 741****SB 775****SB 794****SB 892****SB 914****SB 935****SB 942**

SB 955

SB 982

SB 983

SB 992

SB 1015

SB 1038 (Johnson and Shields - no)

SB 1059

SB 1061

SB 1062

SB 1136

SB 1162

SB 1261

SB 1278

SB 1296

SB 1347

SB 1356 (Finnell - present, not voting)

SB 1357 (Finnell - present, not voting)

SB 1365

SB 1379

SB 1410 (Heflin - no)

SB 1414

SB 1438 (Finnell - present, not voting)

SB 1470

SB 1477

SB 1479

SB 1515

SB 1542

SB 1551 (Finnell - present, not voting)

SB 1585

SB 1604

SB 1620

SB 1628

SB 1629

SB 1645

SB 1688

The following bills which were considered on second reading on the previous legislative day on the local and consent bills calendars were laid before the house, read third time, and passed by (Record 469): 136 Yeas, 0 Nays, 1 Present, not voting (members registering votes and the results of the vote are shown following bill number).

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher(C); Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker.

Absent, Excused — Brady; Carona; Conley; Hawley; Park; Price; Rabuck; Sadler; Staples; Turner, S.

Absent — Cook; Goodman; Mowery.

SB 1693 (136-0-1)

SB 378 (136-0-1)

SB 428 (136-0-1)

SB 443 (136-0-1)

SB 478 (136-0-1)

SB 513 (136-0-1)

SB 888 (Finnell - no) (135-1-1)

SB 1084 (136-0-1)

SB 1129 (136-0-1)

SB 1173 (136-0-1)

SB 1431 (136-0-1)

SB 1491 (136-0-1)

(Speaker in the chair)

COMMITTEE GRANTED PERMISSION TO MEET

Representative Hill moved to suspend all necessary rules to allow the Committee on Urban Affairs to meet at this time.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Urban Affairs, at this time, speakers committee room.

Public Safety, on recess today, Desk 43, to consider pending business.

Civil Practices, on recess today, Desk 32.

Criminal Jurisprudence, on recess today, Desk 5.

Ways and Means, on recess today, Desk 70.

Juvenile Justice and Family Issues, on recess today, Desk 31, to consider **SB 188, SB 262, and SB 936.**

State Affairs, on recess today, Desk 121, to consider pending business.

Public Education, on recess today, Desk 102, to consider **SB 194.**

Land and Resource Management, on recess today, Desk 1.

RECESS

Representative Willis moved that the house recess until 12:35 p.m.

The motion prevailed without objection.

The house accordingly, at 12:20 p.m., recessed until 12:35 p.m.

AFTERNOON SESSION

The house met at 12:35 p.m. and was called to order by the speaker.

(Sadler now present)

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend a meeting of the conference committee on HB 1863:

Oliveira on motion of Telford.

The following members were granted leaves of absence temporarily for today to attend a conference committee on HB 1863:

Maxey on motion of Telford.

Thompson on motion of Telford.

Denny on motion of Telford.

Hilderbran on motion of Telford.

REGULAR ORDER OF BUSINESS SUSPENDED

By unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business in the district:

Gallego on motion of H. Cuellar.

**SB 3 ON THIRD READING
(Seidlits - House Sponsor)**

The speaker laid before the house, on its third reading and final passage,

SB 3, A bill to be entitled An Act relating to the regulation of motor carriers; providing civil, administrative, and criminal penalties.

The bill was read third time.

Amendment No. 1

Representative Bosse offered the following amendment to the bill:

Amend **CSSB 3** by adding a new appropriately numbered section to read as follows and renumbering the existing sections as appropriate:

SECTION _____. Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Section 3C to read as follows:

Sec. 3C. (a) A person may not require indemnification from a motor carrier as a condition to:

(1) the transportation of property by the motor carrier for compensation or hire; or

(2) entrance onto property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire.

(b) Subsection (a)(2) of this section does not apply to a claim arising from damages or losses from the wrongful or negligent act or omission of the motor carrier.

Amendment No. 1 was adopted without objection.

SB 3, as amended, was passed.

**SB 440 ON THIRD READING
(Gallego - House Sponsor)**

The speaker laid before the house, on its third reading and final passage,

SB 440, A bill to be entitled An Act relating to procedures for applying for a writ of habeas corpus by persons convicted of a felony and procedures for the compensation and appointment of counsel to represent certain persons charged with a capital felony.

The bill was read third time and was passed.

**SB 20 ON SECOND READING
(Siebert and Stiles - House Sponsors)**

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 20**.

CSSB 20, A bill to be entitled An Act relating to transferring the powers and duties of the state treasurer to the comptroller of public accounts.

CSSB 20 was read second time.

Amendment No. 1

Representative Stiles offered the following amendment to **CSSB 20**:

Amend **CSSB 20** as follows:

(1) In SECTION 2(a) of the bill, at the end of the first sentence (house committee report, page 2, line 9), strike "1997" and substitute "1996".

(2) In SECTION 3 of the bill, in the first sentence (house committee report, page 3, line 6), strike "1997" and substitute "1996".

(3) Add the following sentence at the end of SECTION 3 of the bill (house committee report, page 3, line 10):

This Act takes effect on the date the constitutional amendment takes effect for the limited purpose of allowing the state treasurer and the comptroller to make agreed preparatory transfers of records, employees, or real or personal property under Section 2(a) of this Act.

Amendment No. 1 was adopted without objection.

CSSB 20, as amended, was passed to third reading. (Heflin and Talton recorded voting no)

(Denny now present)

SB 94 ON SECOND READING

(Madden, Danburg, Denny, Stiles, and Greenberg - House Sponsors)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 94**.

CSSB 94, A bill to be entitled An Act relating to the regulation of political contributions, political expenditures, and political advertising in connection with certain judicial candidates and officeholders and to personal financial statements filed by certain judicial officeholders; providing civil and criminal penalties.

CSSB 94 was read second time.

(Speaker pro tempore in the chair)

(Maxey now present)

Amendment No. 1

Representatives Madden, Denny, Stiles, Danburg, Greenberg, Crabb, and Duncan offered the following amendment to **CSSB 94**:

Amend **CSSB 94** as follows:

(1) In SECTION 1 of the bill, in proposed Subsection (a)(1)(A), Section 253.153, Election Code (House Committee Report, page 3, line 2), strike "180th" and substitute "210th".

(2) In SECTION 1 of the bill, in proposed Subsection (a)(1)(B), Section 253.153, Election Code (House Committee Report, page 3, line 6), strike "180th" and substitute "210th".

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representatives Madden, Denny, Stiles, Greenberg, Crabb, and Danburg offered the following amendment to **CSSB 94**:

Amend **CSSB 94** in SECTION 6 of the bill by striking proposed Subsection (f), Section 255.008, Election Code (House Committee Report, page 27, lines 1-3), and substituting the following:

(f) A person who violates this section or a rule adopted under this section is liable for a civil penalty not to exceed:

(1) \$15,000, for a candidate for a statewide judicial office or a specific-purpose committee for supporting such a candidate;

(2) \$10,000, for a candidate for chief justice or justice, court of appeals, or a specific-purpose committee for supporting such a candidate; or

(3) \$5,000, for a candidate for any other judicial office covered by Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate.

(g) Section 253.176 applies to the imposition and disposition of a civil penalty under this section.

Amendment No. 2 was adopted without objection.

CSSB 94, as amended, was passed to third reading. (Heflin, Horn, and Swinford recorded voting no)

SB 102 ON SECOND READING

(Mowery - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 102, A bill to be entitled An Act relating to state employee contributions to the federal old age and survivors insurance program.

The bill was read second time.

Representative Bailey raised a point of order against further consideration of **SB 102** on the grounds that **SB 102** violates Rule 4, Section 34(b)(3), of the House Rules.

The chair overruled the point of order.

(Thompson now present)

Amendment No. 1

Representative Mowery offered the following amendment to the bill:

Amend **SB 102** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 606.064, Government Code, is amended to read as follows:

Sec. 606.064. EMPLOYEE CONTRIBUTIONS [~~BY STATE AGENCY~~].

(a) Each state employee, including a judge paid by the state, for whom an agreement for social security coverage is in effect under this subchapter shall pay contributions on wages in the amount of the employee tax. [~~The state shall pay all contributions on wages for social security coverage of a state employee except:~~

~~[(1) as provided by Section 606.065; or~~

~~[(2) the amount of the employee tax in excess of 5.85 percent of wages computed on a wage base of \$16,500 in a calendar year.]~~

~~(b) The obligation provided by this section is a condition of employment or of holding office. [The legislature may provide in the General Appropriations Act for a state contribution in excess of the amount provided in Subsection (a)(2).]~~

~~[(c) A state employee is obligated to pay only the difference between the amount the legislature provides and the amount required by federal law.~~

~~[(d) The contribution made by the state shall be paid from the same fund from which an employee receives compensation.~~

~~[(e) The comptroller may prorate the state's expected contribution for an employee's employee tax over the portion of the calendar year that the employee's salary is subject to the Federal Insurance Contributions Act to equalize the employee's monthly contributions during the portion of the year that the employee's salary is subject to Federal Insurance Contributions Act taxes.]~~

SECTION 2. Section 606.067(a), Government Code, is amended to read as follows:

(a) For a state employee who is paid from the state treasury, the legislature shall appropriate, from the same fund from which the employee is paid, an amount equal to the ~~[total of the]~~ state's contributions under Section 606.063 ~~[and Section 606.064 or 606.065].~~

SECTION 3. Chapter 659, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. BENEFIT REPLACEMENT PAY

Sec. 659.121. DEFINITIONS. In this subchapter:

(1) "Compensation" means, except as provided by Section 659.124, salary or wages subject to tax under the Federal Insurance Contributions Act.

(2) "Eligible state employee" means an individual who was on August 31, 1995:

(A) employed by a state agency and eligible for state payment of the employee tax under Section 606.064 as that section existed on that date;

(B) using unpaid leave from a position with a state agency, if the individual would have been eligible for state payment of the employee tax under Section 606.064 as that section existed on that date had the individual not been using unpaid leave from the position; or

(C) not working for a state agency if:

(i) the individual was not working on that date solely because the individual's employment with the agency customarily does not include the summer months;

(ii) the individual had contracted with the agency not later than that date for the individual to resume working for the agency not later than September 2, 1995; and

(iii) the position held by the individual on September 2, 1995, would have made the individual eligible for state payment of the employee tax under Section 606.064 as that section existed on August 31, 1995, if the employee had held the position on that date.

(3) "Eligible state-paid judge" means an individual who on August 31, 1995:

(A) held office; and

(B) was eligible for state payment of the employee tax under Section 606.065 as that section existed on that date.

(4) "Employee tax" means the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act.

(5) "Retirement contribution" means a mandatory contribution by an eligible state employee or eligible state-paid judge to a retirement system.

(6) "Retirement system" means the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the optional retirement program governed by Chapter 830, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two.

(7) "State agency" has the meaning assigned by Section 606.061.

Sec. 659.122. INCLUSION OF BENEFIT REPLACEMENT PAY. The salary or wages paid after December 31, 1995, to an eligible state employee or an eligible state-paid judge includes benefit replacement pay in the amount provided by Section 659.123.

Sec. 659.123. AMOUNT OF BENEFIT REPLACEMENT PAY. (a) Except as provided by Section 659.124, the benefit replacement pay of an eligible state employee or an eligible state-paid judge for a pay period is equal to the sum of:

(1) 5.85 percent of the compensation earned by the employee or judge during the pay period, subject to the limit provided by Subsection (b); and

(2) an additional amount equal to the retirement contribution paid by the employee or judge because of the benefit replacement pay provided by this subsection.

(b) The amount paid to an eligible state employee or an eligible state-paid judge under Subsection (a)(1) may not exceed \$965.25 each calendar year.

Sec. 659.124. AMOUNT OF BENEFIT REPLACEMENT PAY FOR HIGHER EDUCATION EMPLOYEES. (a) For a state employee employed by an institution of higher education, the benefit replacement pay is an increase in compensation equal to the sum of:

(1) 5.85 percent of the employee's compensation as of October 31, 1995, subject to the limit provided by Subsection (b); and

(2) an additional amount equal to the retirement contribution paid by the employee because of the benefit replacement pay provided by this subsection.

(b) The amount paid to an eligible state employee of an institution of higher education under Subsection (a)(1) may not exceed \$965.25.

(c) In this section, "compensation" means annualized base salary or wages, including longevity and hazardous duty pay.

Sec. 659.125. PAYING BENEFIT REPLACEMENT PAY IN EQUAL INSTALLMENTS. (a) Unless prohibited by a state agency under Subsection (b), an eligible state employee or an eligible state-paid judge may choose for the benefit replacement pay that the employee or judge is eligible to receive in a calendar year to be paid in equal installments in that year. The employee or judge must exercise this option before the beginning of the year. This subsection applies only to an eligible state employee or an eligible state-paid judge whose benefit replacement pay under Section 659.123(a)(1) will be

\$965.25 during that year if the employee or judge remains in the position at the same compensation during the year.

(b) A state agency may prohibit an eligible state employee or an eligible state-paid judge from exercising the option described by Subsection (a) if the agency pays the employee's or judge's compensation.

(c) An eligible state employee or an eligible state-paid judge who exercises the option described by Subsection (a) for a calendar year and who terminates employment or leaves office before the end of that year is ineligible to be paid the difference between the benefit replacement pay received by the employee or judge and the benefit replacement pay the employee or judge would have received had the employee or judge not exercised the option described by Subsection (a).

Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT REPLACEMENT PAY. (a) An eligible state employee who leaves state employment after August 31, 1995, for at least 12 consecutive months, on returning to state employment or on assuming a state office, is ineligible to receive benefit replacement pay.

(b) An eligible state-paid judge who leaves office after August 31, 1995, for at least 12 consecutive months, on return to state office or on accepting a state employment, is ineligible to receive benefit replacement pay.

Sec. 659.127. ADMINISTRATION. The comptroller may adopt rules and establish procedures and reporting requirements to administer this subchapter.

SECTION 4. Section 606.065, Government Code, is repealed.

SECTION 5. (a) The appropriations in the General Appropriations Act for the state's contribution to the employee tax assessed on compensation paid after December 31, 1995, and before September 3, 1997, are canceled and may not take effect. The appropriations for the state's matching contribution are not affected by this section.

(b) In this section:

(1) "Compensation" means salary or wages subject to tax under the Federal Insurance Contributions Act.

(2) "Employee tax" means the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act.

(c) This section expires September 3, 1997.

SECTION 6. (a) Notwithstanding Chapter 606, Government Code, as it exists before Sections 1, 2, and 4 of this Act take effect, the state is not obligated to pay any portion of the employee tax for an individual who is not an eligible state employee or an eligible state-paid judge.

(b) In this section:

(1) "Eligible state employee" means an individual who was on August 31, 1995:

(A) employed by a state agency; and

(B) eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on that date.

(2) "Eligible state-paid judge" means an individual who on August 31, 1995:

(A) held office; and

(B) was eligible for state payment of the employee tax under Section 606.065, Government Code, as that section existed on that date.

(3) "Employee tax" means the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act.

(4) "State agency" has the meaning assigned by Section 606.061, Government Code.

(c) This section expires January 1, 1996.

SECTION 7. (a) This Act is contingent on the becoming law of an appropriation for the fiscal biennium ending August 31, 1997, made by the 74th Legislature, Regular Session, 1995, to pay benefit replacement pay to every individual entitled to receive it under Subchapter H, Chapter 659, Government Code, as added by this Act.

(b) A general increase in salaries for state employees and state-paid judges that does not include amounts appropriated specifically to compensate for the reductions in net pay resulting from Sections 1, 2, 4, and 5 of this Act does not satisfy the contingency of Subsection (a) of this section.

(c) Before January 1, 1996, the comptroller shall determine whether an appropriation described by Subsection (a) of this section has become law and publish a finding in that regard in the Texas Register. If an appropriation described by that subsection does not become law, as determined by the comptroller, this Act has no effect.

(d) This section expires January 1, 1996.

SECTION 8. (a) Sections 1, 2, and 4 of this Act take effect December 1, 1995, and apply only to compensation paid after December 31, 1995. Compensation paid before January 1, 1996, is subject to Subchapter C, Chapter 606, Government Code, as it exists on November 30, 1995, and that law is continued in effect for that purpose.

(b) Section 5 of this Act takes effect December 1, 1995.

(c) The remainder of this Act takes effect September 1, 1995.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1 was adopted without objection.

A record vote was requested.

The vote of the house was taken on **SB 102** and the vote was announced yeas 66, nays 67.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 470): 65 Yeas, 60 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Black; Brimer; Carter; Chisum; Clemons; Combs; Cook; Corte; Crabb; Craddick; Culberson; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Finnell; Goolsby; Gray; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hilbert; Holzheuser; Horn; Howard; Hunter, B.; Jackson; Janek; Junell; Kamel; Krusee; Kuempel; Madden; Marchant; McCall; Moffat; Mowery; Nixon; Ogden; Patterson; Pitts; Reyna; Rusling; Saunders; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Walker; West; Williamson; Wohlgemuth; Woolley; Yost.

Nays — Alexander; Alonzo; Alvarado; Bailey; Bosse; Coleman; Counts; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dukes; Dutton; Edwards; Ehrhardt; Farrar; Giddings; Goodman; Greenberg; Gutierrez; Hernandez; Hightower; Hirschi; Hochberg; Hunter, T.; Johnson; King; Kubiak; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Oakley; Pickett; Place; Puente; Rangel; Raymond; Rodriguez; Romo; Seidlits; Serna; Telford; Thompson; Tillery; Torres; Turner, B.; Van de Putte; Willis; Wilson; Wolens; Yarbrough.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Hawley; Park; Price; Rabuck; Staples; Turner, S.

Absent, Excused, Committee Meeting — Hilderbran; Oliveira.

Absent — Berlanga; Glaze; Hill; Hudson; Jones, D.; Jones, J.; Ramsay; Rhodes; Sadler; Solis; Zbranek.

The chair stated that **SB 102**, as amended, was passed to third reading by the above vote.

(Hilderbran now present)

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of important business:

Hill on motion of Heflin.

Zbranek on motion of Munoz.

Glaze on motion of Rangel.

The following member was granted leave of absence for the remainder of today because of important business in the district:

Solis on motion of Puente.

HOUSE AT EASE

At 2:17 p.m., the chair announced that the house would stand at ease.

The chair called the house to order at 2:27 p.m.

MESSAGE FROM THE SENATE

Austin, Texas, May 19, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HCR 32 by Moreno (Sponsor-Rosson), congratulating Nolan Richardson on his many accomplishments in the sport of basketball.

HCR 174 by Jackson and Eiland (Sponsor-Patterson, Jerry), honoring the city of Friendswood's Centennial Celebration.

SCR 162 by Zaffirini, designating May, 1995, as "Child Focused Accident, Injury, and Illness Prevention Month."

SCR 163 by Ratliff, saluting the First Baptist Church of Marshall, Texas, on its 150th anniversary.

HB 2313 by Stiles and Price (Sponsor-Galloway), relating to abolition of the Lamar University System and the transfer of the institutions in that system to the Texas State University System, and to the actions and functions of the board of regents of the Texas State University System (committee substitute and amended).

HB 73 by Delisi (Sponsor-Montford), relating to the fraudulent filing of a financing statement; providing a penalty (amended).

HB 200 by Madden (Sponsor-Ratliff), relating to professional surveying (committee substitute).

HB 1200 by Rodriguez, et al. (Sponsor-Galloway), relating to the regulation of medical radiologic technologists and other persons who perform radiologic procedures; providing civil and criminal penalties (committee substitute and amended).

HB 1964 by Oakley (Sponsor-Brown), relating to the issuance of permits by the Parks and Wildlife Department for the conservation, protection, and management of certain wildlife resources; providing penalties (amended).

HB 2042 by Hochberg (Sponsor-West, Royce), relating to civil remedies for certain nuisances (amended).

HB 2168 by Kuempel (Sponsor-Turner, Jim), relating to participation and credit in, contributions to, and benefits and administration of the Texas Municipal Retirement System (amended).

HB 2674 by Hunter, Todd (Sponsor-Cain), relating to the charging of interest under certain agreements.

HB 3226 by Berlanga, Holzheuser, Saunders, et al. (Sponsor-Patterson, Jerry), relating to protection of coastal resources.

HB 3235 by Hightower (Sponsor-Turner, Jim), relating to the creation of certain judicial districts and to the offices of district attorney of certain judicial districts (committee substitute and amended).

HB 2781 by Hightower (Sponsor-Turner, Jim), relating to the appointment of bailiffs for certain district courts (amended).

I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on the following by vote of 31 Yeas, 0 Nays: **SB 753, HB 686, HJR 50, and HB 1343.**

I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to the following bills by Viva Voce Vote: **SCR 58, SB 49, SB 161, SB 267, SB 622, SB 979, SB 810, SB 993, SB 1512, SB 329, SB 1622, SB 346, SB 489, SB 981 and SB 1420.**

The Senate concurred in House amendments to the following bills by a vote of 31 Yeas, 0 Nays: **SB 221, SB 240, SB 691, SB 1139, SB 1280, and SB 1607**

I am directed by the Senate to inform the House that the Senate has granted the request of the House for the appointment of a Conference Committee to adjust the differences between the two Houses on **HB 1127.**

The following have been appointed on the part of the Senate: Senator Henderson, Chair, Senator Brown, Senator Lucio, Senator Harris, and Senator Gallegos.

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to **SB 14** and requests the appointment of a Conference Committee to adjust the differences between the two Houses.

The following have been appointed on the part of the Senate: Senator Bivins, Chair, Senator Sims, Senator Armbrister, Senator Brown, and Senator Barrientos.

SB 45 Senate Conferees: Shapiro, Chair, Whitmire, West, Moncrief and Harris.

SB 172 Senate Conferees: Luna, Chair, Harris, Cain, Wentworth and West.

SB 1190 Senate Conferees: Ellis, Chair, Zaffirini, Moncrief, Patterson and Ratliff.

SJR 51 Senate Conferees: Montford, Chair, Bivins, Lucio, Brown and Truan.

SCR 59 Senate Conferees: Patterson, Chair, Zaffirini, Nelson, Nixon and Moncrief.

Respectfully,
Betty King
Secretary of the Senate

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of important business:

Ramsay on motion of Harris.

SB 141 ON SECOND READING

(Hochberg, Naishtat, Farrar, and Greenberg - House Sponsors)

The chair laid before the house, on its second reading and passage to third reading,

SB 141, A bill to be entitled An Act relating to the prosecution of and punishment for an offense motivated by bias or prejudice.

The bill was read second time.

Representative Hochberg moved to postpone consideration of **SB 141** until 10 a.m. Monday, May 22.

The motion prevailed.

SB 840 ON SECOND READING

(De La Garza - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 840, A bill to be entitled An Act relating to the creation of an offense for the possession of certain weapons in a school zone and to places where weapons are prohibited.

SB 840 was read second time.

Amendment No. 1

Representative De La Garza offered the following amendment to **SB 840**:

Amend **SB 840** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 46, Penal Code, is amended by adding Section 46.11 to read as follows:

Sec. 46.11. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE SCHOOL ZONE. (a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

(1) in, on, or within 100 feet of the premises of a school;

(2) on a school bus or in a motor vehicle that is owned or operated by a school district and that is carrying one or more students to or from a school or a function or premises described by Subdivision (4);

(3) in, on, or within 100 feet of the premises of an institution of higher education; or

(4) on premises where:

(A) an official school function is taking place;

(B) an event sponsored or sanctioned by the university interscholastic league is taking place; or

(C) a school-sponsored extracurricular activity in which the actor is a participant is taking place.

(b) This section does not apply to an offense under Section 46.03(a)(1).

(c) In this section, "institution of higher education," "premises," and "school" have the meanings assigned by Section 481.134, Health and Safety Code.

SECTION 2. Chapter 46, Penal Code, is amended by adding Section 46.12 to read as follows:

Sec. 46.12. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 46.11, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

SECTION 3. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 4. This Act takes effect September 1, 1995.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1 was adopted without objection.

SB 840, as amended, was passed to third reading.

HR 1002 - ADOPTED

Representative Wilson moved to suspend all necessary rules to take up and consider at this time **HR 1002**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Wilson,

HR 1002, Requesting Prairie View A&M University to name the institution's new Cooperative Extension Building the Hoover Carden Cooperative Extension Building.

The resolution was adopted without objection.

On motion of Representative Ogden, the names of all the members of the house were added to **HR 1002** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Wilson, who introduced Mr. Hoover Carden.

SJR 1 ON SECOND READING (Siebert and Stiles - House Sponsors)

The chair laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SJR 1**.

CSSJR 1, A joint resolution proposing a constitutional amendment abolishing the office of state treasurer.

CSSJR 1 was read second time.

Amendment No. 1

Representative Stiles offered the following amendment to **CSSJR 1**:

Amend **CSSJR 1** as follows:

(1) In **SECTION 1** of the resolution, in Subsection (b) of the temporary provision added to the Texas Constitution (House Committee Report, page 1, line 11), strike "1997" and substitute "1996".

(2) In **SECTION 15** of the resolution, in the first sentence (House Committee Report, page 10, line 6), strike "November 5, 1996" and substitute "November 7, 1995".

Amendment No. 1 was adopted without objection.

A record vote was requested.

CSSJR 1, as amended, was adopted by (Record 471): 107 Yeas, 18 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Brimer; Chisum; Clemons; Cook; Corte; Counts; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Hamric; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; McCall; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Nixon; Oakley; Ogden; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wolens; Woolley; Yarbrough; Yost.

Nays — Bosse; Carter; Crabb; Denny; Elkins; Haggerty; Harris; Hartnett; Heflin; Hilderbran; Holzheuser; Janek; Marchant; Moffat; Patterson; Shields; Turner, B.; Wohlgemuth.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Oliveira.

Absent — Coleman; Combs; De La Garza; Longoria; Madden; Maxey; Mowery.

STATEMENTS OF VOTE

I was shown voting no on Record No. 471. I intended to vote yes.

Crabb

I was shown voting yes on Record No. 471. I intended to vote no.

Hightower

I was shown voting no on Record No. 471. I intended to vote yes.

Holzheuser

I was shown voting no on Record No. 471. I intended to vote yes.

Janek

I was shown voting no on Record No. 471. I intended to vote yes.

Moffat

I was shown voting yes on Record No. 471. I intended to vote no.

Talton

When Record No. 471 was taken, I was out of the House Chamber being interviewed on drug free school zones. I would have voted yes.

De La Garza

When Record No. 471 was taken, I was in the house but away from my desk. I would have voted yes.

Madden

SB 1135 ON THIRD READING
(Stiles - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 1135, A bill to be entitled An Act relating to the Commission on Law Enforcement Officer Standards and Education.

The bill was read third time.

Representative Stiles moved to postpone consideration of **SB 1135** until 10 a.m. Monday, May 22.

The motion prevailed without objection.

SB 472 ON THIRD READING
(Craddick - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 472, A bill to be entitled An Act relating to the waiver of the visual standards for a commercial driver's license to operate a commercial motor vehicle only in this state.

A record vote was requested.

The bill was read third time and was passed by (Record 472): 127 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.;

Lewis, R.; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Oliveira.

Absent — De La Garza; Longoria; Romo; Sadler; Van de Putte.

STATEMENT OF VOTE

When Record No. 472 was taken, I was out of the house chamber being interviewed on drug free school zones. I would have voted yes.

De La Garza

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend a meeting of the conference committee on HB 1863:

Hilderbran on motion of McCall.

The following member was granted leave of absence temporarily for today to attend a meeting of the conference committee on HB 1863:

Denny on motion of McCall.

SB 488 ON THIRD READING (Bosse - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 488, A bill to be entitled An Act relating to a contractual lien for surveying or engineering services.

The bill was read third time and was passed.

SB 512 ON THIRD READING (Dutton - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 512, A bill to be entitled An Act relating to payment for a statement of facts in a suit affecting the parent-child relationship.

The bill was read third time and was passed.

SB 1446 ON THIRD READING (Alexander - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 1446, A bill to be entitled An Act relating to the regulation of certain motor vehicle dealers and to the sale, titling, and registration of certain motor vehicles.

A record vote was requested.

The bill was read third time and was passed by (Record 473): 120 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzhauser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Munoz; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Walker; West; Williamson; Willis; Wilson; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C); Wohlgemuth.

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Oliveira.

Absent — Chisum; De La Garza; Gray; Maxey; Mowery; Ogden; Romo; Swinford; Van de Putte.

STATEMENTS OF VOTE

I was shown voting no on Record No. 473. I intended to vote yes.

McCoulskey

When Record No. 473 was taken, I was out of the house chamber being interviewed on drug free school zones. I would have voted yes.

De La Garza

SB 219 ON THIRD READING (Saunders - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 219, A bill to be entitled An Act relating to community assistance and economic development program activities of certain river authorities; validating certain actions and instruments of the river authorities.

A record vote was requested.

The bill was read third time and was passed by (Record 474): 122 Yeas, 1 Nay, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Clemons; Coleman; Combs; Cook; Corte; Counts;

Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Nay — McCoulskey.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Oliveira.

Absent — Chisum; De La Garza; Ogden; Romo; Swinford; Van de Putte; Wilson.

STATEMENT OF VOTE

When Record No. 474 was taken, I was out of the house chamber being interviewed on drug free school zones. I would have voted yes.

De La Garza

SB 651 ON THIRD READING (Kuempel - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 651, A bill to be entitled An Act relating to an exemption from the requirement to obtain a water use permit for certain reservoirs used in surface coal mining operations.

The bill was read third time and was passed.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence temporarily for today to attend a meeting of the conference committee on HB 1863:

Thompson on motion of Serna.

Maxey on motion of Serna.

SB 921 ON THIRD READING (Bosse - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 921, A bill to be entitled An Act relating to the regulation of certain persons engaged in the business of motor vehicle leasing.

A record vote was requested.

The bill was read third time and was passed by (Record 475): 123 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; Dear; Delisi; Driver; Dukes; Duncan; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — De La Garza; Dutton; Ogden; Romo; Van de Putte.

STATEMENT OF VOTE

When Record No. 475 was taken, I was out of the house chamber being interviewed on drug free school zones. I would have voted yes.

De La Garza

SB 1017 ON THIRD READING (R. Lewis - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 1017, A bill to be entitled An Act relating to the designation of water quality protection zones in certain areas.

A record vote was requested.

The bill was read third time and was passed by (Record 476): 105 Yeas, 16 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Crabb; Craddick; Culberson; Davila; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Goodman; Goolsby; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.;

Jackson; Janek; Johnson; Jones, D.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Madden; Marchant; McCall; McCoulskey; Moffat; Moreno; Mowery; Munoz; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Rodriguez; Rusling; Saunders; Seidlits; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Nays — Alvarado; Cuellar, H.; Cuellar, R.; Danburg; Davis; Giddings; Gray; Greenberg; Jones, J.; Luna; McDonald; Naishtat; Raymond; Reyna; Rhodes; Serna.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbrank.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Counts; De La Garza; Edwards; Hochberg; Ogden; Romo; Sadler.

STATEMENTS OF VOTE

I was shown voting no on Record No. 476. I intended to vote yes.

Davis

When Record No. 476 was taken, I was in the house but away from my desk. I would have voted yes.

Counts

When Record No. 476 was taken, I was out of the house chamber being interviewed on drug free school zones. I would have voted no.

De La Garza

SB 1654 ON THIRD READING (Counts - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 1654, A bill to be entitled An Act relating to the exemption from ad valorem taxation of real property owned by certain organizations chartered by the Congress of the Republic of Texas.

The bill was read third time and was passed.

SB 572 ON THIRD READING (Naishtat - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 572, A bill to be entitled An Act relating to court-ordered mental health services.

A record vote was requested.

The bill was read third time and was passed by (Record 477): 124 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Hochberg; Lewis, R.; Ogden; Williamson.

SB 124 ON THIRD READING

(McCall, De La Garza, Goodman, Danburg, Naishtat, et al. - House Sponsors)

The chair laid before the house, on its third reading and final passage,

SB 124, A bill to be entitled An Act relating to notification of a victim of the offense of stalking about the release on bail of the defendant in the case.

The bill was read third time.

Representative McCall moved to postpone consideration of **SB 124** until 3:30 p.m. today.

The motion prevailed without objection.

SB 126 ON THIRD READING

(McCall, Greenberg, Combs, Danburg, Naishtat, et al. - House Sponsors)

The chair laid before the house, on its third reading and final passage,

SB 126, A bill to be entitled An Act relating to the requirement that a victim of the offense of stalking must have previously reported the stalking conduct; providing penalties.

The bill was read third time.

Representative McCall moved to postpone consideration of **SB 126** until 3:35 p.m. today.

The motion prevailed without objection.

SB 129 ON THIRD READING**(McCall, Goodman, Danburg, Dukes, Naishtat, et al. - House Sponsors)**

The chair laid before the house, on its third reading and final passage,

SB 129, A bill to be entitled An Act relating to magistrate's orders for emergency protection for victims of family violence or the offense of stalking and to the offense of violation of a protective order or magistrate's order for emergency protection.

The bill was read third time.

Representative McCall moved to postpone consideration of **SB 129** until 3:35 p.m. today.

The motion prevailed without objection.

SB 351 ON THIRD READING**(R. Lewis - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

SB 351, A bill to be entitled An Act relating to clarifying procedures for the removal of organs or tissues from decedents when an inquest is required.

A record vote was requested.

The bill was read third time and was passed by (Record 478): 121 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Munoz; Nixon; Oakley; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Counts; Horn; Mowery; Naishtat; Ogden; Patterson; Rodriguez.

SB 338 ON THIRD READING
(H. Cuellar - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 338, A bill to be entitled An Act relating to the termination of the parent-child relationship.

The bill was read third time and was passed.

SB 283 ON THIRD READING
(Goodman - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 283, A bill to be entitled An Act relating to the authority of certain prosecuting attorneys to apply for a protective order.

The bill was read third time and was passed.

SB 1445 ON THIRD READING
(Siebert - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 1445, A bill to be entitled An Act relating to transfer of title to a motor vehicle, procurement of a copy of a motor vehicle certificate of title, the collection and administration of the motor vehicle sales tax, and certain disclosures that must be made to the purchaser of a motor vehicle.

The bill was read third time.

Representative Siebert moved to postpone consideration of **SB 1445** until 4 p.m. today.

The motion prevailed without objection.

SB 904 ON THIRD READING
(Elkins - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 904, A bill to be entitled An Act relating to the eligibility of certain fire and police departments to participate in the Texas Municipal Retirement System.

A record vote was requested.

The bill was read third time and was passed by (Record 479): 126 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Jones, D.; Jones, J.; Junell;

Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Dukes; Johnson.

SB 130 ON THIRD READING
(Greenberg - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 130, A bill to be entitled An Act relating to creating the offense of transferring a handgun to a person who is the subject of a protective order and including in the law enforcement information system maintained by the Department of Public Safety information relating to protective orders.

The bill was read third time and was passed. (Shields recorded voting no; Johnson, yes)

SB 661 ON THIRD READING
(Carona - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 661, A bill to be entitled An Act relating to transaction fees for the use of an electronic terminal connected to a shared electronic network.

The bill was read third time and was passed.

SB 744 ON THIRD READING
(Holzheuser - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 744, A bill to be entitled An Act relating to guaranteed energy savings projects for local governments.

A record vote was requested.

The bill was read third time and was passed by (Record 480): 124 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg;

Davila; Davis; De La Garza; Dear; Delisi; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgenuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Dukes; Marchant; Naishtat; Ogden.

SB 1384 ON THIRD READING **(Goodman - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

SB 1384, A bill to be entitled An Act relating to the recusal of judges on the supreme court.

A record vote was requested.

The bill was read third time and was passed by (Record 481): 124 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders;

Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Dukes; Marchant; Naishtat; Ogden.

SB 627 ON THIRD READING
(B. Hunter and Conley - House Sponsors)

The chair laid before the house, on its third reading and final passage,

SB 627, A bill to be entitled An Act relating to authorizing the Texas State Library and Archives Commission to negotiate an agreement with the appropriate authorities in Mexico for the exchange of certain Alamo and San Jacinto battle flags.

A record vote was requested.

The bill was read third time and was passed by (Record 482): 126 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Alonzo; Ogden.

SB 261 ON THIRD READING
(Reyna - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 261, A bill to be entitled An Act relating to certain charges in connection with a fine for violation of a motor vehicle law.

A record vote was requested.

The bill was read third time and was passed by (Record 483): 102 Yeas, 21 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Dear; Delisi; Driver; Duncan; Elkins; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Nixon; Oakley; Patterson; Pitts; Puente; Rangel; Raymond; Reyna; Rhodes; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wolens; Woolley; Yost.

Nays — Alonzo; Bailey; Davis; De La Garza; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Hirschi; Hochberg; Jones, J.; Longoria; Luna; Munoz; Naishtat; Rodriguez; Tillery; Torres; Wilson; Yarbrough.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Dukes; Ogden; Pickett; Place; Wohlgemuth.

STATEMENT OF VOTE

I was shown voting yes on Record No. 483. I intended to vote no.

Davila

SB 1371 ON THIRD READING
(Corte - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 1371, A bill to be entitled An Act relating to the authority of certain political subdivisions to contract for solid waste services.

A record vote was requested.

The bill was read third time and was passed by (Record 484): 124 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Ramsay; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Dukes; Hartnett; Ogden; Williamson.

HR 849 - ADOPTED

Representative McCoulskey moved to suspend all necessary rules to take up and consider at this time **HR 849**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By McCoulskey,

HR 849, Congratulating Marlene Saenz Luna on her receipt of a doctorate in education from the University of Houston.

The resolution was adopted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Calendars, 3:15 p.m. today, speakers committee room.

(Ramsay now present)

SB 964 ON SECOND READING (Bailey - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 964, A bill to be entitled An Act relating to the regulation of driver training; providing a penalty.

The bill was read second time.

Amendment No. 1 (Committee Amendment No. 1)

Representative Bailey offered the following committee amendment to the bill:

Amend **SB 964** as follows:

- (1) On page 22, line 21, strike "may not" and substitute "shall".
- (2) On page 22, line 21, strike "in excess of" and substitute "equal to".
- (3) On page 49, line 24, strike "may not" and substitute "shall".
- (4) On page 49, line 24, strike "in excess of" and substitute "equal to".

Amendment No. 1 was adopted without objection.

Amendment No. 2 (Committee Amendment No. 2)

Representative Bailey offered the following committee amendment to the bill:

Amend **SB 964** as follows:

- (1) On page 45, line 8, after the phrase "driver.", strike lines 8-17.
- (2) On page 42, between lines 17 and 18, insert the following:

"(d) The agency shall contract with the Department of Public Safety to provide undercover and investigative assistance in the enforcement of the prohibition provided by Subsection (a) of this section."

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Bailey offered the following amendment to the bill:

Amend **SB 964** as follows:

On page 43, beginning on line 13, strike Section 26 and Section 27 and renumber the subsequent sections appropriately.

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative Kubiak offered the following amendment to the bill:

Amend **SB 964** as follows:

(1) In SECTIONS 1-30 of the bill, strike all references to "Texas Higher Education Coordinating Board [~~Central Education Agency~~]" and substitute "Central Education Agency".

(2) In SECTIONS 1-30 of the bill, strike all references to "board [~~State Board of Education~~]" and substitute "State Board of Education".

(3) In SECTIONS 1-30 of the bill, strike all references to "members of the Texas Higher Education Coordinating Board [~~State Board of Education~~]" and substitute "State Board of Education".

(4) In SECTIONS 1-30 of the bill, strike all references to "commissioner of higher education" and substitute "commissioner of education".

(5) In SECTIONS 1-30 of the bill, strike all references to "Texas Higher Education Coordinating Board" that are not immediately followed by bracketed language and substitute "Central Education Agency".

(6) Strike SECTION 31 of the bill, and substitute the following:

SECTION 31. This Act takes effect September 1, 1995. A change in law made by this Act applies only to an offense committed on or after that date. For purposes of this section, an offense was committed before September 1, 1995, if any element of the offense occurred before that date. An offense committed before September 1, 1995, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Amendment No. 4 was adopted without objection.

Amendment No. 5

Representative Cook offered the following amendment to the bill:

Amend **SB 964** pg 17 by striking 3 and Line 4 through the semicolon on Line 4.

Re-number accordingly.

Amend **SB 964** page 48 by striking Lines 20 and 21.

Amendment No. 5 was withdrawn.

Amendment No. 6

Representatives Place and Talton offered the following amendment to the bill:

Amend **SB 964** on page 50 line 10, by deleting Section 30 and renumbering subsequent sections accordingly.

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative Horn offered the following amendment to the bill:

Amend **SB 964** as follows:

(1) In SECTION 25 of the bill, after "approved by the" (page 43, line 3) insert "department under Section 7A of this Act or by the"; and

(2) In SECTION 25 of the bill, after "public" (page 43, line 15) insert ", home,"; and

(3) In SECTION 26 of the bill, after "education course," (Page 44, line 8) insert "which may be a course approved under Section 7A of this Act,"; and

(4) In SECTION 26 of the bill, after "public" (Page 44, line 9) insert ", home,"; and

(5) Insert the following new SECTIONS, renumbering accordingly, to read as follows:

SECTION _____. Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding Section 7A to read as follows:

Sec. 7A DEPARTMENT-APPROVED COURSES. (a) the department by rule shall provide for approval of a driver training course given by the parent or legal guardian of a person who is required to complete successfully a driver training course to obtain a Class C license. The rules must provide that:

(1) the parent or guardian be a licensed driver; and

(2) the student driver spend a minimum number of hours in:

(A) classroom instruction; and

(B) behind-the-wheel instruction.

(b) The department may not approve a course unless it determines that the course materials are at least equal to those required in a course approved by the Central Education Agency, except that the department may not require that:

(1) the classroom instruction be provided in a room having particular characteristics or equipment; or

(2) the vehicle used for the behind-the-wheel instruction have equipment other than the equipment otherwise required by law for operation of the vehicle on a highway while the vehicle is not being used for driver training.

(c) The rules must provide a method by which:

(1) approval of a course if obtained; and

(2) an applicant submits proof of completion of the course.

(d) Completion of a driver training course approved under this section has the same effect under this Act as completion of a driver training course approved by the Central Education Agency.

SECTION _____. Section 12(d)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) An applicant for a license under this subsection must:

(A) be at least fifteen (15) years of age;

(B) satisfactorily complete and pass a driver training course approved by the Department, which may be a course approved under Section 7A of this Act; and

(C) pass the examination required by Section 10 or 10A of this Act.

Amendment No. 7 was adopted without objection.

Amendment No. 8

On behalf of Representative Alonzo, Representative Bailey offered the following amendment to the bill:

Amend **SB 964** (House committee report) as follows:

(1) In SECTION 26 of the bill, in the language describing the amendment (page 43, line 15), strike "Subsection (e)" and substitute "Subsections (e) and (f)".

(2) In SECTION 26 of the bill, between lines 23 and 24, insert a new Subsection (f), Article 6687b, Vernon's Texas Civil Statutes, to read as follows:

(f) Each applicant shall be given the option of taking the traffic law and highway sign part of the examination in writing in addition to or instead of by a mechanical, electronic, or other testing method. If the applicant takes that part of the examination in writing in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version. The department shall inform each person taking the examination of the person's rights under this subsection.

Amendment No. 8 was adopted without objection.

SB 964, as amended, was passed to third reading.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business in the district:

Smithee on motion of Averitt.

MESSAGE FROM THE SENATE

Austin, Texas, May 19, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to **SB 95** and requests the appointment of a Conference Committee to adjust the differences between the two Houses.

The following have been appointed on the part of the Senate: Senators West, chair, Cain, Whitmire, Luna, and Gallegos.

Respectfully,
Betty King
Secretary of the Senate

**SB 1013 ON SECOND READING
(Oakley - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 1013**.

CSSB 1013, A bill to be entitled An Act relating to complaints against police officers and fire fighters.

CSSB 1013 was read second time.

Amendment No. 1

Representative Munoz offered the following amendment to **CSSB 1013**:

Amend **CSSB 1013** as follows:

Add the following section, appropriately numbered, to read as follows:

SECTION _____. Subchapter B, Chapter 614, Government Code, is amended by adding Section 614.024 to read as follows:

Sec. 614.024. POLYGRAPH EXAMINATION. (a) A peace officer against whom a written complaint is filed as provided by this subchapter may not be suspended, discharged, or subjected to any other form of employment discrimination by the peace officer's employer because the officer refused to take a polygraph examination in response to the complaint.

(b) This section does not apply to a peace officer:

(1) to whom Section 411.007 applies; or

(2) who is required to take a polygraph examination under Section 143.124, Local Government Code.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Bailey offered the following amendment to **CSSB 1013**:

Amend **CSSB 1013** by adding a new SECTION 2 to read as follows and by renumbering the current SECTION 2 accordingly:

SECTION 2. Section 614.023(b), Government Code, is amended to read as follows:

(b) Disciplinary action may not be taken against the officer or employee unless:

- (1) a copy of the signed complaint is given to the officer or employee;
- (2) the complaint is investigated; and
- (3) there is sufficient evidence to prove allegations of misconduct.

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Bailey offered the following amendment to **CSSB 1013**:

Amend **CSSB 1013** by striking SECTION 1 and adding a new SECTION 1 to read as follows:

SECTION 1. Section 614.021, Government Code, is amended to read as follows:

Sec. 614.021. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a complaint against:

(1) a law enforcement of the State of Texas, including an officer of the Department of Public Safety or of the Texas Alcoholic Beverage Commission;

(2) a fire fighter [~~who is not covered by a civil service statute~~]; or

(3) a police officer [~~who is not covered by a civil service statute~~].

(b) In this subchapter, "police officer" means a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, who is employed by a political subdivision of the state.

Amendment No. 3 was adopted without objection.

CSSB 1013, as amended, was passed to third reading. (T. Hunter recorded voting no)

SB 956 ON SECOND READING
(Puente - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 956, A bill to be entitled An Act relating to the conveyance of certain state-owned real property in Bexar County.

The bill was read second time and was passed to third reading.

SB 700 ON SECOND READING
(Swinford - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 700, A bill to be entitled An Act relating to the registration of pesticides.

The bill was read second time.

Representative Swinford moved to lay **SB 700** on the table subject to call.

The motion prevailed without objection.

SB 680 ON SECOND READING
(Madden - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 680, A bill to be entitled An Act relating to the cancellation of and to the filing of a declaration of write-in candidacy in certain elections.

The bill was read second time.

Amendment No. 1 (Committee Amendment No. 1)

Representative Madden offered the following committee amendment to the bill:

Amend **SB 680** by striking SECTION 4 of the bill (senate engrossment, page 3, lines 8-16) and substituting the following:

SECTION 4. Sections 50.004(a) and (d), Water Code, are amended to read as follows:

(a) In a general election for board members under Chapter 50, 51, 52, 53, ~~[or] 54, 55, or 58~~ of this code, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 45th ~~[30th]~~ day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th ~~[33rd]~~ day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd ~~[27th]~~ day before election day.

Amendment No. 1 was adopted without objection.

SB 680, as amended, was passed to third reading.

SB 863 ON SECOND READING
(Combs, Naishtat, Greenberg, and Maxey - House Sponsors)

The chair laid before the house, on its second reading and passage to third reading,

SB 863, A bill to be entitled An Act relating to certain conditions of employment for and investigations of fire fighters and police officers in certain municipalities.

The bill was read second time and was passed to third reading.

SB 748 ON SECOND READING
(Eiland - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 748, A bill to be entitled An Act relating to authorizing certain local governments to accept ownership of conveyed property in certain circumstances.

The bill was read second time.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Longoria, Representative Eiland offered the following committee amendment to the bill:

Amend **SB 748** as follows:

1. On page 1, lines 14 and 15, after the word "mail", strike ", not later than the 90th day before the date the grantor conveys the property."

2. On page 1, line 23, after the word "for", strike "the next" and add "a"

3. On page 2, line 1, after the word "government", strike "." and add "within 60 days. The grantor or his representative shall appear before the governing body of the local government at such meeting to answer any questions about the property. The local government shall accept or reject the proposed conveyance within 90 days of the meeting."

4. On page 2, line 3, after the word "Subsection (a)" strike ":" and add "immediately after the governing body of the local government approves the conveyance."

5. On page 2, strike lines 4 - 10.

Amendment No. 1 was adopted without objection.

SB 748, as amended, was passed to third reading.

SB 1485 ON SECOND READING
(Van de Putte - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 1485, A bill to be entitled An Act relating to the child fatality review team committee and child fatality review teams.

The bill was read second time.

Amendment No. 1

Representative Van de Putte offered the following amendment to the bill:

Amend **SB 1485** as follows:

(1) In Section 264.501, Family Code, as added by SECTION 1 of the bill, insert a new Subdivision (1) (House Committee Report, page 1, between lines 8 and 9) to read as follows and renumber subsequent subdivisions of Section 264.501 appropriately:

(1) "Autopsy" and "inquest" have the meanings assigned by Section 49.01, Code of Criminal Procedure.

(2) Following Section 264.512, Family Code, as added by SECTION 1 of the bill (House Committee Report, page 14, between lines 1 and 2), insert the following:

Sec. 264.513. REPORT OF DEATH OF CHILD. (a) A person who knows of the death of a child younger than six years of age shall immediately

report the death to the medical examiner of the county in which the death occurs or, if the death occurs in a county that does not have a medical examiner's office or that is not part of a medical examiner's district, to a justice of the peace in that county.

(b) The requirement of this section is in addition to any other reporting requirement imposed by law, including any requirement that a person report child abuse or neglect under this code.

(c) A person is not required to report a death under this section that is the result of a motor vehicle accident. This subsection does not affect a duty imposed by another law to report a death that is the result of a motor vehicle accident.

Sec. 264.514. PROCEDURE IN THE EVENT OF REPORTABLE DEATH. (a) A medical examiner or justice of the peace notified of a death of a child under Section 264.513 shall hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death is unexpected.

(b) The medical examiner or justice of the peace shall immediately notify an appropriate local law enforcement agency if the medical examiner or justice of the peace determines that the death is unexpected, and that agency shall investigate the child's death.

Sec. 264.515. INVESTIGATION. (a) The investigation required by Section 264.514 must include:

(1) an autopsy, unless an autopsy was conducted as part of the inquest;

(2) an inquiry into the circumstances of the death, including an investigation of the scene of the death and interviews with the parents of the child, any guardian or caretaker of the child, and the person who reported the child's death; and

(3) a review of relevant information regarding the child from an agency, professional, or health care provider.

(b) The review required by Subsection (a)(3) must include a review of any applicable medical record, child protective services record, record maintained by an emergency medical services provider, and law enforcement report.

(c) The committee shall develop a protocol relating to investigation of an unexpected death of a child under this section. In developing the protocol, the committee shall consult with individuals and organizations that have knowledge and experience in the issues of child abuse and child deaths.

SECTION 2. Article 49.04(a), Code of Criminal Procedure, is amended to read as follows:

(a) A justice of the peace shall conduct an inquest into the death of a person who dies in the county served by the justice if:

(1) the person dies in prison or in jail;

(2) the person dies an unnatural death from a cause other than a legal execution;

(3) the body of the person is found and the cause or circumstances of death are unknown;

(4) the circumstances of the death indicate that the death may have been caused by unlawful means;

(5) the person commits suicide or the circumstances of the death indicate that the death may have been caused by suicide;

- (6) the person dies without having been attended by a physician;
- (7) the person dies while attended by a physician who is unable to certify the cause of death and who requests the justice of the peace to conduct an inquest; or
- (8) the person is a child who is younger than six years [~~18 months~~] of age and the death is reported under Chapter 264, Family Code [~~suspected cause of death is sudden infant death syndrome~~].

SECTION 3. Article 49.10(e), Code of Criminal Procedure, is amended to read as follows:

- (e) A justice of the peace shall order an autopsy performed on a body if:
 - (1) the justice determines that an autopsy is necessary to determine or confirm the nature and cause of death; [~~or~~]
 - (2) the deceased was a child younger than six years of age and the death was reported under Chapter 264, Family Code; or
 - (3) directed to do so by the district attorney, criminal district attorney, or, if there is no district or criminal district attorney, the county attorney.

SECTION 4. Section 6, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 6. DEATH INVESTIGATIONS. Any medical examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

- 1. When a person shall die within twenty-four hours after admission to a hospital or institution or in prison or in jail;
- 2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;
- 3. When the body of a human being is found, and the circumstances of his death are unknown;
- 4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;
- 5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;
- 6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Section 193.005, Health and Safety Code, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; [~~and~~]
- 7. When the person is a child who is younger than six years of age and the death is reported under Chapter 264, Family Code; and
- 8. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Section 193.004, Health and Safety Code. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the medical examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the medical examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the medical examiner or authorized deputy shall take charge of the body and all property found with it.

SECTION 5. The child fatality review team committee shall develop the protocol required by Section 264.515(c), Family Code, as added by this Act, not later than September 1, 1996.

(3) Strike Section 3 of the bill.

(4) Renumber sections of the bill appropriately.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Naishtat offered the following amendment to the bill:

Amend **SB 1485** as follows:

(1) On page 12 insert the following subdivision between lines 9 and 10: (c) This section does not authorize the release of the original or copies of the mental health or medical records of any member of the child's family, guardian or caretaker of the child or an alleged or suspected perpetrator of abuse or neglect of the child which are in the possession of any state or local government agency as provided in Subdivision (2). Information relating to the mental health or medical condition of a member of the child's family, guardian or caretaker of the child or the alleged or suspected perpetrator of abuse or neglect of the child acquired as part of an investigation by a state or local government agency as provided in Subdivision (2) may be provided to the review team.

Amendment No. 2 was adopted without objection.

SB 1485, as amended, was passed to third reading.

SB 421 ON SECOND READING (Krusee - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 421**.

CSSB 421, A bill to be entitled An Act relating to the transfer of extraterritorial jurisdiction between certain municipalities.

CSSB 421 was read second time.

Amendment No. 1

Representative Krusee offered the following amendment to **CSSB 421**:

Amend **CSSB 421** as follows:

(1) In SECTION 1 of the bill, in proposed Section 42.024(a)(2), Local Government Code (committee printing, page 1, line 16) after "utility" and before the period, insert the following:

", that has a charter provision allowing for limited-purpose annexation, and that has annexed territory for a limited purpose".

(2) In SECTION 1 of the bill, strike proposed Section 42.024(b)(3)(C), Local Government Code (committee printing, page 2, lines 7-18), and substitute the following:

"(C) located within one or more school districts, each of which has the majority of its territory outside the territory of the releasing municipality."

(3) In SECTION 1 of the bill, in proposed Section 42.024(B)(4), Local Government Code (committee printing, page 2, line 23), strike "and".

(4) In SECTION 1 of the bill, in proposed Section 42.024(b)(5), Local Government Code (committee printing, page 2, line 26), insert the following after "area" and before the period:

; and

(6) the size of the released area does not exceed the difference between the total area within the extraterritorial jurisdiction of the adopting municipality, exclusive of the extraterritorial jurisdiction of the releasing municipality, on the date the resolution was adopted under this subsection, as determined by Section 42.021, and the total area within the adopting municipality's extraterritorial jurisdiction on the date of the resolution.

(5) In SECTION 1 of the bill, strike proposed Section 42.024(e), Local Government Code (committee printing page 5, lines 10-16), and substitute the following:

(e) If any part of a tract of land, owned either in fee simple or under common control or undivided ownership, was or becomes split, before or after the dedication or deed of a portion of the land for a public purpose, between the extraterritorial jurisdiction of a releasing municipality and the extraterritorial jurisdiction of another municipality, or is land described in Subsection (b)(3)(C), the authority to act under Chapter 212 and the authority to regulate development and building with respect to the tract of land is, on the request of the owner to the municipality, with the municipality selected by the owner of the tract of land. The municipality selected under this subsection may also provide or authorize another person or entity to provide municipal services to land subject to this subsection.

Amendment No. 1 was adopted without objection.

CSSB 421, as amended, was passed to third reading.

SB 1546 ON SECOND READING **(Counts - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 1546, A bill to be entitled An Act relating to persons affected by matters in hearings before the Texas Natural Resource Conservation Commission.

The bill was read second time.

Amendment No. 1

Representative Harris offered the following amendment to the bill:

Amend **SB 1546** (House Committee Report) on page 1, lines 12 and 13, by striking "An interest common to members of the general public does not qualify as a personal justiciable interest.".

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Hirschi offered the following amendment to the bill:

Amend **SB 1546**, SECTION 1, by adding a new sentence at the end of subsection (a) of Section 5.115 on page 1 line 22 to read:

Before the commission may make a determination that a request for hearing is not reasonable the commission shall adopt rules specifying factors to consider in determining whether a request is not reasonable.

Representative Counts moved to table Amendment No. 2.

The motion to table prevailed.

SB 1546, as amended, was passed to third reading. (Davila and Farrar recorded voting no)

(Speaker in the chair)

SB 124 ON THIRD READING

**(McCall, De La Garza, Goodman, Danburg, Naishtat, et al. -
House Sponsors)**

The speaker laid before the house, as postponed business, on its third reading and final passage,

SB 124, A bill to be entitled An Act relating to notification of a victim of the offense of stalking about the release on bail of the defendant in the case.

The bill was read third time earlier today and was postponed until this time.

Amendment No. 1

Representative McCall offered the following amendment to the bill:

Amend **SB 124** on third reading as follows:

Strike sections 2 and 3 and substitute the following:

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that the Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 1 was adopted without objection.

A record vote was requested.

SB 124, as amended, was passed by (Record 485): 124 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman;

Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Longoria; Munoz; Ogden; Sadler; Uher.

SB 126 ON THIRD READING

(McCall, Greenberg, Combs, Danburg, Naishtat, et al. - House Sponsors)

The speaker laid before the house, as postponed business, on its third reading and final passage,

SB 126, A bill to be entitled An Act relating to the requirement that a victim of the offense of stalking must have previously reported the stalking conduct; providing penalties.

The bill was read third time earlier today and was postponed until this time.

Amendment No. 1

Representative McCall offered the following amendment to the bill:

Amend **SB 126** on third reading as follows:

Strike sections 9 and 10 and substitute the following:

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that the Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 1 was adopted without objection.

A record vote was requested.

SB 126, as amended, was passed by (Record 486): 125 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Black; Bosse; Brimer; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis;

De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Fennell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Berlanga; Coleman; Longoria; Sadler.

SB 129 ON THIRD READING

(McCall, Goodman, Danburg, Dukes, Naishtat, et al. - House Sponsors)

The speaker laid before the house, as postponed business, on its third reading and final passage,

SB 129, A bill to be entitled An Act relating to magistrate's orders for emergency protection for victims of family violence or the offense of stalking and to the offense of violation of a protective order or magistrate's order for emergency protection.

The bill was read third time earlier today and was postponed until this time.

Amendment No. 1

Representative McCall offered the following amendment to the bill:

Amend **SB 129** on third reading as follows:

Strike sections 4 and 5 and substitute the following:

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that the Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 1 was adopted without objection.

A record vote was requested.

SB 129, as amended, was passed by (Record 487): 123 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook;

Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Giddings; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough.

Present, not voting — Mr. Speaker(C); Farrar.

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Goodman; Hightower; Longoria; Mowery; Yost.

STATEMENT OF VOTE

I was shown voting present, not voting on Record No. 487. I intended to vote yes.

Farrar

SB 1660 ON SECOND READING (Yost - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1660, A bill to be entitled An Act relating to agreed orders of the Texas Natural Resource Conservation Commission.

The bill was read second time.

Amendment No. 1

Representative Bosse offered the following amendment to the bill:

Amend **SB 1660** as follows:

(1) In SECTION 1, sec. 26.136, Water Code, subsection (p): strike new language "(3) the order is not intended to become a part of a party's or a facility's compliance history."

(2) In SECTION 2, sec. 361.251, Health and Safety Code, subsection (v): strike new language "(3) the order is not intended to become a part of a party's or a facility's compliance history."

(3) In SECTION 3, sec. 361.252, Health and Safety Code, subsection (r): strike new language "(3) the order is not intended to become a part of a party's or a facility's compliance history."

(4) In SECTION 4, sec. 382.088, Health and Safety Code, subsection (k): strike new language "~~(3) the order is not intended to become a part of a party's or a facility's compliance history.~~"

Representative Yost moved to table Amendment No. 1.

The motion to table prevailed.

SB 1660 was passed to third reading. (Danburg and Puente recorded voting no)

SB 560 ON SECOND READING
(Bosse - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 560, A bill to be entitled An Act relating to disposal of abandoned vehicles.

The bill was read second time and was passed to third reading.

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolution:

SB 604, SB 605, SB 641, SB 750, SB 882, SB 1150, SB 1198, SJR 36

SB 1090 ON SECOND READING
(Bosse - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1090, A bill to be entitled An Act relating to the violation of a court order enjoining a person from engaging in certain organized criminal activity; providing a criminal penalty.

The bill was read second time and was passed to third reading.

SB 739 ON SECOND READING
(Brimer - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 739, A bill to be entitled An Act relating to the inspection and certification of elevators in an industrial facility.

The bill was read second time.

Amendment No. 1 (Committee Amendment No. 1)

Representative Brimer offered the following committee amendment to the bill:

Amend **SB 739**, page 1, Lines 14-15, Section 754.014 (a)(2) as follows:
"(2) buildings that contain an elevator, an escalator, or related equipment that ~~the is open to the general public, is generally invited to use,~~ including a

hotel, motel, apartment house, boarding house, church, office, shopping center, or other commercial establishment."

Amendment No. 1 was adopted without objection.

Amendment No. 2 (Committee Amendment No. 2)

Representative Brimer offered the following committee amendment to the bill:

Amend **SB 739** by adding new Section as follows:

Strike Section 2 and substitute the following:

SECTION 2. Subchapter B, Chapter 754, Health and Safety Code, is amended by adding Section 754.0111 to read as follows:

Sec. 754.0111. EXEMPTION. This subchapter does not apply to an elevator, escalator or related equipment in a private building for a labor union, trade association, private club or charitable organization that has two or fewer floors.

Renumber SECTIONS 2 and 3 accordingly.

Amendment No. 2 was adopted without objection.

SB 739, as amended, was passed to third reading.

SB 1445 ON THIRD READING
(Siebert - House Sponsor)

The speaker laid before the house, as postponed business, on its third reading and final passage,

SB 1445, A bill to be entitled An Act relating to transfer of title to a motor vehicle, procurement of a copy of a motor vehicle certificate of title, the collection and administration of the motor vehicle sales tax, and certain disclosures that must be made to the purchaser of a motor vehicle.

The bill was read third time earlier today and was postponed until this time.

(Black in the chair)

Amendment No. 1

Representative Pickett offered the following amendment to the bill:

Amend **SB 1445** on third reading by adding an appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION _____. The Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), is amended by adding Section 34A to read as follows:

Sec. 34A. (a) Notwithstanding any other provision of this Act, the department by rule may provide that the owner of a classic motor vehicle, an antique motor vehicle, or a motor vehicle that is not a classic or antique motor vehicle but that is a historic vehicle or a special interest vehicle, may, in lieu of surrendering the title to the vehicle with an application for a new certificate of title, be permitted to retain the certificate of title to the vehicle.

(b) The department shall indicate on the face of a certificate of title that the department permits the owner of the vehicle to retain under this section that the certificate of title may not be used to transfer any interest in the motor vehicle or to establish any lien on the vehicle.

(c) The department may require an owner requesting to retain a certificate of title under this section to pay a fee, in an amount not to exceed the amount that is sufficient, when added to other fees collected under this Act, to recover the actual cost to the department of administering this section.

(d) In this section:

(1) "Antique motor vehicle" means a vehicle eligible for registration under Section 5a, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5a, Vernon's Texas Civil Statutes).

(2) "Classic motor vehicle" means a vehicle eligible for registration under Section 5n, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5n, Vernon's Texas Civil Statutes).

Amendment No. 1 was adopted without objection.

A record vote was requested.

SB 1445, as amended, was passed by (Record 488): 112 Yeas, 10 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Giddings; Goodman; Goolsby; Greenberg; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Junell; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; McCall; McCoulskey; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Ogden; Patterson; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Stiles; Swinford; Telford; Tillery; Torres; Turner, B.; Uher; Van de Putte; West; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Nays — Combs; Finnell; Grusendorf; Horn; Kamel; McDonald; Reyna; Solomons; Talton; Williamson.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Gray; Hudson; Jones, J.; Munoz; Pickett; Walker.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Rodriguez moved to suspend all necessary rules to allow the Committee on Local and Consent Calendars to meet while the house is in session.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Local and Consent Calendars, at this time, speakers committee room.

**PROVIDING FOR LOCAL AND CONSENT BILLS AND
RESOLUTIONS CALENDARS**

Representative Rodriguez moved to set local and consent bills and resolutions calendars for 10 a.m. Wednesday, May 24.

The motion prevailed without objection.

**SB 1545 ON SECOND READING
(Dutton - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 1545, A bill to be entitled An Act relating to the seizure and sale for delinquent ad valorem taxes of abandoned real property in a municipality.

The bill was read second time.

Amendment No. 1

Representative Marchant offered the following amendment to the bill:

Amend **SB 1545** as follows:

On page 2, line 4, after "units" and before the period add "after determining that the sum of all outstanding tax and municipal claims against the property plus the estimated costs of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale"

Amendment No. 1 was adopted without objection.

SB 1545, as amended, was passed to third reading.

**SB 609 ON SECOND READING
(Marchant - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 609, A bill to be entitled An Act relating to municipal regulation of pool yard enclosures.

The bill was read second time and was passed to third reading.

**SB 437 ON SECOND READING
(Alexander - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 437, A bill to be entitled An Act relating to requiring a county to report on its expenditure of funds required to be used for highways.

The bill was read second time.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Bosse, Representative Alexander offered the following committee amendment to the bill:

Amend **SB 437** as follows:

(1) Insert a new Section 3 to the bill to be numbered appropriately and to read as follows:

SECTION 3. The County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes) is amended by adding Section 2.0091 to read as follows:

Sec. 2.0091. (a) This section applies only to a county that has a population of 20,000 to 25,000 and is adjacent to a county with a population of 400,000 to one million.

(b) Each county commissioner may decide whether to maintain a public road in the commissioner's precinct.

(c) If the public road is within the limits of a municipality, the county commissioner may authorize county maintenance of the road if the work on the road is done with the consent and approval of the governing body of the municipality.

(d) If the public road is under the jurisdiction of the Texas Department of Transportation, the county commissioner may authorize county maintenance of the road if the work on the road is done with the consent and approval of the department.

(2) Renumber subsequent sections of the bill accordingly.

Representative Alexander moved to table Amendment No. 1.

The motion to table prevailed.

SB 437 was passed to third reading.

HB 686 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hernandez submitted the following conference committee report on **HB 686**:

Austin, Texas, May 17, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 686** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Barrientos

Zaffirini

Ellis

Bivins

Turner

On the part of the Senate

Hernandez

Chisum

Romo

Elkins

Gutierrez

On the part of the House

HB 686, A bill to be entitled An Act relating to the student loan program administered by the Texas Higher Education Coordinating Board; authorizing the issuance of bonds.

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

SECTION 1. Section 52.01, Education Code, is amended to read as follows:

Sec. 52.01. ADMINISTRATION. The Texas Higher Education Coordinating Board, or its successors, shall administer the student loan program authorized by this chapter pursuant to Article III, Sections 50b, 50b-1, 50b-2, [and] 50b-3, and 50b-4, of the Texas Constitution. Personnel and other expenses required to properly administer this chapter shall be funded by:

- (1) the general appropriations acts; or
- (2) any other source of revenue received by the board in connection with the operation of the student loan program.

SECTION 2. Section 52.501(4), Education Code, is amended to read as follows:

(4) "Bond" means a general obligation bond issued by the board under Article III, Section 50b, 50b-1, 50b-2, [~~or~~] 50b-3, or 50b-4, of the Texas Constitution.

SECTION 3. Section 52.81(2), Education Code, is amended to read as follows:

(2) "Bond" means a general obligation bond issued by the board under Article III, Section 50b-3 or 50b-4, of the Texas Constitution.

SECTION 4. Section 52.82(a), Education Code, is amended to read as follows:

(a) The board may by resolution authorize the issuance of general obligation bonds in [a] total aggregate amounts [~~amount~~] not to exceed:

(1) \$300 million under Section 50b-3, Article III, Texas Constitution;
and

(2) \$300 million under Section 50b-4, Article III, Texas Constitution.

SECTION 5. Section 52.87, Education Code, is amended to read as follows:

Sec. 52.87. MANDAMUS. The performance of official duties prescribed by this subchapter and Article III, Sections [~~Section~~] 50b-3 and 50b-4, of the Texas Constitution, in reference to the payment of the bonds, may be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.

SECTION 6. This Act takes effect on the date on which the constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, providing for the issuance of \$300 million in general obligation bonds to finance educational loans to students takes effect. If that amendment is not approved by the voters, this Act has no effect.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Representative Hernandez moved to adopt the conference committee report on **HB 686**.

The motion prevailed.

HB 1343 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hightower submitted the following conference committee report on **HB 1343**:

Austin, Texas, May 17, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1343** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Montford

Hightower

Bivins

Farrar

Brown

Gray

Moncrief

Place

Whitmire

Telford

On the part of the Senate

On the part of the House

HB 1343, A bill to be entitled An Act relating to inmate grievances and frivolous or malicious litigation filed by inmates.

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

SECTION 1. Subchapter B, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.018 to read as follows:

Sec. 15.018. INMATE LITIGATION. (a) Except as provided by Section 15.014, an action that accrued while the plaintiff was housed in a facility operated by or under contract with the Texas Department of Criminal Justice shall be brought in the county in which the facility is located.

(b) An action brought by two or more plaintiffs that accrued while the plaintiffs were housed in a facility operated by or under contract with the Texas Department of Criminal Justice shall be brought in a county in which a facility that housed one of the plaintiffs is located.

(c) This section does not apply to an action brought under the Family Code.

SECTION 2. Subtitle A, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 14 to read as follows:

CHAPTER 14. INMATE LITIGATION

Sec. 14.001. DEFINITIONS. In this chapter:

(1) "Claim" means a cause of action governed by this chapter.

(2) "Department" means the Texas Department of Criminal Justice.

(3) "Inmate" means a person housed in a secure correctional facility.

(4) "Secure correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(5) "Trust account" means an inmate's trust account administered by the department under Section 501.014, Government Code, by a facility under contract with the department, or by a jail.

(6) "Unsworn declaration" means a document executed in accordance with Chapter 132.

Sec. 14.002. SCOPE OF CHAPTER. (a) This chapter applies only to a suit brought by an inmate in a district, county, justice of the peace, or small claims court in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

(b) This chapter does not apply to an action brought under the Family Code.

Sec. 14.003. DISMISSAL OF CLAIM. (a) A court may dismiss a claim, either before or after service of process, if the court finds that:

(1) the allegation of poverty in the affidavit or unsworn declaration is false;

(2) the claim is frivolous or malicious; or

(3) the inmate filed an affidavit or unsworn declaration required by this chapter that the inmate knew was false.

(b) In determining whether a claim is frivolous or malicious, the court may consider whether:

(1) the claim's realistic chance of ultimate success is slight;

(2) the claim has no arguable basis in law or in fact;

(3) it is clear that the party cannot prove facts in support of the claim;

or

(4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

(c) In determining whether Subsection (a) applies, the court may hold a hearing. The hearing may be held before or after service of process, and it may be held on motion of the court, a party, or the clerk of the court.

(d) On the filing of a motion under Subsection (c), the court shall suspend discovery relating to the claim pending the hearing.

(e) A court that dismisses a claim brought by a person housed in a facility operated by or under contract with the department may notify the department of the dismissal and, on the court's own motion or the motion of any party or the clerk of the court, may advise the department that a mental health evaluation of the inmate may be appropriate.

Sec. 14.004. AFFIDAVIT RELATING TO PREVIOUS FILINGS. (a) An inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration:

(1) identifying each suit, other than a suit under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the suit was brought; and

(2) describing each suit that was previously brought by:

(A) stating the operative facts for which relief was sought;

(B) listing the case name, cause number, and the court in which the suit was brought;

(C) identifying each party named in the suit; and

(D) stating the result of the suit, including whether the suit was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

(b) If the affidavit or unsworn declaration filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit or unsworn declaration must state the date of the final order affirming the dismissal.

(c) The affidavit or unsworn declaration must be accompanied by the certified copy of the trust account statement required by Section 14.006(f).

Sec. 14.005. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF ADMINISTRATIVE REMEDIES. (a) An inmate who files a claim that is subject to the grievance system established under Section 501.008, Government Code, shall file with the court:

(1) an affidavit or unsworn declaration stating the date that the grievance was filed and the date the written decision described by Section 501.008(d), Government Code, was received by the inmate; and

(2) a copy of the written decision from the grievance system.

(b) A court shall dismiss a claim if the inmate fails to file the claim before the 31st day after the date the inmate receives the written decision from the grievance system.

(c) If a claim is filed before the grievance system procedure is complete, the court shall stay the proceeding with respect to the claim for a period not to exceed 180 days to permit completion of the grievance system procedure.

Sec. 14.006. COURT FEES, COURT COSTS, OTHER COSTS. (a) A court may order an inmate who has filed a claim to pay court fees, court costs, and other costs in accordance with this section and Section 14.007. The clerk of the court shall mail a copy of the court's order and a certified bill of costs to the department or jail, as appropriate.

(b) On the court's order, the inmate shall pay an amount equal to the lesser of:

(1) 20 percent of the preceding six months' deposits to the inmate's trust account; or

(2) the total amount of court fees and costs.

(c) In each month following the month in which payment is made under Subsection (b), the inmate shall pay an amount equal to the lesser of:

(1) 10 percent of that month's deposits to the trust account; or

(2) the total amount of court fees and costs that remain unpaid.

(d) Payments under Subsection (c) shall continue until the total amount of court fees and costs are paid or until the inmate is released from confinement.

(e) On receipt of a copy of an order issued under Subsection (a), the department or jail shall withdraw money from the trust account in accordance with Subsections (b), (c), and (d). The department or jail shall hold the money in a separate account and shall forward the money to the court clerk on the earlier of the following dates:

(1) the date the total amount to be forwarded equals the total amount of court fees and costs that remains unpaid; or

(2) the date the inmate is released.

(f) The inmate shall file a certified copy of the inmate's trust account statement with the court. The statement must reflect the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed. The court may request the department or jail to furnish the information required under this subsection.

(g) An inmate may authorize payment in addition to that required by this section.

(h) The court may dismiss a claim if the inmate fails to pay fees and costs assessed under this section.

(i) An inmate may not avoid the fees and costs assessed under this section by nonsuiting a party or by voluntarily dismissing the action.

Sec. 14.007. OTHER COSTS. (a) An order of a court under Section 14.006(a) shall include the costs described by Subsection (b) if the court finds that:

(1) the inmate has previously filed an action in a district, county, justice of the peace, or small claims court; and

(2) a final order has been issued that affirms that the action was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

(b) Costs under Subsection (a) shall include, as costs of court, expenses incurred by the court or by the department, jail, or private facility operator, in connection with the claim and not otherwise charged to the inmate under Section 14.006, including:

(1) expenses of service of process;

(2) postage; and

(3) transportation, housing, or medical care incurred in connection with the appearance of the inmate in the court for any proceeding.

Sec. 14.008. HEARING. (a) The court may hold a hearing under this chapter at a jail or a facility operated by or under contract with the department or may conduct the hearing with video communications technology that permits the court to see and hear the inmate and that permits the inmate to see and hear the court and any other witness.

(b) A hearing conducted under this section by video communications technology shall be recorded on videotape. The recording is sufficient to serve as a permanent record of the hearing.

Sec. 14.009. SUBMISSION OF EVIDENCE. (a) The court may request a person with an admissible document or admissible testimony relevant to the subject matter of the hearing to submit a copy of the document or written statement stating the substance of the testimony.

(b) A written statement submitted under this section must be made under oath or made as an unsworn declaration under Section 132.001.

(c) A copy of a document submitted under this section must be accompanied by a certification executed under oath by an appropriate custodian of the record stating that the copy is correct and any other matter relating to the admissibility of the document that the court requires.

(d) A person submitting a written statement or document under this section is not required to appear at the hearing.

(e) The court shall require that the inmate be provided with a copy of each

written statement or document not later than 14 days before the date on which the hearing is to begin.

Sec. 14.010. DISMISSAL OF CLAIM. (a) The court may enter an order dismissing the entire claim or a portion of the claim under this chapter.

(b) If a portion of the claim is dismissed, the court shall designate the issues and defendants on which the claim may proceed, subject to Sections 14.006 and 14.007.

(c) An order under this section is not subject to interlocutory appeal by the inmate.

Sec. 14.011. EFFECT ON OTHER CLAIMS. (a) Except as provided by Subsection (b), on receipt of an order assessing fees and costs under Section 14.006 that indicates that the court made the finding described by Section 14.007(a), a clerk of a court may not accept for filing another claim by the inmate until the fees and costs assessed under Section 14.006 are paid.

(b) A court may allow an inmate who has not paid the fees and costs assessed against the inmate to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

Sec. 14.012. QUESTIONNAIRE. To implement this chapter, a court may develop, for use in that court, a questionnaire to be filed by the inmate.

Sec. 14.013. REVIEW AND RECOMMENDATION BY MAGISTRATES. (a) The supreme court shall, by rule, adopt a system under which a court may refer a suit governed by this chapter to a magistrate for review and recommendation.

(b) The system adopted under Subsection (a) may be funded from money appropriated to the supreme court or from money received by the supreme court through interagency contract or contracts.

(c) For the purposes of Section 14.014, the adoption of a system by rule under Subsection (a) does not constitute a modification or repeal of a provision of this chapter.

Sec. 14.014. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE. Notwithstanding Section 22.004, Government Code, this chapter may not be modified or repealed by a rule adopted by the supreme court.

SECTION 3. Chapter 13, Civil Practice and Remedies Code, is amended by adding Section 13.004 to read as follows:

Sec. 13.004. INAPPLICABILITY TO CERTAIN CLAIMS. This chapter does not apply to a claim governed by Chapter 14.

SECTION 4. Chapter 106, Civil Practice and Remedies Code, is amended by adding Section 106.004 to read as follows:

Sec. 106.004. INAPPLICABILITY TO CERTAIN CLAIMS. This chapter does not authorize a claim for preventive relief against the Texas Department of Criminal Justice, an employee of the department, or any other agency, agent, employee, or officer of this state if:

(1) the claim is brought by a person housed in a facility operated by or under contract with the department; and

(2) the claim accrued while the person was housed in the facility.

SECTION 5. Chapter 498, Government Code, is amended by adding Section 498.0045 to read as follows:

Sec. 498.0045. FORFEITURE OF GOOD CONDUCT TIME: FRIVOLOUS LAWSUITS. (a) In this section, "final order" means a certified copy of a final order of a state or federal court that dismisses as frivolous or malicious a lawsuit brought by an inmate while the inmate was in the custody of the department.

(b) On receipt of a final order, the department shall forfeit:

(1) 60 days of an inmate's accrued good conduct time, if the department has previously received one final order;

(2) 120 days of an inmate's accrued good conduct time, if the department has previously received two final orders; or

(3) 180 days of an inmate's accrued good conduct time, if the department has previously received three or more final orders.

(c) The department may not restore good conduct time forfeited under this section.

SECTION 6. Section 501.008, Government Code, is amended to read as follows:

Sec. 501.008. INMATE GRIEVANCE SYSTEM [PROCEDURE]. (a) The department [institutional division] shall develop and maintain a system for the resolution of [inmate] grievances by inmates housed in facilities operated by the department or under contract with the department that qualifies for certification under 42 U.S.C. Section 1997e and the department shall obtain and maintain certification under that section. A remedy provided by the grievance system is the exclusive administrative remedy available to an inmate for a claim for relief against the department that arises while the inmate is housed in a facility operated by the department or under contract with the department, other than a remedy provided by writ of habeas corpus challenging the validity of an action occurring before the delivery of the inmate to the department or to a facility operated under contract with the department.

(b) The grievance system must provide procedures:

(1) for an inmate to identify evidence to substantiate the inmate's claim; and

(2) for an inmate to receive all formal written responses to the inmate's grievance.

(c) A report, investigation, or supporting document prepared by the department in response to an inmate grievance is considered to have been prepared in anticipation of litigation and is confidential, privileged, and not subject to discovery by the inmate in a claim arising out of the same operative facts as are alleged in the grievance.

(d) An inmate may not file a claim in state court regarding operative facts for which the grievance system provides the exclusive administrative remedy until:

(1) the inmate receives a written decision issued by the highest authority provided for in the grievance system; or

(2) if the inmate has not received a written decision described by Subdivision (1), the 180th day after the date the grievance is filed.

(e) The limitations period applicable to a claim arising out of the same operative facts as a claim for which the grievance system provides the exclusive remedy:

- (1) is suspended on the filing of the grievance; and
- (2) remains suspended until the earlier of the following dates:
 - (A) the 180th day after the date the grievance is filed; or
 - (B) the date the inmate receives the written decision described

by Subsection (d)(1).

(f) This section does not affect any immunity from a claim for damages that otherwise exists for the state, the department, or an employee of the department.

SECTION 7. Subchapter A, Chapter 501, Government Code, is amended by adding Section 501.019 to read as follows:

Sec. 501.019. COST OF CONFINEMENT AS CLAIM; SETOFF. (a) The state may deduct from any monetary obligation owed to an incarcerated person:

(1) the cost of incarceration, if a cost of incarceration for the person can be computed; and

(2) any amount assessed against the person under Section 14.006, Civil Practice and Remedies Code, that remains unpaid at the time the monetary obligation is to be paid.

(b) In a case in which a person may be indemnified under Chapter 104, Civil Practice and Remedies Code, and that arises from a claim made by a person for whom a cost of incarceration can be computed, the court shall reduce the amount recoverable by the claimant by the amount of the cost of incarceration.

(c) The annual cost of incarceration of a person shall be computed using the average cost per day for imprisonment calculated by the Criminal Justice Policy Council.

(d) In making a deduction under Subsection (a) or in reducing an award under Subsection (b), the department or the court shall credit or debit a prorated portion of the cost of incarceration for a person incarcerated for 365 days or less in a year. The number of days of incarceration in a year includes time served before conviction.

(e) This section applies to a monetary obligation arising from a judgment against the state, an agency of the state, or an officer or employee of the state or an agency of the state, only if:

(1) the judgment awards damages for property damage or bodily injury resulting from a negligent act or omission, including an act or omission described by Section 101.021(1), Civil Practice and Remedies Code; and

(2) there is not a finding by the court of a violation of the constitution of this state or the United States.

SECTION 8. Section 30.006, Civil Practice and Remedies Code, is repealed.

SECTION 9. (a) The Texas Department of Criminal Justice shall provide notice to all persons housed in facilities operated by or under contract with the department of the provisions of this Act.

(b) In providing notice under this section, the Texas Department of Criminal Justice shall:

(1) include notice of the provisions of this Act in a newspaper or similar publication published for persons housed in facilities operated by or under contract with the department;

(2) post notice of the provisions of this Act in each law library maintained by the department or under contract with the department in a facility in which persons are housed; and

(3) ensure that adequate notice is provided to persons who are not housed in the general population of inmates.

SECTION 10. (a) This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 498.0045, Government Code, as added by this Act, applies only to a forfeiture of good conduct time based on the filing in court of a lawsuit on or after the effective date of this Act.

(c) Section 501.008, Government Code, as amended by this Act, applies only to an inmate grievance filed on or after the effective date of this Act. An inmate grievance filed before the effective date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Hightower moved to adopt the conference committee report on **HB 1343**.

A record vote was requested.

The motion prevailed by (Record 489): 123 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgenuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbrank.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira; Thompson.

Absent — Bosse; Gutierrez; Hudson; Longoria; Sadler.

(Thompson now present)

HJR 50 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hernandez submitted the following conference committee report on **HJR 50**:

Austin, Texas, May 17, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HJR 50** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Barrientos

Hernandez

Zaffirini

Chisum

Ellis

Romo

Bivins

Elkins

Turner

Gutierrez

On the part of the Senate

On the part of the House

HJR 50, A joint resolution proposing a constitutional amendment providing for the issuance of general obligation bonds by the Texas Higher Education Coordinating Board.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 50b-4 to read as follows:

Sec. 50b-4. ADDITIONAL STUDENT LOANS. (a) The legislature by general law may authorize the Texas Higher Education Coordinating Board or its successor or successors to issue and sell general obligation bonds of the State of Texas in an amount not to exceed \$300 million to finance educational loans to students. The bonds are in addition to those bonds issued under Sections 50b, 50b-1, 50b-2, and 50b-3, Article III, Texas Constitution.

(b) The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Higher Education Coordinating Board or its successor or successors.

(c) The maximum net effective interest rate to be borne by bonds issued under this section must be set by law.

(d) The legislature may provide for the investment of bond proceeds and

may establish and provide for the investment of an interest and sinking fund to pay the bonds. Income from the investment shall be used for the purposes prescribed by the legislature.

(e) While any of the bonds issued under this section or interest on the bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, less any amount in an interest and sinking fund established under this section at the end of the preceding fiscal year that is pledged to the payment of the bonds or interest.

(f) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on the earlier of the first date on which another election on a constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, is held or November 7, 1995. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the issuance of \$300 million in general obligation bonds to finance educational loans to students."

Representative Hernandez moved to adopt the conference committee report on **HJR 50**.

A record vote was requested.

The motion prevailed by (Record 490): 123 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira.

Absent — Gutierrez; Harris; Hudson; Longoria; Moffat; Sadler.

SB 753 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hartnett submitted the conference committee report on **SB 753**.

Representative Hartnett moved to adopt the conference committee report on **SB 753**.

A record vote was requested.

The motion prevailed by (Record 491): 124 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Maxey; Oliveira.

Absent — Gutierrez; Hudson; Longoria; Moffat; Sadler.

(Maxey now present)

HB 668 - WITH SENATE AMENDMENTS

Representative Junell called up with senate amendments for consideration at this time,

HB 668, A bill to be entitled An Act relating to civil remedies for deceptive trade practices and certain related consumer claims.

On motion of Representative Junell, the house concurred in the senate amendments to **HB 668**.

HB 668 - TEXT OF SENATE AMENDMENTS

CSHB 668, A bill to be entitled An Act relating to civil remedies for deceptive trade practices and certain related consumer claims.

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

SECTION 1. Sections 17.42, 17.43, and 17.44, Business & Commerce Code, are amended to read as follows:

Sec. 17.42. **WAIVERS: PUBLIC POLICY.** (a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if:

(1) the waiver is in writing and is signed by the consumer;

(2) ~~[a defendant in an action or claim under this subchapter pleads and proves:~~

~~[(1)]~~ the consumer is not in a significantly disparate bargaining position; and

~~(3) [(2)] the consumer is represented by legal counsel in seeking or acquiring the goods or services[, other than the purchase or lease of a family residence occupied or to be occupied as the consumer's residence, by a purchase or a lease for a consideration paid or to be paid that exceeds \$500,000; and~~

~~[(3) the consumer waives all or part of this subchapter, other than Section 17.555, by an express provision in a written contract signed by both the consumer and the consumer's legal counsel; and provided, however, that a business consumer with assets of \$5 million or more according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles that has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and that is not in a significantly disparate bargaining position may by written contract waive the provisions of this subchapter, other than Section 17.555].~~

(b) A waiver under Subsection (a) is not effective if the consumer's legal counsel was directly or indirectly identified, suggested, or selected by a defendant or an agent of the defendant [The existence or absence of a disparate bargaining position may not be established as a matter of law solely by evidence of the consumer's financial position relative to other parties to the contract or by matters contained in a written contract relating to the relative bargaining position of the parties].

(c) A waiver under this section must be:

(1) conspicuous and in bold-face type of at least 10 points in size;

(2) identified by the heading "Waiver of Consumer Rights," or words of similar meaning; and

(3) in substantially the following form:

"I waive my rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of my own selection, I voluntarily consent to this waiver."

(d) The waiver required by Subsection (c) may be modified to waive only specified rights under this subchapter.

(e) The fact that a consumer has signed a waiver under this section is not a defense to an action brought by the attorney general under Section 17.47.

Sec. 17.43. **CUMULATIVE REMEDIES.** The provisions of this

subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both ~~[actual]~~ damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

Sec. 17.44. CONSTRUCTION AND APPLICATION. (a) This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

(b) Chapter 27, Property Code, prevails over this subchapter to the extent of any conflict.

SECTION 2. Section 17.45, Business & Commerce Code, is amended by amending Subdivisions (5) and (9) and adding Subdivisions (11), (12), and (13) to read as follows:

(5) "Unconscionable action or course of action" means an act or practice which, to a consumer's ~~[person's]~~ detriment,[-

~~[(A)]~~ takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer ~~[a person]~~ to a grossly unfair degree;[-
or

~~[(B)] results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration].~~

(9) "Knowingly" means actual awareness, at the time of the act or practice complained of, of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act, ~~[or]~~ practice, condition, defect, or failure constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(11) "Economic damages" means compensatory damages for pecuniary loss, including costs of repair and replacement. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(12) "Residence" means a building:

(A) that is a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system; and

(B) that is occupied or to be occupied as the consumer's residence.

(13) "Intentionally" means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty giving rise to the consumer's claim, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness. Intention may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally.

SECTION 3. Section 17.46(b), Business & Commerce Code, is amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- (6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- (14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- (15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or

work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; [or]

(24) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction; or

(25) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.

SECTION 4. Section 17.49, Business & Commerce Code, is amended by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(23);

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; or

(4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion.

(d) Subsection (c) applies to a cause of action brought against the person who provided the professional service and a cause of action brought against any entity that could be found to be vicariously liable for the person's conduct.

(e) Except as specifically provided by Subsections (b) and (h), Section 17.50, nothing in this subchapter shall apply to a cause of action for bodily injury or death or for the infliction of mental anguish.

(f) Nothing in the subchapter shall apply to a claim arising out of a written contract if:

(1) the contract relates to a transaction, a project, or a set of transactions related to the same project involving total consideration by the consumer of more than \$100,000;

(2) in negotiating the contract the consumer is represented by legal counsel who is not directly or indirectly identified, suggested, or selected by the defendant or an agent of the defendant; and

(3) the contract does not involve the consumer's residence.

(g) Nothing in this subchapter shall apply to a cause of action arising from a transaction, a project, or a set of transactions relating to the same project, involving total consideration by the consumer of more than \$500,000, other than a cause of action involving a consumer's residence.

SECTION 5. Section 17.50, Business & Commerce Code, is amended to read as follows:

Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may maintain an action where any of the following constitute a producing cause of economic ~~[actual]~~ damages or damages for mental anguish:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is:

(A) specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter; and

(B) relied on by a consumer to the consumer's detriment;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, [Texas] Insurance Code~~[, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended]~~.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) the amount of economic ~~[actual]~~ damages found by the trier of fact. ~~[In addition the court shall award two times that portion of the actual damages that does not exceed \$1,000.]~~ If the trier of fact finds that the conduct of the defendant was committed knowingly, the consumer may also recover damages for mental anguish, as found by the trier of fact, and the trier of fact may award not more than three times the amount of economic ~~[actual]~~ damages; or if the trier of fact finds the conduct was committed intentionally, the consumer may recover damages for mental anguish, as found by the trier of fact, and the trier of fact may award not more than three times the amount of damages for mental anguish and economic damages ~~[in excess of \$1,000; provided that:~~

~~[(A) the provisions of Chapters 33 and 41, Civil Practice and Remedies Code, shall govern the determination of the consumer's right under this subchapter to recover actual and other damages, including exemplary damages, and the amount of those damages that may be recovered by the consumer under this subchapter, in an action seeking damages for (i) death; (ii) personal injury other than mental anguish or distress associated with a violation of this subchapter that does not involve death or bodily injury; or (iii) damage to property other than the goods acquired by the purchase or lease that is involved in the consumer's action or claim if that damage arises out of an occurrence that involves death or bodily injury; and~~

~~[(B) only in an action under this subchapter that is subject to Paragraph (A) of this subdivision, the consumer's right to recover damages shall be subject to any defense or defensive matter that could be considered by the trier of fact in an action subject to Chapter 33, Civil Practice and Remedies Code, in determining the percentage of responsibility attributable to the consumer claimant under that chapter];~~

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the

person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless in fact or law or [and] brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

(e) In computing additional damages under Subsection (b), attorneys' fees, costs, and prejudgment interest may not be considered.

(f) A court may not award prejudgment interest applicable to:

(1) damages for future loss under this subchapter; or

(2) additional damages under Subsection (b).

(g) Chapter 41, Civil Practice and Remedies Code, does not apply to a cause of action brought under this subchapter.

(h) Notwithstanding any other provision of this subchapter, if a claimant is granted the right to bring a cause of action under this subchapter by another law, the claimant is not limited to recovery of economic damages only, but may recover any actual damages incurred by the claimant, without regard to whether the conduct of the defendant was committed intentionally. For the purpose of the recovery of damages for a cause of action described by this subsection only, a reference in this subchapter to economic damages means actual damages. In applying Subsection (b)(1) to an award of damages under this subsection, the trier of fact is authorized to award a total of not more than three times actual damages, in accordance with that subsection.

SECTION 6. Section 17.505, Business & Commerce Code, is amended to read as follows:

Sec. 17.505. NOTICE; ~~INSPECTION~~~~[:—OFFER OF SETTLEMENT]~~.

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of ~~economic [actual]~~ damages, ~~damages for mental anguish,~~ and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer. ~~[If the consumer unreasonably refuses to permit the inspection, the court shall not award the two times actual damages not exceeding \$1,000, as provided in Subsection (b) of Section 17.50 of this subchapter.]~~

(b) If the giving of 60 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by ~~[Subsection (c) of this section and by]~~

Subsection (d), Section 17.506 of this subchapter may be made within 60 days after service ~~[the filing]~~ of the suit or counterclaim.

~~(c) A person against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. This subsection does not apply if Subsection (b) applies. [Any person who receives the written notice provided by Subsection (a) of this section may, within 60 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 60 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.]~~

~~(d) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (c) if the plea in abatement:~~

~~(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (a); and~~

~~(2) is not controverted by an affidavit filed by the consumer before the 11th day after the date on which the plea in abatement is filed.~~

~~(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a). [A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the amount tendered in the settlement offer is the same as or more than, or if the court finds that amount to be substantially the same as, the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less. Such settlement offer shall not be admissible as evidence before a jury.~~

~~[(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (d) of this section.]~~

SECTION 7. Subchapter E, Chapter 17, Business & Commerce Code, is amended by adding Sections 17.5051 and 17.5052 to read as follows:

Sec. 17.5051. MEDIATION. (a) A party may, not later than the 90th day after the date of service of a pleading in which relief under this subchapter is sought, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) If the parties do not agree on a mediator, the court shall appoint the mediator.

(d) Mediation shall be held within 30 days after the date the order is signed, unless the parties agree otherwise or the court determines that additional time, not to exceed an additional 30 days, is warranted.

(e) Except as agreed to by all parties who have appeared in the action, each party who has appeared shall participate in the mediation and, except as provided by Subsection (f), shall share the mediation fee.

(f) A party may not compel mediation under this section if the amount of economic damages claimed is less than \$15,000, unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided in this section, Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to the appointment of a mediator and to the mediation process provided by this section.

(h) This section does not apply to an action brought by the attorney general under Section 17.47.

Sec. 17.5052. OFFERS OF SETTLEMENT. (a) A person who receives notice under Section 17.505 may tender an offer of settlement at any time during the period beginning on the date the notice is received and ending on the 60th day after that date.

(b) If a mediation under Section 17.5051 is not conducted, the person may tender an offer of settlement at any time during the period beginning on the date an original answer is filed and ending on the 90th day after that date.

(c) If a mediation under Section 17.5051 is conducted, a person against whom a claim under this subchapter is pending may tender an offer of settlement during the period beginning on the day after the date that the mediation ends and ending on the 20th day after that date.

(d) An offer of settlement tendered by a person against whom a claim under this subchapter is pending must include an offer to pay the following amounts of money, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the consumer's claim for damages; and

(2) an amount of money to compensate the consumer for the consumer's reasonable and necessary attorneys' fees incurred as of the date of the offer.

(e) Unless both parts of an offer of settlement required under Subsection (d) are accepted by the consumer not later than the 30th day after the date the offer is made, the offer is rejected.

(f) A settlement offer tendered by a person against whom a claim under this subchapter is pending that complies with this section and that has been rejected by the consumer may be filed with the court with an affidavit certifying its rejection.

(g) If the court finds that the amount tendered in the settlement offer for damages under Subsection (d)(1) is the same as, substantially the same as, or

more than the damages found by the trier of fact, the consumer may not recover as damages any amount in excess of the lesser of:

- (1) the amount of damages tendered in the settlement offer; or
- (2) the amount of damages found by the trier of fact.

(h) If the court makes the finding described by Subsection (g), the court shall determine reasonable and necessary attorneys' fees to compensate the consumer for attorneys' fees incurred before the date and time of the rejected settlement offer. If the court finds that the amount tendered in the settlement offer to compensate the consumer for attorneys' fees under Subsection (d)(2) is the same as, substantially the same as, or more than the amount of reasonable and necessary attorneys' fees incurred by the consumer as of the date of the offer, the consumer may not recover attorneys' fees greater than the amount of fees tendered in the settlement offer.

(i) If the court finds that the offering party could not perform the offer at the time the offer was made or that the offering party substantially misrepresented the cash value of the offer, Subsections (g) and (h) do not apply.

(j) If Subsection (g) does not apply, the court shall award as damages the amount of economic damages and damages for mental anguish found by the trier of fact, subject to Sections 17.50 and 17.501. If Subsection (h) does not apply, the court shall award attorneys' fees as provided by Section 17.50(d).

(k) An offer of settlement is not an admission of engaging in an unlawful act or practice or liability under this subchapter. Except as otherwise provided by this section, an offer or a rejection of an offer may not be offered in evidence at trial for any purpose.

SECTION 8. Subsection (d), Section 17.506, Business & Commerce Code, is amended to read as follows:

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of economic [actual] damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

(1) the amount of economic [actual] damages and damages for mental anguish claimed; and

(2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

SECTION 9. Section 17.56, Business & Commerce Code, is amended to read as follows:

Sec. 17.56. VENUE. An action brought under this subchapter may be brought:

(1) in any county in which venue is proper under Chapter 15, Civil Practice and Remedies Code; or

(2) [which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought or in the county

~~in which the alleged act or practice occurred or~~ in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

SECTION 10. Section 27.004, Property Code, is amended by adding new Subsections (d) and (e) and relettering existing Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) to read as follows:

(d) The court shall abate a suit governed by this section if Subsection (c) does not apply and the court, after a hearing, finds that the contractor is entitled to an abatement because notice was not provided as required by Subsection (a). A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed if the plea in abatement:

(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (a); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the plea in abatement is filed.

(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).

(f) [(d)] If a claimant unreasonably rejects an offer made as provided by this section or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of the reasonable cost of the repairs which are necessary to cure the construction defect and which are the responsibility of the contractor and may recover only the amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected.

(g) [(e)] If a contractor fails to make a reasonable offer under this section, or fails to make a reasonable attempt to complete the repairs specified in an accepted offer made under this section, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer made under this section, the limitations on damages and defenses to liability provided for in this section shall not apply.

(h) [(f)] Except as provided by Subsection (f) [(d)], in a suit subject to this chapter the claimant may recover only the following damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect that the contractor failed to cure;

(2) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(3) the reduction in market value, if any, to the extent the reduction is due to structural failure; and

(4) reasonable and necessary attorney's fees.

(i) [(g)] The total damages awarded in a suit subject to this chapter may not exceed the claimant's purchase price for the residence.

(j) [(h)] An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(k) [(i)] An affidavit certifying rejection of a settlement offer under this section may be filed with the court. The trier of fact shall determine the reasonableness of a rejection of an offer of settlement made under this section.

(l) [(j)] A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(m) [(k)] Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) [(h)] This section does not preclude a contractor from making a monetary settlement offer.

(o) [(m)] The inspection and repair provisions of this chapter are in addition to any rights of inspection and settlement provided by common law or by another statute, including Section 17.505, Business & Commerce Code.

SECTION 11. Section 4, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 4. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading;

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing,

disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure any person engaged in the business of insurance;

(4) Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(5) False Financial Statements. (a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive;

(b) Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer;

(6) Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, company stock or other capital stock, or benefit certificates or shares in any corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Provided, however, that nothing in this subsection shall be construed as prohibiting the issuing or delivery of participating insurance policies otherwise authorized by law.

(7) Unfair Discrimination. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to renew, cancelling or limiting the amount of coverage on a policy of insurance covered by Subchapter C, Chapter 5, of this code because of the geographic location of the risk unless:

(1) the refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(2) the refusal, cancellation or limitation is required by law or regulatory mandate.

(8) Rebates. (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(b) Nothing in clause 7 or paragraph (a) of clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) Deceptive Name, Word, Symbol, Device, or Slogan. Using, displaying, publishing, circulating, distributing, or causing to be used, displayed, published, circulated, or distributed in any letter, pamphlet, circular, contract, policy, evidence of coverage, article, poster, or other document, literature, or public media of:

(a) a name as the corporate or business name of a person or entity engaged in an insurance or insurance related business in this state that is the same as, or deceptively similar to, the name adopted and used by an insurance entity, health maintenance organization, third party administrator, or group hospital service company authorized to do business under the laws of this state; or

(b) a word, symbol, device, slogan, or any combination of these items, whether registered or not registered, that is the same as or deceptively similar to one adopted and used by an insurance entity, health maintenance organization, third party administrator, or group hospital service company to distinguish such entities, products, or service from other entities, and includes the title, designation, character names, and distinctive features of broadcast or other advertising.

Where two persons or entities are using a name, word, symbol, device, slogan, or any combination of these items that are the same or deceptively similar and are likely to cause confusion or a mistake, the user who can demonstrate the first continuous actual use of such name, word, symbol, device, slogan, or combination of these items shall not have committed an unfair method of competition or deceptive act or practice.

(10) Unfair Settlement Practices. (a) Engaging in any of the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(i) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

(ii) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;

(iii) failing to attempt, in good faith, to effectuate a prompt, fair, and equitable settlement under one portion of a policy of a claim with respect to which the insurer's liability has become reasonably clear in order to influence the claimant to settle an additional claim under another portion of the coverage, provided that this prohibition does not apply if payment under one portion of the coverage constitutes evidence of liability under another portion of the policy;

(iv) failing to provide promptly to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or for the offer of a compromise settlement of a claim;

(v) failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(B) submit a reservation of rights to a policyholder;

(vi) refusing, failing, or unreasonably delaying an offer of settlement under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy;

(vii) undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, provided that this prohibition does not apply to a compromise settlement of a doubtful or disputed claim;

(viii) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(ix) with respect to a Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy all or any part of the loss forming the basis of that claim; or

(x) requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the person unless:

(A) the claimant is ordered to produce those tax returns by a court;

(B) the claim involves a fire loss; or

(C) the claim involves lost profits or income.

(b) Paragraph (a) of this clause does not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

(11) Misrepresentation of Insurance Policy. Misrepresenting an insurance policy by:

(a) making an untrue statement of material fact;

(b) failing to state a material fact that is necessary to make other statements made not misleading, considering the circumstances under which the statements were made;

(c) making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact;

(d) making a material misstatement of law; or

(e) failing to disclose any matter required by law to be disclosed, including a failure to make disclosure in accordance with another provision of this code.

SECTION 12. Article 21.21, Insurance Code, is amended by adding Section 11A to read as follows:

Sec. 11A. DOUBLE RECOVERY PROHIBITED. A person may not recover damages and penalties for the same act or practice under both this Article and under another law.

SECTION 13. Section 16, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 16. RELIEF AVAILABLE TO INJURED PARTIES. (a) Any person who has sustained actual damages caused by ~~[as a result of]~~ another's engaging in an act or practice declared in Section 4 of this Article ~~[or in rules or regulations lawfully adopted by the Board under this Article]~~ to be unfair methods of competition or unfair or deceptive acts or practices in the business of insurance or in any practice specifically enumerated in a subdivision of ~~[defined by]~~ Section 17.46(b), ~~[17.46 of the]~~ Business & Commerce Code, ~~[as amended,]~~ as an unlawful deceptive trade practice may maintain an action against the person or persons engaging in such acts or practices. To maintain an action for a deceptive act or practice enumerated in Section 17.46(b), Business & Commerce Code, a person must show that the person has relied on the act or practice to the person's detriment.

(b) In a suit filed under this section, any plaintiff who prevails may obtain:

(1) the amount of actual damages plus court costs and reasonable and necessary attorneys' fees. If the trier of fact finds that the defendant knowingly committed the acts complained of, the trier of fact may award not more than three ~~[court shall award, in addition, two]~~ times the amount of actual damages; or

(2) an order enjoining such acts or failure to act; or

(3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) All actions under this Article must be commenced within two years after the date on which the unfair method of competition or unfair or deceptive act or practice occurred or within two years after the person bringing the action discovered or, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair method of competition or unfair or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the person bringing the action proves that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

(e) As a prerequisite to filing a suit seeking damages under this section against any person, the person seeking damages shall give written notice to the other person at least 60 [30] days before filing suit. The notice must advise the person of the specific complaint and the amount of actual damages and expenses, including any attorneys' fees reasonably incurred in asserting the claim against the defendant.

(f) If giving 60 [30] days' written notice is impracticable because the suit must be filed in order to prevent the expiration of the statute of limitations or because the claim is asserted as a counterclaim, the notice provided for in Subsection (e) of this section is not required~~], and the tender of a written offer of settlement provided for by Subsection (g) of this section may be made not later than the 30th day after the date of filing of the suit or counterclaim].~~

(g) A person against whom a suit is pending who does not receive written notice, as required by Subsection (e) of this section, may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. This subsection does not apply if Subsection (f) of this section applies [A person who receives the written notice provided by Subsection (e) of this section may tender, not later than the 30th day after the date of receipt of the notice, to the person seeking damages, a written offer of settlement, including an agreement to reimburse the person for any attorneys' fees reasonably incurred in asserting the claim to the date of the written notice. A person who does not receive a written notice because the suit or counterclaim is filed as provided for by Subsection (f) of this section may tender, not later than the 30th day after the date of filing of the suit or counterclaim, a written offer of settlement, including an agreement to reimburse the person for any attorneys' fees reasonably incurred in asserting the claim to the date the suit or counterclaim was filed. An offer of settlement is rejected if it is not accepted on or before the 30th day after the date of receipt by the person seeking damages].

(h) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (g) if the plea in abatement:

(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (e); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the plea in abatement is filed [A rejected

~~settlement offer made in compliance with Subsection (g) of this section may be filed with the court with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the plaintiff may not recover an amount that exceeds the lesser of:~~

~~[(1) the amount tendered in the settlement offer; or~~

~~[(2) the amount of actual damages found by the trier of fact].~~

~~(i) An abatement under Subsection (h) continues until the 60th day after the date that written notice is served in compliance with Subsection (e) [The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Article. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (h) of this section].~~

SECTION 14. Article 21.21, Insurance Code, is amended by adding Sections 16A and 16B to read as follows:

Sec. 16A. OFFERS OF SETTLEMENT. (a) A person who receives notice under Section 16(e) of this article may tender an offer of settlement at any time during the period beginning on the date notice is received and ending on the 60th day after that date.

(b) If a mediation under Section 16B of this article is not conducted, the person may tender an offer of settlement at any time during the period beginning on the date an original answer is filed and ending on the 90th day after that date.

(c) If a mediation under Section 16B of this article is conducted, a person against whom a claim under Section 16 of this article is pending may tender an offer of settlement during the period beginning on the day after the date that the mediation ends and ending on the 20th day after that date.

(d) An offer of settlement tendered by a person against whom a claim under Section 16 of this article is pending must include an offer to pay the following amounts of money, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the claim for damages; and

(2) an amount of money to compensate the claimant for the claimant's reasonable and necessary attorneys' fees incurred as of the date of the offer.

(e) Unless both parts of an offer of settlement required under Subsection (d) of this section are accepted by the claimant not later than the 30th day after the date the offer is made, the offer is rejected.

(f) A settlement offer tendered by a person against whom a claim under Section 16 of this article is pending that complies with this section and that has been rejected by the claimant may be filed with the court with an affidavit certifying its rejection.

(g) If the court finds that the amount tendered in the settlement offer for damages under Subsection (d)(1) of this section is the same as, substantially the same as, or more than the damages found by the trier of fact, the claimant may not recover as damages any amount in excess of the lesser of:

(1) the amount of damages tendered in the settlement offer; or

(2) the amount of damages found by the trier of fact.

(h) If the court makes the finding described by Subsection (g) of this

section, the court shall determine reasonable and necessary attorneys' fees to compensate the claimant for attorneys' fees incurred before the date and time of the rejected settlement offer. If the court finds that the amount tendered in the settlement offer to compensate the claimant for attorneys' fees under Subsection (d)(2) of this section is the same as, substantially the same as, or more than the amount of reasonable and necessary attorneys' fees incurred by the claimant as of the date of the offer, the claimant may not recover attorneys' fees greater than the amount of fees tendered in the settlement offer.

(i) If the court finds that the offering party could not perform the offer at the time the offer was made or that the offering party substantially misrepresented the cash value of the offer, Subsections (g) and (h) of this section do not apply.

(j) If Subsection (g) of this section does not apply, the court shall award damages as required by Section 16(b) of this article. If Subsection (h) of this section does not apply, the court shall award attorneys' fees as required by Section 16(b) of this article.

(k) An offer of settlement is not an admission of engaging in an act or practice declared in Section 4 of this article to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Sec. 16B. MEDIATION. (a) A party may, not later than the 90th day after the date of service of a pleading in which relief under Section 16 of this article is sought, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) If the parties do not agree on a mediator, the court shall appoint the mediator.

(d) Mediation shall be held within 30 days after the date the order is signed, unless the parties agree otherwise or the court determines that additional time, not to exceed an additional 30 days, is warranted.

(e) Except as agreed to by all parties who have appeared in the action, each party who has appeared shall participate in the mediation and, except as provided by Subsection (f), shall share the mediation fee.

(f) A party may not compel mediation under this section if the amount of actual damages claimed is less than \$15,000, unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided in this section, Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to the appointment of a mediator and to the mediation process provided by this section.

SECTION 15. Section 17(a), Article 21.21, Insurance Code, is amended to read as follows:

(a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Section 4 of this Article ~~or by the rules and regulations lawfully adopted by the Board under this Article or by any practice defined by Section 17.46 of the Business & Commerce Code,~~

~~as amended;~~] as an unlawful deceptive trade practice, the Board may request the Attorney General to bring a class action, or the individual damaged may bring an action on behalf of himself and others similarly situated, to recover damages and relief as provided in this section.

SECTION 16. Section 33.002, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) This chapter does not apply to[:

~~[(1)] an action to collect workers' compensation benefits under the workers' compensation laws of this state, Subtitle A, Title 5, Labor Code, [(Article 8306 et seq., Vernon's Texas Civil Statutes)] or actions against an employer for exemplary damages arising out of the death of an employee.~~

(c) This chapter applies to[:

~~[(2)] an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) [except as specifically provided in Section 17.50 of that Act; or~~

~~[(3)] an action brought under Chapter 21, Insurance Code].~~

SECTION 17. Article 11.05, Title 79, Revised Statutes (Article 5069-11.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11.05. FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS. No debt collector may collect or attempt to collect debts or obtain information concerning a consumer by any fraudulent, deceptive, or misleading representations which employ the following practices:

(a) using any name while engaged in the collection of debts other than the true business or professional name or the true personal or legal name of the debt collector or, if engaged in the collection of a credit card debt, the name appearing on the face of the credit card; or failing to maintain a list of all business or professional names known to be used or formerly used by individual persons collecting debts or attempting to collect debts for the debt collector;

(b) falsely representing that the debt collector has information in his possession or something of value for the consumer in order to solicit or discover information about the consumer;

(c) failing to clearly disclose, in any communication with the debtor, the name of the person to whom the debt has been assigned or is owed at the time of making any demand for money (provided, however, this subsection shall not apply to persons servicing or collecting real estate first lien mortgage loans) or credit card debts;

(d) failing to clearly disclose, in any communication with the debtor, that the debt collector is attempting to collect a debt, unless such communication is for the purpose of discovering the whereabouts of the debtor;

(e) using any written communication which fails to clearly indicate the name of the debt collector and the debt collector's street address or post office box and telephone number, when the written notice refers to an alleged delinquent debt; (the foregoing shall not require disclosure of names and addresses of employees of debt collectors);

(f) using any written communication which demands a response to a place other than the debt collector's or creditor's street address or post office box; (the foregoing shall not require response to the address of an employee of a debt collector);

(g) misrepresenting the character, extent, or amount of a debt against a consumer, or misrepresenting its status in any judicial or governmental proceedings;

(h) falsely representing that any debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of this state or any agency of federal, state, or local government;

(i) using, distributing, or selling any written communication which simulates or falsely represents to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other legally constituted or authorized governmental authority, or which creates a false impression about its source, authorization, or approval; or using any seal or insignia or design which simulates that of any governmental agency;

(j) representing that a debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges when there is no written contract or statute authorizing such additional fees or charges;

(k) representing that a debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges when the award of such fee or charge is discretionary by a court of law;

(l) falsely representing the status or true nature of the services rendered by the debt collector or his business;

(m) using any written communication which violates or fails to conform to the United States postal laws and regulations;

(n) using any communication which purports to be from any attorney or law firm, when in fact it is not;

(o) representing that a debt is being collected by an attorney when it is not; ~~or~~

(p) representing that a debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person to whom the debt is owed; however, nothing herein shall prohibit a creditor from owning or operating its own bona fide debt collection agency; or

(q) all changes made to this Act by any act of the 74th Legislature shall apply to any civil action pending on or after the effective date of the enactment of these changes.

SECTION 18. Article 11.10, Title 79, Revised Statutes (Article 5069-11.10, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A person who successfully maintains an action under this article for violation of Article 11.02(c) or 11.07A of this Act shall be awarded at least \$100 for each violation of this Act.

(d) All changes made to this Act by any act of the 74th Legislature shall apply to any civil action pending on or after the effective date of the enactment of these changes.

SECTION 19. (a) This Act takes effect September 1, 1995.

(b) This Act applies to all causes of action that accrue on or after the effective date of this Act. This Act applies to all causes of action that accrued before the effective date of this Act and upon which suit is filed on or after

September 1, 1996. Except as provided by Subsection (c) of this section, a cause of action that accrued before the effective date of this Act and upon which suit is filed prior to September 1, 1996, is governed by the law in effect immediately prior to the effective date of this Act, and that law is continued in effect for that purpose.

(c) Section 17.56, Business & Commerce Code, as amended by this Act, applies to a cause of action that accrued before the effective date of this Act and upon which suit is filed on or after September 1, 1995.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **HB 668** by striking SECTION 16 of the bill (Senate committee printing, page 16, lines 50-65) and substituting the following:

SECTION 16. Section 33.002, Civil Practice and Remedies Code, is amended by adding Subsection (h) to read as follows:

(h) This chapter applies to an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Senate Amendment No. 2

Amend **HB 668** as follows:

(1) In SECTION 17 of the bill, strike Article 11.05(c) (House engrossment, page 42, lines 1-6) and substitute:

(c) failing to clearly disclose, in any communication with the debtor, the name of the person to whom the debt has been assigned or is owed at the time of making any demand for money (provided, however, this subsection shall not apply to persons servicing or collecting real estate first lien mortgage loans or credit card debts);

(2) In SECTION 17 of the bill, at the end of Article 11.05(o) (House engrossment, page 43, line 23) strike "[or]" and substitute "or".

(3) In SECTION 17 of the bill, at the end of Article 11.05(p) (House engrossment, page 44, line 3), strike "or" and substitute a period.

(4) In SECTION 17 of the bill, strike Article 11.05(q) (House engrossment, page 44, lines 4-6).

(5) In SECTION 18 of the bill, strike Article 11.10(d) (House engrossment, page 44, lines 14-16) and conform the introductory language in SECTION 18 (House engrossment, page 44, line 9), to this change by striking "and adding Subsection (d)".

(6) Add a new Section 20 to the bill (House engrossment, page 44, between lines 25 and 26) to read as follows:

SECTION 20. Notwithstanding Section 19, the purpose of the amendments to Article 11.05, Title 79, Revised Statutes (Article 5069-11.05, Vernon's Texas Civil Statutes), and Article 11.10(c), Title 79, Revised Statutes (Article 5069-11.10, Vernon's Texas Civil Statutes), is to clarify existing law, and those amendments apply to all civil actions commenced on or after May 30, 1995, or pending on that date.

(7) Renumber subsequent sections accordingly.

Senate Amendment No. 3

1. Amend **HB 668** by deleting the existing language from Tex. Ins. Code art. 21.21 Sec. 4(7)(b) (Senate committee printing, page 11, lines 38-44), and substituting the following:

~~[(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;]~~

(b) [(e)] Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to renew, cancelling or limiting the amount of coverage on a policy of insurance covered by Subchapter C, Chapter 5, of this code because of the geographic location of the risk unless:

(1) the refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(2) the refusal, cancellation or limitation is required by law or regulatory mandate.

2. Amend **HB 668** by adding a new Section to read as follows:

SECTION _____. Amend the Insurance Code by adding a new Article 21.21-8 to read as follows:

ARTICLE 21.21-8. UNFAIR DISCRIMINATION

Sec. 1. Scope. This article shall apply to any person engaged in the business of insurance. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, county mutual, farm mutual, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and life insurance counselors.

Sec. 2. No person shall engage in any unfair discrimination by making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

Sec. 3. (a) A person who has sustained economic damages as a result of another's engaging in unfair discrimination, as defined in Section 2 of this Article, may maintain an action against the person or persons engaging in such acts or practices in a district court in Travis County, Texas, and not elsewhere.

(b) In a suit filed under this Article, any plaintiff who prevails may obtain:

(1) The amount of economic damages plus court costs and attorneys' fees. Court costs may include any reasonable and necessary expert witness fees. If the trier of fact finds that the defendant knowingly committed any acts prohibited by this Article, the court may award a civil penalty in an amount of not more than \$25,000 per claimant; and

(2) An order enjoining such acts or failure to act.

(c) All actions under this Article must be commenced within twelve (12) months after the date on which the plaintiff was denied insurance or the unfair act occurred.

(d) On a finding by the court that an action under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award the defendant reasonable and necessary attorneys' fees.

3. Renumber subsequent SECTIONS of the bill accordingly.

HB 668 - STATEMENTS OF LEGISLATIVE INTENT

We have reviewed the statement of legislative intent filed by Senator Ellis in the Senate Journal on May 17, 1995, and express our disagreement with his statement. The prohibitions contained in Art. 21.21-8, Section 2, were only intended to be expanded to all lines of insurance in a manner consistent with the express statutory language and consistent with past interpretation of that language. Senator Ellis's statement deviates from the language in several respects.

Art. 21.21-8, Section 2, prohibits certain unfair discrimination between individuals of the same class and essentially the same hazard. Senator Ellis's statement of intent attempts to deviate from the statutory language by using the words "groups of insureds" and "same expectation of loss." These terms do not appear in Art. 21.21-8, Section 2. Further, his statement that the statute would prohibit the "use of rating or underwriting factors" is also contrary to the language in Article 21.21-8, Section 2. It is our intention that Article 21.21-8, Section 2, use the identical words contained in Article 21.21, Section 4(7)(b) with the sole exception that the words "accident and health" would be deleted.

Duncan
T. Hunter
Junell

One of the Senate Floor amendments creates a new article 21.21-8 which prohibits certain unfair discrimination. The prohibition in this new Article was taken from Article 21.21, Section 4(7)(b) which had an identical prohibition applicable only to accident and health insurance. Article 21.21, Section 4(7)(b) was deleted. The intention of this new Article is to provide a cause of action for this prohibition that is more reasonable and can be more consistently applied and enforced. This new Article, Article 21.21-8, is not intended to prohibit insurance organizations (such as USAA, Farm Bureau, Fraternal or other membership type organizations) that require membership or qualification for membership in a club, group, or organization from applying such membership qualifications uniformly as a condition of providing insurance.

One of the Senate Floor amendments creates a new Article 21.21-8, Insurance Code, which prohibits certain unfair discrimination. I was an author of and directly involved in negotiations regarding this amendment. It is not my intent to authorize private causes of action against insurance companies based on classifications of risks promulgated or approved by the Commissioner of Insurance. Challenges to classifications should continue to be made to the Department of Insurance through administrative action.

Duncan

HB 699 - WITH SENATE AMENDMENT

Representative Culberson called up with a senate amendment for consideration at this time,

HB 699, A bill to be entitled An Act relating to the eligibility of certain military veterans and other persons with military-related service and survivors of certain military veterans to an exemption from tuition, fees, and charges at a public institution of higher education if the person is in default of an educational loan made under a federal program.

On motion of Representative Culberson, the house concurred in the senate amendment to **HB 699** by (Record 492): 119 Yeas, 1 Nay, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Naishtat; Nixon; Oakley; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Nay — Willis.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Oliveira.

Absent — Dutton; Farrar; Gutierrez; Hudson; Longoria; Moffat; Munoz; Ogden; Sadler; Seidlits.

HB 699 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend Section 1 of **HB 699** as follows:

- 1) On line 18, delete the word "solely" after the word "extinguished"
- 2) On line 20, after the word "purposes.", add "A person is not eligible for the exemption if the person is in default on a loan made or guaranteed for educational purposes by the State of Texas."

HB 869 - WITH SENATE AMENDMENT

Representative Maxey called up with a senate amendment for consideration at this time,

HB 869, A bill to be entitled An Act relating to coordinated delivery of health and human services programs.

On motion of Representative Maxey, the house concurred in the senate amendment to **HB 869** by (Record 493): 75 Yeas, 49 Nays, 2 Present, not voting.

Yeas — Alexander; Alonzo; Alvarado; Bailey; Berlanga; Bosse; Carter; Clemons; Coleman; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dear; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Giddings; Goodman; Gray; Greenberg; Harris; Hernandez; Hightower; Hirschi; Hochberg; Hunter, T.; Janek; Johnson; Jones, D.; Jones, J.; Junell; King; Lewis, G.; Lewis, R.; Luna; Marchant; Maxey; McDonald; Moreno; Naishtat; Nixon; Oakley; Pickett; Place; Puente; Rangel; Raymond; Rhodes; Rodriguez; Romo; Saunders; Seidlits; Serna; Siebert; Stiles; Thompson; Tillery; Torres; Uher; Van de Putte; Walker; Willis; Wilson; Wohlgemuth; Wolens; Yarbrough; Yost.

Nays — Allen; Averitt; Brimer; Chisum; Combs; Cook; Corte; Counts; Crabb; Craddick; Culberson; Delisi; Elkins; Finnell; Goolsby; Grusendorf; Haggerty; Hamric; Hartnett; Heflin; Hilbert; Holzheuser; Horn; Howard; Hunter, B.; Jackson; Kamel; Krusee; Kubiak; Kuempel; Madden; McCall; McCoulskey; Mowery; Ogden; Patterson; Pitts; Ramsay; Reyna; Rusling; Shields; Solomons; Swinford; Talton; Telford; Turner, B.; West; Williamson; Woolley.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran; Oliveira.

Absent — Gutierrez; Hudson; Longoria; Moffat; Munoz; Sadler.

HB 869 - TEXT OF SENATE AMENDMENT

CSHB 869, A bill to be entitled An Act relating to coordinated delivery of health and human services programs.

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

SECTION 1. Section 10, Article 4413(502), Revised Statutes, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) In developing a strategic health and human services plan and plan updates under this section, the commissioner shall consider:

- (1) existing strategic plans of health and human services agencies;
- (2) the health and human services priorities and plans submitted to the commissioner by governmental entities under Subsection (e) of this section;
- (3) facilitation of pending reorganizations or consolidations of health and human services agencies and programs;
- (4) ~~(3)~~ public comment, including comment documented through public hearings conducted under Section 11 of this article; and
- (5) ~~(4)~~ budgetary issues, including projected agency needs and projected availability of funds.

(e) The commissioner shall identify governmental entities that coordinate the delivery of health and human services in different regions, counties, and municipalities in the state and shall request that each of these entities:

(1) identify the health and human services priorities in the entity's jurisdiction and the most effective ways to deliver and coordinate services in that jurisdiction;

(2) develop a coordinated plan for the delivery of health and human services, including transition services that prepare special education students for adulthood, in the entity's jurisdiction; and

(3) make the information described by Subdivisions (1) and (2) of this section available to the commission.

SECTION 2. Section 14(a), Article 4413(502), Revised Statutes, is amended to read as follows:

(a) The commissioner shall:

(1) arbitrate and render the [a] final decision on interagency disputes;

(2) facilitate and enforce coordinated planning and delivery of health and human services, including compliance with the coordinated strategic plan, co-location of services, integrated intake, and coordinated referral and case management;

(3) at the request of a governmental entity identified under Section 10(e) of this article, assist the governmental entity in implementing a coordinated plan, which may include co-location of services, integrated intake, and coordinated referral and case management, tailored to the needs and priorities of that entity;

(4) request budget execution for the transfer of funds from one agency to another;

(5) [~~(4)~~] establish a federal health and human services funds management system and maximize the availability of those funds;

(6) [~~(5)~~] develop with the Department of Information Resources automation standards for computer systems to enable health and human services agencies, including agencies operating on a local level, to share pertinent data;

(7) [~~(6)~~] establish and enforce uniform regional boundaries for all health and human services agencies;

(8) [~~(7)~~] carry out statewide health and human services needs surveys and forecasting;

(9) [~~(8)~~] perform independent special outcome evaluations of health and human services programs and activities;

(10) [~~(9)~~] adopt rules necessary to carry out the commission's duties under this Act; and

(11) [~~(10)~~] develop a formula for distribution of funds that considers such need factors as client base, population, and economic and geographic factors within the regions of the state.

SECTION 3. Article 4413(502), Revised Statutes, is amended by adding Section 10A to read as follows:

Sec. 10A. USE OF AGENCY STAFF. To the extent requested by the commission, a health and human services agency shall assign existing staff to perform a function under this article.

SECTION 4. Section 533.044(a), Health and Safety Code, as added by Chapter 905, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) The department[~~, Texas Department of Health,~~] and Texas Department

of Human Services by rule shall adopt a joint memorandum of understanding that requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by the department[~~, Texas Department of Health,~~] or Texas Department of Human Services needs a guardian of the person or estate, or both.

SECTION 5. (a) The commissioner of health and human services, in collaboration with the state agencies listed in this section, the Regional Administration for Children and Families Head Start and Child Care Bureaus, the Texas Head Start Association, and the Texas Association of Community Action Agencies, shall coordinate the program services, eligibility requirements, funding, enrollment periods, fees, and administrative functions of the following programs by no later than December 1, 1996:

(1) the child-care programs of the Texas Department of Human Services; and

(2) the prekindergarten programs of the Central Education Agency.

(b) The commissioner of health and human services shall report the results of the initiative prescribed by this provision to the legislature on or before December 1, 1996.

(c) Nothing in this section shall be construed to transfer funding for or the administration of child-care or prekindergarten programs to the Health and Human Services Commission.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 1341 - WITH SENATE AMENDMENTS

Representative Stiles called up with senate amendments for consideration at this time,

HB 1341, A bill to be entitled An Act relating to the operation and funding of the Work and Family Policies Clearinghouse.

On motion of Representative Stiles, the house concurred in the senate amendments to **HB 1341**.

HB 1341 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1341** as follows:

(1) On page 1, line 10, between the words "Subsection (e)" and before the period "." insert the following: ". except as provided by subsection (g)"

(2) On page 1, line 15, insert a new subsection (g) to read as follows:

"(g) A local registrar that on March 31, 1995 was charging a fee for the issuance of a certified birth certificate that exceeded the fee charged by the

bureau of vital statistics for the same type of certificate may continue to do so but shall not raise this fee until the fee charged by the bureau exceeds the fee charged by the local registrar. A local registrar to which this subsection applies shall charge the additional fee as required under subsection (e)."

Senate Amendment No. 2

Amend Committee Amendment No. 1 to **HB 1341** as follows:

(1) On page 1, line 14, insert the words "copy of a" between the words "certified" and "birth".

HB 3122 - WITH SENATE AMENDMENT

Representative Ogden called up with a senate amendment for consideration at this time,

HB 3122, A bill to be entitled An Act relating to a university-sponsored debit card program at Texas A&M University.

(Oliveira now present)

On motion of Representative Ogden, the house concurred in the senate amendment to **HB 3122** by (Record 494): 124 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Naishtat; Nixon; Oakley; Ogden; Oliveira; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran.

Absent — Gutierrez; Hudson; Longoria; Moffat; Munoz; Rodriguez; Sadler.

HB 3122 - TEXT OF SENATE AMENDMENT

CSHB 3122, A bill to be entitled An Act relating to debit cards provided to students of public institutions of higher education.

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

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.940 to read as follows:

Sec. 51.940. STUDENT DEBIT CARDS. (a) This section applies only to:

(1) an institution that is a component of The Texas A&M University System; or

(2) an institution that is a component of the Texas State University System.

(b) The governing board of an institution of higher education to which this section applies may establish a program to provide students enrolled at the institution with a debit card.

(c) A student issued a debit card under the program may use the card to purchase merchandise or service available through the institution or through a person authorized to sell merchandise or service at the institution, as determined by the governing board.

(d) The program must allow a person who is in business to sell merchandise or service of the same kind as the merchandise or service that a student may purchase under Subsection (c) to participate in the program under the same or equivalent terms applicable to a person authorized to sell merchandise under Subsection (c) and accept a debit card payment from a student to whom a debit card has been issued under the program for purchase of that merchandise or service.

(e) An institution of higher education may not administer or sponsor a debit card program for students of the institution that does not conform to this section.

(f) In this section:

(1) "Governing board" and "institution of higher education" have the meanings assigned by Section 61.003.

(2) "Person" has the meaning assigned by Section 1.201, Business & Commerce Code.

(g) A student debit card program offered by an institution of higher education must comply with this section not later than August 15, 1996. This subsection expires January 1, 1997.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 2349 - WITH SENATE AMENDMENTS

Representative Kuempel called up with senate amendments for consideration at this time,

HB 2349, A bill to be entitled An Act relating to the regulation of sanitary landfills.

Representative Kuempel moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on the bill.

The motion prevailed without objection.

HB 2349 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2349**: Kuempel, chair, R. Lewis, Saunders, Walker, and Yost.

HB 160 - WITH SENATE AMENDMENT

Representative Kamel called up with a senate amendment for consideration at this time,

HB 160, A bill to be entitled An Act relating to the regulation of litter by counties.

On motion of Representative Kamel, the house concurred in the senate amendment to **HB 160** by (Record 495): 121 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Greenberg; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Patterson; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Park; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbranek.

Absent, Excused, Committee Meeting — Denny; Hilderbran.

Absent — Coleman; Gray; Gutierrez; Hudson; Kuempel; Moffat; Munoz; Ogden; Pickett; Sadler.

HB 160 - TEXT OF SENATE AMENDMENT**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 160** as follows:

On page 1, line 9, insert the following after the period: "The commissioner's court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Section 361 of the Health and Safety Code."

HB 1111 - WITH SENATE AMENDMENT

Representative Naishtat called up with a senate amendment for consideration at this time,

HB 1111, A bill to be entitled An Act relating to the provision of protective services to persons who are elderly or disabled.

On motion of Representative Naishtat, the house concurred in the senate amendment to **HB 1111**.

HB 1111 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1111** by adding a new SECTION, appropriately numbered, to read as follows and renumbering subsequent sections accordingly:

SECTION _____. Section 48.040, Human Resources Code, is amended to read as follows:

Sec. 48.040. REPRESENTATION. (a) Except as provided by Subsection (b), the [The] prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding [brought by the department] under this chapter unless the representation would be a conflict of interest.

(b) In a county having a population of more than 2.8 million, the prosecuting attorney representing the state in civil cases in the county court shall represent the department in any proceeding under this chapter unless the representation would be a conflict of interest.

(Park now present)

HB 1583 - WITH SENATE AMENDMENT

Representative Rusling called up with a senate amendment for consideration at this time,

HB 1583, A bill to be entitled An Act relating to taxation of certain lawn services.

On motion of Representative Rusling, the house concurred in the senate amendment to **HB 1583** by (Record 496): 123 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Bosse; Brimer; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Naishtat; Oakley; Park; Patterson; Pickett; Pitts; Place; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Black(C).

Absent, Excused — Brady; Carona; Conley; Gallego; Glaze; Hawley; Hill; Price; Rabuck; Smithee; Solis; Staples; Turner, S.; Zbrank.

Absent, Excused, Committee Meeting — Denny; Hilderbran.

Absent — Coleman; Gutierrez; Hudson; Jackson; Munoz; Nixon; Ogden; Oliveira; Sadler.

HB 1583 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend the House Engrossment of **HB 1583** as follows:

1) In SECTION 1 on page 1, lines 11 through 13, strike "preceding calendar quarter or in the same calendar quarter of the preceding year do not exceed \$1,000" and insert in its place "most recent four calendar quarters do not exceed \$5,000".

2) In SECTION 1 of page 1, line 22, strike "\$10,000" and insert in its place "\$5,000".

HB 2078 - WITH SENATE AMENDMENT

Representative Puente called up with a senate amendment for consideration at this time,

HB 2078, A bill to be entitled An Act relating to the sale or lease of property by municipalities, counties, or other political subdivisions.

On motion of Representative Puente, the house concurred in the senate amendment to **HB 2078**.

HB 2078 - TEXT OF SENATE AMENDMENT

CSHB 2078, A bill to be entitled An Act relating to the sale or lease of property by municipalities, counties, or other political subdivisions.

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

SECTION 1. Sections 272.001(a), (b), (c), (f), and (g), Local Government Code, are amended to read as follows:

(a) Except for the types of land and interests covered by Subsection (b), (g), [or] (h), or (i), and except as provided by Section 253.007, before land owned by a political subdivision of the state may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication.

(b) The notice and bidding requirements of Subsection (a) do not apply to the types of land and real property interests described by this subsection and owned by a political subdivision. The land and those interests described by this subsection may not be conveyed, sold, or exchanged for less than the fair

market value of the land or interest unless the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. The fair market value is determined by an appraisal obtained by the political subdivision that owns the land or interest or, in the case of land or an interest owned by a home-rule municipality, the fair market value may be determined by the price obtained by the municipality at a public auction for which notice to the general public is published in the manner described by Subsection (a). The notice of the auction must include, instead of the content required by Subsection (a), a description of the land, including its location, the date, time, and location of the auction, and the procedures to be followed at the auction. The appraisal or public auction price is conclusive of the fair market value of the land or interest, regardless of any contrary provision of a home-rule charter. This subsection applies to:

(1) narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;

(2) streets or alleys, owned in fee or used by easement;

(3) ~~[an easement for which one or more abutting property owners own the underlying fee simple;~~

~~[(4)]~~ land or a real property interest originally acquired for streets, rights-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, rights-of-way, ~~[or]~~ easements, or other public purposes, including transactions partly for cash;

(4) ~~[(5)]~~ land that the political subdivision wants to have developed by contract with an independent foundation;

(5) ~~[(6)]~~ a real property interest conveyed to a governmental entity that has the power of eminent domain; or

(6) ~~[(7)]~~ a municipality's land that is located in a reinvestment zone designated as provided by law and that the municipality desires to have developed under a project plan adopted by the municipality for the zone.

(c) The land or interests described by Subsections (b)(1) and[(2)] ~~and~~ ~~(3)]~~ may be sold to:

(1) abutting property owners in the same subdivision if the land has been subdivided; or

(2) abutting property owners in proportion to their abutting ownership, and the division between owners must be made in an equitable manner.

(f) The fair market value of land, an easement, or other real property interest ~~[to be dedicated or conveyed by plat or deed to a political subdivision]~~ in exchange for land, an easement, or other real property interest as authorized by Subsection (b)(3) is conclusively determined by an appraisal obtained by the political subdivision ~~[to which the land, easement, or other interest is to be dedicated or conveyed]~~. The cost of any streets, utilities, or other improvements constructed on the affected land or to be constructed by an entity other than the political subdivision on the affected land may be considered in determining that fair market value.

(g) A political subdivision may acquire or assemble land or real property interest, except by condemnation, and sell, exchange, or otherwise convey the

land or interests to an entity for the development of low-income or moderate-income housing. The municipality shall determine the terms and conditions of the transactions so as to effectuate and maintain the public purpose. If conveyance of land under this subsection serves a public purpose, the land may be conveyed for less than its fair market value. In this subsection, "entity" means an individual, corporation, partnership, or other legal entity.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HR 996 - ADOPTED

Representative Serna moved to suspend all necessary rules to take up and consider at this time **HR 996**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Serna,

HR 996, Commending Antonio de la Rosa for coming to the aid of police officers.

The resolution was adopted without objection.

HR 983 - ADOPTED

Representative Duncan moved to suspend all necessary rules to take up and consider at this time **HR 983**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Duncan,

HR 983, Recognizing May 19, 1995, as OS/2 Warp Day at the State Capitol.

The resolution was adopted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Local and Consent Calendars, 8:30 p.m., Sunday, May 21, Representative Rodriguez's office.

HR 952 - ADOPTED

Representative Farrar moved to suspend all necessary rules to take up and consider at this time **HR 952**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Farrar,

HR 952, Honoring the Martin Luther King Parade Foundation on the occasion of its Appreciation Awards Banquet and Ceremony.

The resolution was adopted without objection.

RESOLUTIONS REFERRED TO COMMITTEES

The following resolutions were laid before the house and referred to committees:

By Marchant, Brimer, and Patterson,

HCR 216, Requesting the Texas attorney general to undertake litigation on behalf of the Texas banking commissioner to prevent effectuation of the decision of the United States comptroller of the currency and to preserve the rejection of branch banking in Texas.

To Committee on Financial Institutions.

By Stiles,

HR 977, Honoring Joran Meeks on winning the Class 3A state golf championship.

To Committee on Rules and Resolutions.

By Haggerty,

HR 979, Honoring Commander Patrick L. Beatty for his military service.

To Committee on Rules and Resolutions.

By Marchant,

HR 984, Honoring Dr. W. M. Lynch on the occasion of his retirement.

To Committee on Rules and Resolutions.

By Rusling,

HR 988, Honoring the Red Sox baseball team of the Manchaca Optimist Pony Baseball Pinto Division-American Conference.

To Committee on Rules and Resolutions.

By Finnell,

HR 989, Honoring the Jacksboro High School FFA Range and Pasture team.

To Committee on Rules and Resolutions.

By Park,

HR 990, Honoring Lennijo Blair on her retirement from the Hurst-Eules-Bedford School Board.

To Committee on Rules and Resolutions.

SCR 154, Directing the Texas Natural Resource Conservation Commission, the Texas Water Development Board, the Texas Department of Health, the Texas Department of Agriculture, and the Texas Parks and Wildlife Department to establish a special task force on the management of the Rio Grande under the direction of the chairman of the Texas Natural Resource Conservation Commission.

To Committee on Natural Resources.

SCR 155, Respectfully urging the president to call for the coordination of existing commissions and boards relating to border health and environment.
To Committee on Natural Resources.

SCR 158, Designating the month of May as Texas Special Olympics Summer Games Month.
To Committee on Rules and Resolutions.

SCR 159, Commending Brenda Shelton Olds for her 27 years of service with the Texas Legislative Reference Library.
To Committee on Rules and Resolutions.

SCR 160, Commending the students of Klein Forest High School and designating May 19, 1995, as a Day of Hope and Healing in Texas.
To Committee on Rules and Resolutions.

RULES SUSPENDED

Representative Telford moved to suspend the 5-day posting rule to allow the Committee on Pensions and Investments to consider SB 1535.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Pensions and Investments, on adjournment today, Desk 54, to consider SB 1535.

Licensing and Administrative Procedures, on adjournment today, Desk 66.

STATEMENTS OF VOTE

When Record No. 472 was taken, I was temporarily out of the house chamber with schoolchildren from the district. I would have voted yes.

Van de Putte

When Record No. 473 was taken, I was temporarily out of the house chamber with schoolchildren from the district. I would have voted yes.

Van de Putte

When Record No. 474 was taken, I was temporarily out of the house chamber with schoolchildren from the district. I would have voted yes.

Van de Putte

When Record No. 475 was taken, I was temporarily out of the house chamber with schoolchildren from the district. I would have voted yes.

Van de Putte

ADJOURNMENT

Representative Chisum moved that the house adjourn until 10 a.m. Monday, May 22.

The motion prevailed without objection.

The house accordingly, at 4:48 p.m., adjourned until 10 a.m. Monday, May 22.

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

Appropriations - **SB 392**

Business and Industry - **SB 1334**

Civil Practices - **SB 1102**

Environmental Regulation - **SB 933**

Land and Resource Management - **SB 623, SB 1632, SB 1676, SB 1691, SB 1704**

Licensing and Administrative Procedures - **SB 1044**

Public Health - **SB 1675**

State, Federal, and International Relations - **HCR 205, HCR 209, HR 789**

Transportation - **SB 1360**

Urban Affairs - **SB 631, SB 1014, SB 1225**

Ways and Means - **SB 1658**

ENROLLED

May 18 - **HB 321, HB 344, HB 635, HB 865, HB 1320, HB 1381, HB 1422, HB 1559, HB 1564, HB 1567, HB 1696, HB 1745, HB 1824, HB 1899, HB 1914, HB 2021, HB 2094, HB 2159, HB 2176, HB 2387, HB 2495, HB 2687, HB 2842, HB 2987, HB 3061, HB 3075, HB 3171, HJR 73, HCR 212, HCR 214**

SENT TO THE GOVERNOR

May 19 - **HB 321, HB 344, HB 635, HB 865, HB 1320, HB 1381, HB 1422, HB 1559, HB 1564, HB 1567, HB 1696, HB 1745, HB 1824, HB 1899, HB 1914, HB 2021, HB 2094, HB 2159, HB 2176, HB 2387, HB 2495, HB 2687, HB 2842, HB 2987, HB 3061, HB 3075, HB 3171, HCR 212, HCR 214**

SENT TO THE SECRETARY OF STATE

May 19 - **HJR 73**