

HOUSE JOURNAL

SEVENTY-FIFTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-SEVENTH DAY — TUESDAY, MAY 20, 1997

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 452).

Present — Mr. Speaker; Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Fennell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

The invocation was offered by W. C. Martin, pastor, Bennett Chapel, Center, as follows:

Father God, we bring ourselves to you this morning in submission and complete humbleness asking for your divine intervention for this session today. We ask that you put your hand on the men and women that make these important decisions here in Austin. Lord God we are not perfect and we know you are the alpha and omega, the all powerful, the perfection, and strength we desire. Lord God be with us. Give us direction, bless us, as we in turn give you the glory, the credit, and the praise. Lord God we are all sinners; we ask you to forgive us of our sins and ask you, Father, to build into us the wisdom and knowledge to do the things and say the things that will only glorify your name. So that no matter who sees us or hears us they will have no question in their minds that you are the one and only almighty, miracle-working God. Lead us now. Guide us. Thank you for all you do for us. In Jesus your blessed son's name. Amen.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

COMMITTEE GRANTED PERMISSION TO MEET

Representative Patterson requested permission for the Committee on Agriculture and Livestock to meet while the house is in session.

Permission to meet was granted without objection.

HCR 276 - ADOPTED
(by Patterson)

Representative Patterson moved to suspend all necessary rules to take up and consider at this time **HCR 276**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 276, Designating May 20, 1997, Think Child Safety Day at the Capitol.

HCR 276 was read and was adopted without objection.

On motion of Representative Hill, the names of all the members of the house were added to **HCR 276** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Patterson, who introduced a group of participants in Think Child Safety Day.

Stewart Dodson, a paramedic from Paris, addressed the house briefly.

HR 795 - ADOPTED
(by Hunter)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 795**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 795, Commending the Texas Historical Commission and recognizing May 20, 1997, as Historical Markers Day.

(Kubiak in the chair)

HR 795 was read and was adopted without objection.

On motion of Representative Price, the names of all the members of the house were added to **HR 795** as signers thereof.

HR 1004 - ADOPTED
(by Alvarado)

Representative Alvarado moved to suspend all necessary rules to take up and consider at this time **HR 1004**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 1004, Honoring Charles T. Barrett, Jr., for his many contributions to the community.

HR 1004 was adopted without objection.

On motion of Representative Longoria, the names of all the members of the house were added to **HR 1004** as signers thereof.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

HR 997 - ADOPTED (by Chisum)

Representative Chisum moved to suspend all necessary rules to take up and consider at this time **HR 997**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 997, Declaring John Aloysius Riley an Honorary Texan.

(Stiles in the chair)

HR 997 was read and was adopted without objection.

On motion of Representative Dukes, the names of all the members of the house were added to **HR 997** as signers thereof.

HR 1008 - ADOPTED (by Kubiak)

Representative Kubiak moved to suspend all necessary rules to take up and consider at this time **HR 1008**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 1008, Honoring Damion Turner of Rockdale High School on winning the gold medal in the high jump at the 1997 State Track and Field Meet.

HR 1008 was read and was adopted without objection.

On motion of Representative Yarbrough, the names of all the members of the house were added to **HR 1008** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Kubiak, who introduced Damion Turner.

HR 1007 - ADOPTED (by Kubiak)

Representative Kubiak moved to suspend all necessary rules to take up and consider at this time **HR 1007**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 1007, Congratulating Freddie Cates of Rockdale High School on winning the gold medal in the ducus competition.

HR 1007 was read and was adopted without objection.

On motion of Representative Swinford, the names of all the members of the house were added to **HR 1007** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Kubiak, who introduced Freddie Cates.

HR 991 - ADOPTED (by Yarbrough)

Representative Yarbrough moved to suspend all necessary rules to take up and consider at this time **HR 991**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 991, Congratulating the Clifton Middle School seventh grade girls' basketball team on winning the District III title.

HR 991 was adopted without objection.

HR 992 - ADOPTED (by Yarbrough)

Representative Yarbrough moved to suspend all necessary rules to take up and consider at this time **HR 992**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 992, Congratulating Ione Frye Morosin on winning three gold and three silver medals in the Houston Senior Olympics.

HR 992 was adopted without objection.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a meeting of the Committee on Agriculture and Livestock:

Cook on motion of R. Lewis.

HR 1013 - ADOPTED (by Wilson)

Representative Wilson moved to suspend all necessary rules to take up and consider at this time **HR 1013**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 1013, Congratulating Howard Bailey Coward on the occasion of his 80th birthday.

HR 1013 was adopted without objection.

On motion of Representative Edwards, the names of all the members of the house were added to **HR 1013** as signers thereof.

HR 1012 - ADOPTED
(by Swinford)

Representative Swinford moved to suspend all necessary rules to take up and consider at this time **HR 1012**.

The motion prevailed without objection.

The chair laid before the house the following resolution:

HR 1012, Honoring Dr. Kenneth B. Porter on the occasion of his 50th anniversary in crop breeding.

HR 1012 was adopted without objection.

On motion of Representative Price, the names of all the members of the house were added to **HR 1012** as signers thereof.

CAPITOL PHYSICIAN

The chair recognized Representative Price who presented Dr. Frank Bryant of San Antonio as the "Doctor for the Day."

The house welcomed Dr. Bryant and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(Speaker in the chair)

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 59).

**BILLS AND JOINT RESOLUTIONS ON FIRST READING
AND REFERRAL TO COMMITTEES
RESOLUTIONS REFERRED TO COMMITTEES**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

SB 1 - COMMITTEE ON CALENDARS RULE ADOPTED

Pursuant to House Rule 3, Section 4(2) and House Rule 6, Section 16(f), Representative Stiles moved to adopt the following rule proposed by the Committee on Calendars governing floor consideration of **SB 1** (relating to the development and management of water resources of this state):

All original amendments that will be offered during second reading consideration of the bill must be filed with the chief clerk by 5 p.m. on Tuesday, May 20, 1997.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Agriculture and Livestock, 11 a.m. today, E2.010, Capitol Extension.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today to attend a meeting of the Committee on Agriculture and Livestock:

Swinford on motion of R. Lewis.

B. Turner on motion of J. Jones.

The following members were granted leaves of absence temporarily for today to attend a meeting of the Committee on Agriculture and Livestock:

Roman on motion of R. Lewis.

**SB 273 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Cuellar, the house granted the request of the senate for the appointment of a conference committee on **SB 273**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 273**: Cuellar, chair, Naishtat, Chavez, Pitts, and Maxey.

**SJR 33 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Gallego, the house granted the request of the senate for the appointment of a conference committee on **SJR 33**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SJR 33**: Gallego, chair, Walker, Swinford, Price, and Eiland.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend a meeting of the Committee on Agriculture and Livestock:

Patterson on motion of Marchant.

**HB 107 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative Giddings called up with senate amendments for consideration at this time,

HB 107, A bill to be entitled An Act relating to specialized licence plates to support the diagnosis of reading development and comprehension at certain grade levels in public school and to requirements concerning that diagnosis.

On motion of Representative Giddings, the house concurred in the senate amendments to **HB 107**.

Senate Committee Substitute

CSHB 107, A bill to be entitled An Act relating to specialized license plates to support the diagnosis of reading development and comprehension at

certain grade levels in public school and to requirements concerning that diagnosis.

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

SECTION 1. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.292 to read as follows:

Sec. 502.292. READ TO SUCCEED. (a) The department shall issue specially designed "Read to Succeed" license plates for passenger cars and light trucks.

(b) The department shall issue license plates under this section to a person who:

(1) applies to the county assessor-collector of the county in which the person resides on the form for original registration or annual renewal of registration provided by the department; and

(2) pays an annual fee in the amount set under Subsection (c), in addition to the fee prescribed by Section 502.161 and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(c) The department shall set the annual fee for license plates under this section at:

(1) an amount, not to exceed \$5, necessary to administer this section; and

(2) an additional amount of:

(A) \$25 for each set of plates, except as provided by Paragraph (B); or

(B) \$15 for each set of plates, if the person is purchasing plates under this section for a fleet of 50 or more vehicles.

(d) The fee collected under Subsection (c)(1) may be used only to defray the cost of administering this section.

(e) The department shall deposit each fee collected under Subsection (c)(2) to the credit of an account in the general revenue fund to be known as the "Read to Succeed" account. Money from the account may be used only to supplement appropriated funds in implementing the requirements under Section 28.006, Education Code. The account is composed of:

(1) money required to be deposited to the credit of the account under this subsection; and

(2) donations made to the account.

SECTION 2. Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.006 to read as follows:

Sec. 28.006. READING DIAGNOSIS. (a) The commissioner shall develop recommendations for school districts for:

(1) administering reading instruments to diagnose student reading development and comprehension;

(2) training educators in administering the reading instruments; and

(3) applying the results of the reading instruments to the instructional program.

(b) The commissioner shall adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension. A district-level committee established under Subchapter F, Chapter 11, may

adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner's list. Each reading instrument adopted by the commissioner or a district-level committee must be based on scientific research concerning reading skills development and reading comprehension. A list of reading instruments adopted under this subsection must provide for diagnosing the reading development and comprehension of students participating in a program under Subchapter B, Chapter 29.

(c) Each school district shall administer, at the kindergarten and first and second grade levels, a reading instrument on the list adopted by the commissioner or by the district-level committee. The district shall administer the reading instrument in accordance with the commissioner's recommendations under Subsection (a)(1).

(d) The superintendent of each school district shall report to the board of trustees of the district the results of the reading instruments.

(e) The results of reading instruments administered under this section may not be used for purposes of appraisals and incentives under Chapter 21 or accountability under Chapter 39.

(f) This section may be implemented only if funds are appropriated for administering the reading instruments. Funds, other than local funds, may be used to pay the cost of administering a reading instrument only if the instrument is on the list adopted by the commissioner.

(g) The commissioner shall adopt a list of reading instruments and recommendations concerning those reading instruments in accordance with this section not later than August 1, 1998. Each school district shall implement a reading diagnosis program in accordance with this section, and recommendations adopted under this section, beginning with the 1998-1999 school year. This subsection expires January 1, 1999.

SECTION 3. This Act takes effect September 1, 1997.

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.

HB 1091 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Goodman called up with senate amendments for consideration at this time,

HB 1091, A bill to be entitled An Act relating to the parent-child relationship, including suits affecting the parent-child relationship, the establishment of paternity, the termination of the parent-child relationship, and the adoption of children; providing penalties.

On motion of Representative Goodman, the house concurred in the senate amendments to **HB 1091**.

Senate Committee Substitute

CSHB 1091, A bill to be entitled An Act relating to the parent-child relationship, including suits affecting the parent-child relationship, the establishment of paternity, the termination of the parent-child relationship, and the adoption of children; providing penalties.

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

SECTION 1. Section 102.009(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the following are entitled to service of citation on the filing of a petition in an original suit:

- (1) a managing conservator;
- (2) a possessory conservator;
- (3) a person having possession of or access to the child under an order;
- (4) a person required by law or by order to provide for the support of the child;

(5) a guardian of the person of the child;

(6) a guardian of the estate of the child;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161;

(8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161 or unless the petitioner has complied with the provisions of Section 161.002(b)(2) or (b)(3); [and]

(9) a man who has filed a notice of intent to claim paternity as provided by Subchapter D, Chapter 160; and

(10) the Department of Protective and Regulatory Services, if the petition requests that the department be appointed as managing conservator of the child.

SECTION 2. Section 102.011(b), Family Code, is amended to read as follows:

(b) The court may also exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

- (1) the person is personally served with citation in this state;
- (2) the person submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the child resides in this state as a result of the acts or directives of the person;

(4) the person resided with the child in this state;

(5) the person resided in this state and provided prenatal expenses or support for the child;

(6) the person engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; ~~[or]~~

(7) the person registered with the paternity registry maintained by the bureau of vital statistics as provided by Chapter 160; or

(8) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

SECTION 3. Section 107.013, Family Code, is amended to read as follows:

Sec. 107.013. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR [INDIGENT] PARENT. (a) In a suit in which termination of

the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of:

(1) an [each] indigent parent of the child who responds in opposition to the termination;

(2) a parent served by citation by publication;

(3) an alleged father who failed to register with the registry under Subchapter D, Chapter 160, and whose identity or location is unknown; and

(4) an alleged father who registered with the paternity registry under Subchapter D, Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

(b) If both parents of the child are entitled to the appointment of an attorney ad litem under this section [~~indigent and oppose termination~~] and the court finds that the interests of the parents are not in conflict, the court may appoint a single attorney ad litem to represent the interests of both parents.

SECTION 4. Section 153.434, Family Code, is amended to read as follows:

Sec. 153.434. LIMITATION ON RIGHT TO REQUEST ACCESS. A biological or adoptive grandparent may not request possession of or access to a grandchild if:

(1) the grandparent is a parent of a person whose parental rights with the child have been terminated by court order or by death; or [and]

(2) the grandparent is a parent of a person who has executed an affidavit of waiver of interest in child or an affidavit of relinquishment of parental rights under Chapter 161 and the affidavit designates an authorized agency, licensed child-placing agency, or person other than the child's stepparent as the managing conservator of the child; and

(3) the other biological parent has died, has executed an affidavit of waiver of interest in child or an affidavit of relinquishment of parental rights under Chapter 161, or has had that parent's parental rights terminated and the grandchild has been adopted by a person other than the child's stepparent.

SECTION 5. Section 159.201, Family Code, is amended to read as follows:

Sec. 159.201. BASES FOR JURISDICTION OVER NONRESIDENT. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with citation in this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; [or]

(7) the individual asserted parentage in the paternity registry maintained in this state by the bureau of vital statistics; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

SECTION 6. Chapter 160, Family Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. PATERNITY REGISTRY

Sec. 160.251. PATERNITY REGISTRY; PURPOSE. (a) The bureau of vital statistics shall establish a paternity registry.

(b) The bureau of vital statistics shall administer the registry to:

(1) protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered; and

(2) expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.

(c) The registry does not relieve a mother of the obligation to identify the known father of her child.

(d) A man is not required to register with the paternity registry if he:

(1) is presumed to be the biological father of a child under Chapter 151; or

(2) has been adjudicated to be the biological father of a child by a court of competent jurisdiction.

Sec. 160.252. REQUIRED INFORMATION. A man registering with the registry shall provide:

(1) the name, last known address, driver's license number, and social security number, if known, of the mother of the child;

(2) the name of the child and the location and date of birth of the child, if known, or the probable month and year of the expected birth of the child;

(3) the man's name, address, driver's license number, and social security number; and

(4) a statement in which the man claims to be the father of the child identified by the man.

Sec. 160.253. INFORMATION MAINTAINED BY REGISTRY. The registry shall record the name, address, driver's license number, and social security number of a man who claims to be the father of a child whose paternity has not been adjudicated by a court of competent jurisdiction by giving notice of intent to claim paternity, as provided by this subchapter.

Sec. 160.254. KNOWLEDGE OF PREGNANCY. (a) A person who has sexual intercourse with a person of the opposite sex is deemed to have knowledge that sexual intercourse can result in the woman's pregnancy.

(b) Except as provided by this subchapter, a man who claims to be the father of a child shall file a notice of intent to assert as provided by this subchapter his right to establish paternity of a child that may result from the sexual intercourse.

(c) Ignorance of a pregnancy is not a sufficient reason for failing to register with the registry to claim paternity of the child born of the pregnancy.

Sec. 160.255. FURNISHING OF REGISTRY INFORMATION; CONFIDENTIALITY; OFFENSE. (a) If the mother's address has been provided, the registry shall send a copy of the notice of intent to claim paternity

to the mother as notification that a man has registered with the paternity registry claiming to be the father of the mother's child.

(b) Information contained in the registry is confidential and may be released on request only to:

(1) a court;

(2) the mother of a child;

(3) an authorized agency;

(4) a licensed child-placing agency;

(5) an attorney at law in this state who is participating or assisting in a suit affecting the parent-child relationship, including termination of the parent-child relationship or a suit for the adoption of the child that the registrant claims to have fathered; or

(6) any other person or entity the bureau of vital statistics considers to have a legitimate interest in the information.

(c) The registry shall furnish registry information by electronic data exchange or any other means to the state's Title IV-D agency and the Department of Protective and Regulatory Services.

(d) A person commits an offense if the person intentionally and unlawfully releases information from the registry to the public or makes any other unlawful use of the information in violation of this subchapter. An offense under this subsection is a Class B misdemeanor.

Sec. 160.256. NOTICE OF INTENT TO CLAIM PATERNITY. (a) Except as provided by Subsection (d), a person may register as provided by this subchapter by filing a notice of intent to claim paternity on a form provided by the bureau of vital statistics. This form shall be signed and acknowledged before a notary public.

(b) The bureau shall make registration forms available to all:

(1) hospitals and other birthing places in this state;

(2) licensed child-placing agencies;

(3) county and district clerks;

(4) municipal clerks;

(5) justices of the peace;

(6) jails;

(7) prisons; and

(8) facilities of the Texas Department of Criminal Justice and Texas Youth Commission.

(c) A notice of intent to claim paternity may be filed before the birth of the child but may not be filed after the 30th day after the date of birth of the child.

(d) If the bureau of vital statistics has received from the clerk of the court notice under Chapter 108 of a decree terminating the parent-child relationship between the person applying to register and the child, the bureau shall notify the person that the person's parent-child relationship with the child has been terminated and may not enter into the registry a notice of intent to claim paternity filed by the person.

Sec. 160.257. DENIAL OF REGISTRANT'S PATERNITY; NOTIFICATION. (a) Not later than the 30th day after the date of the receipt of notification from the bureau of vital statistics that a notice of intent to claim paternity has been filed, the mother of the child may deny the registrant's claim

of paternity on a form provided by the bureau and signed and acknowledged before a notary public.

(b) If the mother denies that the registrant is the father of the child, the bureau of vital statistics shall immediately notify the registrant of the denial and of the registrant's right to file a legal action to establish paternity.

Sec. 160.258. EFFECT OF FAILURE TO FILE NOTICE OF INTENT. Except as provided by Chapter 102 and Chapter 161, a man who fails to file a notice of intent to claim paternity before the 30th day after the date of the birth of the child may not assert an interest in the child other than by filing a suit to establish paternity before the termination of the man's parental rights.

Sec. 160.259. CHANGE OR REVOCATION OF REGISTRY INFORMATION. (a) A man who files a notice of intent to claim paternity with the registry shall promptly notify the registry in writing of any change in the information, including a change of address.

(b) A man who files a notice of intent to claim paternity may at any time revoke the notice by sending the registry a written statement signed and acknowledged by the registrant before a notary public. The statement must include a declaration that, to the best of the registrant's knowledge and belief:

(1) the registrant is not the father of the named child; or

(2) a court has adjudicated paternity and a person other than the registrant has been determined to be the father of the child.

Sec. 160.260. FURNISHING OF CERTIFICATE OF REGISTRY SEARCH. On request, the bureau of vital statistics shall furnish a certificate, signed by the state registrar of vital statistics, attesting to the results of a search of the registry regarding a notice of intent to claim paternity to:

(1) a court;

(2) the mother of a child;

(3) an authorized agency;

(4) a licensed child-placing agency;

(5) an attorney licensed to practice law in this state who is participating or assisting in an adoption; or

(6) any other person or entity the bureau of vital statistics considers to have a legitimate interest in the information.

Sec. 160.261. REMOVAL OF REGISTRANT'S NAME. If a court determines that a registrant is not the father of the child, the court shall order the bureau of vital statistics to remove the registrant's name from the registry. On receipt of an order for the removal of a registrant's name, the bureau of vital statistics shall remove the name from the registry.

Sec. 160.262. REGISTRY FEES. (a) A fee may not be charged for filing with the registry a notice of intent to claim paternity of a child or a denial of a registrant's paternity.

(b) Except as provided by Subsection (c), the Texas Department of Health may charge a fee for processing a search of the paternity registry and for furnishing a certificate under Section 160.260.

(c) The Department of Protective and Regulatory Services and the Title IV-D agency are not required to pay a fee under Subsection (b).

Sec. 160.263. ADMISSIBILITY OF INFORMATION MAINTAINED BY REGISTRY. Information maintained by the paternity registry is admissible in a proceeding in a court or administrative tribunal of this state for any

purpose, including for the establishment of the registrant's paternity or an action to terminate parental rights.

SECTION 7. Section 161.002, Family Code, is amended by amending Subsection (b) and adding Subsections (c)-(f) to read as follows:

(b) The rights of an alleged biological father may be terminated if: [-]

(1) after being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Chapter 160 prior to the final hearing in the suit;

(2) he has not registered with the paternity registry under Subchapter D, Chapter 160, and after the exercise of due diligence by the petitioner:

(A) his identity and location are unknown; or

(B) his identity is known but he cannot be located; or

(3) he has registered with the paternity registry under Subchapter D, Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner.

(c) The termination of the rights of an alleged biological father under Subsection (b)(2) rendered on or after January 1, 1998, does not require personal service of citation or citation by publication on the alleged father.

(d) The termination of rights of an alleged biological father under Subsection (b)(3) does not require service of citation by publication on the alleged father.

(e) The court shall not render an order terminating parental rights under Subsection (b)(2) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to identify and locate the alleged biological father and considering any evidence submitted by the attorney ad litem for the alleged biological father, has found that the petitioner exercised due diligence in attempting to identify and locate the alleged biological father. The order shall contain specific findings regarding due diligence of the petitioner.

(f) The court shall not render an order terminating parental rights under Subsection (b)(3) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to obtain personal service of citation on the alleged father and considering any evidence submitted by the attorney ad litem for the alleged father, has found that the petitioner exercised due diligence in attempting to obtain service on the alleged father. The order shall contain specific findings regarding the exercise of due diligence of the petitioner.

SECTION 8. Subchapter A, Chapter 161, Family Code, is amended by adding Section 161.007 to read as follows:

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT. The court may order the termination of the parent-child relationship of a parent and a child if the court finds that:

(1) the parent has been convicted of an offense committed under Section 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the commission of the offense by the parent, the victim of the offense became pregnant with the parent's child; and

(3) termination is in the best interest of the child.

SECTION 9. Section 161.103, Family Code, is amended to read as follows:

Sec. 161.103. AFFIDAVIT OF VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS. (a) An affidavit for voluntary relinquishment of parental rights must be:

(1) signed after the birth of the child, but not before 48 hours after the birth of the child, by the parent, whether or not a minor, whose parental rights are to be relinquished;

(2) witnessed by two credible persons; and

(3) verified before a person authorized to take oaths.

(b) The affidavit must contain:

(1) the name, address, and age of the parent whose parental rights are being relinquished;

(2) the name, age, and birth date of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) an allegation that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and address of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child has no presumed father and that an affidavit of status of the child has been executed as provided by this chapter;

(8) a statement that the parent has been informed of parental rights and duties; ~~and~~

(9) a statement that the relinquishment is revocable, that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time;

(10) if the relinquishment is revocable, a statement in boldfaced type concerning the right of the parent signing the affidavit to revoke the relinquishment only if the revocation is made before the 11th day after the date the affidavit is executed;

(11) if the relinquishment is revocable, the name and address of a person to whom the revocation is to be delivered; and

(12) the [;

~~[(c) The affidavit may contain:~~

~~[(1) a] designation of a prospective adoptive parent [qualified person], the Department of Protective and Regulatory Services, if the department has consented in writing to the designation, or a licensed child-placing agency to serve as managing conservator of the child and the address of the person or agency.[:]~~

~~(c) The affidavit may contain:~~

~~(1) [(2)] a waiver of process in a suit to terminate the parent-child relationship filed under this chapter or in a suit to terminate joined with a petition for adoption; and~~

(2) [(3)] a consent to the placement of the child for adoption by the Department of Protective and Regulatory Services or by a licensed child-placing agency.

(d) A copy of the affidavit shall be provided to the parent at the time the parent signs the affidavit.

(e) The relinquishment in an [An] affidavit that [of relinquishment of parental rights is irrevocable if it] designates the Department of Protective and Regulatory Services or a licensed child-placing agency to serve as the managing conservator is irrevocable. A relinquishment in any [Any] other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

(f) A relinquishment in an affidavit of relinquishment of parental rights that fails to state that the relinquishment is irrevocable for a stated time is revocable as provided by Section 161.1035.

(g) To revoke a relinquishment under Subsection (e) the parent must sign a statement witnessed by two credible persons and verified before a person authorized to take oaths. A copy of the revocation shall be delivered to the person designated in the affidavit. If a parent attempting to revoke a relinquishment under this subsection has knowledge that a suit for termination of the parent-child relationship has been filed based on the parent's affidavit of relinquishment of parental rights, the parent shall file a copy of the revocation with the clerk of the court.

SECTION 10. Subchapter B, Chapter 161, Family Code, is amended by adding Section 161.1035 to read as follows:

Sec. 161.1035. REVOCABILITY OF CERTAIN AFFIDAVITS. An affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child that fails to state that the relinquishment or waiver is irrevocable for a stated time is:

(1) revocable only if the revocation is made before the 11th day after the date the affidavit is executed; and

(2) irrevocable on or after the 11th day after the date the affidavit is executed.

SECTION 11. Section 161.106, Family Code, is amended by adding Subsections (f)-(j) to read as follows:

(f) A waiver in an affidavit under this section that designates the Department of Protective and Regulatory Services or a licensed child-placing agency to serve as the managing conservator is irrevocable. A waiver in any other affidavit under this section is revocable unless it expressly provides that it is irrevocable for a stated period not to exceed 60 days after the date of execution.

(g) A waiver in an affidavit under this section that fails to state that the waiver is irrevocable for a stated time is revocable as provided by Section 161.1035.

(h) An affidavit under this section that contains a waiver that is revocable must contain:

(1) a statement in boldfaced type concerning the right of the person who executed the affidavit to revoke the affidavit only if the revocation is made before the 11th day after the date the affidavit is executed; and

(2) the name and address of the person to whom the revocation is to be delivered.

(i) A copy of the affidavit shall be provided to the person who executed the affidavit at the time the person signs the affidavit.

(j) To revoke a waiver, the person who executed the affidavit must sign a statement witnessed by two credible persons and verified before a person authorized to take oaths. A copy of the revocation shall be delivered to the person designated in the affidavit of waiver of interest in a child. If a person attempting to revoke an affidavit under this subsection has knowledge that a suit for termination of the parent-child relationship based on the person's waiver of interest in a child has been filed, the person shall file a copy of the revocation with the clerk of the court.

SECTION 12. Subchapter B, Chapter 161, Family Code, is amended by adding Sections 161.108 and 161.109 to read as follows:

Sec. 161.108. RELEASE OF CHILD FROM HOSPITAL OR BIRTHING CENTER. (a) Before or at the time an affidavit of relinquishment of parental rights under Section 161.103 is executed, the mother of a newborn child may authorize the release of the child from the hospital or birthing center to a licensed child-placing agency, the Department of Protective and Regulatory Services, or another designated person.

(b) A release under this section must be:

(1) executed in writing;

(2) witnessed by two credible adults; and

(3) verified before a person authorized to take oaths.

(c) A hospital or birthing center shall comply with the terms of a release executed under this section without requiring a court order.

Sec. 161.109. REQUIREMENT OF PATERNITY REGISTRY CERTIFICATE. (a) If an affidavit of status of child as provided by this chapter states that the father of the child is unknown and no probable father is known, a certificate from the bureau of vital statistics signed by the registrar that a diligent search has been made of the paternity registry maintained by the bureau and that a registration has not been found pertaining to the father of the child in question must be filed with the court before a trial on the merits in the suit for termination may be held.

(b) In a proceeding to terminate parental rights in which the alleged or probable father has not been personally served with citation or signed an affidavit of relinquishment or an affidavit of waiver of interest, the court may not terminate the parental rights of the alleged or probable father, whether known or unknown, unless a certificate from the bureau of vital statistics signed by the registrar states that a diligent search has been made of the paternity registry maintained by the bureau and that a filing or registration has not been found pertaining to the father of the child in question.

SECTION 13. Subchapter A, Chapter 162, Family Code, is amended by adding Section 162.0025 to read as follows:

Sec. 162.0025. ADOPTIVE HOME SCREENING. (a) The court shall order an adoptive home screening to evaluate each party who requests the adoption. The screening must be completed before a child may be placed in an applicant's home unless the child is being adopted by a member of the child's family related by the second degree of consanguinity or affinity. The

screening must comply with the rules adopted by the Board of Protective and Regulatory Services providing minimum requirements for the screening.

(b) The court may appoint an investigator to conduct the screening required by this section who has the qualifications established by rule of the Board of Protective and Regulatory Services providing minimum qualifications for persons who may perform adoptive home screenings.

(c) The cost of an adoptive home study shall be paid by an applicant who seeks to adopt a child.

SECTION 14. Section 162.001, Family Code, is amended to read as follows:

Sec. 162.001. WHO MAY ADOPT AND BE ADOPTED. (a) Subject to the requirements for standing to sue in Chapter 102, an adult may petition to adopt a child who may be adopted.

(b) A child residing in this state may be adopted if:

(1) the parent-child relationship as to each living parent of the child has been terminated or a suit for termination is joined with the suit for adoption; [or]

(2) the parent whose rights have not been terminated is presently the spouse of the petitioner and the proceeding is for a stepparent adoption;

(3) the child is at least two years old, the parent-child relationship has been terminated with respect to one parent, the person seeking the adoption is the child's former stepparent and has been a managing conservator or has had actual care, possession, and control of the child for a period of six months preceding the adoption, and the nonterminated parent consents to the adoption; or

(4) the child is at least two years old, the parent-child relationship has been terminated with respect to one parent, and the person seeking the adoption is the child's former stepparent and has been a managing conservator or has had actual care, possession, and control of the child for a period of one year preceding the adoption.

(c) If an affidavit of relinquishment of parental rights contains a consent for the Department of Protective and Regulatory Services or a licensed child-placing agency to place the child for adoption and appoints the department or agency managing conservator of the child, further consent by the parent is not required and the adoption order shall terminate all rights of the parent without further termination proceedings.

SECTION 15. Subchapter A, Chapter 162, Family Code, is amended by adding Section 162.0045 to read as follows:

Sec. 162.0045. PREFERENTIAL SETTING. The court shall grant a motion for a preferential setting for a final hearing on an adoption and shall give precedence to that hearing over all other civil cases not given preference by other law if the social study has been filed and the criminal history for the person seeking to adopt the child has been obtained.

SECTION 16. Section 162.0085(a), Family Code, is amended to read as follows:

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order each person seeking to adopt the child to obtain that person's own criminal history record information. The court shall accept

under this section a person's criminal history record information that is provided by the Department of Protective and Regulatory Services or by a licensed child-placing agency that received the information from the department if the information was obtained not more than one year before the date the court ordered the history to be obtained.

SECTION 17. Section 162.018, Family Code, is amended by adding Subsection (d) to read as follows:

(d) At the time an adoption order is rendered, the court shall provide to the parents of an adopted child information provided by the bureau of vital statistics that describes the functions of the voluntary adoption registry under Subchapter E. The licensed child-placing agency shall provide to each of the child's biological parents known to the agency, the information when the parent signs an affidavit of relinquishment of parental rights, affidavit of status of child, or affidavit of waiver of interest in a child. The information shall include the right of the child or biological parent to refuse to participate in the registry. If the adopted child is 14 years old or older the court shall provide the information to the child.

SECTION 18. Section 162.025, Family Code, is amended to read as follows:

Sec. 162.025. PLACEMENT BY UNAUTHORIZED PERSON; OFFENSE.

(a) A person who is not the natural or adoptive parent of the child, the legal guardian of the child, or a child-placing agency licensed under Chapter 42, Human Resources Code, commits an offense if the person:

(1) serves as an intermediary between a prospective adoptive parent and an expectant parent or parent of a minor child to identify the parties to each other ~~[or facilitates the placement of the child for adoption];~~ or

(2) places a child for adoption.

(b) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without the assistance of the professional.

(c) An offense under this section is a Class B misdemeanor.

SECTION 19. Section 162.402, Family Code, is amended by amending Subdivisions (7) and (11) and adding Subdivision (14) to read as follows:

(7) "Authorized agency" means a public agency authorized to care for or to place children for adoption or a private entity approved for that purpose by the department through a license, certification, or other means. The term includes a licensed child-placing agency or a previously licensed child-placing agency that has ceased operations and has transferred its adoption records to the bureau ~~[department]~~ or an agency authorized by the department to place children for adoption and a licensed child-placing agency that has been acquired by, merged with, or otherwise succeeded by an agency authorized by the department to place children for adoption.

(11) "Central registry" means the mutual consent voluntary adoption registry established and maintained by the bureau ~~[department]~~ under this subchapter.

(14) "Bureau" means the bureau of vital statistics.

SECTION 20. Sections 162.403(a) and (c), Family Code, are amended to read as follows:

(a) The bureau [department] shall establish and maintain a mutual consent voluntary adoption registry.

(c) An authorized agency that did not directly or by contract provide registry services as required by this subchapter on January 1, 1984, may not provide its own registry service. The bureau [department] shall operate through the central registry those services for agencies not permitted to provide a registry under this section.

SECTION 21. Subchapter E, Chapter 162, Family Code, is amended by adding Section 162.404 to read as follows:

Sec. 162.404. REQUIREMENT TO SEND INFORMATION TO CENTRAL REGISTRY. An authorized agency that is permitted to provide a registry under this subchapter or that participates in a mutual consent voluntary adoption registry with an association of authorized agencies shall send to the central registry a duplicate of all information the registry maintains in the agency's registry or sends to the registry in which the agency participates.

SECTION 22. Sections 162.407(b) and (c), Family Code, are amended to read as follows:

(b) An adoptee adopted or placed through an authorized agency may register through the registry maintained by that agency or the registry to which the agency has delegated registry services or through the central registry maintained by the bureau [department].

(c) Birth parents and biological siblings shall register through:

(1) the registry of the authorized agency through which the adoptee was adopted or placed; ~~or[. If the proper registry is unknown or if the agency's registry refuses the application, the birth parent or biological sibling may register through]~~

(2) the central registry.

SECTION 23. Section 162.408, Family Code, is amended to read as follows:

Sec. 162.408. PROOF OF IDENTITY. The rules and minimum standards of the Texas Board of Health for the bureau [department] must provide for proof of identity in order to facilitate the purposes of this subchapter and to protect the privacy rights of adoptees, adoptive parents, birth parents, biological siblings, and their families.

SECTION 24. Section 162.411(d), Family Code, is amended to read as follows:

(d) The fees collected by the bureau [department] shall be deposited in a special fund in the general revenue fund. Funds in the special fund may be appropriated only for the administration of the central registry.

SECTION 25. Section 162.414(c), Family Code, is amended to read as follows:

(c) To establish or corroborate a match, the administrator shall request confirmation of a possible match from the bureau ~~[of vital statistics]~~. If the [department or] agency operating the registry has in its own records sufficient information through which the match may be confirmed, the administrator may,

but is not required to, request confirmation from the bureau ~~[of vital statistics]~~. The bureau ~~[of vital statistics]~~ may confirm or deny the match without breaching the duty of confidentiality to the adoptee, adoptive parents, birth parents, or biological siblings and without a court order.

SECTION 26. Section 162.420, Family Code, is amended to read as follows:

Sec. 162.420. RULEMAKING. (a) The Texas Board of Health ~~[department]~~ shall make rules and adopt minimum standards for the bureau to:

(1) administer the provisions of this subchapter; and
(2) ensure that each registry respects the right to privacy and confidentiality of an adoptee, birth parent, and biological sibling who does not desire to disclose the person's identity.

(b) The bureau ~~[department]~~ shall conduct a comprehensive review of all ~~[of its]~~ rules and standards adopted under this subchapter not less than every six years.

(c) In order to provide the administrators an opportunity to review proposed rules and standards and send written suggestions to the Texas Board of Health ~~[department]~~, the board ~~[department]~~ shall, before adopting rules and minimum standards, send a copy of the proposed rules and standards not less than 60 days before the date they take effect to:

(1) the administrator of each registry established under this subchapter; and

(2) the administrator of each agency authorized by the department to place children for adoption.

SECTION 27. Section 162.421(a), Family Code, is amended to read as follows:

(a) This subchapter does not prevent the bureau ~~[department]~~ from making known to the public, by appropriate means, the existence of voluntary adoption registries.

SECTION 28. Sections 162.422(a) and (b), Family Code, are amended to read as follows:

(a) The bureau ~~[department]~~ or authorized agency establishing or operating a registry is not liable to any person for obtaining or disclosing identifying information about a birth parent, adoptee, or biological sibling within the scope of this subchapter and under its provisions.

(b) An employee or agent of the bureau ~~[department]~~ or of an authorized agency establishing or operating a registry under this subchapter is not liable to any person for obtaining or disclosing identifying information about a birth parent, adoptee, or biological sibling within the scope of this subchapter and under its provisions.

SECTION 29. Section 192.008(a), Health and Safety Code, is amended to read as follows:

(a) The supplementary birth certificate of an adopted child must be in the names of the adoptive parents, one of whom must be a female, named as the mother, and the other of whom must be a male, named as the father. This subsection does not prohibit a single individual, male or female, from adopting a child. Copies of the child's birth certificates or birth records may not disclose that the child is adopted.

SECTION 30. Chapter 25, Penal Code, is amended by adding Section 25.09 to read as follows:

Sec. 25.09. ADVERTISING FOR PLACEMENT OF CHILD. (a) A person commits an offense if the person advertises in the public media that the person will place a child for adoption or will provide or obtain a child for adoption.

(b) This section does not apply to a licensed child-placing agency that is identified in the advertisement as a licensed child-placing agency.

(c) An offense under this section is a Class A misdemeanor unless the person has been convicted previously under this section, in which event the offense is a felony of the third degree.

(d) In this section:

(1) "Child" has the meaning assigned by Section 101.003, Family Code.

(2) "Public media" has the meaning assigned by Section 38.01. The term also includes communications through the use of the Internet or another public computer network.

SECTION 31. (a) This Act takes effect September 1, 1997.

(b) Except as otherwise provided by this section, the change in law made by this Act applies only to a suit affecting the parent-child relationship commenced on or after the effective date of this Act. A suit affecting the parent-child relationship commenced before the effective date of this Act is governed by the law in effect on the date it was commenced, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act pertaining to the termination of the parent-child relationship applies only to an affidavit to relinquish parental rights or an affidavit of waiver of interest in a child executed on or after the effective date of this Act. An affidavit executed before the effective date of this Act is governed by the law in effect on the date the affidavit was executed, and the former law is continued in effect for that purpose.

(d) The change in law made by this Act pertaining to adoptions applies only to petitions for adoptions filed on or after the effective date of this Act. A petition for adoption filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose; except that for these purposes a petition for adoption shall be considered to be filed at the time that the original petition was filed or at the time that an amended petition seeking the adoption was filed if the amended petition is filed in a cause that has previously been filed and where the court has continuing jurisdiction over the child.

(e) The change in law made by this Act pertaining to a criminal offense applies only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. 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 that purpose.

(f) The change in law made by this Act transferring the administration of the central voluntary adoption registry from the Department of Protective and

Regulatory Services to the bureau of vital statistics takes effect January 1, 1998. On that date, the powers, duties, obligations, rights, contracts, records, personnel, property, and unexpended appropriations dedicated to the department for the operation of the registry are transferred to the bureau. The department and the bureau shall develop and implement a plan before that date for the transfer of the registry.

SECTION 32. 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 **CSHB 1091** by adding Section 30, as follows, and renumber accordingly:

Section 30. Section 153.139, Family Code, is hereby repealed.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend a meeting of the Committee on Agriculture and Livestock:

Hupp on motion of R. Lewis.

HB 1200 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Cuellar called up with senate amendments for consideration at this time,

HB 1200, A bill to be entitled An Act relating to the period of validity of and fees for a driver's license or personal identification certificate.

Representative Cuellar moved that the house concur in the senate amendments to **HB 1200**.

Representative Wohlgemuth offered a substitute motion that the house not concur and that a conference committee be requested to adjust the differences between the two houses on the bill.

The substitute motion that the house not concur and that a conference committee be requested was lost by (Record 453): 47 Yeas, 92 Nays, 1 Present, not voting.

Yeas — Allen; Bonnen; Brimer; Chisum; Christian; Clark; Corte; Crabb; Craddick; Culberson; Denny; Driver; Elkins; Finnell; Galloway; Goodman; Grusendorf; Hamric; Hartnett; Heflin; Holzheuser; Horn; Howard; Isett; Keffer; Krusee; Kubiak; Kuempel; Madden; Marchant; Merritt; Moffat; Palmer; Pitts; Rabuck; Reyna, E.; Seaman; Shields; Siebert; Smithee; Solomons; Talton; West; Williams; Williamson; Wohlgemuth; Woolley.

Nays — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bosse; Burnam; Carter; Chavez; Coleman; Counts; Cuellar; Danburg; Davila; Davis; Delisi; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goolsby; Gray; Greenberg; Gutierrez; Hawley; Hernandez;

Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Hunter; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; King; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McClendon; McReynolds; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Pickett; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Smith; Solis; Staples; Stiles; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; Walker; Wilson; Wise; Wolens; Yarbrough; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Roman; Swinford; Turner, B.

Absent — Dukes; Haggerty; Jackson.

The motion to concur in the senate amendments to **HB 1200** prevailed by (Record 454): 91 Yeas, 47 Nays, 1 Present, not voting. (The vote was reconsidered on Thursday, May 29, the house refused to concur in senate amendments, and a conference committee was appointed.)

Yeas — Alexander; Alvarado; Averitt; Bailey; Berlanga; Bosse; Burnam; Carter; Chavez; Coleman; Counts; Cuellar; Danburg; Davila; Davis; Delisi; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Gray; Greenberg; Gutierrez; Hawley; Hernandez; Hightower; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Hunter; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; King; Krusee; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McClendon; McReynolds; Moreno; Mowery; Naishtat; Nixon; Oliveira; Olivo; Pickett; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Solis; Stiles; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; Walker; Wilson; Wise; Wolens; Yarbrough; Zbraneck.

Nays — Allen; Bonnen; Brimer; Chisum; Christian; Clark; Corte; Crabb; Craddick; Culberson; Denny; Goodman; Goolsby; Grusendorf; Hamric; Hartnett; Heflin; Hilbert; Hilderbran; Holzheuser; Horn; Howard; Isett; Keffer; Kubiak; Kuempel; Madden; Marchant; Merritt; Moffat; Palmer; Pitts; Rabuck; Reyna, E.; Seaman; Shields; Siebert; Smith; Smithee; Solomons; Staples; Talton; West; Williams; Williamson; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Roman; Swinford; Turner, B.

Absent — Elkins; Haggerty; Jackson; Oakley.

STATEMENT OF VOTE

I was shown voting yes on Record No. 454. I intended to vote no.

Galloway

Senate Committee Substitute

CSHB 1200, A bill to be entitled An Act relating to the period of validity of and fees for a driver's license or personal identification certificate.

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

SECTION 1. Section 521.271, Transportation Code, is amended to read as follows:

Sec. 521.271. LICENSE AND PERSONAL IDENTIFICATION CERTIFICATE EXPIRATION. (a) Each original driver's license, personal identification certificate, and provisional license expires as follows:

(1) a driver's license or personal identification certificate expires on the 60th [first] birthday of the license or certificate holder [occurring after the fourth anniversary of the date of the application];

(2) a provisional license expires on the earlier of:

(A) the 18th birthday of the license holder; or

(B) the first birthday of the license holder occurring after the date of the application;

(3) an instruction permit expires on the first birthday of the license holder occurring after the date of the application; and

(4) an occupational license expires on the first anniversary of the court order granting the license.

(b) A driver's license that is renewed expires on the fourth anniversary of the expiration date before renewal.

(c) The department shall renew the license or certificate of a holder who is under 60 years of age without charge at six-year intervals to include changes in the pertinent information shown on the license or certificate. As a condition of renewal, the department may require a holder to furnish information required for an application for an original license under Section 521.142. Notwithstanding Subsection (a)(1), a driver's license or personal identification certificate expires on the first birthday of the license or certificate holder occurring after the sixth anniversary of the date of application for original issuance or for renewal under this section, unless the holder has obtained from the department a renewed license or certificate under this subsection. This subsection does not affect the right of a person to obtain a duplicate or corrected license or certificate at another time or the obligation of the person to pay the fee required for a duplicate license or certificate obtained at another time.

(d) A driver's license or personal identification certificate that expires under Subsection (c) and that is not renewed within two years after the date of the expiration may not be renewed. To obtain a license or certificate the person who held the expired license or certificate must apply for an original license or certificate and meet all of the requirements for obtaining an original license or certificate, including payment of the fee required by Section 521.421.

SECTION 2. Section 521.421, Transportation Code, is amended by amending the heading and Subsections (a) and (b) and adding Subsection (f) to read as follows:

Sec. 521.421. LICENSE AND CERTIFICATE FEES; EXAMINATION FEES. (a) The fee for issuance [or renewal] of a license or personal identification certificate not otherwise provided for by this section is:

(1) \$85 if on the date of application the applicant is:

(A) at least 18 years of age but younger than 25 years of age, if the application is for a license; or

(B) younger than 25 years of age, if the application is for a personal identification certificate;

(2) \$75 if on the date of application the applicant is at least 25 years of age but younger than 35 years of age;

(3) \$60 if on the date of application the applicant is at least 35 years of age but younger than 45 years of age;

(4) \$40 if on the date of application the applicant is at least 45 years of age but younger than 50 years of age;

(5) \$20 if on the date of application the applicant is at least 50 years of age but younger than 55 years of age; and

(6) \$16 if on the date of application the applicant is at least 55 years of age.

(b) The fee for renewal of a [Class M] license not otherwise provided by this section is \$16 [\$24].

(f) For a license authorizing the operation of a motorcycle or moped:

(1) the fee for renewal under Section 521.271(c) is \$8; and

(2) the fee for renewal is increased by \$8.

SECTION 3. Section 521.422, Transportation Code, is amended to read as follows:

Sec. 521.422. PERSONAL IDENTIFICATION CERTIFICATE RENEWAL FEE. The fee for a renewal of a personal identification certificate is[-

(1) \$10 for a person under 65 years of age; and

(2) \$5 for a person 60 [65] years of age or older.

SECTION 4. Section 521.123, Transportation Code, is amended to read as follows:

Sec. 521.123. DESIGNATOR ON LICENSE ISSUED TO PERSON UNDER 21 YEARS OF AGE. (a) The department shall:

(1) designate and clearly mark as a provisional license each original driver's license issued by the department to a person who is under 18 years of age; and

(2) indicate "UNDER 21" on the face of each original, renewed, or duplicate license issued to a person who is under 21 years of age.

(b) On request of a license holder who is at least 21 years of age, the department shall remove an "UNDER 21" indication from the holder's license without charge.

SECTION 5. Section 521.101(f), Transportation Code, is amended to read as follows:

(f) On request of a certificate holder who is at least 21 years of age, the department shall remove an "UNDER 21" indication from the holder's certificate without charge. [A certificate expires on a date specified by the department.]

SECTION 6. Sections 522.029(a) and (b), Transportation Code, are amended to read as follows:

(a) The fee for a commercial driver's license or commercial driver learner's permit issued by the department is \$60 [\$40].

(b) If [The fee for] a commercial driver's license or commercial driver learner's permit includes an authorization to operate a motorcycle or moped, the fee for issuance or renewal of the license or permit is increased by \$8 [shall

be reduced by \$4 for each remaining year of validity of a driver's license, other than a commercial driver's license or commercial driver learner's permit issued by the department to the applicant].

SECTION 7. Section 522.051, Transportation Code, is amended to read as follows:

Sec. 522.051. EXPIRATION OF LICENSE OR PERMIT. (a) An original commercial driver's license or commercial driver learner's permit expires six [four] years after the applicant's next birthday.

(b) ~~[A commercial driver's license or commercial driver learner's permit issued to a person holding a Texas Class A, B, C, or M license that would expire one year or more after the date of issuance of the commercial driver's license or commercial driver learner's permit expires four years after the applicant's next birthday.~~

~~[(c) A commercial driver's license or commercial driver learner's permit issued to a person holding a Texas Class A, B, C, or M license that would expire less than one year after the date of issuance of the commercial driver's license or commercial driver learner's permit or that has been expired for less than one year expires four years after the expiration date shown on the Class A, B, C, or M license.~~

~~[(d) A commercial driver's license or commercial driver learner's permit issued to a person holding a Texas Class A, B, C, or M license that has been expired for at least one year but not more than two years expires four years after the applicant's last birthday.~~

~~[(e)] For purposes of this section, a person's ["last birthday" is the birthday that occurs on or before the date of issuance, and a person's] "next birthday" is the birthday that occurs on or after the date of issuance.~~

SECTION 8. Sections 522.052(b) and (c), Transportation Code, are amended to read as follows:

(b) A renewal of a commercial driver's license that has been expired for less than one year expires six [four] years after the expiration date shown on the commercial driver's license.

(c) A renewal of a commercial driver's license that has been expired for at least one year but not more than two years expires six [four] years after the applicant's last birthday.

SECTION 9. A driver's license or personal identification certificate for which a renewal application is filed on or after the effective date of this Act is subject to the expiration and fee provisions applicable to an original license or certificate under Chapter 521, Transportation Code, as amended by this Act.

SECTION 10. The Department of Public Safety by rule may provide for the staggered expiration of licenses and certificates under Chapter 521, Transportation Code, so that a proportionate number of licenses and certificates expire each year. The fee for a license or certificate issued for a period other than the period provided by that chapter shall be prorated accordingly.

SECTION 11. This Act takes effect September 1, 1997.

SECTION 12. 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 **CSHB 1200** as follows:

(1) Immediately following the period at the end of the second sentence of Section 502.271(c), Transportation Code, as added by SECTION 1 of the bill (committee printing, page 1, line 39) insert: "The department shall update the holder's picture at each renewal."

(2) Strike SECTION 11 of the bill (committee printing, page 3, line 39) and substitute the following:

SECTION 11. This Act takes effect December 1, 1997.

**HB 1279 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative Oliveira called up with senate amendments for consideration at this time,

HB 1279, A bill to be entitled An Act relating to the delegation of responsibility by a municipality for the approval of certain plats.

On motion of Representative Oliveira, the house concurred in the senate amendments to **HB 1279** by (Record 455): 138 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Corte; Counts; Crabb; Craddick; Cuellar; Culbertson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hinojosa; Hirsch; Hochberg; Holzhauser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Jones, J.; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgenuth; Wolens; Woolley; Yarbrough; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Roman; Swinford; Turner, B.

Absent — Alvarado; Hill; Hodge; Junell.

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1279** as follows:

On page 1 line 8, strike "The municipal authority responsible for approving plats" and insert "The governing body of a municipality"

HB 1280 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Oliveira called up with senate amendments for consideration at this time,

HB 1280, A bill to be entitled An Act relating to delegating to municipal employees the authority to determine compliance with certain plat requirements.

On motion of Representative Oliveira, the house concurred in the senate amendments to **HB 1280** by (Record 456): 138 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Carter; Chavez; Chisum; Christian; Clark; Coleman; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Jones, J.; Kamel; Keel; Keffer; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nay — Burnam.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Roman; Swinford; Turner, B.

Absent — Alexander; Junell; King.

Senate Committee Substitute

CSHB 1280, A bill to be entitled An Act relating to the delegation of municipal authority to determine compliance with certain plat requirements

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

SECTION 1. Section 212.0115, Local Government Code, is amended by adding Subsection (i) to read as follows:

(i) The governing body of a municipality may delegate, in writing, the ability to perform any of the responsibilities under this section to one or more persons. A binding decision of the person or persons under this subsection is appealable to the municipal authority responsible for approving plats.

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 1855 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Eiland called up with senate amendments for consideration at this time,

HB 1855, A bill to be entitled An Act relating to sales tax exemption for items used in manufacturing tangible personal property for ultimate sale.

On motion of Representative Eiland, the house concurred in the senate amendments to **HB 1855**.

Senate Amendment No. 1

Amend **HB 1855** (Senate Committee printing) as follows:

1. On page 1, line 32, strike "and".
2. On page 1, line 35 and 36, strike "and computerized control units" and substitute ", computerized control units, compressors, and hydraulic units,".
3. On page 1, line 39, after "sale" and before the period, insert the following:

;and

(5) machinery, equipment, and replacement parts or accessories used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if their use or consumption is necessary and essential to a pollution control process".

4. Strike page 1, line 40, through page 1, line 59, and substitute the following:

(c) The exemption does not include:

(1) ~~[machinery, equipment, or replacement parts or their accessories having a useful life when new in excess of six months;~~

(2) intraplant transportation equipment, including intraplant transportation equipment used to move a product or raw material in connection with the manufacturing process and specifically including all piping and conveyor systems, provided that piping that is a component part of a single item of manufacturing equipment or pollution control equipment eligible for the exemption under subsection (a)(2), (a)(4) or (a)(5) remains eligible for the exemption;

(2) maintenance or janitorial supplies or equipment[;] or other machinery, equipment, materials, or supplies that are used incidentally in a manufacturing, processing, or fabrication operation;

(3) hand tools; [or]

(4) office equipment or supplies, equipment or supplies used in sales or distribution activities, research or development of new products, or transportation activities, or other tangible personal property not used in an actual manufacturing, processing, or fabrication operation; or

(5) machinery and equipment or supplies used to maintain or store tangible personal property.

5. On page 2, line 5, strike "(c)(2)" and substitute "(c)(1)".

6. On page 2, line 6, strike "(c)(6)" and substitute "(c)(5)".

7. On page 2, line 7, insert the following as new SECTIONS 2 and 3, and renumber the remaining SECTIONS accordingly:

SECTION 2. Section 151.318(n) and (q), Tax Code, are amended to read as follows:

(n) A person engaged in overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts is entitled to an exemption from the ~~[a refund or a reduction in the amount of]~~ tax imposed by this chapter for the purchase of machinery, equipment, or replacement parts or accessories with a useful life in excess of six months, or supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process that are used or consumed in the overhauling, retrofitting, or repairing. ~~[The amount of the refund or reduced amount of tax due is the same as provided by Subsection (h) for property covered by Subsection (g).]~~

(q) For purposes of Subsection (b), "semiconductor fabrication cleanrooms and equipment" means all tangible personal property, without regard to whether the property is affixed to or incorporated into realty, used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually contained in the cleanroom environment. The term includes integrated systems, fixtures, and piping, all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances, and production equipment and machinery. The term does not include the building or a permanent, nonremovable component of the building, that houses the cleanroom environment. The term includes moveable cleanroom partitions and cleanroom lighting. "Semiconductor fabrication cleanrooms and equipment" are not "interplant transportation equipment" or "used incidentally in a manufacturing, processing, or fabrication operation" as those terms are used in Subsection (c)(1) ~~(c)(2)~~.

SECTION 3. Subsections (f)-(m) of Section 151.318, Tax Code, are repealed.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a meeting of the Committee on Agriculture and Livestock:

Rabuck on motion of R. Lewis.

HB 1345 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Uher called up with senate amendments for consideration at this time,

HB 1345, A bill to be entitled An Act relating to the issuance of certain permits to move certain heavy equipment over a state highway.

On motion of Representative Uher, the house concurred in the senate amendments to **HB 1345** by (Record 457): 138 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berlanga; Bonnen; Bosse;

Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Jones, J.; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbrank.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Rabuck; Roman; Swinford; Turner, B.

Absent — Alvarado; Junell; Reyna, E.

Senate Amendment No. 1

Amend **HB 1345** by inserting on page 1 line 32 new subsection (g):

(g) The department shall submit to the Lieutenant Governor and Speaker of the House of Representatives by December 1 of each even numbered year a report describing the cumulative effects on the state highway system, including county roads, of permits issued under subsection (c)(3) during the previous two year period.

HB 1870 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Marchant called up with senate amendments for consideration at this time,

HB 1870, A bill to be entitled An Act relating to the regulation of trust companies; providing administrative and criminal penalties.

On motion of Representative Marchant, the house concurred in the senate amendments to **HB 1870** by (Record 458): 136 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Chavez; Chisum; Christian; Clark; Coleman; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Hodge; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, J.;

Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Rabuck; Roman; Swinford; Turner, B.

Absent — Alvarado; Carter; Edwards; Jones, D.; Lewis, G.

Senate Committee Substitute

CSHB 1870, A bill to be entitled An Act relating to the regulation of trust companies; providing administrative and criminal penalties.

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

SECTION 1. The Texas Trust Company Act is enacted to read as follows:

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. SHORT TITLE

Sec. 1.002. DEFINITIONS

Sec. 1.003. TRUST COMPANY RULES

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. **SHORT TITLE.** This Act may be cited as the Texas Trust Company Act.

Sec. 1.002. **DEFINITIONS.** (a) In this Act:

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar, or agent.

(2) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a state trust company or other company.

(3) "Bank" means a state or national bank.

(4) "Banking commissioner" means the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(5) "Board" means the board of directors, managers, or managing participants of, or a person or group of persons acting in a comparable capacity for, a state trust company or other entity.

(6) "Branch" means a location of a state trust company, other than the trust company's home office, at which the state trust company engages in the trust business.

(7) "Capital" means:

(A) the sum of:

(i) the par value of all shares or participation shares of a state trust company having a par value that have been issued;

(ii) the consideration fixed by the board in the manner provided by the Texas Business Corporation Act for all shares or participation shares of the state trust company without par value that have been issued, except a part of that consideration that:

(a) has been actually received;

(b) is less than all of that consideration; and

(c) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the banking commissioner; and

(iii) an amount not included in Subparagraphs (i) and (ii) of this paragraph that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) of this subdivision that are attributable to the issuance of securities by the state trust company and that the banking commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(8) "Certified surplus" means the part of surplus designated by a vote of the board of a state trust company under Section 3.105 of this Act and recorded in the board minutes as certified.

(9) "Charter" means a corporate charter issued under this Act to engage in a trust business.

(10) "Client" means a person to whom a trust company owes a duty or obligation under a trust or other account administered by the trust company, regardless of whether the trust company owes a fiduciary duty to the person. The term includes a beneficiary of a trust for whom the trust company acts as trustee and a person for whom the trust company acts as agent, custodian, or bailee.

(11) "Company" includes a bank, trust company, corporation, partnership, association, business trust, or another trust.

(12) "Conservator" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties provided by Subchapter B, Chapter 6, of this Act.

(13) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 25 percent or more of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) the ability to control the election of a majority of the board of the state trust company or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the banking commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of 25 percent or more of the outstanding shares or participation shares of a class of voting securities of the state trust company or other company on the transfer of 25 percent or more

of the outstanding shares of a class of voting securities of another state trust company or other company.

(14) "Department" means the Texas Department of Banking.

(15) "Depository institution" means an entity with the power to accept deposits under applicable law.

(16) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company.

(17) "Equity security" means:

(A) stock or a similar security, any security convertible, with or without consideration, into such a security, a warrant or right to subscribe to or purchase such a security, or a security carrying such a warrant or right;

(B) a certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest; and

(C) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(18) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession of a trust company that is necessary to preserve information concerning an act or event relevant to an account of a trust company.

(19) "Finance commission" means the Finance Commission of Texas.

(20) "Foreign corporation" means a company incorporated or organized under the laws of a jurisdiction other than this state. The term does not include a depository institution incorporated or organized under the laws of the United States and domiciled in this state.

(21) "Full liability participant" means a participant that agrees under the terms of a participation agreement to be liable under a judgment, decree, or order of court for the entire amount of all debts, obligations, or liabilities of a limited trust association.

(22) "Hazardous condition" means:

(A) a refusal by the trust company or an affiliate of the trust company to permit an examination of its books, papers, accounts, records, or affairs by the banking commissioner as provided by Section 2.002 of this Act;

(B) violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the banking commissioner or the department; or

(C) a circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the book or fair market value of its assets exceeds its liabilities;

(ii) has equity capital less than the amount of restricted capital the trust company is required to maintain under Section 3.007 of this Act, or has equity capital the adequacy of which is threatened, as determined under regulatory accounting principles;

(iii) has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) violates or refuses to comply with this Act, another statute or regulation applicable to trust companies, or a final and enforceable order of the banking commissioner;

(v) is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) conducts business in an unsafe or unsound manner, including conducting business with:

(a) inexperienced or inattentive management;

(b) weak or potentially dangerous operating practices;

(c) infrequent or inadequate audits;

(d) administration of assets that is notably deficient in relation to the volume and character of or responsibility for asset holdings;

(e) unsound administrative practices;

(f) frequent and uncorrected material occurrences of violations of law, including rules, or terms of the governing instruments; or

(g) a notable degree of conflicts of interest and engaging in self-dealing.

(23) "Home office" means a location registered with the banking commissioner as a state trust company's home office at which:

(A) the trust company does business;

(B) the trust company keeps its corporate books and records; and

(C) at least one executive officer of the trust company maintains an office.

(24) "Insider" means:

(A) each director, manager, managing participant, officer, and principal shareholder or participant of a state trust company;

(B) each affiliate of the state trust company and each director, officer, and employee of the affiliate;

(C) any person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation; or

(D) each company controlled by a person described by Paragraph (A), (B), or (C) of this subdivision.

(25) "Insolvent" means a circumstance or condition in which a state trust company:

(A) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) has equity capital less than \$500,000, as determined under regulatory accounting principles;

(C) fails to maintain deposit insurance for its deposits with the Federal Deposit Insurance Corporation or its successor, or fails to maintain adequate security for its deposits as provided by Section 5.401(c) of this Act;

(D) sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Chapter 3 of this Act; or

(E) attempts to dissolve or liquidate other than as provided by Chapter 7 of this Act.

(26) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit.

(27) "Limited trust association" means a state trust company organized as a limited trust association, authorized to issue participation shares, and controlled by its participants.

(28) "Loans and extensions of credit" means direct or indirect advances of money by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(29) "Manager" means a person elected to the board of a limited trust association.

(30) "Managing participant" means a participant in a limited trust association in which management has been retained by the participants.

(31) "Mutual funds" means equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) and the Securities Act of 1933 (15 U.S.C. Section 77a et seq.). The term does not include money market funds.

(32) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(33) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 50 percent of the outstanding shares of each class of voting securities or its equivalent of the company.

(34) "Participant" means an owner of a participation share in a limited trust association.

(35) "Participant-transferee" means a transferee of a participation share who has not received the unanimous consent of all participants to be a participant, or who becomes a participant-transferee under Subchapter C, Chapter 4, of this Act.

(36) "Participation agreement" means the instrument stating the agreement among the participants of a limited trust association relating to the rights and duties of the participants and participant-transferees, including allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, liabilities of participants, priority rights of participant-transferees to transfer participation shares, rights of participants to purchase participation shares of participant-transferees, the procedures for elections and

voting by participants, and any other matter not prohibited by or inconsistent with this Act.

(37) "Participation shares" means the units into which the proprietary interests of a limited trust association are divided or subdivided by means of classes, series, relative rights, or preferences.

(38) "Person" means an individual or any other legal entity.

(39) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 10 percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(40) "Restricted capital" means the sum of capital and certified surplus.

(41) "Regulatory accounting principles" means generally accepted accounting principles as modified by rules adopted under this Act or an applicable federal statute or regulation.

(42) "Secondary capital" means the amount by which the assets of a state trust company exceed restricted capital, required by Section 3.007 of this Act, and liabilities.

(43) "Shareholder" means an owner of a share in a state trust company.

(44) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(45) "State bank" means a banking association or limited banking association organized or reorganized under the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes), including an association organized under the laws of this state before September 1, 1997, with the express power to receive and accept deposits and possessing other rights and powers granted by that Act expressly or by implication. The term does not include a savings association, savings bank, or credit union.

(46) "State trust company" means a trust association or limited trust association organized or reorganized under this Act, including an association organized under the laws of this state before September 1, 1997.

(47) "Subsidiary" means a state trust company or other company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(48) "Supervisor" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties specified in Subchapter B, Chapter 6, of this Act.

(49) "Trust association" means a trust company organized as a trust association, authorized to issue shares of stock, and controlled by its shareholders.

(50) "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts.

(51) "Trust deposits" means client funds held by a state trust company and authorized to be deposited with itself as a permanent investment or pending investment, distribution, or payment of debts on behalf of the client.

(52) "Unauthorized trust activity" means an act or practice within this state by a person without a charter, license, permit, registration, or other

authority issued or granted by the banking commissioner or other appropriate regulatory authority for which such a charter, license, permit, registration, or other authority is required to conduct trust business.

(53) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation minus subsequent distributions to shareholders or participants and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(54) "Voting security" means a share, participation share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security and a nonvoting participation share of a managing participant.

(b) The definitions shall be liberally construed to accomplish the purposes of the Act.

(c) The finance commission by rule may adopt other definitions to accomplish the purposes of this Act.

Sec. 1.003. TRUST COMPANY RULES. (a) The finance commission may adopt rules to accomplish the purposes of this Act, including rules necessary or reasonable to:

(1) implement and clarify this Act;

(2) preserve or protect the safety and soundness of state trust companies;

(3) grant the same rights and privileges to state trust companies with respect to the exercise of fiduciary powers that are or may be granted to a state or national bank that is domiciled in this state and exercising fiduciary powers;

(4) provide for recovery of the cost of maintenance and operation of the department and the cost of enforcing this Act through the imposition and collection of ratable and equitable fees for notices, applications, and examinations; and

(5) facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

(b) The presence or absence in this Act of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority conferred by this section.

CHAPTER 2. POWERS AND DUTIES OF

TEXAS DEPARTMENT OF BANKING

SUBCHAPTER A. OPERATION OF DEPARTMENT

Sec. 2.001. INTERPRETIVE STATEMENTS AND OPINIONS

Sec. 2.002. EXAMINATION

Sec. 2.003. STATEMENTS OF CONDITION AND INCOME

Sec. 2.004. LIABILITY LIMITED

[Sections 2.005-2.100 reserved for expansion]

SUBCHAPTER B. CONFIDENTIALITY OF INFORMATION

Sec. 2.101. DISCLOSURE BY DEPARTMENT PROHIBITED

- Sec. 2.102. DISCLOSURE TO FINANCE COMMISSION
- Sec. 2.103. DISCLOSURE TO OTHER AGENCIES
- Sec. 2.104. OTHER DISCLOSURE PROHIBITED
- Sec. 2.105. CIVIL DISCOVERY
- Sec. 2.106. INVESTIGATIVE INFORMATION
- Sec. 2.107. EMPLOYMENT INFORMATION
- Sec. 2.108. SHAREHOLDER INSPECTION RIGHTS

CHAPTER 2. POWERS AND DUTIES OF
TEXAS DEPARTMENT OF BANKING

SUBCHAPTER A. OPERATION OF DEPARTMENT

Sec. 2.001. INTERPRETIVE STATEMENTS AND OPINIONS. (a) The banking commissioner may issue interpretive statements containing matters of general policy for the guidance of state trust companies. The banking commissioner shall file the statements for publication in the Texas Register. The banking commissioner may amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement and filing the statement or notice for publication in the Texas Register. The secretary of state shall publish the filed statements and notices in the Texas Register and in a designated chapter of the Texas Administrative Code.

(b) The banking commissioner may issue an opinion in response to a specific request from a member of the public or the state trust company industry directly or through the deputy banking commissioner or the department's attorneys. If the banking commissioner determines that the opinion is useful for the general guidance of trust companies, the banking commissioner may file the opinion for publication in the Texas Register. A published opinion must be redacted in a manner that preserves the confidentiality of the requesting party, unless the requesting party consents to be identified in the published opinion. The banking commissioner may amend or repeal a published opinion by issuing an amended opinion or notice of repeal of an opinion and filing the opinion or notice for publication in the Texas Register, except that the requesting party may rely on the original opinion if all material facts were originally disclosed to the banking commissioner, considerations of safety and soundness of the affected trust companies are not implicated with respect to further and prospective reliance on the original opinion, and the text and interpretation of relevant governing provisions of this Act have not been changed by legislative or judicial action. The secretary of state shall publish the filed opinions and notices in the Texas Register and a designated chapter of the Texas Administrative Code.

(c) An interpretive statement or opinion issued under this section does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted by the finance commission as provided by Chapter 2001, Government Code. An interpretive statement or opinion is an administrative construction of this Act entitled to great weight if the construction is reasonable and does not conflict with this Act.

Sec. 2.002. EXAMINATION. (a) The banking commissioner shall examine each state trust company annually. The banking commissioner may examine a state trust company more often than annually as the banking commissioner considers necessary to safeguard the interests of clients, creditors, shareholders, participants, or participant-transferees and to enforce this Act. The

banking commissioner may defer an examination for not more than six months if the banking commissioner considers the deferment necessary for the efficient enforcement of this Act.

(b) Each state trust company shall pay the cost of examination, the equitable or proportionate cost of maintenance and operation of the department, and the cost of enforcement of this Act through the imposition and collection of fees established by the finance commission under Section 1.003(a)(4) of this Act.

(c) The performance of data processing, electronic fund transfers, or other services or activities performed on behalf of a state trust company by a third-party contractor and the activities of a state trust company affiliate are subject to regulation and examination by the banking commissioner to the same extent as if the services or activities were performed by that state trust company on its own premises. The banking commissioner may collect a fee from the state trust company to cover the cost of the examination.

(d) The banking commissioner may administer oaths and examine persons under oath on any subject that the banking commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a state trust company.

(e) The banking commissioner shall report the results of the examination in writing to the officers and directors, managers, or managing participants of the state trust company. A report of examination under this section is confidential and may be disclosed only under the circumstances set forth in Subchapter B of this chapter.

(f) The banking commissioner may accept an examination of a state trust company, a third-party contractor, or an affiliate of the state trust company by a federal or other governmental agency in lieu of an examination under this section or may conduct an examination of a state trust company, a third-party contractor, or an affiliate of the state trust company jointly with a federal or other governmental agency.

Sec. 2.003. STATEMENTS OF CONDITION AND INCOME. (a) Each state trust company periodically shall file with the banking commissioner a copy of its statement of condition and income.

(b) The finance commission by rule may:

(1) specify the form of the statement of condition and income, including specified confidential and public information to be in the statement;

(2) require public information in the statement to be published at the times and in the publications and locations the finance commission determines; and

(3) require the statement to be filed with the banking commission at the intervals the finance commission determines.

(c) A state trust company that fails to file a statement of condition and income on or before the date it is due is, after notice and hearing, subject to a penalty of not more than \$500 a day for each day of noncompliance.

(d) Except for portions designated to be confidential by the banking commissioner, a statement of condition and income is a public record.

Sec. 2.004. LIABILITY LIMITED. (a) The banking commissioner, each member of the finance commission, the deputy banking commissioner, or an examiner, assistant examiner, supervisor, conservator, agent, or other officer or

employee of the department is not personally liable for damages arising from the person's official act or omission, unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person because of an official act or omission under Subsection (a) of this section, regardless of whether the defendant has terminated service with the department before the action commences.

[Sections 2.005-2.100 reserved for expansion]

SUBCHAPTER B. CONFIDENTIALITY OF INFORMATION

Sec. 2.101. DISCLOSURE BY DEPARTMENT PROHIBITED.

(a) Information obtained directly or indirectly by the department relative to the financial condition or business affairs of a state trust company, other than the public portions of a report of condition or income statement, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of the state trust company, whether obtained through application, examination, or otherwise, and each related file or record of the department is confidential and may not be disclosed by the banking commissioner or an employee of the department except as expressly provided otherwise by this Act or a rule adopted under Section 1.003(a)(1) of this Act.

(b) Information obtained by the department from a federal or state regulatory agency that is confidential under federal or state law may not be disclosed except as provided by federal or state law.

Sec. 2.102. DISCLOSURE TO FINANCE COMMISSION. Confidential information may not be disclosed to a member of the finance commission. A member of the finance commission may not be given access to the files and records of the department except that the banking commissioner may disclose to the finance commission information, files, and records pertinent to a hearing or matter pending before the finance commission.

Sec. 2.103. DISCLOSURE TO OTHER AGENCIES. (a) On request and execution of an appropriate confidentiality agreement approved by the banking commissioner, the banking commissioner may disclose to a federal banking regulatory agency confidential information relative to a state trust company within the agency's jurisdiction, or an affiliate or service provider of the trust company, and may permit the agency access to files and records or reports relating to the trust company or its affiliate or service provider.

(b) If the banking commissioner considers it necessary or proper to the enforcement of the laws of this state, another state, the United States, or a foreign sovereign state, or to the best interest of the public, the banking commissioner may disclose or authorize release of confidential information to another department of this state, another state, the United States, a foreign sovereign state, or any related agency or instrumentality.

Sec. 2.104. OTHER DISCLOSURE PROHIBITED. Confidential information that is provided to a state trust company, affiliate, or service provider of the trust company, whether in the form of a report of examination or otherwise, is the confidential property of the department. The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, independent auditor, or bonding company, except as authorized by rules

adopted under this Act. A person commits an offense if the person discloses or uses the information in violation of this section. An offense under this section is punishable as if it were an offense under Section 37.10, Penal Code.

Sec. 2.105. CIVIL DISCOVERY. Discovery of confidential information from a person subject to this subchapter under subpoena or other legal process in a civil proceeding must comply with rules adopted under this Act and other applicable law. The rules may restrict release of confidential information to the portion directly relevant to the legal dispute at issue and may require that a protective order, in the form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

Sec. 2.106. INVESTIGATIVE INFORMATION. Notwithstanding any other law, the banking commissioner may refuse to release information or records concerning a state trust company in the custody of the department if, in the opinion of the banking commissioner, release of the information or records might jeopardize an ongoing investigation of potentially unlawful activities.

Sec. 2.107. EMPLOYMENT INFORMATION. A person may provide employment information to a state trust company or to a person providing employment information to the trust company concerning the known or suspected involvement of a present or former employee, officer, or director in violation of any state or federal law, rule, or regulation that has been reported to appropriate state or federal authorities. A person may not be held liable for providing information under this section unless the information provided is false and the person provided the information with disregard for the truth.

Sec. 2.108. SHAREHOLDER INSPECTION RIGHTS. (a) Notwithstanding Article 2.44, Texas Business Corporation Act, a shareholder or participant of a state trust company may not examine:

(1) a report of examination or other confidential property of the department that is in the possession of the state trust company; or

(2) a book or record of the state trust company that directly or indirectly pertains to financial or other information maintained by the state trust company on behalf of its clients, including a specific item in the minutes of the board or a committee of the board regarding client account review and approval or any report that would tend to identify the state trust company's client.

(b) This section does not affect the rights of a shareholder or participant of a state trust company when acting in another capacity.

CHAPTER 3. POWERS; ORGANIZATION AND ORGANIZATIONAL CHANGES; CAPITAL AND SURPLUS SUBCHAPTER A. ORGANIZATION PROVISIONS;

GENERAL PROVISIONS

Sec. 3.001. ORGANIZATION AND POWERS OF STATE TRUST COMPANY

Sec. 3.002. ARTICLES OF ASSOCIATION OF STATE TRUST COMPANY

Sec. 3.003. APPLICATION FOR STATE TRUST COMPANY CHARTER

Sec. 3.004. NOTICE AND INVESTIGATION OF CHARTER APPLICATION

- Sec. 3.005. HEARING AND DECISION ON CHARTER APPLICATION
- Sec. 3.006. ISSUANCE OF CHARTER
- Sec. 3.007. RESTRICTED CAPITAL
- Sec. 3.008. APPLICATION OF LAWS RELATING TO GENERAL BUSINESS CORPORATIONS
- Sec. 3.009. BANKING COMMISSIONER HEARINGS
- Sec. 3.010. FINANCE COMMISSION HEARINGS; APPEALS
- Sec. 3.011. EXEMPTION
- Sec. 3.012. APPLICATION FOR EXEMPTION
- Sec. 3.013. ANNUAL CERTIFICATION
- Sec. 3.014. LIMITATION ON EFFECT OF EXEMPTION
- Sec. 3.015. CHANGE OF CONTROL
- Sec. 3.016. GROUNDS FOR REVOCATION OF EXEMPTION
- Sec. 3.017. NOTICE AND EFFECT OF REVOCATION OF EXEMPTION
- Sec. 3.018. ACTION AFTER REVOCATION
- Sec. 3.019. PRIOR EXEMPTION
- Sec. 3.020. TRUST COMPANIES CHARTERED UNDER PRIOR LAW
- Sec. 3.021. FOREIGN CORPORATIONS EXERCISING TRUST POWERS
- Sec. 3.022. ACTIVITIES NOT REQUIRING CHARTER

[Sections 3.023-3.100 reserved for expansion]

SUBCHAPTER B. AMENDMENT OF ARTICLES;
CHANGES IN CAPITAL AND SURPLUS

- Sec. 3.101. AMENDMENT OR RESTATEMENT OF STATE TRUST COMPANY ARTICLES OF ASSOCIATION
- Sec. 3.102. ESTABLISHING SERIES OF SHARES OR PARTICIPATION SHARES
- Sec. 3.103. CHANGE IN RESTRICTED CAPITAL
- Sec. 3.104. CAPITAL NOTES OR DEBENTURES
- Sec. 3.105. BOARD DESIGNATION OF CERTIFIED SURPLUS

[Sections 3.106-3.200 reserved for expansion]

SUBCHAPTER C. STATE TRUST COMPANY OFFICES

- Sec. 3.201. CONDUCT OF TRUST BUSINESS
- Sec. 3.202. HOME OFFICE
- Sec. 3.203. ADDITIONAL OFFICES

[Sections 3.204-3.300 reserved for expansion]

SUBCHAPTER D. MERGER

- Sec. 3.301. MERGER AUTHORITY
- Sec. 3.302. MERGER APPLICATION; GROUNDS FOR APPROVAL
- Sec. 3.303. APPROVAL OF BANKING COMMISSIONER
- Sec. 3.304. RIGHTS OF DISSENTERS TO MERGER

[Sections 3.305-3.400 reserved for expansion]

SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

- Sec. 3.401. AUTHORITY TO PURCHASE ASSETS OF ANOTHER TRUST COMPANY
- Sec. 3.402. AUTHORITY TO ACT AS DISBURSING AGENT
- Sec. 3.403. LIQUIDATION OF SELLING INSTITUTION
- Sec. 3.404. PAYMENT TO CREDITORS
- Sec. 3.405. SALE OF ASSETS

[Sections 3.406-3.500 reserved for expansion]

SUBCHAPTER F. STATE TRUST REGULATORY SYSTEM:
EXIT OF STATE TRUST COMPANY

Sec. 3.501. MERGER, REORGANIZATION, OR CONVERSION OF
STATE TRUST COMPANY INTO NATIONAL BANK
EXERCISING FIDUCIARY POWERS

CHAPTER 3. POWERS; ORGANIZATION AND
ORGANIZATIONAL CHANGES; CAPITAL AND SURPLUS
SUBCHAPTER A. ORGANIZATION PROVISIONS;
GENERAL PROVISIONS

Sec. 3.001. ORGANIZATION AND POWERS OF STATE TRUST
COMPANY. (a) Subject to the other provisions of this chapter,
one or more persons may organize and charter a state trust
company as a state trust association or a limited trust association.
A state trust company may perform any act as a fiduciary that a
state bank or national bank exclusively exercising trust powers
may perform under the laws of this state, including:

- (1) acting as trustee under a written agreement;
- (2) receiving money and other property in its capacity as trustee for investment in real or personal property;
- (3) acting as trustee and performing the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;
- (4) acting as executor, administrator, or trustee of the estate of a deceased person;
- (5) acting as a custodian, guardian, conservator, or trustee for a minor or incapacitated person;
- (6) acting as a successor fiduciary to a depository institution;
- (7) receiving for safekeeping personal property;
- (8) acting as custodian, assignee, transfer agent, escrow agent, registrar, or receiver;
- (9) acting as investment advisor, agent, or attorney in fact according to an applicable agreement;
- (10) exercising additional powers expressly conferred by rule of the finance commission; and
- (11) exercising any incidental power that is reasonably necessary to enable it to fully exercise the powers expressly conferred according to commonly accepted fiduciary customs and usages.

(b) Subject to Section 3.008 of this Act, a state trust company may exercise the powers of a Texas business corporation reasonably necessary to enable exercise of its specific powers under this Act.

(c) A state trust company may contribute to a community fund or to a charitable, philanthropic, or benevolent instrumentality conducive to public welfare amounts that its board considers appropriate and in the interests of the trust company.

(d) Subject to Section 5.401 of this Act, a state trust company may deposit trust funds with itself.

(e) A state trust company insured by the Federal Deposit Insurance Corporation may receive and pay deposits, with or without interest, made by

an agency of the United States Government, the state, a county, or a municipality.

Sec. 3.002. ARTICLES OF ASSOCIATION OF STATE TRUST COMPANY. The articles of association of a state trust company must be signed and acknowledged by each organizer and must contain:

(1) the name of the state trust company, except that the banking commissioner may determine that a proposed name is potentially misleading to the public and require the organizers to select a different name;

(2) the period of the state trust company's duration, which may be perpetual;

(3) the powers of the state trust company, which may be stated as:

(A) all powers granted to a state trust company in this state;

or

(B) a list of the specific powers that the state trust company chooses and is authorized to exercise;

(4) the aggregate number of shares, or participation shares in the case of a limited trust association, that the state trust company will be authorized to issue, the number of classes of shares or participation shares, which may be one or more, the number of shares or participation shares of each class if more than one class, and a statement of the par value of the shares or participation shares of each class or that the shares or participation shares are to be without par value;

(5) if the shares or participation shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares or participation shares of each class, which in the case of a limited trust association may be more fully set forth in the participation agreement;

(6) any provision limiting or denying to shareholders or participants the preemptive right to acquire additional or treasury shares or participation shares of the state trust company;

(7) any provision granting the right of shareholders or participants to cumulative voting in the election of directors or managers;

(8) the aggregate amount of consideration to be received for all shares or participation shares initially issued by the state trust company, and a statement that all authorized shares or participation shares have been subscribed and that all subscriptions received provide for the consideration to be fully paid in cash before issuance of the charter;

(9) any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this Act to be set forth in the articles of association;

(10) the street address of the state trust company's home office required to be maintained under Section 3.202 of this Act; and

(11) the number of directors or managers constituting the initial board, which may not be fewer than five or more than 25, and the names and street addresses of the persons who are to serve as directors or managers until the first annual meeting of shareholders or participants or until successor directors or managers have been elected and qualified; or, at the option of the organizers of a limited trust association that will have not fewer than five or more than

25 participants, a statement that management is vested in a board comprised of all participants, with management authority vested in each participant in proportion to the participant's contribution to capital as adjusted from time to time to properly reflect any additional contribution, and the names and street addresses of the persons who are to be the initial managing participants.

Sec. 3.003. APPLICATION FOR STATE TRUST COMPANY CHARTER. (a) An application for a state trust company charter must be made under oath and in the form required by the banking commissioner and must be supported by information, data, records, and opinions of counsel that the banking commissioner requires. The application must be accompanied by all charter fees and deposits required by statute or rule.

(b) The banking commissioner shall grant a state trust company charter only on proof satisfactory to the banking commissioner that public convenience and advantage will be promoted by the establishment of the state trust company. In determining whether public convenience and advantage will be promoted, the banking commissioner shall consider:

(1) the convenience of the public to be served;

(2) whether the organizational and capital structure and amount of initial capitalization is adequate for the business and location;

(3) whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) whether the proposed officers, directors, and managers, or managing participants, as a group have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the state trust company will operate in compliance with law and that success of the state trust company is probable;

(5) whether each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(6) whether the organizers are acting in good faith.

(c) The organizers bear the burden of proof to establish that public convenience and advantage will be promoted by the establishment of the state trust company. The failure of an applicant to furnish required information, data, opinions of counsel, and other material, or the required fee, is considered an abandonment of the application.

Sec. 3.004. NOTICE AND INVESTIGATION OF CHARTER APPLICATION. (a) The banking commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Promptly after this notification, the organizers shall publish notice of the application and solicit comments and protests, in the form specified by the banking commissioner, in a newspaper of general circulation in the county where the initial home office of the proposed state trust company is to be located. The banking commissioner may require the organizers to publish the notice at other locations reasonably necessary to solicit the views of potentially affected persons.

(b) At the expense of the organizers, the banking commissioner shall thoroughly investigate the application and inquire fully into the identity and character of each proposed director, manager, officer, managing participant, and principal shareholder or participant. The banking commissioner shall prepare a written report of the investigation, and any person, other than a person protesting under Section 3.005 of this Act, may request a copy of the nonconfidential portions of the application and written report as provided by Chapter 552, Government Code. Rules adopted under this Act may specify the confidential or nonconfidential character of information obtained by the department under this section. Except as provided by Subchapter B, Chapter 2, of this Act, or in rules regarding confidential information, the financial statement of a proposed officer, director, manager, or managing participant is confidential and not subject to public disclosure.

Sec. 3.005. HEARING AND DECISION ON CHARTER APPLICATION.

(a) Any person may file a protest of an application with the banking commissioner.

(b) If a protest of the application is not filed on or before the 15th day after the last date the notice was published under Section 3.004 of this Act, the banking commissioner may immediately determine whether all of the necessary conditions set forth in Section 3.003(b) of this Act have been established, based on the application and investigation. The banking commissioner shall approve the application for charter or set the charter application for hearing.

(c) If a protest of the application is timely filed, accompanied by the fees and deposits required by statute or rule, or if the banking commissioner sets a hearing, the banking commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with governing statutes and rules. A person protesting the application is entitled to the confidential portions of the application under a protective order that restricts the use of confidential information to the charter proceedings.

(d) Based on the record of the hearing, the banking commissioner shall determine whether all of the necessary conditions set forth in Section 3.003(b) of this Act have been established and shall enter an order granting or denying the charter. The banking commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

(e) Chapter 2001, Government Code, does not apply to a charter application filed for the purpose of assuming all or any portion of the assets, liabilities, and accounts of any depository institution or state trust company considered by the banking commissioner to be in hazardous condition.

Sec. 3.006. ISSUANCE OF CHARTER. (a) A state trust company may not engage in the trust business until it receives its charter from the banking commissioner. The banking commissioner may not deliver the charter until the state trust company has:

(1) received cash in at least the full amount of restricted capital from subscriptions for the issuance of shares or participation shares;

(2) elected or qualified the initial officers and directors or managers, as appropriate, named in the application for charter or other officers and directors or managers approved by the banking commissioner; and

(3) complied with all other requirements of this Act relating to the organization of the state trust company.

(b) If a state trust company does not open and engage in the trust business within six months after the date it receives its charter or conditional approval of application for charter, the banking commissioner may revoke the charter or cancel the conditional approval of application for charter without judicial action.

Sec. 3.007. RESTRICTED CAPITAL. (a) The banking commissioner may not issue a charter to a state trust company having restricted capital of less than \$1 million.

(b) The banking commissioner may, on a case-by-case basis, require additional restricted capital for a proposed or existing state trust company if the banking commissioner finds the condition and operations of the existing state trust company or the proposed scope or type of operations of the proposed state trust company requires additional restricted capital to protect the safety and soundness of the trust company. The safety and soundness factors to be considered by the banking commissioner in the exercise of discretion, include:

(1) the nature and type of business the state trust company conducts;
(2) the nature and degree of liquidity in assets held in a corporate capacity;

(3) the amount, type, and depository of fiduciary assets that the state trust company manages;

(4) the complexity of the state trust company's fiduciary duties and degree of discretion undertaken;

(5) the competence and experience of the state trust company's management;

(6) the extent and adequacy of internal controls maintained by the state trust company;

(7) the presence or absence of annual unqualified audits by an independent certified public accountant;

(8) the reasonableness of the state trust company's business plans for retaining or acquiring additional restricted capital; and

(9) the existence and adequacy of insurance obtained or held by the state trust company to protect its clients, beneficiaries, and grantors.

(c) The effective date of any order under Subsection (b) of this section must be stated in the order and must be on or after the 21st day after the date the order is mailed or delivered. Unless the state trust company requests a hearing before the banking commissioner in writing before the effective date of the order, the order takes effect and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of an existing state trust company under Subsection (e) of this section or under Section 3.011 of this Act.

(d) Subject to Subsection (e) of this section and Section 3.011 of this Act, a state trust company to which the banking commissioner issues a charter shall at all times maintain restricted capital in at least the amount required under Subsection (a) of this section and in any additional amount the banking commissioner requires under Subsection (b) of this section.

(e) Notwithstanding Subsection (a) of this section, on application, the banking commissioner may, on a case-by-case basis in the exercise of

discretion, reduce the amount of minimum restricted capital required for a state trust company in a manner consistent with protecting the company's safety and soundness. In making a determination under this subsection, the banking commissioner shall consider the factors listed by Subsection (b) of this section.

Sec. 3.008. APPLICATION OF LAWS RELATING TO GENERAL BUSINESS CORPORATIONS. (a) The Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes) are incorporated into this chapter and apply to a state trust company as if they were part of this Act to the extent not inconsistent with this Act or the proper business of a state trust company, except that:

(1) a reference to the secretary of state means the banking commissioner unless the context requires otherwise; and

(2) the right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state trust company's articles of association.

(b) Unless expressly authorized by this Act or a rule of the finance commission, a state trust company may not take an action authorized by the Texas Business Corporation Act regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Texas Business Corporation Act would require a filing with the secretary of state if the state trust company were a business corporation, without submitting the filing to the banking commissioner for prior written approval of the action.

(c) The finance commission may adopt rules to alter or supplement the procedures and requirements of the Texas Business Corporation Act or the Texas Miscellaneous Corporation Laws Act applicable to an action taken under this chapter by a state trust company.

(d) This chapter may not be construed to mean that a state trust company is a corporation incorporated under or governed by the Texas Business Corporation Act or the Texas Miscellaneous Corporation Laws Act.

Sec. 3.009. BANKING COMMISSIONER HEARINGS. (a) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

(b) The banking commissioner may convene a hearing to receive evidence and argument regarding any matter before the banking commissioner for decision or review under this Act. The hearing must be conducted under Chapter 2001, Government Code.

(c) A hearing before the banking commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the banking commissioner. A matter made confidential by law must be considered by the banking commissioner in a closed hearing.

Sec. 3.010. FINANCE COMMISSION HEARINGS; APPEALS. (a) Except as expressly provided otherwise by this Act, a decision or order of the banking commissioner made under this Act after hearing may be appealed directly to a district court of Travis County as provided by Subsection (c) of this section or, at the option of the appellant, to the finance commission for review.

(b) The finance commission shall consider the questions raised by the application for review and may also consider additional matters pertinent to the

appeal. An order of the banking commissioner continues in effect pending review unless the order is stayed by the finance commission. The finance commission may impose any condition before granting a stay of the appealed order. The finance commission may not be required to accept additional evidence or hold an evidentiary hearing if a hearing was held and a record made before the banking commissioner. The finance commission shall remand the proceeding to the banking commissioner to receive any additional evidence the finance commission chooses to consider. A hearing before the finance commission that is required or authorized by law may be conducted by a hearing officer on behalf of the finance commission. A matter made confidential by law must be considered by the finance commission in a closed hearing.

(c) A person affected by a final order of the banking commissioner who elects to appeal directly to district court, or a person affected by a final order of the finance commission under this section, may appeal the final order by filing a petition for judicial review under the substantial evidence rule in a district court of Travis County as provided by Chapter 2001, Government Code. A petition for appeal filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

Sec. 3.011. EXEMPTION. (a) A state trust company may request in writing that it be exempted from specified provisions of this Act. The banking commissioner may grant the exemption in whole or in part if the banking commissioner finds that the state trust company does not transact business with the public. A state trust company does not transact business with the public if it does not make any sale, solicitation, arrangement, agreement, or transaction to provide a trust or other business service, whether or not for a fee, commission, or any other type of remuneration, with:

(1) an individual who is not related within the fourth degree of affinity or consanguinity to an individual who controls the state trust company; or

(2) a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or corporation that is not wholly owned by one or more individuals related within the fourth degree of affinity or consanguinity to an individual who controls the state trust company.

(b) At the expense of a state trust company, the banking commissioner may examine or investigate the state trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the banking commissioner shall approve the application for exemption or set the application for hearing not later than the 61st day after the date the banking commissioner considers the application complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) An exemption granted under this section may be made subject to conditions or limitations imposed by the banking commissioner consistent with this Act.

(d) A state trust company that is or has been exempt from a provision of this Act under this section or a predecessor statute may not transact business with the public unless the banking commissioner determines, as provided by

Section 3.003 of this Act, that public convenience and advantage will be promoted by permitting the state trust company to engage in the trust business.

(e) The finance commission may adopt rules:

(1) defining other circumstances under which a state trust company may be exempted from a provision of this Act because it does not transact business with the public;

(2) specifying the provisions of this Act that are subject to an exemption request; and

(3) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption.

Sec. 3.012. APPLICATION FOR EXEMPTION. (a) A state trust company requesting an exemption under Section 3.011 of this Act shall file an application with the banking commissioner including:

(1) a nonrefundable application fee set by the finance commission;

(2) a detailed sworn statement showing the state trust company's assets and liabilities as of the end of the calendar month previous to the filing of the application;

(3) a sworn statement of the reason for requesting the exemption;

(4) a sworn statement that the state trust company is not transacting business with the public and that the company will not transact business with the public without the prior written permission of the banking commissioner;

(5) the current street mailing address and telephone number of the physical location in this state at which the state trust company will maintain its books and records, with a sworn statement that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and

(6) a list of the specific provisions of this Act for which the request for exemption is made.

(b) The banking commissioner may not approve a state trust company exemption unless the application is completed as required by Subsection (a) of this section.

Sec. 3.013. ANNUAL CERTIFICATION. Before June 30 of each year, an exempt state trust company shall file a certification that it is maintaining the conditions and limitations of its exemption on a form provided by the banking commissioner. The certification must be accompanied by a fee set by the finance commission. The certification is not valid unless it bears an acknowledgment stamped by the department. The department shall return a copy of the acknowledged annual certification to the state trust company not later than the 30th day after the date the certification is filed. The state trust company shall notify the department of any failure to return an acknowledged copy of any annual certification within this period. The banking commissioner may examine or investigate the state trust company periodically as necessary to verify the certification.

Sec. 3.014. LIMITATION ON EFFECT OF EXEMPTION. (a) An exempt state trust company shall comply with the home office provisions of Section 3.202 of this Act.

(b) The granting of an exemption to a state trust company does not affect the state trust company's obligation to pay any corporate franchise tax required by state law.

Sec. 3.015. CHANGE OF CONTROL. Control of an exempt state trust company may not be sold or transferred with exempt status. If control of an exempt state trust company is transferred, the acquiring person must comply with Sections 3.003, 3.004, 3.005, and 4.001 of this Act and the exempt status of the state trust company automatically terminates on the effective date of the transfer. The acquiring person must file a separate application to obtain an exemption under this Act.

Sec. 3.016. GROUNDS FOR REVOCATION OF EXEMPTION. The banking commissioner may revoke an exemption of a state trust company if the trust company:

(1) makes a false statement under oath on any document required to be filed by this Act or finance commission rule;

(2) fails to submit to an examination as required by Section 2.002 of this Act;

(3) withholds requested information from the banking commissioner; or

(4) violates any provision of this Act applicable to an exempt state trust company.

Sec. 3.017. NOTICE AND EFFECT OF REVOCATION OF EXEMPTION. If the banking commissioner determines from examination or other credible evidence that an exempt state trust company has violated any of the requirements of this subchapter relating to an exempt state trust company, the banking commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the state trust company in writing that the state trust company's exemption has been revoked. The notice must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be before the fifth day after the date the notification is mailed or delivered. The revocation takes effect for the state trust company if the state trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that state trust company, and the state trust company is subject to all of the requirements and provisions of the Act applicable to nonexempt state trust companies.

Sec. 3.018. ACTION AFTER REVOCATION. (a) A state trust company shall have five days after the date the revocation takes effect to comply with all of the provisions of Sections 3.003(b) and (c). If, however, the banking commissioner determines at the time of revocation that the state trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the banking commissioner, in the banking commissioner's sole discretion, may waive this compliance period.

(b) If the state trust company does not comply with all of the provisions of this Act, including capitalization requirements determined by the banking commissioner as necessary to assure the safety and soundness of the state trust company, within the prescribed period, the banking commissioner may:

(1) institute any action or remedy prescribed by this Act or any applicable rule; or

(2) refer the state trust company to the attorney general for institution of a quo warranto proceeding to revoke the state trust company's charter.

Sec. 3.019. PRIOR EXEMPTION. A state trust company that was exempt under a predecessor to this Act is considered exempt under this Act.

Sec. 3.020. TRUST COMPANIES CHARTERED UNDER PRIOR LAW. The charter of a corporation with trust powers incorporated under any laws of this state before May 25, 1987, is void if the charter was not presented to the department before May 26, 1988, for substitution of a charter or if the department did not issue a new substitution charter before May 26, 1989.

Sec. 3.021. FOREIGN CORPORATIONS EXERCISING TRUST POWERS. (a) A foreign corporation may not conduct a trust business in this state. A foreign corporation may control a state trust company in this state, if the state trust company is formed or acquired and operated as provided by this Act and applicable rules.

(b) A foreign corporation or other entity chartered or domiciled in another jurisdiction as a trust company or depository institution with trust powers may act as a trustee in this state only as provided by Section 105A, Texas Probate Code.

Sec. 3.022. ACTIVITIES NOT REQUIRING CHARTER. A company does not engage in the trust business in a manner requiring a state charter by:

(1) acting in a manner authorized by law and in the scope of authority as an agent of a state trust company;

(2) rendering a service customarily performed as an attorney in a manner approved and authorized by the Supreme Court of Texas or State Bar of Texas;

(3) acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

(4) conducting a trust business under a charter that authorizes the exercise of trust powers as a depository institution, if the exercise of trust powers in this state by the depository institution is not otherwise prohibited by law;

(5) engaging in a business regulated by the Office of Consumer Credit Commissioner, except as limited by rules adopted by the finance commission;

(6) receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Texas Real Estate Commission;

(7) engaging in a securities transaction or providing an investment advisory service as a licensed and registered dealer, salesman, or advisor to the extent that the activity is regulated by the State Securities Board or the Securities and Exchange Commission;

(8) engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Texas Department of Insurance to the extent that the activity is regulated by the Texas Department of Insurance;

(9) engaging in the lawful sale of prepaid funeral benefits under a permit issued by the banking commissioner under Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes);

(10) engaging in the lawful business of a perpetual care cemetery corporation under Chapter 712, Health and Safety Code;

(11) engaging in the lawful sale of checks under a license issued by

the banking commissioner under The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes);

(12) acting as trustee under a voting trust as provided by Article 2.30, Texas Business Corporation Act;

(13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;

(14) engaging in another activity expressly excluded from the application of this Act by rule of the finance commission;

(15) rendering services customarily performed by a certified accountant in a manner authorized by the Texas State Board of Public Accountancy;

(16) serving as trustee of a charitable trust as provided by Article 2.31, Texas Non-Profit Corporation Act (Article 1396-2.31, Vernon's Texas Civil Statutes);

(17) performing escrow or settlement services if licensed under Chapter 9, Insurance Code; or

(18) acting as a qualified intermediary in a tax deferred exchange under 26 U.S.C. Section 1031 and applicable regulations.

[Sections 3.023-3.100 reserved for expansion]

SUBCHAPTER B. AMENDMENT OF ARTICLES; CHANGES IN CAPITAL AND SURPLUS

Sec. 3.101. AMENDMENT OR RESTATEMENT OF STATE TRUST COMPANY ARTICLES OF ASSOCIATION. (a) A state trust company that has been granted a certificate of authority under Section 3.006 of this Act or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares or participation shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares or participation shares in series must contain:

(1) the designation of each series and a statement of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) a statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) A limited trust association may not amend its articles of association to extend its period of existence for a perpetual period or for any period of years, unless the period of existence is expressly contingent on those events resulting in dissolution of the trust association under Section 4.207 of this Act.

(d) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders or participants must be made or obtained in accordance with the Texas Business Corporation Act for the amendment or restatement of articles of incorporation, except as otherwise provided by this Act or rules adopted under this Act. The original and one copy of the articles of amendment or restated articles of association must be filed with the banking commissioner for approval. Unless the submission presents novel or unusual questions, the banking commissioner shall approve

or reject the amendment or restatement not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement of articles of association under this section.

(e) If the banking commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the banking commissioner, and any required filing fee has been paid, the banking commissioner shall:

(1) endorse the face of the original and copy with the date of approval and the word “Approved”;

(2) file the original in the department’s records; and

(3) deliver a certified copy of the amendment or restatement to the state trust company.

(f) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

Sec. 3.102. ESTABLISHING SERIES OF SHARES OR PARTICIPATION SHARES. (a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series, the board may do so only on compliance with this section and any rules adopted under this chapter.

(b) A series of shares or participation shares may be established in the manner provided by the Texas Business Corporation Act as if a state trust company were a domestic corporation, but the shares or participation shares of the series may not be issued and sold except on compliance with Section 3.103 of this Act. The state trust company shall file the original and one copy of the statement of action required by the Texas Business Corporation Act with the banking commissioner. Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the series not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the banking commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the banking commissioner, and that any required filing fee has been paid, the banking commissioner shall:

(1) endorse the face of the original and copy of the statement with the date of approval and the word “Approved”;

(2) file the original in the department’s records; and

(3) deliver a certified copy of the statement to the trust company.

Sec. 3.103. CHANGE IN RESTRICTED CAPITAL. (a) A state trust company may not reduce or increase its restricted capital through dividend, redemption, issuance of shares or participation shares, or otherwise without the prior approval of the banking commissioner, except as permitted by this section or rules adopted under this chapter.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in restricted capital accomplished through:

(1) issuance of shares of common stock or their equivalent in participation shares for cash;

(2) declaration and payment of pro rata share dividends as defined by the Texas Business Corporation Act; or

(3) adoption by the board of a resolution directing that all or part of undivided profits be transferred to restricted capital.

(c) Prior approval is not required for a decrease in restricted capital caused by incurred losses in excess of undivided profits.

Sec. 3.104. CAPITAL NOTES OR DEBENTURES. (a) With the prior written approval of the banking commissioner, a state trust company may at any time through action of its board, and without requiring action of its shareholders or participants, issue and sell its capital notes or debentures. The notes or debentures must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders or participants.

(b) Capital notes or debentures may be convertible into shares or participation shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the banking commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the banking commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes provided by rules adopted under this Act.

Sec. 3.105. BOARD DESIGNATION OF CERTIFIED SURPLUS. Periodically the board may vote to designate and record the amount of certified surplus in its minutes. Except to absorb losses in excess of undivided profits and uncertified surplus, certified surplus may not be reduced without the prior written approval of the banking commissioner.

[Sections 3.106-3.200 reserved for expansion]

SUBCHAPTER C. STATE TRUST COMPANY OFFICES

Sec. 3.201. CONDUCT OF TRUST BUSINESS. A state trust company may engage in the trust business at its home office and at other locations as permitted by this subchapter.

Sec. 3.202. HOME OFFICE. (a) Each state trust company must have and continuously maintain in this state a home office at which the state trust company does business and keeps its corporate books and records. At least one executive officer must maintain an office at the home office.

(b) Each officer at the home office is an agent for service of process for a state trust company.

(c) A state trust company may change its home office to any location in this state, if the location that is the home office before the change remains an office of the state trust company at which the state trust company does business. To change the location of its home office, the state trust company must file a written notice with the banking commissioner setting forth the name of the state trust company, the street address of its home office before the change, the street address to which the home office is to be changed, and a copy of the resolution adopted by the board authorizing the change. The change of home office takes effect on the 31st day after the date the banking commissioner receives the notice.

(d) A relocation of a state trust company's home office may not be made, or another action that would effect an abandonment of the state trust company's initial home office may not be taken, without the prior written approval of the banking commissioner. The state trust company must establish to the satisfaction of the banking commissioner that the abandonment is consistent with the original determination of public convenience and advantage for the establishment of a state trust company at that location.

Sec. 3.203. **ADDITIONAL OFFICES.** (a) A state trust company may establish and maintain additional offices anywhere in this state by filing a written notice with the banking commissioner setting forth the name of the state trust company, the street address of the proposed additional office, a description of the activities proposed to be conducted at the additional office, and a copy of the resolution adopted by the board authorizing the additional office.

(b) A state trust company may commence business at the additional office on the 31st day after the date the banking commissioner receives the notice, unless the banking commissioner specifies an earlier or later date. The banking commissioner may specify a later date on a determination that the written notice raises issues that require additional information or additional time for analysis. If a later date is specified, the state trust company may establish the additional office only on prior written approval by the banking commissioner. The banking commissioner may deny permission to establish an additional office of the state trust company if the banking commissioner has a significant supervisory or regulatory concern regarding the proposed additional office, the applicant, or an affiliate.

[Sections 3.204-3.300 reserved for expansion]

SUBCHAPTER D. MERGER

Sec. 3.301. **MERGER AUTHORITY.** (a) Subject to this subchapter and with the prior written approval of the banking commissioner, a state trust company may merge with another person to the same extent as a business corporation under the Texas Business Corporation Act.

(b) Implementation of the plan of merger by the parties and approval of the board, shareholders, participants, or owners of the parties must be made or obtained as provided by the Texas Business Corporation Act as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by rules adopted under this chapter.

Sec. 3.302. **MERGER APPLICATION; GROUNDS FOR APPROVAL.** (a) To apply for approval of a merger, the parties must submit the original

articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the banking commissioner. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The banking commissioner shall investigate the condition of the merging parties.

(c) The banking commissioner may approve the merger if:

(1) each resulting state trust company will be solvent and have adequate capitalization for its business and location;

(2) each resulting state trust company has in all respects complied with the statutes and rules relating to the organization of a state trust company;

(3) all obligations and liabilities of each trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a trust company or other fiduciary;

(4) each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and

(5) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved.

Sec. 3.303. APPROVAL OF BANKING COMMISSIONER. (a) If the banking commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the banking commissioner shall:

(1) endorse the face of the original and each copy of the articles of merger with the date of approval and the word "Approved";

(2) file the original in the department's records; and

(3) deliver a certified copy of the articles of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the banking commissioner consents to a different effective date.

Sec. 3.304. RIGHTS OF DISSENTERS TO MERGER. A shareholder, participant, or participant-transferee may dissent from the merger to the extent and by following the procedure provided by the Texas Business Corporation Act or rules adopted under this Act.

[Sections 3.305-3.400 reserved for expansion]

SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

Sec. 3.401. AUTHORITY TO PURCHASE ASSETS OF ANOTHER TRUST COMPANY. (a) A state trust company, with the prior written approval of the banking commissioner, may purchase all or substantially all of the assets of another regulated financial institution, including the right to control accounts established with the state trust company. Except as otherwise expressly provided by another statute, the purchase of all or part of the assets of the institution does not make the purchasing state trust company responsible for any liability or obligation of the selling institution that the purchasing state trust company does not expressly assume. Except as otherwise provided by this Act, this subchapter does not govern or prohibit the purchase by a state trust company of all or part of the assets of a corporation or other entity that is not a state trust company.

(b) To make a purchase under this section, an application in the form required by the banking commissioner must be filed with the banking commissioner. The banking commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The banking commissioner shall approve the purchase if:

(1) the acquiring state trust company will be solvent and have sufficient capitalization for its business and location;

(2) the acquiring state trust company has complied with all applicable statutes and rules;

(3) all obligations and liabilities of each trust company that is a party to the purchase or sale of assets have been properly discharged or otherwise lawfully assumed or retained by a trust company or other fiduciary;

(4) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved; and

(5) all fees and costs have been paid.

(c) A purchase is effective on the date of approval unless the purchase agreement provides for and the banking commissioner consents to a different effective date.

Sec. 3.402. AUTHORITY TO ACT AS DISBURSING AGENT. The purchasing state trust company may hold the purchase price and any additional funds delivered to it by the selling institution in trust for the selling institution and may act as agent of the selling institution in disbursing those funds in trust by paying the creditors of the selling institution. If the purchasing state trust company acts under written contract of agency approved by the banking commissioner that specifically names each creditor and the amount to be paid each, and if the agency is limited to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and reflected in the contract of agency and does not involve discretionary duties or authority other than the identification of the creditors named, the purchasing trust company:

(1) may rely on the contract of agency and the instructions included in it; and

(2) is not responsible for:

(A) any error made by the selling institution in determining its liabilities and creditors to whom the liabilities are due or the amounts due the creditors; or

(B) any preference that results from the payments made under the contract of agency and the instructions included in it.

Sec. 3.403. LIQUIDATION OF SELLING INSTITUTION. If the selling institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing state trust company shall pay to the receiver of the selling institution the balance of the money held by it in trust for the selling institution and not yet paid to the creditors of the selling institution. Without further action the purchasing state trust company is discharged of all responsibilities to the selling institution, its receiver, or its creditors, shareholders, participants, or participant-transferees.

Sec. 3.404. PAYMENT TO CREDITORS. Payment to a creditor of the selling institution of the amount to be paid the person under the terms of the

contract of agency may be made by the purchasing state trust company by opening an agency account in the name of the creditor, crediting the account with the amount to be paid the creditor under the terms of the agency contract, and mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the creditor's address shown in the records of the selling institution. The relationship between the purchasing state trust company and the creditor is that of agent to creditor only to the extent of the credit reflected by the ticket.

Sec. 3.405. SALE OF ASSETS. (a) The board of a state trust company, with the banking commissioner's approval, may cause the state trust company to sell all or substantially all of its assets, including the right to control accounts established with the state trust company, without shareholder or participant approval if the banking commissioner finds:

(1) the interests of the state trust company's clients, depositors, and creditors are jeopardized because of the hazardous condition of the state trust company;

(2) the sale is in the best interest of the state trust company's clients, depositors, and creditors; and

(3) if the deposits of the state trust company are insured, the Federal Deposit Insurance Corporation or its successor approves the transaction.

(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of a state trust company's liabilities to clients and depositors;

(2) all of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) obligations incurred by the banking commissioner arising out of the supervision or sale of the state trust company; and

(4) fees and assessments due the department.

(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the banking commissioner's right to take action under another law. The sale by a state trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by Subchapter B, Chapter 7, of this Act.

[Sections 3.406-3.500 reserved for expansion]

SUBCHAPTER F. STATE TRUST REGULATORY SYSTEM:

EXIT OF STATE TRUST COMPANY

Sec. 3.501. MERGER, REORGANIZATION, OR CONVERSION OF STATE TRUST COMPANY INTO NATIONAL BANK EXERCISING FIDUCIARY POWERS. (a) A state trust company may act as necessary under the laws of the United States or this state to merge, reorganize, or convert into a national bank exercising fiduciary powers.

(b) The merger, reorganization, or conversion must be made and approval of the state trust company's board, shareholders, or participants must be obtained in accordance with the Texas Business Corporation Act as if the state trust company were a domestic corporation and all other parties to the transaction, if any, were foreign corporations or other entities, except as may be otherwise provided by rules. For purposes of this subsection, a conversion

is considered a merger into the successor national bank exercising fiduciary powers.

(c) The state trust company does not cease to be a state trust company subject to the supervision of the banking commissioner unless:

(1) the banking commissioner has been given written notice of the intention to merge, reorganize, or convert before the 31st day before the date of the proposed transaction;

(2) the state trust company has published notice of the transaction, in the form and frequency specified by the banking commissioner, in a newspaper of general circulation published in the county of its home office or, if such a newspaper is not published in the county, in an adjacent county and in other locations that the banking commissioner considers appropriate;

(3) the state trust company has filed with the banking commissioner:

(A) a copy of the application filed with the successor regulatory authority, including a copy of each contract evidencing or implementing the merger, reorganization, or conversion, or other documents sufficient to show compliance with applicable law;

(B) a certified copy of all minutes of board meetings and shareholder or participant meetings at which action was taken regarding the merger, reorganization, or conversion; and

(C) a publisher's certificate showing publication of the required notice;

(4) the banking commissioner determines that:

(A) all accounts and liabilities of the state trust company are fully discharged, assumed, or otherwise retained by the successor national bank exercising fiduciary powers;

(B) any conditions imposed by the banking commissioner for the protection of clients and creditors have been met or otherwise resolved; and

(C) any required filing fees have been paid; and

(5) the state trust company has received a certificate of authority to do business as a national bank exercising fiduciary powers.

CHAPTER 4. SHARES AND PARTICIPATION

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CHAPTER 4. SHARES AND PARTICIPATION SHARES; SHAREHOLDERS AND PARTICIPANTS; MANAGEMENT SUBCHAPTER A. TRANSFER OF OWNERSHIP INTERESTS IN STATE TRUST COMPANY

Sec. 4.001. ACQUISITION OF CONTROL. (a) Except as expressly permitted by this Act, a person may not without the prior written approval of the banking commissioner directly or indirectly acquire a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of the state trust company if, after the acquisition, the person would control the state trust company. For purposes of this subchapter and except as otherwise provided by rules adopted under this Act, the principal shareholder or principal participant of a state trust company that directly or indirectly owns or has the power to vote a greater percentage of voting securities of the state trust company than any other shareholder or participant is considered to control the state trust company.

(b) This subchapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(2) the acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this subchapter or who was identified as a controlling person in a prior application filed with and approved by the banking commissioner;

(3) an acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired; or

(4) a transaction exempted by the banking commissioner or by rules adopted under this Act because the transaction is not within the purposes of this subchapter or the regulation of which is not necessary or appropriate to achieve the objectives of this subchapter.

Sec. 4.002. APPLICATION REGARDING ACQUISITION OF CONTROL. (a) An application for approval to acquire control of a state trust company or a person that controls a state trust company must be filed under oath by the transferee on a form prescribed by the banking commissioner and accompanied by any filing fee required by statute or rule. The application must contain all information required by rules adopted under this Act or that the banking commissioner requires in a particular application as necessary to an informed decision to approve or reject the acquisition.

(b) If a person or transferee proposing to acquire voting securities subject to this section includes a group of individuals or entities acting in concert, the information required by the banking commissioner may be required of each member of the group.

(c) Information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or any employee of the department except as provided by Subchapter B, Chapter 2, of this Act.

(d) Promptly after the applicants are notified by the banking commissioner that the application is complete and accepted for filing, the applicants shall publish notice of the application, its date of filing, and the identity of each applicant, in the form specified by the banking commissioner, in a newspaper of general circulation in the county where the state trust company's home office is located. Publication of notice of an application filed in contemplation of a public tender offer subject to 15 U.S.C. Section 78n(d)(1) may be deferred for not more than 34 days after the date the application is filed if:

(1) the applicant requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(2) the banking commissioner determines that the public interest will not be harmed by the requested confidential treatment.

(e) The banking commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest. If publication of notice is waived under this subsection, the information that would be contained in a published notice becomes public information under Chapter 552, Government Code, on the 35th day after the date the application is filed.

Sec. 4.003. HEARING AND DECISION ON ACQUISITION OF CONTROL. (a) Not later than the 60th day after the date the notice is

published, the banking commissioner shall approve the application or set the application for hearing. If the banking commissioner sets a hearing, the department shall participate as the opposing party and the banking commissioner shall conduct a hearing and one or more prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with governing statutes and rules. A hearing held under this section is confidential and closed to the public.

(b) Based on the record, the banking commissioner may issue an order denying an application if:

(1) the acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) the anticompetitive effects of the acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) the acquisition is not in violation of the law of this state or the United States;

(2) the financial condition of the transferee, or any member of a group comprising the transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the transferee, or any member of a group comprising the transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) the state trust company will not be solvent, have adequate capitalization, or be in compliance with the laws of this state after the acquisition;

(6) the transferee has failed to furnish all information pertinent to the application reasonably required by the banking commissioner; or

(7) the transferee is not acting in good faith.

(c) If an application filed under this section is approved by the banking commissioner, the transaction may be consummated. Any written commitment from the transferee offered to and accepted by the banking commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this Act.

Sec. 4.004. APPEAL FROM ADVERSE DECISION. (a) If a hearing has been held, the banking commissioner has entered an order denying the application, and the order has become final, the transferee may appeal the final order by filing a petition for judicial review under the substantial evidence rule in a district court of Travis County as provided by Chapter 2001, Government Code.

(b) The filing of an appeal under this section does not stay the order of the banking commissioner.

Sec. 4.005. **OBJECTION TO OTHER TRANSFER.** This subchapter does not prevent the banking commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is included within this subchapter, if the banking commissioner considers the transfer to be against the public interest.

Sec. 4.006. **CIVIL ENFORCEMENT; CRIMINAL PENALTIES.** (a) If the banking commissioner believes that a person has committed or is about to commit a violation of this subchapter or a rule or order of the banking commissioner pertaining to this subchapter, the attorney general on behalf of the banking commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief the nature of the case requires.

(b) A person who knowingly fails or refuses to file the application required by Section 4.002 of this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

[Sections 4.007-4.100 reserved for expansion]

SUBCHAPTER B. BOARD AND OFFICERS

Sec. 4.101. **VOTING SECURITIES HELD BY TRUST COMPANY.**

(a) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:

(1) under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(2) the terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(3) the securities are voted solely by a cofiduciary that is not an affiliate of the state trust company, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

Sec. 4.102. **BYLAWS.** (a) Each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Texas Business Corporation Act.

(b) A limited trust association in which management is retained by the participants is not required to adopt bylaws if provisions required by law to be contained in the bylaws are contained in the articles of association or the participation agreement. If a limited trust association has adopted bylaws that designate each full liability participant, the limited trust association shall file with the banking commissioner a copy of the bylaws. Only the portion of the bylaws designating each full liability participant is a public record.

Sec. 4.103. **BOARD OF DIRECTORS, MANAGERS, OR MANAGING PARTICIPANTS.** (a) The board of a state trust company must consist of not fewer than five or more than 25 directors, managers, or managing participants,

the majority of whom must be residents of this state. Except for a limited trust association in which management has been retained by its participants, the principal executive officer of the state trust company is a member of the board. The principal executive officer acting in the capacity of board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(b) Unless the banking commissioner consents otherwise in writing, a person may not serve as director, manager, or managing participant of a state trust company if:

(1) the state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) the person has been convicted of a felony; or

(3) the person has violated, with respect to a trust under which the state trust company has fiduciary responsibility, Section 113.052 or 113.053(a), Property Code, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a state trust company other than a limited trust association operated by managing participants does not elect directors or managers before the 61st day after the date of its regular annual meeting, the banking commissioner may appoint a conservator under Chapter 6 of this Act to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors or managers, the banking commissioner may close the state trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors, managers, or managing participants to fewer than five must be filled not later than the 30th day after the date the vacancy occurs. A limited trust association with fewer than five managing participants must add one or more new participants or elect a board of managers of not fewer than five persons to resolve the vacancy. After 30 days after the date the vacancy occurs, the banking commissioner may appoint a conservator under Chapter 6 of this Act to operate the state trust company and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors or managers, the banking commissioner may close the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director or manager of a state trust company, or annually for a person who is a managing participant, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) accepts the position and is not disqualified from serving in the position;

(2) will not violate or knowingly permit an officer, director, manager, managing participant, or employee of the state trust company to violate any law applicable to the conduct of business of the trust company; and

(3) will diligently perform the duties of the position.

(f) An advisory director or manager is not considered a director if the advisory director or manager:

(1) is not elected by the shareholders or participants of the state trust company;

(2) does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(3) provides solely general policy advice to the board.

Sec. 4.104. **REQUIRED BOARD MEETINGS.** The board of a state trust company shall hold at least one regular meeting each quarter. At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the state trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All actions of the board must be recorded in its minutes.

Sec. 4.105. **OFFICERS.** (a) The board shall annually appoint the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. These positions may not be held by the same person. The board may appoint other officers of the state trust company as the board considers necessary.

(b) Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a state trust company asset or create or incur a liability on behalf of the state trust company.

Sec. 4.106. **CERTAIN CRIMINAL OFFENSES.** (a) An officer, director, manager, managing participant, employee, shareholder, or participant of a state trust company commits an offense if the person knowingly:

(1) conceals information or a fact or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the banking commissioner or an agent of the banking commissioner; or

(2) for the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, manager, managing participant, or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(c) An offense under this section is a felony of the third degree.

Sec. 4.107. **TRANSACTIONS WITH MANAGEMENT AND AFFILIATES.** (a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of the banking commissioner, a state trust company may not directly or indirectly:

(1) sell or lease an asset of the state trust company to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company;

(2) purchase or lease an asset in which an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company has an interest; or

(3) subject to Section 5.201 of this Act, extend credit to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding Subsection (a) of this section, a lease transaction described in Subsection (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the banking commissioner. For purposes of this subsection only, an affiliate of a state trust company does not include a subsidiary of the state trust company.

(c) Subject to Section 5.201 of this Act, a state trust company may not directly or indirectly extend credit to an employee, officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company, unless the extension of credit:

(1) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, principal shareholders, participants, or affiliates of the state trust company;

(2) does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) the state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, principal shareholders, participants, or affiliates of the state trust company.

(d) An officer, director, manager, or managing participant of a state trust company who knowingly participates in or permits a violation of this section commits an offense. An offense under this subsection is a felony of the third degree.

(e) The finance commission may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

Sec. 4.108. FIDUCIARY RESPONSIBILITY. The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) the determination of policies;

(2) the investment and disposition of property held in a fiduciary capacity; and

(3) the direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

Sec. 4.109. RECORDKEEPING. A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust

company in compliance with the rules adopted under this Act. The fiduciary records must contain all appropriate material information relative to each account.

Sec. 4.110. BONDING REQUIREMENTS. (a) The board of a state trust company shall require a bond for protection and indemnity of clients, in reasonable amounts established by rules adopted under this chapter, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses with a corporate insurance or surety company:

(1) authorized to do business in this state; or

(2) acceptable to the banking commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by rule, a bond is required to cover each director, manager, managing participant, officer, and employee of a state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the banking commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The banking commissioner shall approve the application if the banking commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the banking commissioner shall approve the application or set the application for hearing not later than the 61st day after the date the banking commissioner considers the application complete and accepted for filing.

Sec. 4.111. REPORTS OF APPARENT CRIME. (a) A state trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of \$5,000, or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, manager, managing participant, officer, or employee shall report such robbery, shortage, or apparent or suspected misapplication to the banking commissioner within 48 hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The state trust company or a director, manager, managing participant, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

(b) A trust report filed with the banking commissioner under this section may be a copy of a written report filed with an appropriate federal agency.

[Sections 4.112-4.200 reserved for expansion]

SUBCHAPTER C. SPECIAL PROVISIONS FOR LIMITED TRUST ASSOCIATIONS

Sec. 4.201. FILING OF NOTICE OF FULL LIABILITY. (a) A limited trust association shall file with the banking commissioner a copy of any participation agreement by which a participant of the limited trust association agrees to become a full liability participant and the name and address of each full liability participant. Only the portion of the filed copy containing the designation of each full liability participant is a public record.

(b) The banking commissioner may require a complete copy of the participation agreement to be filed with the department, regardless of whether a state trust company has a full liability participant, except that the provisions of the participation agreement other than those by which a participant of the

limited trust association agrees to become a full liability participant are confidential and subject to release only as provided by Subchapter B, Chapter 2, of this Act.

Sec. 4.202. LIABILITY OF PARTICIPANTS AND MANAGERS.

(a) Except as provided by Subsection (b) of this section, the participants, participant-transferees, and managers of a limited trust association may not be held liable for a debt, obligation, or liability of the limited trust association, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant, other than a full liability participant, or a manager of a limited trust association is not a proper party to proceedings by or against a limited trust association, unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited trust association.

(b) A full liability participant of a limited trust association is liable under a judgment, decree, or order of court for a debt, obligation, or liability of the limited trust association that accrued during the participation of the full liability participant in the limited trust association and before the full liability participant or a successor in interest files a notice of withdrawal as a full liability participant from the limited trust association with the banking commissioner. The filed notice of withdrawal is a public record.

Sec. 4.203. CONTRACTING DEBTS AND OBLIGATIONS. Except as provided by this section or the articles of association of the limited trust association, a debt, liability, or other obligation may be contracted for or incurred on behalf of a limited trust association only by:

(1) a majority of the managers, if management of the limited trust association has been vested in a board of managers;

(2) a majority of the managing participants; or

(3) an officer or other agent vested with actual or apparent authority to contract for or incur the debt, liability, or other obligation.

Sec. 4.204. MANAGEMENT OF LIMITED TRUST ASSOCIATION.

(a) Management of a limited trust association is vested in the participants in proportion to each participant's contribution to capital, as adjusted periodically to properly reflect any additional contribution. The articles of association may provide that management of a limited trust association is vested in a board of managers to be elected annually by the participants as prescribed by the bylaws.

(b) Participants of a limited trust association may not retain management and must elect a board of managers if:

(1) any participant is disqualified from serving as a managing participant under Section 4.103 of this Act;

(2) the limited trust association has fewer than five or more than 25 participants; or

(3) any participant has been removed by the banking commissioner under Subchapter A, Chapter 6, of this Act.

(c) The articles of association, bylaws, and participation agreement of a limited trust association may use the terms "director" and "board" instead of "manager" and "board of managers," respectively.

Sec. 4.205. WITHDRAWAL OR REDUCTION OF PARTICIPANT'S CONTRIBUTION TO CAPITAL. (a) A participant may not receive from a limited trust association any part of the participant's contribution to capital until:

(1) all liabilities of the limited trust association, except liabilities to participants on account of contribution to capital, have been paid or, if after the withdrawal or reduction, sufficient property of the limited trust association will remain to pay all liabilities of the limited trust association, except liabilities to participants on account of contribution to capital;

(2) all participants consent, unless the return of the contribution to capital may be demanded as provided by this chapter; or

(3) the articles of association are canceled or amended to set out the withdrawal or reduction.

(b) A participant may demand the return of the participant's contribution to capital on the dissolution of the association and the failure by the full liability participants to exercise the right for the business of the limited trust association to be carried on by the remaining participants as provided by Section 4.207 of this Act.

(c) Unless allowed by the articles of association or by the unanimous consent of all participants of the limited trust association, a participant may demand the return of the participant's contribution to capital only in cash.

Sec. 4.206. INTEREST IN LIMITED TRUST ASSOCIATION; TRANSFERABILITY OF INTEREST. (a) The interest of a participant or participant-transferee in a limited trust association is the personal estate of the participant or the participant-transferee and may be transferred as provided by the bylaws or the participation agreement. A transferee of a participant's interest has the status of a participant-transferee and does not by the transfer become a participant or obtain a right to participate in the management of the limited trust association. A participant-transferee is entitled to receive only a share of profits, return of contribution, or other distributive benefit in respect to the interest transferred to which the participant who transferred the interest would have been entitled. A participant-transferee may become a participant only as provided by the bylaws or the participation agreement.

(b) A limited trust association may add additional participants in the same manner as participant-transferees after payment in full of the capital contribution to the limited trust association payable for the issuance of additional participation interests.

Sec. 4.207. DISSOLUTION. (a) A limited trust association organized under this chapter is dissolved on:

(1) the expiration of the period fixed for the duration of the limited trust association;

(2) a vote to dissolve or the execution of a written consent to dissolve by all full liability participants, if any, and a sufficient number of other participants that combined with all full liability participants hold at least two-thirds of the participation shares in each class in the association, or a greater fraction as provided by the articles of association;

(3) except as provided by the articles of association, the death, insanity, expulsion, bankruptcy, retirement, or resignation of a participant unless a majority in interest of all remaining participants elect in writing not later than the 90th day after the date of the event to continue the business of the association; or

(4) the occurrence of an event of dissolution specified in the articles of association.

(b) A dissolution under this section is considered to be the initiation of a voluntary liquidation under Subchapter B, Chapter 7, of this Act.

(c) An event of dissolution described by Subsection (a)(3) of this section does not cancel or revoke a contract to which the limited trust association is a party, including a trust indenture or agreement or voluntary dissolution under Subchapter B, Chapter 7, of this Act, until the period for the remaining participants to continue the business of the limited trust association has expired without the remaining participants having completed the necessary action to continue the business of the limited trust association.

Sec. 4.208. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited trust association may be allocated among the participants and among classes of participants as provided by the participation agreement. Without the prior written approval of the banking commissioner, the profits and losses must be allocated based on the relative interests of the participants as reflected in the articles of association and related documents filed with and approved by the banking commissioner.

Sec. 4.209. DISTRIBUTIONS. Subject to Section 3.103 of this Act, distributions of cash or other assets of a limited trust association may be made to the participants as provided by the participation agreement. Without the prior written approval of the banking commissioner, distributions must be made to the participants based on the relative interests of the participants as reflected in the articles of association and related documents filed with and approved by the banking commissioner.

Sec. 4.210. OTHER PROVISIONS RELATED TO LIMITED TRUST ASSOCIATIONS. For purposes of the provisions of this Act other than this subchapter, as the context requires:

(1) a manager and the board of managers are considered to be a director and the board of directors, respectively;

(2) if there is not a board of managers, a participant is considered to be a director and all of the participants are considered to be the board of directors;

(3) a participant or participant-transferee is considered to be a shareholder;

(4) a participation share is considered to be a share of stock; and

(5) a distribution is considered to be a dividend.

CHAPTER 5. INVESTMENTS, LOANS, AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF STATE TRUST COMPANY FACILITIES

Sec. 5.001. INVESTMENT IN STATE TRUST COMPANY FACILITIES
[Sections 5.002-5.100 reserved for expansion]

SUBCHAPTER B. STATE TRUST COMPANY INVESTMENTS

Sec. 5.101. SECURITIES

Sec. 5.102. TRANSACTIONS IN STATE TRUST COMPANY SHARES OR
PARTICIPATION SHARES

Sec. 5.103. SUBSIDIARIES

Sec. 5.104. OTHER REAL ESTATE

[Sections 5.105-5.200 reserved for expansion]

SUBCHAPTER C. LOANS

Sec. 5.201. LENDING LIMITS

Sec. 5.202. LEASE FINANCING TRANSACTIONS

[Sections 5.203-5.300 reserved for expansion]

SUBCHAPTER D. OTHER INVESTMENT PROVISIONS

Sec. 5.301. OTHER INVESTMENT PROVISIONS

Sec. 5.302. ENGAGING IN COMMERCE PROHIBITED

[Sections 5.303-5.400 reserved for expansion]

SUBCHAPTER E. TRUST DEPOSITS

Sec. 5.401. TRUST DEPOSITS

[Sections 5.402-5.500 reserved for expansion]

SUBCHAPTER F. LIABILITIES AND PLEDGE OF ASSETS

Sec. 5.501. BORROWING LIMIT

Sec. 5.502. PLEDGE OF ASSETS

CHAPTER 5. INVESTMENTS, LOANS, AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF STATE

TRUST COMPANY FACILITIES

Sec. 5.001. INVESTMENT IN STATE TRUST COMPANY FACILITIES.

(a) In this subchapter, “state trust company facility” means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(1) providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(2) conducting trust business, including meeting the reasonable needs and convenience of the public and the state trust company’s clients, computer operations, document and other item processing, maintenance, and record retention and storage;

(3) holding, improving, and occupying as an incident to future expansion of the state trust company’s facilities; or

(4) conducting another activity authorized by rules adopted under this Act.

(b) Without the prior written approval of the banking commissioner, a state trust company may not directly or indirectly invest an amount in excess of 60 percent of its restricted capital in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this Act, in computing this limitation a state trust company:

(1) shall include:

(A) its direct investment in state trust company facilities;

(B) any investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by Subsection (a) of this section;

(C) any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) any indebtedness incurred on state trust company facilities by a company:

(i) that holds title to the facility;

(ii) that is an affiliate of the state trust company; and

(iii) in which the state trust company is invested in the manner described by Paragraph (B) or (C) of this subdivision; and

(2) may exclude an amount included under Subdivisions (1)(B)-(D) of this subsection to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(c) Real estate acquired under Subsection (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the banking commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(d) A state trust company shall comply with regulatory accounting principles in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

[Sections 5.002-5.100 reserved for expansion]

SUBCHAPTER B. STATE TRUST COMPANY INVESTMENTS

Sec. 5.101. SECURITIES. (a) A state trust company may invest its restricted capital in any type or character of equity or investment securities under the limitations provided by this section.

(b) Unless the banking commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to at least 40 percent of the state trust company's restricted capital under Section 3.007 of this Act in investment securities that are readily marketable and can be converted to cash within four business days.

(c) Subject to Subsection (d) of this section, the total investment of its restricted capital in equity and investment securities of any one issuer, obligor, or maker, and the total investment of its restricted capital in mutual funds, held by the state trust company for its own account, may not exceed an amount equal to 15 percent of the state trust company's restricted capital. The banking commissioner may authorize investments in excess of this limitation on written application if the banking commissioner concludes that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding Subsection (c) of this section, a state trust company may invest its restricted capital in, without limitation and subject only to the exercise of prudent judgment:

(1) bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

(2) an investment security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) securities that are offered and sold under 15 U.S.C. Section 77d(5);

(4) mortgage related securities as defined in 15 U.S.C. Section 78c(a), except that notwithstanding Section 347 of the Riegle Community Development and Regulatory Improvement Act of 1994, a note or obligation that is secured by a first lien on one or more parcels of real estate on which is located one or more commercial structures is subject to the limitations of Subsection (c) of this section;

(5) investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation;

(6) investment securities issued or guaranteed by the North American Development Bank; or

(7) securities issued by a Federal Home Loan Bank.

(e) Notwithstanding 15 U.S.C. Section 77r-1(c), Subsection (c) of this section applies to investments in small business related securities as defined by 15 U.S.C. Section 78c(a).

(f) In the exercise of prudent judgment, a state trust company shall, at a minimum:

(1) exercise care and caution to make and implement investment and management decisions for the entire investment portfolio, taking into consideration the safety and soundness of the state trust company;

(2) pursue an overall investment strategy to enable management to make appropriate present and future decisions; and

(3) consider, to the extent relevant to the decision or action, the size, diversification and liquidity of its corporate assets, the general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of the investment decisions or strategies, the role that each investment or course of action plays within the investment portfolio, and the expected total return of the portfolio.

(g) A state trust company may invest its secondary capital in any type or character of equity or investment securities subject to the exercise of prudent judgment. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section 5.101(f) of this Act.

(h) The finance commission may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

Sec. 5.102. TRANSACTIONS IN STATE TRUST COMPANY SHARES OR PARTICIPATION SHARES. Except with the prior written approval of the banking commissioner:

(1) a state trust company may not acquire its own shares or participation shares unless the amount of its undivided profits is sufficient to fully absorb the acquisition of the shares or participation shares under regulatory accounting principles; and

(2) a state trust company may not acquire a lien upon its own shares or participation shares unless the amount of indebtedness secured is less than the amount of the state trust company's undivided profits.

Sec. 5.103. SUBSIDIARIES. (a) Except as otherwise provided by this Act or rules adopted under this Act, and subject to the exercise of prudent judgment, a state trust company may invest its secondary capital to acquire or establish one or more subsidiaries to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary. The factors to be

considered by a state trust company in exercise of prudent judgment include the factors contained in Section 5.101(f) of this Act.

(b) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the banking commissioner describing in detail the proposed activities of the subsidiary.

(c) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary on the 31st day after the date the banking commissioner receives the state trust company's letter, unless the banking commissioner specifies an earlier or later date. The banking commissioner may extend the 30-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the banking commissioner.

(d) A subsidiary of a state trust company is subject to regulation by the banking commissioner to the extent provided by this Act or rules adopted under this section. In the absence of limiting rules, the banking commissioner may regulate a subsidiary as if it were a state trust company.

Sec. 5.104. OTHER REAL ESTATE. (a) A state trust company may not invest its restricted capital in real estate except:

(1) as permitted by Section 5.001 of this Act or as otherwise provided by this Act, including rules adopted under this Act; or

(2) if necessary to avoid or minimize a loss on a loan or investment previously made in good faith.

(b) With the prior written approval of the banking commissioner, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or Subsection (a) of this section, or acquire additional real estate to avoid or minimize loss on real estate acquired as permitted by Subsection (a) of this section.

(c) A state trust company shall dispose of any real estate subject to Subsection (a) of this section not later than:

(1) the fifth anniversary of the date:

(A) it was acquired, except as otherwise provided by rules adopted under this Act; or

(B) it ceases to be used as a state trust company facility; or

(2) the second anniversary of the date it ceases to be a state trust company facility as provided by Section 5.001(c) of this Act.

(d) The banking commissioner on application may grant one or more extensions of time for disposing of real estate under Subsection (c) of this section if the banking commissioner determines that:

(1) the state trust company has made a good faith effort to dispose of the real estate; or

(2) disposal of the real estate would be detrimental to the state trust company.

(e) Subject to the exercise of prudent judgment, a state trust company may invest its secondary capital in real estate. The factors to be considered by a

state trust company in exercise of prudent judgment include the factors contained in Section 5.101(f) of this Act.

[Sections 5.105-5.200 reserved for expansion]

SUBCHAPTER C. LOANS

Sec. 5.201. LENDING LIMITS. (a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to 15 percent of the state trust company's restricted capital.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to 15 percent of the state trust company's restricted capital. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a non-insider.

(c) The finance commission may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

(d) The banking commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f) An officer, director, manager, managing participant, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company have been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, manager, managing participant, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under Subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

(g) This subchapter does not confer general banking privileges on state trust companies.

Sec. 5.202. LEASE FINANCING TRANSACTIONS. (a) Subject to rules adopted under this Act, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written

approval of the banking commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) Rental payments received by the state trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of Section 5.201 of this Act.

[Sections 5.203-5.300 reserved for expansion]

SUBCHAPTER D. OTHER INVESTMENT PROVISIONS

Sec. 5.301. OTHER INVESTMENT PROVISIONS. (a) Without the prior written approval of the banking commissioner, a state trust company may not make any investment of its secondary capital in any investment that incurs or may incur, under regulatory accounting principles, a liability or contingent liability for the state trust company.

(b) The banking commissioner may, on a case-by-case basis, require a state trust company to dispose of any investment of its secondary capital, if the banking commissioner finds that the divestiture of the asset is necessary to protect the safety and soundness of the state trust company. Among the safety and soundness factors to be considered by the banking commissioner in the exercise of discretion, include the factors contained in Section 3.007(b) of this Act. The proposed effective date of an order requiring an existing state trust company to divest of an asset must be stated in the order as on or after the 21st day after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the banking commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable.

(c) Subject to Subsections (a) and (b) of this section, to Section 5.302 of this Act, and to the exercise of prudent judgment, a state trust company may invest its secondary capital in any type or character of investment for the purpose of generating income or profit. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section 5.101(f) of this Act.

Sec. 5.302. ENGAGING IN COMMERCE PROHIBITED. Except as otherwise provided by this Act or rules adopted under this Act, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing goods or by owning or operating a business not part of the state trust business, except as necessary to fulfill a fiduciary obligation to a client.

[Sections 5.303-5.400 reserved for expansion]

SUBCHAPTER E. TRUST DEPOSITS

Sec. 5.401. TRUST DEPOSITS. (a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary provided:

(1) it maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank

or a clearing corporation, as defined by Section 8.102, Business & Commerce Code, either in this state or elsewhere;

(2) the total market value of the security is at all times at least equal to the amount of the deposit; and

(3) the separate fund is designated as such.

(b) A state trust company may make periodic withdrawals from or additions to the securities fund required by Subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under Subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

(d) This subchapter does not confer general banking privileges on state trust companies.

[Sections 5.402-5.500 reserved for expansion]

SUBCHAPTER F. LIABILITIES AND PLEDGE OF ASSETS

Sec. 5.501. BORROWING LIMIT. Except with the prior written approval of the banking commissioner, a state trust company may not have outstanding liabilities, excluding trust deposit liabilities arising pursuant to Section 5.401 of this Act, which exceed an amount equal to five times its restricted capital.

Sec. 5.502. PLEDGE OF ASSETS. (a) A state trust company may not pledge or create a lien on any of its assets except:

(1) to secure the repayment of money borrowed;

(2) to secure trust deposits as specifically authorized or required by Section 5.401 of this Act, Title 9, Property Code, or by rules adopted under this chapter; or

(3) to secure deposits made by the United States Government, state, county, or municipality, or an agency thereof.

(b) An act, deed, conveyance, pledge, or contract in violation of this section is void.

CHAPTER 6. ENFORCEMENT ACTIONS

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STATE TRUST COMPANIES AND MANAGEMENT

Sec. 6.001. DETERMINATION LETTER

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- Sec. 6.101. ORDER OF SUPERVISION
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SUBCHAPTER C. UNAUTHORIZED TRUST ACTIVITY:
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CHAPTER 6. ENFORCEMENT ACTIONS

SUBCHAPTER A. ENFORCEMENT ORDERS:

STATE TRUST COMPANIES AND MANAGEMENT

Sec. 6.001. DETERMINATION LETTER. (a) If the banking commissioner determines from examination or other credible evidence that a state trust company is in a condition that may warrant the issuance of an enforcement order under this chapter, the banking commissioner may, by personal delivery or by registered or certified mail, return receipt requested, notify the state trust company in writing of the determination, the requirements the state trust company must satisfy to abate the determination, and the time in which the requirements must be satisfied to avert further administrative action.

(b) The determination letter may be issued in connection with the issuance of a cease and desist, removal, or prohibition order under this subchapter or an order of supervision or conservatorship under Subchapter B of this chapter.

Sec. 6.002. CEASE AND DESIST ORDER. (a) The banking commissioner has grounds to issue a cease and desist order to an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company itself acting through an authorized person, if the banking commissioner determines from examination or other credible evidence that the state trust company or person, directly or indirectly:

- (1) has violated this Act or another applicable law or rule;
- (2) has engaged in a breach of trust or other fiduciary duty;
- (3) has refused to submit to examination or examination under oath;
- (4) has conducted business in an unsafe or unsound manner; or
- (5) has violated a condition of the state trust company's charter or an

agreement between the state trust company or the person and the banking commissioner or the department.

(b) If the banking commissioner has grounds for action under Subsection (a) of this section and further finds that an order to cease and desist from a violation appears to be necessary and in the best interest of a state trust company involved and its clients, creditors, and shareholders or participants, the banking commissioner, by personal delivery or by registered or certified mail, return receipt requested, may serve a proposed cease and desist order on the state trust company and each person who committed or participated in the violation. The order must state the grounds for the order with reasonable certainty. The order must state its effective date, which may not be before the 21st day after the date the order is mailed or delivered. The order takes effect for the state trust company if the trust company does not request a hearing in writing before the effective date and takes effect for each other person against whom the order is directed if that person does not request a hearing in writing before the effective date. After taking effect, the order is final and nonappealable as to that state trust company or other person.

Sec. 6.003. REMOVAL OR PROHIBITION ORDER. (a) The banking commissioner has grounds to remove a present or former officer, director, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of the state trust company from further participation in the affairs of, the state trust company, state bank, or other entity chartered or licensed by the banking commissioner under the laws of this state, if the banking commissioner determines from examination or other credible evidence that:

(1) the person committed, participated, or acted, in other than an inadvertent or unintentional manner, as described by Section 6.002(a) of this Act with regard to the affairs of the state trust company, or violated a final cease and desist order issued in response to the same or a similar act;

(2) because of this action by the person:

(A) the state trust company has suffered or will probably suffer financial loss or other damage;

(B) the interests of the trust company's clients have been or could be prejudiced; or

(C) the person has received financial gain or other benefit by reason of the violation; and

(3) this action by the person:

(A) involves personal dishonesty on the part of the person; or

(B) demonstrates wilful or continuing disregard for the safety or soundness of the state trust company.

(b) If the banking commissioner finds grounds for action under Subsection (a) of this section and further finds that a removal or prohibition order appears to be necessary and in the best interest of the state trust company involved and its clients, creditors, and shareholders or participants, the banking commissioner, by personal delivery or by registered or certified mail, return receipt requested, may serve a proposed removal or prohibition order, as appropriate, on an officer, employee, director, manager or managing participant, controlling shareholder or participant, or other person alleged to have committed or participated in the violation. The order must state the grounds for removal or prohibition with reasonable certainty. The order must state its effective date, which may not be before the 21st day after the date the order is mailed or delivered. The order takes effect for a person against whom the order is directed if the person does not request a hearing in writing before the effective date. After taking effect the order is final and nonappealable as to that person.

Sec. 6.004. HEARING ON PROPOSED ORDER. (a) A requested hearing on a proposed order shall be held not later than the 30th day after the date the first request for a hearing on the order was received by the banking commissioner unless the parties agree to a later hearing date. Each party shall be given written notice by personal delivery or by registered or certified mail, return receipt requested, of the date set by the banking commissioner for the hearing not later than the 11th day before that date. The hearing shall be conducted as provided by Chapter 2001, Government Code. At the hearing, the banking commissioner has the burden of proof and each person against whom the order is directed may cross-examine and present evidence to show why the order should not be issued.

(b) After the hearing, the banking commissioner shall issue or decline to issue the order. The order may be modified as necessary to conform to the findings at the hearing and to require the board to take necessary affirmative action to correct the conditions cited in the order.

(c) An order issued under this section is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Section 3.010 of this Act.

Sec. 6.005. EMERGENCY ORDERS. (a) If the banking commissioner believes that immediate action is needed to prevent immediate and irreparable harm to the state trust company and its clients, creditors, and shareholders or participants, the banking commissioner may issue one or more cease and desist, removal, or prohibition orders as emergency orders to become effective immediately on service without prior notice or hearing. Service must be by personal delivery or by registered or certified mail, return receipt requested.

(b) In each emergency order the banking commissioner shall notify the state trust company and any person against whom the order is directed of the specific conduct, activity, or omission requiring the order, the citation of each

statute or rule alleged to have been violated, the immediate and irreparable harm alleged to be threatened, and the right to a hearing. A hearing on the order may be requested in writing not later than the 10th day after the date the order is served. Unless a person against whom the order is directed requests a hearing in writing before the 11th day after the date the order is served on the person, the order is final and nonappealable as to that person.

(c) A hearing on an emergency order, if requested, must be given priority over all other matters pending before the banking commissioner and must be held not later than the 20th day after the date the order is requested unless the parties agree to a later hearing date.

(d) Until the hearing, an emergency order continues in effect unless the order is stayed by the banking commissioner. The banking commissioner may impose any condition before granting a stay of the emergency order.

(e) After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Section 3.010 of this Act.

Sec. 6.006. COPY OF LETTER OR ORDER IN STATE TRUST COMPANY RECORDS. A copy of any determination letter, proposed order, emergency order, or final order issued by the banking commissioner under this subchapter shall be immediately brought to the attention of the board of the affected state trust company, regardless of whether the state trust company is a party, and filed in the minutes of the board. Each director, manager, or managing participant shall immediately certify to the banking commissioner in writing that the certifying person has read and understood the determination letter, proposed order, emergency order, or final order. The required certification may not be considered an admission of a person in a subsequent legal or administrative proceeding.

Sec. 6.007. EFFECT OF FINAL REMOVAL OR PROHIBITION ORDER.

(a) Without the prior written approval of the banking commissioner, a person subject to a final and enforceable removal or prohibition order issued by the banking commissioner:

(1) may not serve as a director, officer, or employee of any state trust company, state bank, or other entity chartered or licensed by the banking commissioner under the laws of this state while the order is in effect;

(2) may not directly or indirectly participate in any manner in the management of such an entity;

(3) may not directly or indirectly vote for a director of such an entity;

(4) may not solicit, procure, transfer, attempt to transfer, vote, or attempt to vote a proxy, consent, or authorization with respect to voting rights in such an entity; and

(5) remains entitled to receive dividends or a share of profits, return of contribution, or other distributive benefit from such an entity with respect to voting securities in the entity owned by the person.

(b) If voting securities of an entity identified in Subsection (a)(1) of this section cannot be voted under this section, the voting securities are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

(c) Participants of a limited trust association in which a participant has been finally removed or prohibited from participation in the state trust company's affairs under this subchapter shall elect a board of managers.

(d) This section and Section 6.008 of this Act do not prohibit a removal or prohibition order that has indefinite duration or that by its terms is perpetual.

Sec. 6.008. LIMITATION ON ACTION. The banking commissioner may not initiate an enforcement action under this subchapter later than the fifth anniversary of the date the conduct or acts involved were discovered or reasonably should have been discovered by the banking commissioner.

Sec. 6.009. ENFORCEMENT OF FINAL ORDER. (a) If the banking commissioner reasonably believes that a state trust company or person has violated a final and enforceable cease and desist, removal, or prohibition order issued under this subchapter, the banking commissioner may:

(1) initiate administrative penalty proceedings against the state trust company under Section 6.010 of this Act;

(2) refer the matter to the attorney general for enforcement by injunction or other available remedy; or

(3) pursue any other action the banking commissioner considers appropriate under applicable law.

(b) If the attorney general prevails in an action brought under Subsection (a)(2) of this section, the attorney general is entitled to recover reasonable attorney's fees from a state trust company or person violating the order.

Sec. 6.010. ADMINISTRATIVE PENALTIES. (a) The banking commissioner may initiate a proceeding for an administrative penalty against a state trust company under Section 6.009(a)(1) of this Act by serving on the state trust company, by personal delivery or registered or certified mail, return receipt requested, notice of the time and place of a hearing on the penalty. The hearing may not be held earlier than the 20th day after the date the notice is served and shall be conducted under Chapter 2001, Government Code. The notice must contain a statement of the acts or conduct alleged to be in violation of the order.

(b) In determining whether an order has been violated, the banking commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order.

(c) If the banking commissioner determines after the hearing that an order has been violated, the banking commissioner may impose an administrative penalty against a state trust company in an amount not to exceed \$500 for each day the state trust company is in violation of the final order.

Sec. 6.011. PAYMENT OR APPEAL OF ADMINISTRATIVE PENALTIES. (a) When a penalty order under Section 6.010 of this Act becomes final, a state trust company shall pay the penalty or appeal by filing a petition for judicial review under the substantial evidence rule in a district court of Travis County.

(b) The petition for judicial review stays the penalty order during the period preceding the decision of the court. If the court sustains the order, the court shall order the state trust company to pay the full amount of the penalty or a lower amount determined by the court. If the court does not sustain the order, a penalty is not owed. If the final judgment of the court requires

payment of a penalty, interest accrues on the penalty, at the rate charged on loans to depository institutions by the New York Federal Reserve Bank, beginning on the date the judgment is final and ending on the date the penalty and interest are paid.

(c) If the state trust company does not pay a final and nonappealable penalty order, the banking commissioner shall refer the matter to the attorney general for enforcement. The attorney general is entitled to recover reasonable attorney's fees from the state trust company if the attorney general prevails in judicial action necessary for collection of the penalty.

(d) A penalty collected under this section shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

Sec. 6.012. **CONFIDENTIALITY OF RECORDS.** A copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to an order issued under this subchapter is confidential and may be released only as provided by Subchapter B, Chapter 2, of this Act, except that the banking commissioner shall publish all final removal and prohibition orders on a periodic basis. The banking commissioner may publish a final cease and desist order or information regarding the existence of the order to the public if the banking commissioner concludes that effective enforcement of the order would be enhanced by the release.

Sec. 6.013. **COLLECTION OF FEES.** The banking commissioner may sue to enforce the collection of a fee owed to the department under a law administered by the banking commissioner. In the suit a certificate by the banking commissioner showing the delinquency is prima facie evidence of:

(1) the levy of the fee or the delinquency of the stated fee amount; and

(2) compliance by the banking commissioner with the law relating to the computation and levy of the fee.

[Sections 6.014-6.100 reserved for expansion]

SUBCHAPTER B. SUPERVISION AND CONSERVATORSHIP

Sec. 6.101. **ORDER OF SUPERVISION.** If the banking commissioner determines from examination or other credible evidence that a state trust company is in hazardous condition and that an order of supervision appears to be necessary and in the best interest of the state trust company and its clients, creditors, and shareholders or participants, or the public, the banking commissioner may without prior notice issue an order appointing a supervisor over the state trust company. The supervisor serves until the earlier of the expiration of the period stated in the order of supervision or the date the banking commissioner determines that the requirements for abatement of the order have been satisfied.

Sec. 6.102. **ORDER OF CONSERVATORSHIP.** In addition to the grounds for conservatorship provided by Sections 4.103 and 6.104 of this Act, if the banking commissioner determines from examination or other credible evidence that a state trust company is in hazardous condition and immediate and irreparable harm is threatened to the state trust company, its clients, creditors, or shareholders or participants, or the public, the banking commissioner may without prior notice issue an order appointing a conservator at any time before, during, or after the period of supervision. An order of

conservatorship issued under this section must specifically state the basis for the order.

Sec. 6.103. HEARING. (a) An order issued under Section 6.101 or 6.102 of this Act must contain or be accompanied by a notice that a hearing before the banking commissioner will be held at the request of a state trust company at which the state trust company may cross-examine and present evidence to contest the order or show that it has satisfied all requirements for abatement of the order. The banking commissioner has the burden of proof for any continuation of the order or the issuance of a new order.

(b) A state trust company that seeks to contest or modify the order or demonstrate that it has satisfied all requirements for abatement of the order shall submit a written request for a hearing to the banking commissioner. The request must state the grounds for the request to set aside or modify the order. On receiving a request for hearing, the banking commissioner shall serve notice by personal delivery or by registered or certified mail, return receipt requested, of the time and place of the hearing, which must be not later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date.

(c) The banking commissioner may delay a decision for a prompt examination of the state trust company and may reopen the record as necessary to allow presentation of the results of the examination and appropriate opportunity for cross-examination and presentation of other relevant evidence.

Sec. 6.104. POST-HEARING ORDER. (a) If the banking commissioner after the hearing finds that a state trust company has been rehabilitated, its hazardous condition has been remedied, irreparable harm is no longer threatened, or that the state trust company should otherwise be released from the order, the banking commissioner shall release the state trust company from the order, subject to conditions the banking commissioner from the evidence believes are warranted to preserve the safety and soundness of the state trust company.

(b) If the banking commissioner after the hearing finds that a state trust company has failed to comply with the lawful requirements of the banking commissioner, has not been rehabilitated, is insolvent, or otherwise continues in hazardous condition, the banking commissioner by order shall:

(1) appoint or reappoint a supervisor pursuant to Section 6.101 of this Act;

(2) appoint or reappoint a conservator pursuant to Section 6.102 of this Act; or

(3) take other appropriate action authorized by law.

(c) An order issued under Subsection (b) of this section is immediately final for purposes of appeal. The order may be appealed as provided by Section 3.010 of this Act.

(d) This subchapter does not prevent release of a state trust company from supervision or conservatorship before a hearing if the banking commissioner is satisfied that requirements for abatement have been adequately satisfied.

Sec. 6.105. CONFIDENTIALITY OF RECORDS. An order issued under this subchapter and a copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to the order are confidential and may be released only as provided by Subchapter B, Chapter

2, of this Act, except that the banking commissioner may release an order or information regarding the existence of an order to the public if the banking commissioner concludes that effective enforcement of the order would be enhanced by the release.

Sec. 6.106. DUTIES OF STATE TRUST COMPANY UNDER SUPERVISION. During the period of supervision, a state trust company may not, without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision:

- (1) dispose of, sell, transfer, convey, or encumber the state trust company's assets;
- (2) lend or invest the trust company's funds;
- (3) incur a debt, obligation, or liability;
- (4) pay a cash dividend to the state trust company's shareholders or participants; or
- (5) solicit or accept any new client accounts.

Sec. 6.107. POWERS AND DUTIES OF CONSERVATOR. (a) A conservator appointed under this subchapter shall immediately take charge of a state trust company and all of its property, books, records, and affairs on behalf and at the direction and control of the banking commissioner.

(b) Subject to any limitation contained in the order of appointment or other direction of the banking commissioner, the conservator has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of a state trust company, shall conduct the business of the state trust company, and shall take all steps the conservator considers appropriate to remove the causes and conditions that required the appointment of a conservator. During the conservatorship, the board may not direct or participate in the affairs of the state trust company.

(c) Except as otherwise provided by this subchapter, rules adopted under this Act, or Section 2.010, Texas Banking Act (Article 342-2.010, Vernon's Texas Civil Statutes), the conservator has the rights and privileges and is subject to the duties, restrictions, penalties, conditions, and limitations of the directors, officers, and employees of state trust companies.

Sec. 6.108. QUALIFICATIONS OF APPOINTEE. The banking commissioner may appoint any person as a supervisor or conservator who in the sole judgment of the banking commissioner is qualified to serve. The banking commissioner may serve or may appoint an employee of the department to serve as supervisor or conservator.

Sec. 6.109. EXPENSES. (a) The banking commissioner shall determine and approve the reasonable expenses attributable to the service of a supervisor or conservator, including costs incurred by the department and the compensation and expenses of the supervisor or conservator and any professional employees appointed to represent or assist the supervisor or conservator. The banking commissioner or an employee of the department may not receive compensation in addition to salary for serving as supervisor or conservator, but the department may receive reimbursement for the fully allocated personnel cost associated with service of the banking commissioner or an employee as supervisor or conservator.

(b) All approved expenses shall be paid by the state trust company as the banking commissioner determines. The banking commissioner has a lien

against the assets and funds of the state trust company to secure payment of approved expenses. The lien has a higher priority than any other lien against the state trust company.

(c) Notwithstanding any other provision of this subchapter, the state trust company may employ an attorney and other persons the state trust company selects to assist the state trust company in contesting or satisfying the requirements of an order of supervision or conservatorship. The banking commissioner shall authorize the payment of reasonable fees and expenses from the state trust company for the attorney or other persons as expenses of the supervision or conservatorship.

(d) The banking commissioner may defer collection of assessment and examination fees by the department from the state trust company during a period of supervision or conservatorship, if deferral would appear to aid prospects for rehabilitation. As a condition of release from supervision or conservatorship, the banking commissioner may require the rehabilitated state trust company to pay or develop a reasonable plan for payment of deferred fees.

Sec. 6.110. REVIEW OF SUPERVISOR OR CONSERVATOR DECISIONS. (a) Notwithstanding Section 6.107(b) of this Act, a majority of the state trust company's board, acting directly or through counsel who affirmatively represents that the requisite majority has been obtained, may request in writing that the banking commissioner review an action taken or proposed by the supervisor or conservator. The request must specify why the action would not be in the best interest of the state trust company. The banking commissioner shall investigate to the extent necessary and make a prompt written ruling on the request. If the action is proposed rather than already taken or if the effect of the action can be postponed, the banking commissioner may stay the action on request pending review.

(b) If a majority of the state trust company's board objects to the banking commissioner's ruling, the majority may, not later than the 10th day after the date the state trust company is notified of the ruling, request a hearing before the banking commissioner.

(c) The banking commissioner shall give the board notice of the time and place of the hearing by personal delivery or by registered or certified mail, return receipt requested. The hearing may not be held later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing the board has the burden of proof to demonstrate that the action is not in the best interest of the state trust company.

(d) After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the prior ruling. An order supporting the action contested by the board is immediately final for purposes of appeal. The order may be appealed as provided by Section 3.010 of this Act. If the order is appealed to the finance commission, the finance commission may affirm, terminate, or modify the order, continue or end supervision or conservatorship, and order further relief as justice, equity, and protection of clients, creditors, and the public require.

Sec. 6.111. VENUE. A suit filed against a state trust company while the state trust company is under an order of conservatorship, or a suit filed against a person in connection with an action taken or decision made by that person

as a supervisor or conservator of a state trust company, regardless of whether the state trust company remains under an order of supervision or conservatorship, must be brought in Travis County. A conservator may sue a person on the trust company's behalf to preserve, protect, or recover state trust company assets, including claims or causes of action. The suit may be in:

- (1) Travis County; or
- (2) another location where jurisdiction and venue against that person may be obtained under law.

Sec. 6.112. DURATION. A supervisor or conservator shall serve for the period necessary to accomplish the purposes of the supervision or conservatorship as intended by this subchapter. A rehabilitated state trust company shall be returned to its former or new management under conditions reasonable and necessary to prevent recurrence of the conditions causing the supervision or conservatorship.

Sec. 6.113. ADMINISTRATIVE ELECTION OF REMEDIES. If the banking commissioner determines that a state trust company should be closed and liquidated under Chapter 7 of this Act, the banking commissioner may take any action authorized under that chapter regardless of the existence of supervision or conservatorship. A period of supervision or conservatorship is not required before a trust company is closed for liquidation or other remedial action is taken.

[Sections 6.114-6.200 reserved for expansion]

SUBCHAPTER C. UNAUTHORIZED TRUST ACTIVITY: INVESTIGATION AND ENFORCEMENT

Sec. 6.201. INVESTIGATION OF UNAUTHORIZED TRUST ACTIVITY.

(a) If the banking commissioner has reason to believe that a person has engaged, is engaging, or is likely to engage in an unauthorized trust activity, the banking commissioner may:

(1) make any investigation necessary inside or outside this state to determine whether the unauthorized trust activity has occurred or is likely to occur, or to aid in the enforcement of the laws administered by the banking commissioner;

(2) initiate appropriate disciplinary action as provided by this subchapter; and

(3) report any unauthorized trust activity to a law enforcement agency or another regulatory agency with appropriate jurisdiction.

(b) The banking commissioner may furnish any materials, documents, reports, complaints, or other evidence the banking commissioner has compiled in connection with the unauthorized activity to a law enforcement agency on written request and may assist the law enforcement agency or other regulatory agency as requested.

(c) A person acting without malice, fraudulent intent, or bad faith is not subject to liability, including liability for libel, slander, or other relevant tort, because the person files a report or furnishes, orally or in writing, information concerning a suspected, anticipated, or completed unauthorized activity to a law enforcement agency, the banking commissioner or another regulatory agency with appropriate jurisdiction, or an agent or employee of a law enforcement agency, the banking commissioner, or other regulatory agency. The person is entitled to attorney's fees and court costs if the person prevails in an action for

libel, slander, or any other relevant tort based on the report or other information the person furnished as provided by this subchapter. This section does not:

- (1) affect or modify a common law or statutory privilege or immunity;
- (2) preempt the authority or relieve the duty of a law enforcement agency or other regulatory agency with appropriate jurisdiction to investigate and prosecute suspected criminal acts;
- (3) prohibit a person from voluntarily disclosing information to a law enforcement agency or other regulatory agency; or
- (4) limit a power or duty granted to the banking commissioner under this Act or other law.

Sec. 6.202. UNAUTHORIZED USE OF “TRUST” AND SIMILAR WORDS. (a) Except as provided in Subsection (b) of this section, a person or company may not use in a business name or advertising the words “trust,” “trust company,” or any similar term or phrase, any word pronounced “trust” or “trust company,” any foreign word which means “trust” or “trust company,” or any term that tends to imply the business is holding out to the public that it engages in the business of a fiduciary for hire unless the banking commissioner has approved the use in writing after finding that the use will not be misleading. This subsection does not prohibit an individual from engaging in the business of a fiduciary for compensation or from using the words “trust” or “trustee” for the purpose of identifying assets held or actions taken in an existing capacity.

(b) This section does not apply to:

(1) a state or national bank, a state or federal savings bank, a state or federal savings association, a state or federal credit union, or a depository or trust company institution authorized under this Act to conduct a trust business in this state; and

(2) another entity organized under the laws of this state, another state, the United States, or a foreign sovereign state to the extent that:

(A) the entity is authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by Subsection (a) of this section; and

(B) the entity is authorized by the laws of this state or the United States to conduct the activities in which the entity is engaged in this state.

Sec. 6.203. SUBPOENA AUTHORITY. (a) This section applies only to an investigation of an unauthorized trust activity as provided by Section 6.201 of this Act, and does not affect the conduct of a contested case under Chapter 2001, Government Code.

(b) The banking commissioner may issue a subpoena to compel the attendance and testimony of a witness and the production of a book, account, record, paper, or correspondence relating to a matter that the banking commissioner has authority to consider or investigate at the department’s offices in Austin or at another place the banking commissioner designates.

(c) The banking commissioner or the deputy banking commissioner shall sign and issue the subpoena.

(d) A person who is required by subpoena to attend a proceeding before the banking commissioner is entitled to receive:

(1) reimbursement for mileage, in the amount provided for travel by state employees, for traveling to or returning from a proceeding that is more than 25 miles from the witness's residence; and

(2) a fee for each day or part of a day the witness is necessarily present as a witness in an amount equal to the per diem travel allowance of a state employee.

(e) The banking commissioner may serve the subpoena or have it served by an authorized agent of the banking commissioner, a sheriff, or a constable. The sheriff's or constable's fee for serving the subpoena must be the same as the fee paid the sheriff or constable for similar services.

(f) A person possessing materials located outside this state that are requested by the banking commissioner may make the materials available to the banking commissioner or a representative of the banking commissioner for examination at the place where the materials are located. The banking commissioner may designate a representative, including an official of the state in which the materials are located, to examine the materials and may respond to similar requests from an official of another state, the United States, or a foreign country.

(g) A subpoena issued under this section to a financial institution is not subject to Section 30.007, Civil Practice and Remedies Code, as added by Chapter 914, Acts of the 74th Legislature, Regular Session, 1995.

(h) The authority granted under this section is in addition to other law authorizing the banking commissioner to obtain or require information.

Sec. 6.204. ENFORCEMENT OF SUBPOENA. (a) If necessary the banking commissioner may apply to a district court of Travis County or of the county in which the subpoena was served for enforcement of the subpoena, and the court may issue an order compelling compliance.

(b) If the court orders compliance with the subpoena or finds the person in contempt for failure to obey the order, the banking commissioner, or the attorney general if representing the banking commissioner, may recover reasonable court costs, attorney's fees, and investigative costs incurred in the proceeding.

Sec. 6.205. CONFIDENTIALITY OF SUBPOENAED RECORDS. (a) A book, account, record, paper, correspondence, or other document subpoenaed and produced under this section that is otherwise made privileged or confidential by law remains privileged or confidential unless admitted into evidence at an administrative hearing or in a court. The banking commissioner may issue an order protecting the confidentiality or privilege of the document and restricting its use or distribution by any person or in any proceeding, other than a proceeding before the banking commissioner.

(b) Subject to Subchapter B, Chapter 2, of this Act, and confidentiality provisions of other law administered by the banking commissioner, information or material acquired under this section under a subpoena is not a public record for the period the banking commissioner considers reasonably necessary to complete the investigation, protect the person being investigated from unwarranted injury, or serve the public interest. The information or material is not subject to a subpoena, except a valid grand jury subpoena, until released for public inspection by the banking commissioner or, after notice and a hearing, a district court determines that the public interest and any investigation

by the banking commissioner would not be jeopardized by obeying the subpoena. The district court order may not apply to:

(1) a record or communication received from another law enforcement or regulatory agency except on compliance with the confidentiality laws governing the records of the other agency; or

(2) an internal note, memorandum, report, or communication made in connection with a matter that the banking commissioner has the authority to consider or investigate, except on good cause and compliance with applicable confidentiality laws.

Sec. 6.206. EVIDENCE. (a) On certification by the banking commissioner, a book, record, paper, or document produced or testimony taken as provided by Section 6.203 of this Act and held by the department is admissible as evidence in any case without prior proof of its correctness and without other proof. The certified book, record, document, or paper, or a certified copy, is prima facie evidence of the facts it contains.

(b) This section does not limit another provision of this Act or a law that provides for the admission of evidence or its evidentiary value.

Sec. 6.207. CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. (a) If the banking commissioner believes a person is engaging or is likely to engage in an unauthorized trust activity, the banking commissioner may serve on the person, by personal delivery or registered or certified mail, return receipt requested, to the person's last known address, a proposed cease and desist order. The proposed order must state the acts or practices alleged to be an unauthorized activity. The proposed order must state its effective date, which may not be before the 21st day after the date the proposed order is mailed or delivered. Unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of the proposed order, the order takes effect and is final and nonappealable as to that person.

(b) A requested hearing on a proposed order shall be held not later than the 30th day after the date the first written request for a hearing on the order is received by the banking commissioner unless the parties agree to a later hearing date. At the hearing, the banking commissioner has the burden of proof and must present evidence in support of the order. Each person against whom the order is directed may cross-examine and show cause why the order should not be issued.

(c) After the hearing, the banking commissioner shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this section is immediately final for purposes of enforcement and appeal and must require the person to immediately cease and desist from the unauthorized trust activity.

(d) The banking commissioner may release a final cease and desist order issued under this section or information regarding the existence of the order to the public if the banking commissioner finds that effective enforcement of the order would be enhanced by a release or the public interest will be served.

Sec. 6.208. EMERGENCY CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. (a) The banking commissioner may issue an emergency cease and desist order if the banking commissioner

reasonably believes a person is engaging in a continuing unauthorized trust activity that is fraudulent or threatens immediate and irreparable public harm.

(b) On issuance of an emergency cease and desist order, the banking commissioner shall serve on each person affected by the order, by personal delivery or registered or certified mail, return receipt requested, to the person's last known address, an order that states the specific charges and requires the person immediately to cease and desist from the unauthorized activity. The order must contain a notice that a request for hearing may be filed under this section.

(c) A person affected by an emergency cease and desist order may request a hearing before the banking commissioner not later than the 10th day after the date on which the person receives the order. A request for a hearing must be in writing and directed to the banking commissioner and must state the grounds for the request to set aside or modify the order. Unless a person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and nonappealable as to that person.

(d) On receiving a request for a hearing, the banking commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the banking commissioner has the burden of proof and must present evidence in support of the order. The person requesting the hearing may cross-examine witnesses and show cause why the order should not be affirmed.

(e) Until the hearing, an emergency cease and desist order continues in effect unless the order is stayed by the banking commissioner. The banking commissioner may impose any condition before granting a stay of the order.

(f) After the hearing, the banking commissioner shall affirm, modify, or set aside in whole or part the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(g) The banking commissioner may release a final cease and desist order issued under this section or information regarding the existence of the order to the public if the banking commissioner finds that effective enforcement of the order would be enhanced by a release or the public interest will be served.

Sec. 6.209. APPEAL OF CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review in the district court of Travis County under the substantial evidence rule as provided by Chapter 2001, Government Code.

(b) A filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

Sec. 6.210. VIOLATION OF FINAL CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. (a) If the banking commissioner reasonably believes that a person has violated a final and enforceable cease and desist order, the banking commissioner may:

(1) initiate administrative penalty proceedings under Section 6.211 of this Act;

(2) refer the matter to the attorney general for enforcement by injunction and any other available remedy; or

(3) pursue any other action the banking commissioner considers appropriate under applicable law.

(b) If the attorney general prevails in an action brought under Subsection (a)(2) of this section, the attorney general is entitled to reasonable attorney's fees.

Sec. 6.211. PENALTY ORDER FOR UNAUTHORIZED TRUST ACTIVITY. (a) The banking commissioner may initiate an action for an administrative penalty against a person under Section 6.210(a)(1) of this Act by serving on the person, by personal delivery or registered or certified mail, return receipt requested, to the person's last known address, notice of the time and place of a hearing on the penalty. The hearing may not be held earlier than the 20th day after the date the notice is served and shall be conducted under Chapter 2001, Government Code. The notice must contain a statement of the facts or conduct alleged to be in violation of the cease and desist order.

(b) In determining whether a cease and desist order has been violated, the banking commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order.

(c) If the banking commissioner after the hearing determines that a cease and desist order has been violated, the banking commissioner may:

(1) impose an administrative penalty in an amount not to exceed \$25,000 for each separate act of unauthorized activity;

(2) direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the banking commissioner, to each resident of this state and entity operating in this state damaged by the violation; or

(3) impose both the penalty and direct restitution.

(d) In determining the amount of the penalty and whether to impose restitution, the banking commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation;

(6) whether the violation was intentional or unintentional;

(7) the financial ability of the person against whom the penalty is to be assessed; and

(8) any other matter that justice may require.

Sec. 6.212. PAYMENT AND APPEAL OF PENALTY ORDER.

(a) When a penalty order under Section 6.211 of this Act becomes final, a person affected by the order shall, within the time permitted by law for appeal:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the amount of the penalty, file a petition for

judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the time permitted by law for appeal, a person who acts under Subsection (a)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the banking commissioner by certified mail.

(c) If the banking commissioner receives a copy of an affidavit under Subsection (b)(2) of this section, the banking commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the banking commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

Sec. 6.213. JUDICIAL REVIEW OF PENALTY ORDER. (a) Judicial review of a penalty order of the banking commissioner:

(1) is instituted by filing a petition as provided by Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(b) If the court sustains the order, the court shall order the person to pay the full amount of the penalty or a lower amount determined by the court. If the court does not sustain the order, a penalty is not owed.

(c) When the judgment of the court becomes final, if the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest computed at the annual rate of 10 percent be remitted to the person. The interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount of the penalty.

(d) If the judgment of the court requires payment of a penalty that has not previously been paid, the court shall order as part of its judgment that interest accrues on the penalty at the annual rate of 10 percent, beginning on the date the judgment is final and ending on the date the penalty and interest are paid.

Sec. 6.214. DEPOSIT TO GENERAL REVENUE FUND. A penalty collected under this subchapter shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

CHAPTER 7. DISSOLUTION AND RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 7.001. DEFINITION
- Sec. 7.002. REMEDIES EXCLUSIVE
- Sec. 7.003. APPOINTMENT OF INDEPENDENT RECEIVER
- Sec. 7.004. FEDERAL DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR

- Sec. 7.005. SUCCESSION OF TRUST POWERS

[Sections 7.006-7.100 reserved for expansion]

SUBCHAPTER B. VOLUNTARY DISSOLUTION

- Sec. 7.101. APPROVALS REQUIRED FOR VOLUNTARY DISSOLUTION
- Sec. 7.102. NOTICE OF VOLUNTARY DISSOLUTION
- Sec. 7.103. SAFE DEPOSITS AND OTHER BAILMENTS
- Sec. 7.104. FIDUCIARY ACTIVITIES
- Sec. 7.105. FINAL LIQUIDATION
- Sec. 7.106. ADMINISTRATIVE AUTHORITY; ELECTION OF REMEDIES

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SUBCHAPTER C. INVOLUNTARY DISSOLUTION AND LIQUIDATION

- Sec. 7.201. ACTION TO CLOSE STATE TRUST COMPANY
- Sec. 7.202. INVOLUNTARY CLOSING
- Sec. 7.203. NATURE AND DURATION OF RECEIVERSHIP
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- Sec. 7.209. DEPOSITORIES
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- Sec. 7.217. OTHER POWERS OF RECEIVER; ADMINISTRATIVE EXPENSES
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- Sec. 7.220. FILING REPORTS; EXPENSES
- Sec. 7.221. COURT-ORDERED AUDIT
- Sec. 7.222. SAFE DEPOSITS AND OTHER BAILMENTS
- Sec. 7.223. FIDUCIARY ACTIVITIES
- Sec. 7.224. DISPOSITION AND MAINTENANCE OF RECORDS
- Sec. 7.225. RECORDS ADMITTED
- Sec. 7.226. RESUMPTION OF BUSINESS
- Sec. 7.227. AFTER-DISCOVERED ASSETS

[Sections 7.228-7.300 reserved for expansion]

SUBCHAPTER D. CLAIMS AGAINST RECEIVERSHIP ESTATE

- Sec. 7.301. FILING CLAIMS
- Sec. 7.302. PROOF OF CLAIM
- Sec. 7.303. JUDGMENT AS PROOF OF CLAIM
- Sec. 7.304. SECURED CLAIMS
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- Sec. 7.306. SET-OFF
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- Sec. 7.308. OBJECTION TO APPROVED CLAIM
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- Sec. 7.311. PRIORITY OF CLAIMS AGAINST INSURED STATE TRUST COMPANY
- Sec. 7.312. PRIORITY OF CLAIMS AGAINST UNINSURED STATE TRUST COMPANY
- Sec. 7.313. EXCESS ASSETS
- Sec. 7.314. UNCLAIMED FUNDS AND PROPERTY

CHAPTER 7. DISSOLUTION AND RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.001. DEFINITION. In this chapter, “administrative expense” means:

- (1) an expense designated as an administrative expense by Subchapter C or D of this chapter;
- (2) court costs and expenses of operation and liquidation of a state trust company estate;
- (3) wages owed to an employee of a state trust company for services rendered within three months before the date the state trust company was closed for liquidation and not exceeding:
 - (A) \$2,000 to each employee; or
 - (B) another amount set by rules adopted under this Act;
- (4) current wages owed to an employee of a state trust company whose services are retained by the receiver for services rendered after the date the state trust company is closed for liquidation;
- (5) an unpaid expense of supervision or conservatorship of the state trust company before its closing for liquidation; and
- (6) any unpaid fees or assessments owed to the department.

Sec. 7.002. REMEDIES EXCLUSIVE. (a) Unless the banking commissioner requests, a court may not:

- (1) order the closing or suspension of operation of a state trust company; or
- (2) appoint for a state trust company a receiver, supervisor, conservator, or liquidator, or other manager or overseer with similar responsibility.

(b) A person may not be designated receiver, supervisor, conservator, or liquidator without the voluntary approval and concurrence of the banking commissioner.

(c) This chapter prevails over any other conflicting law of this state.

Sec. 7.003. APPOINTMENT OF INDEPENDENT RECEIVER. (a) On request of the banking commissioner, the court in which the liquidation

proceeding is pending may appoint an independent receiver and may require a suitable bond of the independent receiver.

(b) If an independent receiver is appointed, the banking commissioner is discharged as receiver but shall remain a party to the liquidation proceeding with standing to initiate or contest any motion. The views of the banking commissioner are entitled to deference if not contrary to the plain meaning of this chapter.

Sec. 7.004. FEDERAL DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR. The banking commissioner without court action may tender a state trust company that has been closed for liquidation to the Federal Deposit Insurance Corporation or its successor as receiver and liquidating agent if the trust deposits of the state trust company were insured by the Federal Deposit Insurance Corporation or its successor on the date of closing. After acceptance of tender of the state trust company, the Federal Deposit Insurance Corporation or its successor shall perform the acts and duties as receiver of the state trust company that it considers necessary or desirable and that are permitted or required by federal law or this chapter. If the Federal Deposit Insurance Corporation or its successor refuses to accept tender of the state trust company, the banking commissioner shall act as receiver.

Sec. 7.005. SUCCESSION OF TRUST POWERS. (a) If a state trust company in the process of voluntary or involuntary dissolution and liquidation is acting as trustee, guardian, executor, administrator, or escrow agent, or in another fiduciary or custodial capacity, the banking commissioner may authorize the sale of the state trust company's administration of fiduciary accounts to a successor entity with fiduciary powers.

(b) The successor entity shall, without the necessity of action by a court or the creator or a beneficiary of the fiduciary relationship, continue the office, trust, or fiduciary relationship and shall perform all the duties and exercise all the powers connected with or incidental to the fiduciary relationship in the same manner as if the successor entity had been originally designated as the fiduciary.

(c) This section applies to all fiduciary relationships, including a trust established for the benefit of a minor by court order under Section 142.005, Property Code. This section does not affect any right of a court or a party to the instrument governing the fiduciary relationship to subsequently designate another trustee as the successor fiduciary.

[Sections 7.006-7.100 reserved for expansion]

SUBCHAPTER B. VOLUNTARY DISSOLUTION

Sec. 7.101. APPROVALS REQUIRED FOR VOLUNTARY DISSOLUTION. (a) A state trust company may initiate voluntary dissolution and surrender its charter as provided by this subchapter:

- (1) with the approval of the banking commissioner;
- (2) after complying with the provisions of the Texas Business Corporation Act regarding board and shareholder approval for voluntary dissolution; and
- (3) by filing the notice of dissolution as provided by Section 7.102(a) of this Act.

(b) Unless the banking commissioner directs or consents otherwise, the home office and all branch offices of the state trust company shall remain open for business during normal business hours until the last date specified in

published notices for presentation of claims, withdrawal of accounts, and redemption of property.

(c) The shareholders or participants of a state trust company initiating voluntary dissolution shall by resolution appoint one or more persons to act as liquidating agent or committee who shall conduct the liquidation as provided by law and under the supervision of the board. The board, in consultation with the banking commissioner, shall require the liquidating agent or committee to give a suitable bond.

Sec. 7.102. NOTICE OF VOLUNTARY DISSOLUTION. (a) After resolutions to dissolve and liquidate the state trust company have been adopted by the board and shareholders or participants, a majority of the directors, managers, or managing participants shall verify and file duplicate certified copies with the banking commissioner of:

(1) the resolutions of the shareholders or participants that are adopted at a meeting for which proper notice was given or by unanimous written consent and that approve the dissolution and liquidation of the state trust company;

(2) if the trust company is operated by a board of directors or managers, the resolutions of the board approving the dissolution and liquidation of the state trust company;

(3) a copy of the notice to the shareholders or participants informing them of the meeting; and

(4) a plan of liquidation.

(b) The banking commissioner shall review the submitted documentation and conduct any necessary investigation or examination. If the proceedings appear to have been properly conducted and the bond to be given by the liquidating agent or committee is adequate for its purposes, the banking commissioner shall consent to dissolution and direct the state trust company to publish notice of its pending dissolution.

(c) The state trust company shall publish notice in a newspaper of general circulation in each community where its home office or a branch is located at least once each week for eight consecutive weeks or at other times specified by the banking commissioner or rules adopted under this Act. The notice must state that the state trust company is liquidating, that clients, depositors, and creditors must present their claims for payment on or before a specific date, and that all safe deposit box holders and bailors of property left with the state trust company should remove their property on or before a specified date. The dates selected by the state trust company must be approved by the banking commissioner and must allow the affairs of the state trust company to be wound up as quickly as feasible and allow creditors, clients, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property. The banking commissioner may adjust the dates with or without republication of notice if additional time appears needed for these activities.

(d) At the same time as or promptly after publication of the notice, the state trust company shall mail to each of the state trust company's known clients, depositors, creditors, safe deposit box holders, and bailors of property left with the state trust company, at the mailing address shown on the state trust company's records, an individual notice containing the information required in

a notice under Subsection (c) of this section and specific information pertinent to the account or property of the addressee.

(e) A notice under this section must be in the form and include the information required by the banking commissioner.

Sec. 7.103. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A contract between the state trust company and a person for bailment, or of deposit for hire, or for the lease of a safe, vault, or box, ceases on the date specified as the date for removal of property in the notices or a later date approved by the banking commissioner. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has an unsecured claim against the state trust company for a refund of any unearned amount paid.

(b) If the property is not removed by the date specified in the notices or by the banking commissioner, an officer of the state trust company, in the presence of a notary public who is not an officer or employee of the state trust company and who is bonded in an amount and by sureties approved by the banking commissioner, shall inventory the property and may open a safe, vault, box, package, parcel, or receptacle in the custody or possession of the state trust company to make the inventory. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the state trust company. After all property belonging to others that is in the state trust company's custody and control has been inventoried, a master list certified by the state trust company officer and the notary public shall be furnished to the banking commissioner. The master list shall be kept in a place and dealt with in a manner the banking commissioner specifies pending delivery of the property to its owner or to the comptroller as unclaimed property.

Sec. 7.104. FIDUCIARY ACTIVITIES. (a) As soon after publication of the notice of dissolution as is practicable, the state trust company shall terminate all fiduciary positions it holds, surrender all property held by it as a fiduciary, and settle its fiduciary accounts.

(b) Unless all fiduciary accounts are settled and transferred by the last date specified in published notices or by the banking commissioner and unless the banking commissioner directs otherwise, the state trust company shall mail individual notices to each trustor and beneficiary of any remaining trust, escrow arrangement, or other fiduciary relationship advising the person of an office location open during normal business hours and a telephone number at that location where administration of the remaining fiduciary accounts will continue until settled or transferred.

Sec. 7.105. FINAL LIQUIDATION. (a) After the state trust company has taken all of the actions specified by Sections 7.102, 7.103, and 7.104 of this Act and has paid all its debts and obligations and transferred all property for which a legal claimant has been found after the time for presentation of claims has expired, the state trust company shall, under oath or affirmation of a majority of its board or managing participants, make a list from its books of the names of each depositor, creditor, owner of personal property in the state trust company's possession or custody, or lessee of any safe, vault, or box, who has not claimed or has not received a deposit, debt, dividend, interest, balance, or other amount or property due to the person.

(b) The list, accompanied by any necessary identifying information, shall be filed with the banking commissioner. The state trust company shall pay any unclaimed funds and deliver any unclaimed property to the comptroller as provided by Chapter 74, Property Code, and certify to the banking commissioner that the unclaimed funds and property have been paid or delivered.

(c) After the banking commissioner has reviewed the list and has reconciled the unclaimed cash and property with the amounts of money and property reported and transferred to the comptroller, the banking commissioner shall allow the state trust company to distribute the state trust company's remaining assets, if any, among its shareholders, participants, or participant-transferees as their ownership interests appear.

(d) After distribution of all remaining assets, the state trust company shall:

(1) file with the department, under the oath or affirmation of a majority of its board or managing participants, another affidavit accompanied by schedules showing the distribution to each shareholder, participant, or participant-transferee; and

(2) tender to the department:

(A) all copies of reports of examination of the state trust company in its possession; and

(B) its original charter, or an affidavit stating that the original charter is lost, and any branch certificates of authority.

(e) After verifying the submitted information and documents, the banking commissioner shall issue a certificate canceling the charter of the state trust company.

Sec. 7.106. ADMINISTRATIVE AUTHORITY; ELECTION OF REMEDIES. (a) A state trust company in the process of voluntary dissolution and liquidation remains subject to this Act, including provisions for examination by the banking commissioner, and the state trust company shall furnish reports required by the banking commissioner.

(b) The banking commissioner may authorize a deviation from the procedures for voluntary dissolution in this subchapter if the banking commissioner determines that the interests of claimants are not jeopardized by the deviation.

(c) If the banking commissioner determines that the voluntary liquidation is being conducted in an improper or illegal manner or is not in the best interests of the state trust company's clients and creditors or that the state trust company is insolvent or imminently insolvent, the banking commissioner may close the state trust company for involuntary dissolution and liquidation under this chapter.

(d) After a state trust company's charter has been voluntarily surrendered and canceled, the state trust company may not resume business or reopen except on application for and approval of a new charter.

[Sections 7.107-7.200 reserved for expansion]

SUBCHAPTER C. INVOLUNTARY DISSOLUTION AND LIQUIDATION

Sec. 7.201. ACTION TO CLOSE STATE TRUST COMPANY. (a) The banking commissioner may close and liquidate a state trust company on finding that:

(1) the interests of its clients and creditors are jeopardized by the state trust company's insolvency or imminent insolvency; and

(2) the best interests of clients and creditors would be served by requiring that the state trust company be closed and its assets liquidated.

(b) A majority of the state trust company's directors, managers, or managing participants may voluntarily close the state trust company and place it with the banking commissioner for liquidation.

Sec. 7.202. INVOLUNTARY CLOSING. (a) After closing a state trust company under Section 7.201 of this Act, the banking commissioner shall place a sign at its main entrance stating that the state trust company has been closed and the findings on which the closing of the state trust company is based. A correspondent bank of the closed state trust company may not pay an item drawn on the account of the closed state trust company that is presented for payment after the correspondent has received actual notice of closing unless it previously certified the item for payment.

(b) As soon as practicable after posting the sign at the state trust company's main entrance, the banking commissioner shall tender the state trust company to the Federal Deposit Insurance Corporation as provided by Section 7.004 of this Act or initiate a receivership proceeding by filing a copy of the notice contained on the sign in a district court in the county where the state trust company's home office is located. The court in which the notice is filed shall docket it as a case styled, "In re liquidation of ____" (inserting the name of the state trust company). As soon as this notice is filed, the court has constructive custody of all the state trust company's assets, and any action initiated that seeks to directly or indirectly affect state trust company assets is considered to be an intervention in the receivership proceeding and subject to this subchapter and Subchapter D of this chapter.

(c) Venue for an action instituted to effect, contest, or otherwise intervene in the liquidation of a state trust company is in Travis County, except that on motion filed and served concurrently with or before the filing of the answer, the court may, upon a finding of good cause, transfer the action to the county of the state trust company's home office.

Sec. 7.203. NATURE AND DURATION OF RECEIVERSHIP. (a) The court may not require a bond from the banking commissioner as receiver. Any reference in this chapter to the receiver is a reference to the banking commissioner as receiver and any successors in office, the Federal Deposit Insurance Corporation if acting as receiver as provided by Section 7.004 of this Act and federal law, or an independent receiver appointed at the request of the banking commissioner as provided by Section 7.003 of this Act. The receiver and all employees and agents acting on behalf of the receiver are acting in an official capacity and are subject to the protection of Section 2.010, Texas Banking Act (Article 342-2.010, Vernon's Texas Civil Statutes). The acts of the receiver are the acts of the state trust company in liquidation and this state and its political subdivisions are not liable and may not be held accountable for any debt or obligation of a state trust company in receivership.

(b) The receiver has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of the state trust company as necessary to support an action taken on behalf of the state trust company.

(c) Section 64.072, Civil Practice and Remedies Code, applies to the receivership of a state trust company except as provided by this subsection. A state trust company receivership shall be administered continuously for the length of time necessary to complete its purposes, and a period prescribed by other law limiting the time for the administration of receiverships or of corporate affairs generally, including Section 64.072(d), Civil Practice and Remedies Code, does not apply.

Sec. 7.204. CONTEST OF LIQUIDATION. (a) A state trust company, acting through a majority of its directors, managers, or managing participants, may intervene in the action filed by the banking commissioner to challenge the banking commissioner's closing of the state trust company and to enjoin the banking commissioner or other receiver from liquidating its assets. The intervenors must file the intervention not later than the second business day after the closing of the state trust company, excluding legal holidays. The court may issue an ex parte order restraining the receiver from liquidating state trust company assets pending a hearing on the injunction. The receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction.

(b) The court shall hear this action as quickly as possible and shall give it priority over other business.

(c) The state trust company or receiver may appeal the court's judgment as in other civil cases, except that the receiver shall retain all state trust company assets pending a final appellate court order even if the banking commissioner does not prevail in the trial court. If the banking commissioner prevails in the trial court, liquidation of the state trust company may proceed unless the trial court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the trial court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

Sec. 7.205. NOTICE OF STATE TRUST COMPANY CLOSING. (a) As soon as reasonably practicable after initiation of the receivership proceeding, the receiver shall publish notice, in a newspaper of general circulation in each community where the state trust company's home office and a branch are located. The notice must state that the state trust company has been closed for liquidation, that clients and creditors must present their claims for payment on or before a specific date, and that all safe deposit box holders and bailors of property left with the state trust company should remove their property not later than a specified date. The receiver shall select the dates to allow the affairs of the state trust company to be wound up as quickly as feasible while allowing creditors, clients, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property, but may not select a date before the 121st day after the date of the notice. The receiver may adjust the dates with the approval of the court with or without republication of notice if additional time appears needed for these activities.

(b) As soon as reasonably practicable given the state of state trust company records and the adequacy of staffing, the receiver shall mail to each of the state trust company's known clients, creditors, safe deposit box holders, and bailors

of property left with the state trust company, at the mailing address shown on the state trust company's records, an individual notice containing the information required in a notice under Subsection (a) of this section and specific information pertinent to the account or property of the addressee.

(c) The receiver may determine the form and content notices under this section.

Sec. 7.206. **INVENTORY.** As soon as reasonably practicable given the state of state trust company records and the adequacy of staffing, the receiver shall prepare a comprehensive inventory of the state trust company's assets for filing with the court. The inventory shall be open to inspection.

Sec. 7.207. **TITLE IN RECEIVER.** (a) The receiver has the title to all the state trust company's property, contracts, and rights of action, wherever located, beginning on the date the state trust company is closed for liquidation.

(b) The rights of the receiver have priority over a contractual lien or statutory landlord's lien under Chapter 54, Property Code, judgment lien, attachment lien, or voluntary lien that arises after the date of the closing of the state trust company for liquidation.

(c) The filing or recording of a receivership order in a record office of this state gives the same notice that would be given by a deed, bill of sale, or other evidence of title duly filed or recorded by the state trust company in liquidation. The recording clerk shall index a recorded receivership order in the records to which the order relates.

Sec. 7.208. **RIGHTS FIXED.** The rights and liabilities of the state trust company in liquidation and of a client, creditor, officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, agent, or other person interested in the state trust company's estate are fixed on the date of closing of the state trust company for liquidation except as otherwise directed by the court or as expressly provided otherwise by this subchapter or Subchapter D of this chapter.

Sec. 7.209. **DEPOSITORIES.** (a) The receiver may deposit funds collected on behalf of the state trust company estate in:

(1) the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller; or

(2) one or more depository institutions in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, if the receiver, using sound financial judgment, determines that it would be advantageous to do so.

(b) If receivership funds deposited in an account at a state bank exceed the maximum insured amount, the receiver shall require the excess deposit to be adequately secured through pledge of securities or otherwise, without approval of the court. The depository bank may secure the deposits of the state trust company in liquidation on behalf of the receiver, notwithstanding any other provision of this Act.

Sec. 7.210. **PENDING LAWSUITS.** (a) A judgment or order of a court of this state or of any other jurisdiction in an action pending by or against the state trust company, rendered after the date the state trust company was closed for liquidation, is not binding on the receiver unless the receiver was made a party to the suit.

(b) Before the first anniversary of the date the state trust company was closed for liquidation, the receiver may not be required to plead to any suit pending against the state trust company in a court in this state on the date the state trust company was closed for liquidation and in which the receiver is a proper plaintiff or defendant.

(c) Sections 64.052, 64.053, and 64.056, Civil Practice and Remedies Code, do not apply to a state trust company estate being administered under this subchapter and Subchapter D of this chapter.

Sec. 7.211. NEW LAWSUITS. (a) Except as otherwise provided by this section, the court in which the receivership proceeding is pending under this subchapter has exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the state trust company or receiver after the receivership proceeding starts.

(b) The receiver may file in any jurisdiction an ancillary suit that may be helpful to obtain jurisdiction or venue over a person or property.

(c) Exclusive venue of an action or proceeding instituted against the receiver or the receiver's employee, including an employee of the department, that asserts personal liability on the part of the receiver or employee lies in Travis County.

Sec. 7.212. RECORDS WITH THIRD PARTIES. (a) Each state trust company affiliate, officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, trustee, agent, servant, employee, attorney, attorney-in-fact, or correspondent shall immediately deliver to the receiver any property, book, record, account, document, or other writing of the state trust company or that relates to the business of the state trust company without cost to the receiver.

(b) If by contract or otherwise any book, record, account, document, or other property that can be copied is the property of a person listed in Subsection (a) of this section, it shall be copied, the copy shall be delivered to the receiver, and the original shall be retained by the owner until notification by the receiver that it is no longer required in the administration of the state trust company's estate or at another time the court, after notice and hearing, directs. A copy is considered to be a record of the state trust company in liquidation under Section 7.225 of this Act.

Sec. 7.213. INJUNCTION IN AID OF LIQUIDATION. (a) On application by the receiver, the court may with or without notice issue an injunction:

(1) restraining each state trust company officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, trustee, agent, servant, employee, attorney, attorney-in-fact, accountant or accounting firm, correspondent, or another person from transacting the state trust company's business or wasting or disposing of its property; or

(2) requiring the delivery of its property or assets to the receiver subject to the further order of the court.

(b) The court, at any time during a proceeding under this subchapter, may issue another injunction or order considered necessary or desirable to prevent:

(1) interference with the receiver or the proceeding;

(2) waste of the assets of the state trust company;

- (3) the beginning or prosecution of an action;
- (4) the obtaining of a preference, judgment, attachment, garnishment, or other lien; or
- (5) the making of a levy against the state trust company or against its assets.

Sec. 7.214. SUBPOENA. (a) In addition to the authority granted by law to the receiver relating to the taking of a deposition of a witness in a civil action, the receiver may request the court ex parte to issue a subpoena to compel the attendance and testimony of a witness before the receiver and the production of a book, account, record, paper, or correspondence or other record relating to the receivership estate. For this purpose, the receiver or the receiver's designated representative may administer an oath or affirmation, examine a witness, or receive evidence. The court has statewide subpoena power and may compel attendance and production of a record before the receiver at the state trust company, the office of the receiver, or another location.

(b) A person served with a subpoena under this section may file a motion with the court for a protective order as provided by Rule 166b, Texas Rules of Civil Procedure. In a case of disobedience of a subpoena, or of the contumacy of a witness appearing before the receiver or the receiver's designated representative, the receiver may request and the court may issue an order requiring the person subpoenaed to obey the subpoena, give evidence, or produce a book, account, record, paper, or correspondence or other record relating to the matter in question.

(c) Each witness who is required to appear before the receiver is entitled to receive:

(1) reimbursement for mileage, in the amount for travel by state employees, for traveling to or returning from a proceeding that is more than 25 miles from the witness's residence; and

(2) a fee of not less than \$10 a day and not more than an amount equal to the per diem travel allowance of a state employee for each day or part of a day the witness is necessarily present as a witness, as established by the receiver with the approval of the court.

(d) All disbursements made in the payment of fees under Subsection (c) of this section are administrative expenses of liquidation.

(e) The receiver may serve the subpoena or have it served by the receiver's authorized agent, a sheriff, or a constable. The sheriff's or constable's fee for serving a subpoena must be the same as the fee paid the sheriff or constable for similar services.

(f) A subpoena issued under this section to a financial institution is not subject to Section 30.007, Civil Practice and Remedies Code, as added by Chapter 914, Acts of the 74th Legislature, Regular Session, 1995.

(g) On certification by the receiver under official seal, a book, account, record, paper, correspondence, or other record or document produced or testimony taken as provided by this section and held by the receiver is admissible in evidence in any case without prior proof of its correctness and without other proof except the certificate of the receiver that the book, account, record, paper, correspondence, document, or testimony was received from the

person producing the material or testifying. The certified book, account, record, paper, correspondence, or other record or document, or a certified copy of such a document, is prima facie evidence of the facts it contains. This section does not limit another provision of this subchapter, Subchapter D of this chapter, or another law that provides for the admission of evidence or its evidentiary value.

Sec. 7.215. EXECUTORY CONTRACTS; ORAL AGREEMENTS.

(a) Not later than six months after the date the receivership proceeding begins, the receiver may terminate any executory contract to which the state trust company is a party, or any obligation of the state trust company as a lessee. A lessor who receives notice of the receiver's election to terminate the lease before the 60th day preceding the termination date is not entitled to rent or damages for termination, other than rent accrued to the date of termination.

(b) An agreement that tends to diminish or defeat the interest of the estate in a state trust company asset is not valid against the receiver unless the agreement:

(1) is in writing;

(2) was executed by the state trust company and any person claiming an adverse interest under the agreement, including the obligor, at the same time as the acquisition of the asset by the state trust company;

(3) was approved by the board of the state trust company or its designated committee, and the approval is reflected in the minutes of the board or committee; and

(4) has been continuously since its execution an official record of the state trust company.

Sec. 7.216. PREFERENCES. (a) Any transfer of or lien on the property or assets of a state trust company is voidable by the receiver if the transfer or lien:

(1) is made or created after:

(A) four months before the date the state trust company is closed for liquidation; or

(B) one year before the date the state trust company is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, manager, managing participant, principal shareholder, or participant of the state trust company or an affiliate of the trust company;

(2) was made or created with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class; and

(3) is accepted by a creditor or depositor having reasonable cause to believe that a preference will occur.

(b) Each state trust company officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, trustee, agent, servant, employee, attorney-in-fact, or correspondent, or other person acting on behalf of the state trust company, who has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the state trust company as a result of the voidable transfer or lien, is personally liable for the property or benefit received and shall account to the receiver for the benefit of the clients and creditors of the state trust company.

(c) The receiver may avoid a transfer of or lien on the property or assets of a state trust company that a client, creditor, shareholder, participant, or participant-transferee of the state trust company could have avoided and may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the state trust company was closed for liquidation.

Sec. 7.217. OTHER POWERS OF RECEIVER; ADMINISTRATIVE EXPENSES. The receiver may employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. The receiver may use personnel of the department if the receiver considers the use to be advantageous or desirable. The expense of employing these persons is an administrative expense of liquidation.

Sec. 7.218. DISPOSAL OF PROPERTY; SETTLING CLAIMS. (a) In the course of liquidating a state trust company, the receiver on order of the court entered with or without hearing may:

(1) sell all or part of the real and personal property of the state trust company;

(2) borrow money and pledge all or part of the assets of the state trust company to secure the debt created, except that the receiver may not be held personally liable to repay borrowed funds;

(3) compromise or compound a doubtful or uncollectible debt or claim owed by or owing to the state trust company; and

(4) enter another agreement on behalf of the state trust company that the receiver considers necessary or proper to the management, conservation, or liquidation of its assets.

(b) If the amount of a debt or claim owed by or owing to the state trust company or the value of an item of property of the trust company does not exceed \$20,000, excluding interest, the receiver may compromise or compound the debt or claim or sell the property on terms the receiver considers to be in the best interests of the state trust company estate without obtaining the approval of the court.

(c) The receiver may with the approval of the court sell or offer or agree to sell an asset of the state trust company, other than fiduciary assets, to a depositor or creditor of the state trust company. Payment may be in whole or in part out of distributions payable to the purchasing creditor or depositor on account of an approved claim against the state trust company's estate. On application by the receiver, the court may designate one or more representatives to act for certain clients or creditors as a class in the purchase, holding, and management of assets purchased by the class under this section, and the receiver may with the approval of the court advance the expenses of the appointed representative against the security of the claims of the class.

Sec. 7.219. DISCRETION OF COURT. If the court requires notice and hearing before entering an order, the court shall fix the time and place of the hearing and prescribe whether the notice is to be given by service on specific parties, by publication, or by a combination of these methods. The court may not enter an order requested by a person other than the receiver without notice to the receiver and an opportunity for the receiver to be heard.

Sec. 7.220. **FILING REPORTS; EXPENSES.** (a) The receiver shall file quarterly reports with the court showing the operation, receipts, expenditures, and general condition of the state trust company in liquidation. The receiver shall also file a final report regarding the liquidated state trust company showing all receipts and expenditures and giving a full explanation and a statement of the disposition of all assets of the state trust company.

(b) The receiver shall pay all administrative expenses out of funds or assets of the state trust company. Each quarter the receiver shall submit an itemized report of those expenses, sworn to by the receiver. The court shall approve the report unless an objection is filed before the 11th day after the date of submission of the account. An objection, if any, may be made only by a party in interest and must specify each item objected to and the ground for the objection. The court shall set the objection for hearing and notify the parties of this action. The objecting party has the burden of proof to show that the item objected to is improper, unnecessary, or excessive.

(c) The court may prescribe whether the notice of the receiver's report is to be given by service on specific parties, by publication, or by a combination of these methods.

Sec. 7.221. **COURT-ORDERED AUDIT.** The court in which the receivership proceeding is pending may order an audit of the books and records of the receiver that relate to the receivership. A report of an audit ordered under this section shall be filed with the court. The receiver shall make the books and records relating to the receivership available to the auditor as required by the court order. The receiver shall pay the expenses of an audit ordered under this section as an administrative expense.

Sec. 7.222. **SAFE DEPOSITS AND OTHER BAILMENTS.** (a) A contract between the state trust company and another person for bailment, of deposit for hire, or for the lease of a safe, vault, or box ceases on the date specified for removal of property in the notices that were published and mailed or a later date approved by the receiver or the court. A person who has paid rental or storage charges for a period extending beyond the date designated as the date for removal of property shall have a claim against the state trust company estate for a refund of any unearned amount paid.

(b) If the property is not removed by the date specified in the notices or by the receiver or the court, the receiver shall inventory the property and may open a safe, vault, or box, or any package, parcel, or receptacle, in the custody or possession of the receiver, to make the inventory. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the state trust company. After all property belonging to others that is in the receiver's custody and control has been inventoried, the receiver shall compile a master list that is divided for each office of the state trust company that received property that remains unclaimed. The receiver shall publish, in a newspaper of general circulation in each community in which the state trust company had an office that received property that remains unclaimed, the list and the names of the owners of the property as shown in the state trust company's records. The published notice shall specify a procedure for claiming the property, unless the court, on application of the receiver, approves an alternate procedure.

Sec. 7.223. FIDUCIARY ACTIVITIES. (a) As soon after beginning the receivership proceeding as is practicable, the receiver shall terminate all fiduciary positions it holds, surrender all property held by it as a fiduciary, and settle the state trust company's fiduciary accounts. The receiver shall release all segregated and identifiable fiduciary property held by the state trust company to successor fiduciaries.

(b) With the approval of the court, the receiver may sell the administration of all or substantially all remaining fiduciary accounts to one or more successor fiduciaries on terms that appear to be in the best interests of the state trust company's estate and the persons interested in the fiduciary accounts.

(c) If commingled fiduciary funds held by the state trust company as trustee are insufficient to satisfy all fiduciary claims to the commingled funds, the receiver shall distribute commingled funds pro rata to all fiduciary claimants of commingled funds based on their proportionate interests after payment of administrative expenses related solely to the fiduciary claims. The fictional tracing rule does not apply.

(d) The receiver may require certain fiduciary claimants to file proofs of claim if the records of the state trust company are insufficient to identify their respective interests.

Sec. 7.224. DISPOSITION AND MAINTENANCE OF RECORDS.

(a) On approval by the court, the receiver may dispose of records of the state trust company in liquidation that are obsolete and unnecessary to the continued administration of the receivership proceeding.

(b) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the state trust company and of the receiver's office, including maintaining those records on any medium approved by the records management division of the Texas State Library.

(c) To maintain the records of a liquidated state trust company after the closing of the receivership proceeding, the receiver may reserve assets of an estate, deposit them in an account, and use them for maintenance, storage, and disposal of records in closed receivership estates.

(d) Records of a liquidated state trust company are not government records for any purpose, including Chapter 552, Government Code, but shall be preserved and disposed of as if they were records of the department under Chapter 441, Government Code. These records are confidential as provided by Subchapter B, Chapter 2, of this Act, rules adopted under this Act, and Section 30.007, Civil Practice and Remedies Code, as added by Chapter 914, Acts of the 74th Legislature, Regular Session, 1995.

Sec. 7.225. RECORDS ADMITTED. (a) A book, record, document, or paper of a state trust company in liquidation obtained by the receiver and held in the course of the receivership proceeding, or a certified copy of such a record under the official seal of the receiver shall be received in evidence in all cases without proof of correctness or other proof, except the certificate of the receiver that the records were received from the custody of the state trust company or found among its effects.

(b) The receiver may certify the correctness of a paper, document, or record of the receiver's office, including those described by Subsection (a) of this section, and may certify any fact contained in the paper, document, or

record. The paper, document, or record shall be received in evidence in all cases in which the original would be evidence.

(c) The original book, record, document, or paper, or a certified copy of such a record is prima facie evidence of the facts it contains.

(d) A copy of an original record or another record that is maintained on a medium approved by the records management division of the Texas State Library, within the scope of this section, and produced by the receiver or the receiver's authorized representative under this section has the same force and effect as the original record and may be used the same as the original record in a judicial or administrative proceeding in this state.

Sec. 7.226. RESUMPTION OF BUSINESS. (a) A state trust company closed under Section 7.201 of this Act may not be reopened without the approval of the banking commissioner unless a contest of liquidation under Section 7.204 of this Act is finally resolved adversely to the banking commissioner and the court authorizes its reopening.

(b) If a state trust company reopens under this section, the banking commissioner may place temporary limits on the right of withdrawals by, or payments to, individual clients and creditors, in accordance with applicable law.

(c) As a depositor or creditor of a reopened state trust company, this state or a political subdivision of this state may agree to temporary limits that the banking commissioner places on payments or withdrawals.

Sec. 7.227. AFTER-DISCOVERED ASSETS. (a) If the banking commissioner discovers, after the receivership has been closed by final order of the court, assets that have value and were abandoned as worthless or unknown during receivership, the banking commissioner shall report the discovery to the court. The court may reopen the receivership proceeding for continued liquidation if the value of the after-discovered assets justifies the reopening.

(b) If the banking commissioner suspects that the information may have been intentionally or fraudulently concealed, the banking commissioner shall notify appropriate civil and criminal authorities to determine what penalties, if any, may be available.

[Sections 7.228-7.300 reserved for expansion]

SUBCHAPTER D. CLAIMS AGAINST RECEIVERSHIP ESTATE

Sec. 7.301. FILING CLAIMS. (a) A person other than a shareholder, participant, or participant-transferee acting in that capacity who has a claim against a state trust company in liquidation, including a claimant with a secured claim and a claimant under a fiduciary relationship that has been ordered by the receiver to file a claim pursuant to Section 7.223 of this Act, may assert the claim by presenting proof of the claim to the receiver at a place specified by the receiver within the period specified by the receiver under Section 7.205 of this Act. Receipt of the required proof of claim by the receiver is a condition precedent to the payment of a claim. Except as provided by Subsection (b) of this section and Section 7.310(b) of this Act, a claim that is not filed within the period specified by the court may not participate in a distribution of the assets by the receiver. Interest does not accrue on a claim after the date the state trust company is closed for liquidation.

(b) Subject to court approval, the receiver may accept a claim filed after the date specified if the claim is filed with the receiver not later than the 180th

day after the date notice of the claimant's right to file a proof of claim is mailed to the claimant. If accepted and approved, the claim is subordinate to an approved claim of a general creditor.

Sec. 7.302. **PROOF OF CLAIM.** (a) A proof of claim must be a written statement signed by the claimant that includes:

- (1) the claim;
- (2) the consideration for the claim;
- (3) a statement of whether collateral is held or a security interest is asserted against the claim and, if so, a description of the collateral held or security interest asserted;
- (4) any right of priority of payment for the claim or other specific right asserted by the claimant;
- (5) a statement of whether a payment has been made on the claim and, if so, the amount and source of the payment, to the extent known by the claimant;
- (6) a statement that the amount claimed is justly owed by the state trust company in liquidation to the claimant; and
- (7) any other matter that is required by the court in which the receivership is pending.

(b) The receiver may designate the form of the proof of claim. A proof of claim shall be filed under oath unless the oath is waived by the receiver. A proof of claim filed with the receiver is considered filed in an official proceeding for purposes of Chapter 37, Penal Code.

(c) If a claim is founded on an instrument in writing, the original instrument, unless lost or destroyed, shall be filed with the proof of claim. After the instrument is filed, the receiver may permit the claimant to substitute a copy of the instrument until the final disposition of the claim. If the instrument is lost or destroyed, a statement of that fact and of the circumstances of the loss or destruction shall be filed under oath with the claim.

Sec. 7.303. **JUDGMENT AS PROOF OF CLAIM.** A judgment entered against a state trust company before the date the state trust company was closed for liquidation may not be given higher priority than an unsecured creditor unless the judgment creditor in a proof of claim proves the allegations supporting the judgment to the receiver's satisfaction. A judgment against the state trust company entered after the date the state trust company was closed for liquidation may not be considered as evidence of liability or of the amount of damages. A judgment against the state trust company taken by default or by collusion before the date the state trust company was closed for liquidation may not be considered as conclusive evidence of the liability of the state trust company to the judgment creditor or of the amount of damages to which the judgment creditor is entitled.

Sec. 7.304. **SECURED CLAIMS.** (a) The owner of a secured deposit may file a claim as a creditor against a state trust company in liquidation. The value of security shall be determined under supervision of the court by converting the security into money.

(b) The owner of a secured claim against a state trust company in liquidation may surrender the security and file a claim as a general creditor or apply the security to the claim and discharge the claim. If the owner applies the security and discharges the claim, any deficiency shall be treated as a claim

against the general assets of the state trust company on the same basis as a claim of an unsecured creditor. The amount of the deficiency shall be determined as provided by Section 7.305 of this Act, except that if the amount of the deficiency has been adjudicated by a court of competent jurisdiction in a proceeding in which the receiver has had notice and an opportunity to be heard, the court's decision is conclusive as to the amount.

(c) The value of security held by a secured creditor shall be determined under supervision of the court by:

(1) converting the security into money according to the terms of the agreement under which the security was delivered to the creditor; or

(2) agreement, arbitration, compromise, or litigation between the creditor and the receiver.

Sec. 7.305. UNLIQUIDATED OR UNDETERMINED CLAIMS. (a) A claim based on an unliquidated or undetermined demand shall be filed within the period provided by Subchapter C of this chapter for the filing of a claim. The claim may not share in any distribution to claimants until the claim is definitely liquidated, determined, and allowed. After the claim is liquidated, determined, and allowed, the claim shares ratably with the claims of the same class in all subsequent distributions.

(b) For the purposes of this section, a demand is considered unliquidated or undetermined if the right of action on the demand accrued while a state trust company was closed for liquidation and the liability on the demand has not been determined or the amount of the demand has not been liquidated.

(c) If the receiver in all other respects is in a position to close the receivership proceeding, the proposed closing is sufficient grounds for the rejection of any remaining claim based on an unliquidated or undetermined demand. The receiver shall notify the claimant of the intention to close the proceeding. If the demand is not liquidated or determined before the 61st day after the date of the notice, the receiver may reject the claim.

Sec. 7.306. SET-OFF. (a) Mutual credits and mutual debts shall be set off and only the balance allowed or paid, except that a set-off may not be allowed in favor of a person if:

(1) the obligation of a state trust company to the person did not on the date the state trust company was closed for liquidation entitle the person to share as a claimant in the assets of the state trust company;

(2) the obligation of the state trust company to the person was purchased by or transferred to the person after the date the state trust company was closed for liquidation or for the purpose of increasing set-off rights; or

(3) the obligation of the person or the state trust company is as a trustee or fiduciary.

(b) On request, the receiver shall provide a person with an accounting statement identifying each debt that is due and payable. If a person owes a state trust company an amount that is due and payable against which the person asserts set-off of mutual credits that may become due and payable from the state trust company in the future, the person shall promptly pay to the receiver the amount due and payable. The receiver shall promptly refund, to the extent of the person's prior payment, mutual credits that become due and payable to the person by the state trust company in liquidation.

Sec. 7.307. ACTION ON CLAIMS. (a) Not later than six months after the last day permitted for the filing of claims or a later date allowed by the court, the receiver shall accept or reject each filed claim in whole or in part, except for an unliquidated or undetermined claim governed by Section 7.305 of this Act. The receiver may approve or reject a claim filed against a state trust company in liquidation, and shall reject a claim if the receiver doubts its validity.

(b) The receiver shall mail written notice to each claimant, specifying the disposition of the person's claim. If a claim is rejected in whole or in part, the receiver in the notice shall specify the basis for rejection and advise the claimant of the procedures and deadline for appeal.

(c) The receiver shall send each claimant a summary schedule of approved and rejected claims by priority class and notify the claimant:

(1) that a copy of a schedule of claims disposition including only the name of the claimant, the amount of the claim allowed, and the amount of the claim rejected is available on request; and

(2) of the procedure and deadline for filing objection to an approved claim.

(d) The receiver and the receiver's agents and employees, including employees of the department, are not liable for and a cause of action may not be brought against any of them for an action taken or not taken by them relating to the adjustment, negotiation, or settlement of claims.

Sec. 7.308. OBJECTION TO APPROVED CLAIM. On or before the date specified for objection to an approved claim, which shall be set by the receiver with court approval, a depositor, creditor, other claimant, shareholder, participant, or participant-transferee of the state trust company may file an objection to an approved claim. The objection shall be heard and determined by the court. If the objection is sustained, the court shall direct an appropriate modification of the schedule.

Sec. 7.309. APPEAL OF REJECTED CLAIM. If an action on a rejected claim is not brought in the court in which the receivership proceeding is pending within three months after the date of service of notice, the action of the receiver is final and not subject to review. If the action is timely brought, review is de novo as if originally filed in the court and subject to the rules of procedure and appeal applicable to civil cases. This action is separate from the receivership proceeding and is not initiated by a claimant's attempt to appeal the action of the receiver by intervening in the receivership proceeding.

Sec. 7.310. PAYMENT OF CLAIMS. (a) Except as expressly provided otherwise by this subchapter or Subchapter C of this chapter, without the approval of the court the receiver may not make a payment on a claim, other than a claim for an obligation incurred by the receiver for administrative expenses.

(b) The banking commissioner shall deposit in one or more banks located in this state all funds available for the benefit of nonclaiming depositors and creditors. The banking commissioner shall pay the depositors or creditors on demand any amount held for their benefit.

(c) After all objections have been heard and decided as provided by Section 7.308 of this Act, the time for filing appeals has expired as provided by Section 7.309 of this Act, and funds have been made available to provide

for the payment of all nonclaiming depositors and creditors in accordance with Subsection (b) of this section, the receiver may periodically make partial distribution to the holders of approved claims if a proper reserve is established for the pro rata payment of rejected claims that have been appealed and any claims based on unliquidated or undetermined demands governed by Section 7.305 of this Act.

(d) As soon as practicable after the determination of all objections, appeals, and claims based on previously unliquidated or undetermined demands governed by Section 7.305 of this Act and funds have been made available to provide for the payment of all nonclaiming depositors and creditors in accordance with Subsection (b) of this section, the receiver shall distribute the assets of the state trust company in satisfaction of approved claims other than claims asserted in a person's capacity as a shareholder, participant, or participant-transferee.

Sec. 7.311. PRIORITY OF CLAIMS AGAINST INSURED STATE TRUST COMPANY. The distribution of assets from the estate of a state trust company the trust deposits of which are insured by the Federal Deposit Insurance Corporation or its successor shall be made in the same order of priority as assets would be distributed on liquidation or purchase of assets and assumption of liabilities of a national bank under federal law.

Sec. 7.312. PRIORITY OF CLAIMS AGAINST UNINSURED STATE TRUST COMPANY. (a) The priority of distribution of assets from the estate of a state trust company the trust deposits of which are not insured by the Federal Deposit Insurance Corporation or its successor shall be in accordance with the order of each class as provided by this section. Every claim in each class shall be paid in full, or adequate funds shall be retained for that payment, before the members of the next class receive any payment. A subclass may not be established within a class, except for a preference or subordination within a class expressly created by contract or other instrument or in the articles of association.

(b) Assets shall be distributed in the following order of priority:

- (1) administrative expenses;
- (2) approved claims of secured trust deposits to the extent of the value of the security as provided by Section 7.304(a) of this Act;
- (3) approved claims of secured creditors to the extent of the value of the security as provided by Section 7.304(b) of this Act;
- (4) approved claims by beneficiaries of insufficient commingled fiduciary funds or missing fiduciary property and approved claims of clients of the state trust company;
- (5) other approved claims of general creditors not falling within a higher priority under this section, including unsecured claims for taxes and debts due the federal government or a state or local government;
- (6) approved claims of a type described by Subdivisions (1)-(5) of this subsection that were not filed within the period prescribed by this subchapter; and
- (7) claims of capital note or debenture holders or holders of similar obligations and proprietary claims of shareholders, participants, participant-transferees, or other owners according to the terms established by issue, class, or series.

(c) Subject to Sections 7.310 and 7.313 of this Act and after fully satisfying all timely filed and approved claims of a higher priority, the banking commissioner may make a ratable distribution to approved claimants within a particular class or priority if there are insufficient funds to fully satisfy all of those claims, after reserving funds for administrative expenses, if necessary.

Sec. 7.313. EXCESS ASSETS. (a) If state trust company assets remain after the receiver has provided for unclaimed distributions and all of the liabilities of the state trust company in liquidation, the receiver shall distribute the remaining assets to the shareholders or participants of the state trust company. If the remaining assets are not liquid or otherwise require continuing administration, the receiver may call a meeting of the shareholders or participants and participant-transferees of the state trust company by giving notice in a newspaper of general circulation in the county where the home office of the state trust company was located and by written notice to the shareholders or participants and participant-transferees of record at their last known addresses.

(b) At the meeting, the shareholders or participants shall appoint one or more agents to take over the affairs to continue the liquidation for the benefit of the shareholders or participants and participant-transferees. Voting privileges are governed by the state trust company's bylaws and articles of association. If a quorum cannot be obtained at the meeting, the banking commissioner shall appoint an agent.

(c) An agent appointed under Subsection (b) of this section shall execute and file with the court a bond approved by the court, conditioned on the faithful performance of all the duties of the trust. Under order of the court the receiver shall transfer and deliver to the agent or agents for continued liquidation under the court's supervision all assets of the state trust company remaining in the receiver's hands, and the court shall discharge the receiver from further liability to the state trust company and its clients, creditors, shareholders, participants, and participant-transferees. The state trust company may not resume business and the charter of the state trust company is void on the date the court issues the order directing the receiver to transfer and deliver the remaining assets of the state trust company to the agent or agents.

Sec. 7.314. UNCLAIMED FUNDS AND PROPERTY. After completion of the liquidation, any unclaimed property remaining in the hands of the receiver shall be tendered to the comptroller as provided by Chapter 74, Property Code.

CHAPTER 8. GENERAL PROVISIONS

- Sec. 8.001. LIABILITIES, DEFENSES, AND INDEMNIFICATION OF CORPORATE OFFICIALS
- Sec. 8.002. ATTACHMENT, INJUNCTION, OR EXECUTION
- Sec. 8.003. SLANDER OR LIBEL OF STATE TRUST COMPANY
- Sec. 8.004. AUTHORITY TO ACT AS NOTARY PUBLIC
- Sec. 8.005. EXEMPTION FROM SECURITIES LAW
- Sec. 8.006. SUCCESSION OF TRUST POWERS
- Sec. 8.007. DISCOVERY OF CLIENT RECORDS
- Sec. 8.008. COMPLIANCE REVIEW COMMITTEE
- Sec. 8.009. PARITY

CHAPTER 8. GENERAL PROVISIONS

Sec. 8.001. LIABILITIES, DEFENSES, AND INDEMNIFICATION OF CORPORATE OFFICIALS. (a) The provisions of the Texas Business Corporation Act regarding liability, defenses, and indemnification of a director, officer, agent, or employee apply to a director, officer, agent, or employee of a state trust company in this state. Except as limited by those provisions, a disinterested director, manager, managing participant, officer, or employee of a state trust company may not be held personally liable in an action seeking monetary damages arising from the conduct of the state trust company's affairs unless the damages resulted from the gross negligence or wilful or intentional misconduct of the person during the person's term of office with the state trust company.

(b) A director, manager, managing participant, officer, or employee of a state trust company is disinterested with respect to a decision or transaction if the director, manager, managing participant, officer, or employee fully discloses any interest in the decision or transaction and does not participate in the decision or transaction, or if the decision or transaction does not involve:

(1) personal profit for the director, manager, managing participant, officer, or employee through dealing with the state trust company or usurping an opportunity of the trust company;

(2) buying or selling assets of the state trust company in a transaction in which the director, manager, managing participant, officer, or employee has a direct or indirect pecuniary interest;

(3) dealing with a state trust company or other person in which the director, manager, managing participant, officer, or employee is also a director, manager, managing participant, officer, or employee or otherwise has a significant direct or indirect financial interest; or

(4) dealing with a family member of the director, manager, managing participant, officer, or employee.

(c) A director, manager, managing participant, or officer who, in performing the person's duties and functions, acts in good faith and reasonably believes that reliance is warranted is entitled to rely on information or an opinion, report, statement, including a financial statement or other financial data, decision, judgment, or performance, including a decision, judgment, or performance by a committee, prepared, presented, made, or rendered by:

(1) one or more directors, managers, managing participants, officers, or employees of the state trust company, or of an entity under joint or common control with the state trust company, who the director, manager, managing participant, or officer reasonably believes merits confidence;

(2) legal counsel, a public accountant, or another person who the director, manager, managing participant, or officer reasonably believes merits confidence; or

(3) a committee of the board of which the director, manager, or managing participant is not a member.

(d) In this section, "family member" means a person's:

(1) spouse;

(2) minor child; or

(3) adult child who resides in the person's home.

Sec. 8.002. ATTACHMENT, INJUNCTION, OR EXECUTION. (a) An attachment, injunction, or execution for the purpose of collecting a money judgment or securing a prospective money judgment against a state trust company may not be issued against a state trust company located in this state before the judgment is final and all appeals have been exhausted or foreclosed by law.

(b) This section does not affect an attachment, injunction, execution, or writ of garnishment issued to or served on a state trust company for the purpose of collecting a money judgment or securing a prospective money judgment against a client of or client account in the state trust company.

Sec. 8.003. SLANDER OR LIBEL OF STATE TRUST COMPANY.

(a) A person commits an offense if the person:

(1) knowingly makes, circulates, or transmits to another person an untrue statement that is derogatory to the financial condition of a state trust company located in this state; or

(2) intentionally, to injure the state trust company, counsels, aids, procures, or induces another person to knowingly make, circulate, or transmit to another person an untrue statement that is derogatory to the financial condition of a state trust company located in this state.

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

Sec. 8.004. AUTHORITY TO ACT AS NOTARY PUBLIC. A notary public is not disqualified from taking an acknowledgment or proof of a written instrument as provided by Section 406.016, Government Code, solely because of the person's ownership of stock or participation interest in or employment by a state trust company that is an interested party in the underlying transaction.

Sec. 8.005. EXEMPTION FROM SECURITIES LAW. (a) An officer, director, manager, managing participant, or employee of a state trust company with fewer than 500 shareholders or participants or a holding company with fewer than 500 shareholders or participants that controls a state trust company is exempt from the registration and licensing provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) with respect to that person's participation in a sale or other transaction involving securities issued by the state trust company or the holding company of which that person is an officer, director, manager, managing participant, or employee.

(b) A person may not be compensated for services performed under the exemption provided by this section.

Sec. 8.006. SUCCESSION OF TRUST POWERS. If a reorganizing or selling state trust company at the time of a merger, reorganization, conversion, or sale of substantially all of its assets under Chapter 3 of this Act or other applicable law is acting as trustee, guardian, executor, or administrator, or in another fiduciary capacity, the successor entity with fiduciary powers may, without the necessity of judicial action or action by the creator of the trust, continue the office, trust, or fiduciary relationship. The successor entity may perform all the duties and exercise all the powers connected with or incidental to the fiduciary relationship in the same manner as if the successor entity had been originally designated as the fiduciary.

Sec. 8.007. DISCOVERY OF CLIENT RECORDS. Civil discovery of a client record maintained by a state trust company is governed by Section

30.007, Civil Practice and Remedies Code, as added by Chapter 914, Acts of the 74th Legislature, Regular Session, 1995.

Sec. 8.008. COMPLIANCE REVIEW COMMITTEE. (a) In this section:

(1) "Civil action" means a civil proceeding pending in a court or other adjudicatory tribunal with jurisdiction to issue a request or subpoena for records, including an alternative dispute resolution mechanism, voluntary or required, under which a party may compel the production of records. The term does not include an examination or enforcement proceeding initiated by the Federal Deposit Insurance Corporation or its successor and the board of governors of the Federal Reserve System or its successor, in exercise of their jurisdiction.

(2) "Compliance review document" means a document prepared for or created by a compliance review committee.

(b) A state trust company or an affiliate of a state trust company, including its holding company, may establish a compliance review committee to test, review, or evaluate the institution's conduct, transactions, or potential transactions for the purpose of monitoring and improving or enforcing compliance with:

(1) a statutory or regulatory requirement;

(2) financial reporting to a governmental agency;

(3) the policies and procedures of the state trust company or its affiliates; or

(4) safe, sound, and fair lending practices.

(c) Except as provided by Subsection (d) of this section:

(1) a compliance review document is confidential and is not discoverable or admissible in evidence in a civil action;

(2) an individual serving on a compliance review committee or acting under the direction of a compliance review committee may not be required to testify in a civil action as to the contents or conclusions of a compliance review document or as to an action taken or discussions conducted by or for a compliance review committee; and

(3) a compliance review document or an action taken or discussion conducted by or for a compliance review committee that is disclosed to a governmental agency remains confidential and is not discoverable or admissible in a civil action.

(d) Subsection (c)(2) of this section does not apply to an individual that has management responsibility for the operations, records, employees, or activities being examined or evaluated by the compliance review committee.

(e) This section does not limit the discovery or admissibility in a civil action of a document that is not a compliance review document.

Sec. 8.009. PARITY. (a) A state trust company has the same rights and privileges with respect to the exercise of fiduciary powers that are or may be granted to a state or national bank that is domiciled in this state and exercising fiduciary powers.

(b) A state trust company that intends to exercise a right or privilege with respect to the exercise of fiduciary powers granted to a regulated financial institution described in Subsection (a) of this section that is not authorized for state trust companies under the statutes and rules of this state shall submit a letter to the banking commissioner, describing in detail the activity in which

the state trust company intends to engage and the specific authority for the regulated financial institution described in Subsection (a) to undertake the proposed activity and shall attach copies, if available, of relevant state and federal law, including regulations and interpretive letters. The state trust company may begin to perform the proposed activity after the 30th day after the date the banking commissioner receives the state trust company's letter unless the banking commissioner specifies an earlier or later date or prohibits the activity. The banking commissioner may prohibit the state trust company from performing the activity only if the banking commissioner finds that:

(1) a regulated financial institution described in Subsection (a) of this section that is domiciled in this state does not possess the specific right or privilege to perform the activity the state trust company seeks to perform; or

(2) the performance of the activity by the state trust company would adversely affect the safety and soundness of the requesting state trust company.

(c) The banking commissioner may extend the 30-day period under Subsection (b) of this section if the banking commissioner determines that the state trust company's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the state trust company may perform the proposed activity only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed activity or convene a hearing under Section 3.009 of this Act not later than the 60th day after the date the commissioner receives the state trust company's letter. If a hearing is convened under Section 3.009 of this Act, the banking commissioner must approve or prohibit the proposed activity not later than the 30th day after the date the hearing is completed.

(d) A state trust company that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section may appeal as provided by Section 3.010 of this Act or may resubmit a letter under this subsection with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

(e) The finance commission may adopt rules implementing the method or manner in which a state trust company exercises specific rights and privileges, including rules regarding the exercise of rights and privileges that would be prohibited to state trust companies. The finance commission may not adopt rules under this subsection unless it finds that:

(1) regulated financial institutions described in Subsection (a) of this section that are domiciled in this state possess the rights or privileges to perform activities the rules would permit state trust companies to perform; and

(2) the rules contain adequate safeguards and controls, consistent with safety and soundness, to address the concern of the legislature evidenced by the state law the rules would impact.

(f) The exercise of rights and privileges by a state trust company in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

SECTION 2. Section 2001.223, Government Code, is amended to read as follows:

Sec. 2001.223. Exceptions From Declaratory Judgment, Court Enforcement,

and Contested Case Provisions. Section 2001.038 and Subchapters C through H do not apply to:

(1) the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the Texas Department of Human Services;

(2) action by the Banking Commissioner or the Finance Commission of Texas regarding the issuance of a state bank or state trust company charter for a bank or trust company to assume the assets and liabilities of a financial institution that the commissioner considers to be in hazardous condition as defined by Section 1.002(a), Texas Banking Act (Article 342-1.002, Vernon's Texas Civil Statutes), or Section 1.002(a), Texas Trust Company Act, as applicable;

(3) a hearing or interview conducted by the Board of Pardons and Paroles or the pardons and paroles division of the Texas Department of Criminal Justice relating to the grant, rescission, or revocation of parole or other form of administrative release; or

(4) the suspension, revocation, or termination of the certification of a breath analysis operator or technical supervisor under the rules of the Department of Public Safety.

SECTION 3. Section 712.0441(h), Health and Safety Code, is amended to read as follows:

(h) If a fund is misappropriated by its trustee or is not otherwise handled as required by this chapter, the commissioner may take action against the trustee as provided in Chapter 6, Texas Trust Company Act [Articles 342-1104 and 342-1105 of The Texas Banking Code] .

SECTION 4. Section 1, Article 9.05, Insurance Code, is amended to read as follows:

Sec. 1. Any corporation heretofore chartered under the provisions of Article 9.03 of this Act, or its antecedents, Article 9.01, Texas Insurance Code, or Chapter 40, Acts, 41st Legislature, 1929 (codified as Article 1302a, Vernon's Texas Civil Statutes), having as one of its powers "to act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter, as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court" may transfer and assign to a state bank [~~or trust company~~] created under the provisions of the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes) or a predecessor of that Act, as amended, or to a state trust company created under the provisions of the Texas Trust Company Act or a predecessor of that Act, as amended, all of its fiduciary business in which such corporation is named or acting as guardian, trustee, executor, administrator or in any other fiduciary capacity, whereupon said state bank or trust company shall, without the necessity of any judicial action in the courts of the State of Texas or any action by the creator or beneficiary of such trust or estate, continue the guardianship, trusteeship, executorship, administration or other fiduciary relationship, and perform all of the duties and obligations of such corporation, and exercise all of the powers and authority relative thereto now being exercised by such corporation, and provided further that the transfer or assignment by

such corporation of such fiduciary business being conducted by it under the powers granted in its original charter, as amended, shall not constitute or be deemed a resignation or refusal to act upon the part of such corporation as to any such guardianship, trust, executorship, administration, or any other fiduciary capacity; and provided further that the naming or designation by a testator or the creator of a living trust of such corporation to act as trustee, guardian, executor, or in any other fiduciary capacity, shall be considered the naming or designation of the state bank or trust company and authorizing such state bank or trust company to act in said fiduciary capacity. All transfers and assignments of fiduciary business by such corporations to a state bank or trust company consistent with the provisions of this Act are hereby validated.

SECTION 5. Section 105A(c), Texas Probate Code, is amended to read as follows:

(c) No foreign bank or trust company shall establish or maintain any branch office, agency or other place of business within this state, or shall in any way solicit, directly or indirectly, any fiduciary business in this state of the types embraced by subdivision (a) hereof. Except as authorized herein or as may otherwise be authorized by the laws of this state, no foreign bank or trust company shall act in a fiduciary capacity in this state. Nothing in this Section shall be construed to authorize foreign banks and trust companies to issue or to sell or otherwise market or distribute in this state any investment certificates, trust certificates, or other types of securities (including without limiting the generality of the foregoing any securities of the types authorized by Chapter 7 of the Insurance Code of 1951 prior to the repeal thereof), or to conduct any activities or exercise any powers of the type embraced and regulated by the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes) or the Texas Trust Company Act other than those conducted and exercised in a fiduciary capacity under the terms and conditions hereof.

SECTION 6. Section 2.13, Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.13. The name of a savings bank must include the words "State Savings Bank" or the abbreviation "SSB." These words or the abbreviation must be preceded by an appropriate descriptive word or words approved by the commissioner. The commissioner may not approve the incorporation of a savings bank having the same name as another financial institution authorized to do business in this state under this Act, the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), ~~or~~ the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes), or the Texas Trust Company Act or a name so nearly resembling the name of another financial institution as to be calculated to deceive unless the savings bank is formed by the reincorporation, reorganization, or consolidation of the other financial institution or on the sale of the property or franchise of the other savings bank. A person or company, either domestic or foreign, other than a state or federal savings bank, may not do business under a name or title that contains the words "savings bank," that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by a savings bank, or that is calculated to lead any person to believe that its business is that of a savings bank. On application by the commissioner or any savings bank, a court of

competent jurisdiction may issue an injunction to restrain a person or company from violating this section.

SECTION 7. Article 7.06(2), Texas Miscellaneous Corporation Laws Act (Article 1302-7.06, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Corporation" means:

(a) Any corporation, association, or other organization incorporated or organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes) or a predecessor of that Act, the Texas Trust Company Act or a predecessor of that Act, the Insurance Code, the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes), the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes), Articles 1399 through 1407, Revised Statutes, Article 1448, Revised Statutes, Section 2, Chapter 42, Acts of the 42nd Legislature, 3rd Called Session, 1932 (Article 1524c, Vernon's Texas Civil Statutes), the State Housing Law (Article 1528a, Vernon's Texas Civil Statutes), the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes), the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), the Automobile Club Services Act (Article 1528d, Vernon's Texas Civil Statutes), the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), the Texas Mutual Trust Investment Company Act (Article 1528i, Vernon's Texas Civil Statutes), Chapter 221, Health and Safety Code, the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes), the Cultural Education Facilities Corporation Act (Article 1528m, Vernon's Texas Civil Statutes), Chapter 262, Health and Safety Code, Chapter 264, Health and Safety Code, Title 4, Agriculture [~~Agricultural~~] Code, Subchapter A, Chapter 301, Health and Safety Code, Subchapter B, Chapter 301, Health and Safety Code, or the Higher Education Authority Act, Chapter 53, Education Code;

(b) Any corporation, association, or other organization incorporated or organized under the laws of this state that is governed in whole or in part by the Texas Business Corporation Act, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes); or

(c) To the extent permitted by federal law, any federally chartered bank, savings and loan association, or credit union.

SECTION 8. Section 6, Acts of the 60th Legislature, Regular Session, 1967 (Article 5069-50.04, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. The provisions of this Act are cumulative of the Texas Banking Act; the Texas Trust Company Act; the "Texas Savings and Loan Act," as amended; and Articles 2461 through 2484, Revised Civil Statutes of Texas,

1925, as amended and the amendments thereto, and Section 5 of House Bill No. 47, Acts of the 46th Legislature, Regular Session, 1939, and Chapter 173, Acts of the 51st Legislature, Regular Session, 1949, relating to Credit Unions and the amendments thereto.

SECTION 9. Article 2.31, Texas Non-Profit Corporation Act (Article 1396-2.31, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.31. POWER TO SERVE AS TRUSTEE. A corporation that is described by Section 501(c)(3) or 170(c), Internal Revenue Code of 1986, or a corresponding provision of a subsequent federal tax law, or a corporation listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, may serve as the trustee of a trust:

(1) of which the corporation is a beneficiary; or

(2) benefiting another organization described by one of those sections of the Internal Revenue Code of 1986, or a corresponding provision of a subsequent federal tax law, or listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78. ~~[if the service as trustee is in furtherance of the purposes for which the corporation was formed].~~

SECTION 10. Chapter XI, The Texas Banking Code (Article 342-1101 et seq., Vernon's Texas Civil Statutes), is repealed.

SECTION 11. A change in law made by this Act does not affect:

(1) the validity of any action taken by the Finance Commission of Texas or banking commissioner of Texas before the effective date of this Act; or

(2) a civil, criminal, or administrative proceeding completed before the effective date of this Act.

SECTION 12. A trust company that exists on the effective date of this Act retains the powers provided by its charter and is subject to the jurisdiction and control of the banking commissioner of Texas as if it were a trust company chartered under the Texas Trust Company Act, as added by this Act.

SECTION 13. (a) The changes in criminal law made by this Act apply only to 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 that date.

(b) The repeal of a criminal law made by this Act does not apply to an offense committed under the repealed law before the effective date of this Act.

(c) 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 that purpose.

SECTION 14. A principal shareholder or participant that is considered to control a state trust company under Section 4.001(a), Texas Trust Company Act, as added by this Act, is not required to file a change of control application under Section 4.002, Texas Trust Company Act, as added by this Act, until the person acquires one or more additional shares or participation shares of the state trust company on or after the effective date of this Act.

SECTION 15. The changes in civil enforcement provisions, penalties, and procedures made by Chapter 6, Texas Trust Company Act, as added by this Act, do not apply to a civil enforcement proceeding begun by the service of a

notice for hearing or proposed civil enforcement order by the banking commissioner before the effective date of this Act. That proceeding is governed by the law in effect when the proceeding was begun, and that law is continued in effect for that purpose.

SECTION 16. (a) If this Act conflicts with another Act of the 75th Legislature, Regular Session, 1997, other than an Act adopting a nonsubstantive revision of statutes relating to financial institutions and practices:

(1) the change in law made in the other Act prevails and the substance of the change is given effect as part of the Texas Trust Company Act adopted by this Act unless:

(A) this Act or the conflicting Act expressly provides otherwise; or

(B) it is not possible to give the conflicting law effect within the context of the Texas Trust Company Act, in which event the Texas Trust Company Act prevails; and

(2) the text of a law that is reenacted in the other Act only because of the constitutional requirement that the amended law be reenacted at length is superseded by this Act.

(b) If this Act conflicts with an Act of the 75th Legislature, Regular Session, 1997, adopting a nonsubstantive revision of statutes relating to financial institutions and practices, this Act prevails.

(c) If this Act and another Act of the 75th Legislature, Regular Session, 1997, make the same substantive change from the current law but differ in text, this Act prevails regardless of the relative dates of enactment.

SECTION 17. SEVERABILITY. If any provision of this Act or its application to any person, entity or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 18. This Act takes effect September 1, 1997, except that Section 3.022(16), Texas Trust Company Act, as added by this Act, and Article 2.31, Texas Non-Profit Corporation Act (Article 1396-2.31, Vernon's Texas Civil Statutes), as amended by this Act, take effect immediately, and apply to all corporations serving as trustee of a charitable trust before, on, or after the effective date of this Act, including all corporations whose status as trustee of a charitable trust is the subject of litigation or proceedings pending before, on, or after the effective date of this Act.

SECTION 19. 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.

HB 2519 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Gallego called up with senate amendments for consideration at this time,

HB 2519, A bill to be entitled An Act relating to special license plates benefitting Big Bend National Park.

On motion of Representative Gallego, the house concurred in the senate amendments to **HB 2519**.

Senate Amendment No. 1

Amend **HB 2519** as follows:

(1) In the introductory language to SECTION 1 of the bill (Committee printing, page 1, line 12), strike "502.292" and substitute "502.295".

(2) In the section number of Section 502.292, Transportation Code, as added by SECTION 1 of the bill, strike "502.292" (Committee printing, page 1, line 13) and substitute "502.295".

(3) In Section 502.292(d)(2), Transportation Code, as added by SECTION 1 of the bill, between "502.161" and the first comma (Committee printing, page 1, line 36), insert "or 502.162".

**HB 2683 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative Dukes called up with senate amendments for consideration at this time,

HB 2683, A bill to be entitled An Act relating to subdivision descriptions in contracts to convey real property.

On motion of Representative Dukes, the house concurred in the senate amendments to **HB 2683**.

Senate Amendment No. 1

Amend **HB 2683** in SECTION 1 of the bill, in added Section 12.002(d), Property Code (committee printing, page 1, line 23), by inserting between "(d)" and "Subsection (c)", "Except in the case of a subdivision located in an affected county, as defined by Section 232.021, Local Government Code,".

**HB 2918 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

Representative Place called up with senate amendments for consideration at this time,

HB 2918, A bill to be entitled An Act relating to the extension of a period of supervision under community supervision for a defendant charged with or convicted of certain sexual or sexually assaultive offenses, to the publication of notice under the sex offender registration program, and to the classification of inmates in the custody of the Texas Department of Criminal Justice on the basis of need for treatment.

Representative Place 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 **HB 2918**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2918**: Place, chair, Farrar, Talton, Edwards, and A. Reyna.

**MAJOR STATE CALENDAR
SENATE BILLS
THIRD READING**

The following bills were laid before the house and read third time:

**SB 361 ON THIRD READING
(Gray - House Sponsor)**

SB 361, A bill to be entitled An Act relating to the continuation and functions of the Texas State Board of Acupuncture Examiners; providing penalties.

SB 361 was passed.

**MAJOR STATE CALENDAR
(consideration considered)**

The following bills were laid before the house and read second time:

**SB 353 ON SECOND READING
(Hightower - House Sponsor)**

SB 353, A bill to be entitled An Act relating to the continuation and functions of the adjutant general's department.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Pitts, Representative Hightower offered the following committee amendment to **SB 353**:

Amend **SB 353**, as engrossed, as follows:

(1) On page 6, line 1, after the word "state" strike "guidelines" and substitute "laws, rules, regulations, and instructions directly promulgated from those laws, rules, and regulations"

(2) On page 6, line 4, after the word "state" strike "guidelines" and substitute "laws, rules, regulations, and instructions directly promulgated from those laws, rules, and regulations"

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Hightower offered the following amendment to **SB 353**:

Amend **SB 353** as follows:

(1) Between Sections 5 and 6 of the bill (house committee printing, page 4, between lines 19 and 20), insert the following appropriately numbered section:

SECTION __. Section 431.026(c), Government Code, is amended to read as follows:

(c) An assistant or deputy assistant adjutant general has the rank prescribed by the governor, not to exceed the grade authorized for federal recognition in the position, [of brigadier general] and is entitled to the rights, privileges, and immunities granted officers of that rank in the Texas National Guard. The assistant or deputy assistant adjutant general may be removed from office by the governor.

(2) Renumber sections of the bill accordingly.

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Hightower offered the following amendment to **SB 353**:

Amend **SB 353** as follows:

(1) Between Sections 10 and 11 of the bill (house committee printing, page 9, between lines 14 and 15), insert the following appropriately numbered section:

SECTION _____. Section 431.042, Government Code, is amended to read as follows:

Sec. 431.042. OFFICERS. ~~[(a)]~~ An officer of the Texas National Guard is appointed and commissioned by the governor. To be qualified for appointment a person must be ~~[a United States and Texas citizen and must be]~~ qualified under United States law and regulations. The officer shall take and subscribe the official oath.

~~[(b) An officer is entitled to hold the position until the officer reaches 64 years of age, unless earlier discharged or retired because of:~~

~~[(1) resignation;~~

~~[(2) administrative regulation;~~

~~[(3) individual application;~~

~~[(4) disability; or~~

~~[(5) cause determined by a court-martial or efficiency board legally convened for that purpose.]~~

(2) Renumber sections of the bill accordingly.

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative Hightower offered the following amendment to **SB 353**:

Amend **SB 353** as follows:

(1) Between Sections 10 and 11 of the bill (house committee printing, page 9, between lines 14 and 15), insert the following appropriately numbered section:

SECTION _____. Section 432.109(g), Government Code, is amended to read as follows:

(g) An accused ~~[, not later than the 60th day after the date he receives actual notice of the final action on his case,]~~ may petition the Texas Court of Military Appeals for review of a court-martial conviction~~[-The court shall act on the petition]~~ not later than the 60th day after the date the accused or the accused's counsel is notified of the final action on the accused's case, whichever date is earlier ~~[the petition is received]~~. If the court fails or refuses to grant the petition for review, the final action of the convening authority is considered approved. If the court grants a petition for review ~~[Notwithstanding any other provision of this chapter, on the court granting a hearing of an appeal]~~, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this chapter until the court's final decision on the case.

(2) Renumber sections of the bill accordingly.

Amendment No. 4 was adopted without objection.

SB 353, as amended, was passed to third reading. (Burnam recorded voting present, not voting)

RULES SUSPENDED

Representative Berlanga moved to suspend the 5-day posting rule to allow the Committee on Public Health to consider **SB 1774**.

The motion prevailed without objection.

Representative Smithee moved to suspend the 5-day posting rule to allow the Committee on Insurance to consider **SB 1446**, **SB 1565**, **SB 1894**, and **SB 1897**.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Public Education, on noon recess today, Desk 102.

Conference Committee on **HB 4** and **HJR 4**, 3 p.m. today, appropriations committee room.

Public Health, on noon recess today, Desk 138.

Business and Industry, on noon recess today, Desk 3.

Criminal Jurisprudence, on noon recess today, Desk 46, to consider Senate bills in committee.

State, Federal, and International Relations, on noon recess today, Desk 128, to consider pending business.

RECESS

Representative D. Jones moved that the house recess until 1:30 p.m. today.

The motion prevailed without objection.

The house accordingly, at 12:04 p.m., recessed until 1:30 p.m. today.

AFTERNOON SESSION

The house met at 1:30 p.m. and was called to order by the speaker.

LEAVES OF ABSENCE GRANTED

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

West on motion of Hochberg.

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

Coleman on motion of Gallego.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

MAJOR STATE CALENDAR
(consideration continued)
CSSB 35 ON SECOND READING
(Place and Brimer - House Sponsors)

CSSB 35, A bill to be entitled An Act relating to operating a vehicle while intoxicated or under the influence of alcohol by a minor and other actions of a minor concerning the acquisition, possession, and use of alcohol; providing penalties.

Amendment No. 1

Representative Place offered the following amendment to **CSSB 35**:

Amend **CSSB 35** at page 16, Lines 23 through 27, and Page 17, Lines 1 and 2, by deleting Subsection (d), and inserting the following Subsection (d):

(d) A child taken into custody as provided in Subsection (c) may submit to the taking of a specimen or refuse to submit to the taking of a specimen without the concurrence of an attorney as might otherwise be required by Section 51.09(a), Family Code.

(Culberson in the chair)

Amendment No. 1 was withdrawn.

Amendment No. 2

Representative Raymond offered the following amendment to **CSSB 35**:

Amend **CSSB 35** as follows:

(1) In SECTION 5 of the bill, immediately after proposed Section 106.041(j), Alcoholic Beverage Code (house committee report, page 6, between lines 2 and 3), add the following:

(k) In addition to the penalty provided by Subsection (b) or (c), if it is shown at the trial of the defendant that the defendant has been previously convicted of an offense under this section, the court shall order that:

(1) the driver's license of the defendant be suspended until the person attains the age of 21 years, or if the person did not hold a valid driver's license on the date of the conviction, the department is prohibited from issuing a driver's license to the person until the person attains the age of 21; and

(2) if during the period of suspension and before the person attains the age of 21 the person's driver's license expires, the department is prohibited from renewing that driver's license or issuing the person a new driver's license until the person attains the age of 21.

(2) Strike SECTION 18 of the bill (house committee report, page 19, line 20, through page 20, line 14) and substitute the following:

SECTION 18. (a) Section 521.342, Transportation Code, is amended to read as follows:

Sec. 521.342. PERSON UNDER 21 YEARS OF AGE. (a) The license of a person who was under 21 years of age at the time of the offense, other than an offense classified as a misdemeanor punishable by fine only, is automatically suspended on conviction of:

(1) an offense under Chapter 49 [~~Section 49.04 or 49.07~~], Penal Code,

involving the operation of a motor vehicle ~~[committed as a result of the introduction of alcohol into the body];~~

(2) an offense under the Alcoholic Beverage Code, other than an offense to which Section 106.071 of that code applies, involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;

(3) a misdemeanor offense under Chapter 481, Health and Safety Code, for which Subchapter P does not require the automatic suspension of the license;

(4) an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug; or

(5) an offense under Chapter 484, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a volatile chemical.

(b) The department shall suspend ~~[for one year]~~ the license of a person who is under 21 years of age and is convicted of an offense under Subsection (a)(1) ~~[Section 49.04, 49.07, or 49.08, Penal Code,]~~ regardless of whether the person is required to attend an educational program under Section 13(h), Article 42.12, Code of Criminal Procedure, that is designed to rehabilitate persons who have operated motor vehicles while intoxicated. If the person is required to attend such a program and does not complete the program before the end of the person's suspension, the department shall continue the suspension until the department receives proof that the person has successfully completed the program. A person who completes the program may submit proof of the completion to the clerk of the convicting court. The clerk shall send the proof to the department in the manner provided by Section 13(h), Article 42.12, Code of Criminal Procedure.

(c) Except as provided by Subsection (b), the period of a suspension under Subsection (a)(1) continues until the person attains the age of 21 years. If during the period of suspension and before the person attains the age of 21 the person's driver's license expires, the department is prohibited from renewing that driver's license or issuing the person a new driver's license until the person attains the age of 21, or if the person did not hold a valid driver's license on the date of the conviction, the department is prohibited from issuing a driver's license to the person until the person attains the age of 21.

(d) A person whose license is suspended under Subsection (a)(2), (3), (4), or (5) ~~[(a)]~~ remains eligible to receive an occupational license under Subchapter L. A person whose license is suspended under Subsection (a)(1) is not eligible to receive an occupational license under that subchapter. Suspension under Subsection (a)(2), (3), (4), or (5) ~~[(a)]~~ is not a suspension for physical or mental disability or impairment for purposes of eligibility to apply for an occupational license under Subchapter L.

(e) Notwithstanding any other law, including Section 13, Article 42.12, Code of Criminal Procedure, the suspension of a license under Subsection (a)(1) may not be probated.

(b) The changes in law made by this section relating to the period of the suspension of a driver's license apply only to a driver's license that is suspended

on or after September 1, 1997. The period of the suspension of a driver's license suspended before September 1, 1997, is covered by the law in effect when the driver's license was suspended and the former law is continued in effect for that purpose.

(Speaker in the chair)

Representative Goodman moved to table Amendment No. 2.

A record vote was requested.

The motion to table prevailed by (Record 459): 81 Yeas, 53 Nays, 1 Present, not voting.

Yeas — Alexander; Alvarado; Bailey; Berlanga; Bosse; Brimer; Carter; Chavez; Counts; Danburg; Davila; Davis; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Farrar; Gallego; Garcia; Giddings; Glaze; Goodman; Gray; Greenberg; Grusendorf; Gutierrez; Hawley; Hernandez; Hightower; Hinojosa; Hirschi; Hochberg; Holzheuser; Hunter; Janek; Jones, J.; Junell; Keel; Keffer; Lewis, G.; Lewis, R.; Luna; Madden; Maxey; McCall; McClendon; McReynolds; Naishtat; Oakley; Olivo; Pickett; Place; Puente; Ramsay; Rangel; Reyna, A.; Rhodes; Sadler; Seaman; Serna; Shields; Siebert; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Uher; Van de Putte; Walker; Williams; Williamson; Wilson; Wise; Yarbrough.

Nays — Allen; Averitt; Bonnen; Burnam; Chisum; Christian; Clark; Corte; Crabb; Craddick; Cuellar; Culbertson; Delisi; Denny; Ehrhardt; Finnell; Flores; Galloway; Goolsby; Hamric; Hartnett; Heflin; Hilbert; Hilderbran; Hill; Horn; Howard; Isett; Jackson; Jones, D.; Kamel; King; Krusee; Kubiak; Kuempel; Longoria; Marchant; Merritt; Moffat; Mowery; Nixon; Oliveira; Palmer; Pitts; Price; Raymond; Reyna, E.; Smith; Solis; Turner, S.; Wohlgemuth; Woolley; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; West.

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Rabuck; Roman; Swinford; Turner, B.

Absent — Haggerty; Hodge; Moreno; Smithee; Wolens.

Amendment No. 3

Representative Rhodes offered the following amendment to **CSSB 35**:

Amend **CSSB 35** by adding the following at the end of SECTION 5 of the bill:

(k) It is a defense to prosecution for an offense charged under this section if the minor had a detectable amount of alcohol in the minor's system solely because the minor consumed the alcohol as part of a legitimate religious ceremony or practice.

Representative Place moved to table Amendment No. 3.

The motion to table prevailed.

CSSB 35 was passed to third reading. (Dutton and Uher recorded voting no)

INTRODUCTION OF GUEST

The speaker recognized Representative McClendon, who introduced Dr. Frank Bryant.

HR 474, congratulating Dr. Frank Bryant on his receipt of the Outstanding Citizenship Award, having been previously adopted, was read.

CSSB 370 ON SECOND READING

(Bosse, Gray, and Alexander - House Sponsors)

CSSB 370, A bill to be entitled An Act relating to the continuation and functions of the Texas Department of Transportation, the abolition of the Texas Turnpike Authority, and the creation of regional tollway authorities; authorizing the issuance of bonds and the imposition of taxes; granting the power of eminent domain; and providing civil penalties.

(Dutton in the chair)

Amendment No. 1

Representative Bosse offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Section 1.23, Section 223.041, Transportation Code, as follows:

1. In subsection (b), between "setting" and "level" delete "the" and insert "a minimum"

2. In subsection (c), between "reaches a" and "of 35" delete "goal" and insert "minimum"

3. In subsection (c) delete "enacted by the 75th Legislature at its regular session in 1997" and insert "for that biennium"

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Bosse offered the following amendment to **CSSB 370**:

CSSB 370 is amended by inserting a new section 1.35 to read as follows and renumbering the current section 1.35 and all following sections as appropriate:

SECTION 1.35. Section 365.013, Transportation Code, is amended to read as follows:

SECTION 365.013. Nature and Location of Road and Structure.

(a) A toll road must be all or part of a state highway or a major arterial road that connects two state highways, two federal highways, or a combination of state and federal highways.

(b) A district may not construct a toll structure within two miles of the intersection of the toll road and a federal highway unless the toll structure is located in a county with a population of at least 2.1 million or a county adjacent thereto.

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

(1) In Article 1 of the bill add a new appropriately numbered section to read as follows and renumber the remaining sections as appropriate:

SECTION 1.____. Section 201.051(e), Transportation Code, is repealed.

(2) In SECTION 7.06 of the bill, amended Section 361.033(a)(3), Transportation Code (page 59, lines 19-20, house committee report), strike ", other than compensation for acquisition of turnpike right-of-way" and substitute "[~~other than compensation for acquisition of turnpike right-of-way~~]".

(3) In SECTION 7.25 of the bill, proposed Section 366.260, Transportation Code (page 124, lines 19-20, house committee report), strike Subsection (c).

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows and renumbering subsequent sections appropriately:

SECTION _____. Subchapter A, Chapter 201, Transportation Code, is amended by adding Section 201.004 to read as follows:

Sec. 201.004. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE; PENALTY. (a) A person who is a member of the commission or an employee of the department commits an offense if the person accepts a gift, gratuity, or other thing of value, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) An offense under Subsection (a) is a Class A misdemeanor.

Representative Bosse moved to table Amendment No. 4.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 4 and the vote was announced yeas 68, nays 63.

A verification of the vote was requested and was granted.

The roll of those voting yea was again called and the verified vote resulted, as follows (Record 460): 67 Yeas, 66 Nays, 3 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bosse; Brimer; Carter; Chisum; Christian; Clark; Corte; Crabb; Delisi; Denny; Driver; Eiland; Elkins; Gallego; Glaze; Goodman; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Junell; King; Kuempel; Lewis, R.; Madden; Marchant; McCall; McReynolds; Moffat; Mowery; Nixon; Palmer; Pickett; Pitts; Place; Ramsay; Reyna, E.; Rhodes; Serna; Siebert; Smith; Solomons; Staples; Telford; Uher; Walker; Williamson; Wohlgemuth; Zbranek.

Nays — Alvarado; Bailey; Berlanga; Bonnen; Burnam; Chavez; Counts; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Dukes; Dunnam; Edwards; Ehrhardt; Farrar; Finnell; Flores; Galloway; Garcia; Giddings; Greenberg; Hamric; Hartnett; Hawley; Hinojosa; Hirschi; Hochberg; Hodge; Jones, J.; Kamel; Keel; Keffer; Krusee; Kubiak; Lewis, G.; Luna; Maxey; McClendon; Merritt; Moreno; Naishtat; Oliveira; Olivo; Price; Puente; Rangel; Raymond; Reyna, A.; Seaman; Shields; Solis; Talton; Thompson; Tillery; Torres; Turner, S.; Van de Putte; Williams; Wilson; Wise; Wolens; Woolley; Yarbrough.

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

Absent, Excused — Coleman; West.

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Rabuck; Roman; Swinford; Turner, B.

Absent — Longoria; Oakley; Sadler; Smithee.

By unanimous consent, the house dispensed with the verification of those voting nay.

The chair stated that the motion to table Amendment No. 4 prevailed by the above vote.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 460. I intended to vote no.

Grusendorf

I was shown voting yes on Record No. 460. I intended to vote no.

Hilderbran

I was shown voting yes on Record No. 460. I intended to vote no.

McCall

I was shown voting yes on Record No. 460. I intended to vote no.

Solomons

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

CSSB 370 - (consideration continued)**Amendment No. 5**

Representative Berlanga offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding new Section 1.07, and renumbering other sections in Article 1 accordingly:

SECTION 1.07. Section 201.301(a), Transportation Code, is amended to read as follows:

(a) The commission shall ~~employ~~ ~~elect~~ an executive director for the department. The director ~~may~~ ~~must~~ be a registered professional engineer in this state and must have demonstrated executive and organizational ability experienced and skilled in transportation planning, development, construction and maintenance.

Representative Bosse moved to table Amendment No. 5.

The motion to table was lost.

Amendment No. 5 was adopted without objection.

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 4** and **HJR 4**:

Sadler on motion of Cuellar.

Brimer on motion of Cuellar.

Craddick on motion of Cuellar.

CSSB 370 - (consideration continued)**Amendment No. 6**

Representative Hochberg offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.610 to read as follows:

Sec. 201.610. HIGHWAY SOUND BARRIERS. The department may erect a sound barrier to reduce the noise from a road or highway in the state highway system at any location the department determines is appropriate, including along the right-of-way of a railroad that runs parallel or adjacent to a road or highway.

(Speaker in the chair)

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative Hochberg offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.611 to read as follows:

Sec. 201.611. COORDINATION OF FLOOD CONTROL. In the construction of its highway projects, the department shall by rule adopt policies and procedures to minimize the impact of flooding. The rules must include provisions for coordination with local flood control authorities.

Amendment No. 7 was adopted without objection.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a meeting of the conference committee on **HB 4** and **HJR 4**:

Hochberg on motion of Bosse.

CSSB 370 - (consideration continued)

Amendment No. 8

Representative Krusee offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 1 of the bill, by adding a new section to Article 1, appropriately numbered, to read as follows, and renumbering subsequent sections of Article 1 accordingly:

SECTION 1.____. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.2035 to read as follows:

Sec. 201.2035. ACCOUNTING STRUCTURE. The department shall create and maintain an accounting structure for roadway and warehouse inventory of the department. The accounting structure must provide for the accounting for lost or destroyed materials.

Amendment No. 8 was adopted without objection.

Amendment No. 9

Representative Krusee offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.708 to read as follows:

Sec. 201.708. USE OF CERTAIN COSTS IN DETERMINING PRIVATIZATION GOALS. The department may not include any costs not directly related to highway maintenance in reporting its compliance with privatization goals established for highway maintenance.

Amendment No. 9 was adopted without objection.

Amendment No. 10

Representative Isett offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Section 201.705(a), Transportation Code, as added by Section 1.11 of the bill, (House committee report, page 6, line 12) between "conduct" and "a", by inserting ", using fully allocated cost accounting,".

Amendment No. 10 was adopted without objection.

Amendment No. 11

Representatives Alexander and Pickett offered the following amendment to **CSSB 370**:

CSSB 370 is amended by inserting a new Section 1.12 to read as follows and renumbering the current Section 1.12 and all following sections as appropriate:

SECTION 1.12. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.706 to read as follows:

Sec. 201.706. Local Government Assistance. From funds appropriated in Strategy A.1.5, routine maintenance, General Appropriations Act, the Department of Transportation shall assist cities and counties with the maintenance of city streets and county roads. The department shall:

(1) when requested by any local government, provide engineering/maintenance expertise on roadway maintenance within available department resources.

(2) make maximum usage of surplus materials on hand by making surplus materials available to any local government needing such materials.

(3) develop rules and procedures in order to implement this section and provide for the equitable distribution of these surplus materials and other assistance with a preference given to counties with an above average number of overweight trucks at a total value of assistance of not less than the assistance provided in the 1996-97 biennium.

(4) undertake cooperative and joint procurement of roadway materials with local governments and General Service Commission procedures.

Amendment No. 11 was adopted without objection.

Amendment No. 12

Representative Carter offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

(1) On page 6, between lines 8 and 9 insert a new SECTION 1.11 of the bill to read as follows:

"SECTION 1.11. Section 201.601, Transportation Code, is amended by adding new subsections (c) and (d) as follows:

(c) This plan shall designate that the use of land at an airport, owned jointly by two or more populous home-rule municipalities and operated by a joint airport board, shall be considered a land use that is consistent with an area designated industrial or commercial. For purposes of this code, the use of land at such an airport is consistent with an area designated industrial or commercial and is designated commercial and industrial unless otherwise designated by the proprietor of the airport.

(d) Subsection (c) takes effect on the first day of the calendar month

following the date on which the Texas Transportation Commission determines that the implementation of subsection (c) will not result in the loss of highway-related funds from the federal government. The Commission shall endeavor to make such determination as soon as practical but not later than September 1, 1998."

(2) Renumber remaining SECTIONS of the bill appropriately.

Representative Moffat moved to table Amendment No. 12.

The motion to table prevailed.

Amendment No. 13

Representatives Thompson, Davis, and Tillery offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows and renumbering subsequent sections appropriately:

SECTION _____. Subchapter A, Chapter 201, Transportation Code, is amended by adding Section 201.004 to read as follows:

Sec. 201.004. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE GREATER THAN FIFTY DOLLARS; PENALTY. (a) A person who is a member of the commission or an employee of the department commits an offense if the person accepts a gift, gratuity, or other thing of value greater than fifty dollars, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 20 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) An offense under Subsection (a) is a Class A misdemeanor.

Representative Bosse moved to table Amendment No. 13.

The motion to table was lost.

Amendment No. 14

Representative Grusendorf offered the following amendment to Amendment No. 13:

Amend the Thompson and Davis Amendment to read as follows:

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows and renumbering subsequent sections appropriately:

SECTION _____. Subchapter A, Chapter 201, Transportation Code, is amended by adding Section 201.004 to read as follows:

Sec. 201.004. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE GREATER THAN FIFTY DOLLARS; PENALTY. (a) A person who is a member of the commission or an employee of the department commits an offense if the person accepts a gift, gratuity, or other thing of value greater than fifty dollars, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) An offense under Subsection (a) is a Class A misdemeanor.

Amendment No. 14 was adopted without objection.

Amendment No. 13, as amended, was adopted without objection.

Amendment No. 15

Representative Jackson offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 1.22 of the bill, proposed Section 223.012, Transportation Code (page 23, lines 22-24, house committee report), by striking Subdivision (2) and substituting the following:

(2) develop and review a contractor bidding system that ensures contractors meet each quality, safety, and timeliness standard established by the commission.

Amendment No. 15 was adopted without objection.

Amendment No. 16

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 1.23 of the bill, proposed Section 223.041(c), Transportation Code, (page 25, line 19, house committee report), by adding the following at the end of the subsection:

The department shall attempt to make at least half of the expenditures for engineering-related services with private sector providers under this subsection with historically underutilized businesses, as defined by Section 2161.001, Government Code.

Representative Bosse moved to table Amendment No. 16.

The motion to table prevailed.

Amendment No. 17

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 1.23 of the bill, proposed Section 223.041(d), Transportation Code, (page 25, line 20, house committee report), by striking "may provide" and substituting "shall [~~may~~] provide".

Amendment No. 17 was adopted without objection.

Amendment No. 18

Representative Goodman offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

1) On page 31, between lines 17 and 18, insert the following as Section 224.158(c), Transportation Code:

(c) Notwithstanding any other provision of law to the contrary, the department, regional tollway authorities described in Chapter 366; transportation corporations; all transferees of these entities; and all third party service providers under contract with one or more of these entities or a transferee of one or more of these entities, shall consider offering motor vehicle operators the option of using a transponder to pay tolls on a non-stop basis to mitigate congestion at toll collection locations, to enhance traffic flow and to otherwise increase efficiency of operations.

2) On page 58, line 9, insert the following after the end of the sentence as part of Section 361.031(c), Transportation Code: "The authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend the authority's turnpike projects."

3) On page 73, between lines 4 and 5, insert the following as new SECTION 7.21 of the bill and renumber the subsequent sections appropriately:

SECTION 7.21. Section 361.255, Transportation Code, is amended by adding a Subsection (c) to read as follows:

(c) Notwithstanding any other provision of law to the contrary, the authority, all transferees of the authority, and all third party service providers under contract with the authority or a transferee of the authority, shall consider offering motor vehicle operators the option of using a transponder to pay tolls on a non-stop basis to mitigate congestion at toll collection locations, to enhance traffic flow and to otherwise increase efficiency of operations.

4) On page 116, between lines 7 and 8, insert the following as Section 366.179(c), Transportation Code:

(c) Notwithstanding any other provision of law to the contrary, an authority, all transferees of an authority, and all third party service providers under contract with an authority or a transferee of an authority, shall consider offering motor vehicle operators the option of using a transponder to pay tolls on a non-stop basis to mitigate congestion at toll collection locations, to enhance traffic flow and to otherwise increase efficiency of operations.

Amendment No. 18 was adopted without objection.

Amendment No. 19

Representative Christian offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 1 of the bill, Section 1.28, by striking proposed Section 455.0015, Transportation Code, (House Committee printing, page 33, line 27-page 34, line 4), and substituting the following:

Sec. 455.0015. TRANSPORTATION NEEDS OF CLIENTS OF HEALTH AND HUMAN SERVICES AGENCIES. In performing its public transportation planning and funding activities, the department shall:

(1) consider and include the transportation needs of those persons who are clients of the health and human services agencies of this state;

(2) to the extent possible, and to the maximum extent feasible, utilize non-profit entities in addressing those transportation needs; and

(3) to the extent that non-profit entities cannot be utilized to provide those transportation needs, utilize the existing network of transportation providers, particularly the fixed-route components of that network to provide those services.

Amendment No. 19 was adopted without objection.

Amendment No. 20

Representative Berlanga offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 1 of the bill, by striking Section 1.31 and renumbering subsequent sections of Article 1 accordingly.

Representative Bosse moved to table Amendment No. 20.

The motion to table was lost.

Amendment No. 20 was adopted without objection.

Amendment No. 21

Representative Berlanga offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections appropriately:

SECTION _____. Section 201.105, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) The commission by rule shall require that:

(1) any product, service, material, or process that is approved for use in any one district shall be approved for use by any other district.

~~(2) any product, service, material, or process that has been disapproved for use in any one district may not be used by any other district.~~

Representative Bosse moved to table Amendment No. 21.

The motion to table was withdrawn.

Amendment No. 21 was withdrawn.

(Craddick now present)

Amendment No. 22

Representative Madden offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. (a) This section applies only to that portion of Farm to Market Road 2514 located in the Collin County city of Parker and its extraterritorial jurisdiction.

(b) In its project to upgrade Farm to Market Road 2514, the Texas Department of Transportation shall provide a left-hand turn lane or other direct access to each driveway located along that road which provides passage to multiple homes. The means of direct access must be able to accommodate the addition of more lanes to the road.

Representative Bosse moved to table Amendment No. 22.

The motion to table prevailed.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 5).

CSSB 370 - (consideration continued)**Amendment No. 23**

Representative Alexander offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 4 of the bill by adding the following appropriately numbered sections to read as follows and by renumbering the remaining sections as appropriate:

SECTION 4.____. Sections 3(a) and (e), Article 6675c, Revised Statutes, are amended to read as follows:

(a) A motor carrier may not operate a commercial motor vehicle, as defined by Section 548.001, Transportation Code, [~~140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);~~] or a tow truck on a road or highway of this state unless the carrier registers with the department under this article.

(e) The department shall issue a certificate containing a single registration number to a motor carrier, regardless of the number of vehicles requiring registration the carrier operates. The department shall issue a cab card as described by Section 5 of this article for each vehicle requiring registration the motor carrier operates. To avoid multiple registrations of a single motor carrier, the department shall adopt simplified procedures for the registration of motor carriers transporting household goods as agents for carriers required to register under this article.

SECTION 4.____. Sections 4(a), (b), and (d), Article 6675c, Revised Statutes, are amended to read as follows:

(a) A motor carrier that is required to register under Section 3 of this article shall maintain liability insurance in an amount set by the department for each vehicle requiring registration the carrier operates. The department by rule

may set the amount of liability insurance required at an amount that does not exceed the amount required for a motor carrier under federal regulations adopted under 49 U.S.C. Section 10927(a)(1). In setting the amount the department shall consider:

- (1) the class and size of the vehicle; and
- (2) the type of persons or cargo being transported.

(b) A motor carrier required to register under Section 3 of this article transporting household goods shall maintain cargo insurance in the same amount required for a motor carrier transporting household goods under federal law.

(d) A motor carrier that is required to register under Section 3 of this article must file with the department proof of insurance in the amounts required by Subsections (a) and (b) of this section, or proof of financial responsibility as described by Subsection (c) of this section, in a form prescribed by the department. The form must be filed:

- (1) at the time of the initial registration;
- (2) at the time of a subsequent registration, if the motor carrier was required to be continuously registered under this article and the carrier failed to maintain continuous registration;
- (3) at the time a motor carrier changes insurers; and
- (4) at the time a motor carrier changes ownership, as determined by rules adopted by the department.

SECTION 4.____. Section 7(a), Article 6675c, Revised Statutes, is amended to read as follows:

(a) The department may suspend or revoke a registration issued under this article if:

- (1) a motor carrier fails to maintain insurance or proof of financial responsibility as required by Section 4(a) or (b) or Section 8(c)(5) of this article;
- (2) a motor carrier fails to keep proof of insurance in the cab of each vehicle as required by Section 4(e) of this article;
- (3) a motor carrier fails to register a vehicle requiring registration; or
- (4) a motor carrier knowingly provides false information on any form filed with the department under this section.

SECTION 4.____. Section 8, Article 6675c, Revised Statutes, is amended by amending Subsections (c) and (f) and adding Subsection (g) to read as follows:

(c) The department shall adopt rules to protect consumers who use the services of a motor carrier [~~who is required to register under Section 3 of this article and~~] who is transporting household goods for compensation [~~that are at least as stringent as the corresponding provisions of 49 C.F.R. Part 1056. The department may adopt rules under this subsection that are more stringent than the corresponding federal provisions. A motor carrier transporting household goods shall list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state~~]. The department may adopt all such rules as are necessary to ensure that customers of household goods movers are protected from deceptive or unfair practices and unreasonably hazardous activities on the part of the movers. Such rules shall [~~may~~] include but are not limited to measures to:

(1) establish a formal process for resolving disputes over fees and damages ~~[apart from the method of mediation in Subsection (f) of this section];~~

(2) require a carrier to indicate clearly to consumers whether estimates are binding or nonbinding and disclose the maximum price a consumer could be required to pay; ~~[and]~~

(3) create a centralized process for making complaints about a carrier which also allows consumers to inquire about a carrier's complaint record;

(4) require a motor carrier transporting household goods to list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state;

(5) require motor carriers who are required to register under this section to file proof of cargo insurance in amounts to be determined by the department that do not exceed the amount required for a motor carrier transporting household goods under federal law and measures to allow alternative proof of financial responsibility, through surety bonds, letters of credit, or other means satisfactory to the department, for contractual obligations to customers that do not exceed \$5,000 aggregate loss or damage to total cargo shipped at any one time;

(6) require motor carriers who are required to register under this section to conspicuously advise consumers concerning limitation of any carrier liability for loss or damage as determined under Subdivision (7) of this subsection; and

(7) determine reasonable provisions governing limitation of liability for loss or damage of motor carriers required to register under this section, not to exceed 60 cents per pound per article.

(f) The department shall appoint a rules advisory committee consisting of representatives of motor carriers transporting household goods using small, medium, and large equipment, the public, and the department. Members of the committee serve at the pleasure of the department and are not entitled to compensation or reimbursement of expenses for serving on the committee. The department may adopt rules to govern the operations of the advisory committee. The committee shall:

(1) examine the rules adopted by the department under Subsection (c) of this section and make recommendations to the department on modernizing and streamlining the rules;

(2) conduct a study of the feasibility and necessity of requiring any vehicle liability insurance for household goods carriers required to register under this section; and

(3) pursuant to Subsection (c)(7) of this section, recommend a maximum level of liability limitation that does not exceed 60 cents per pound ~~[All collective associations of motor carriers transporting household goods, or agents thereof, which have received approval for collective ratemaking agreements under Section 9(d) of this article shall provide a method of mediation for consumers to receive resolution through mediation of disputes over fees, damages, and services. All costs associated with such mediation shall be borne by the motor carriers, the agents thereof, or the association. All carriers and agents who are parties to collective agreements approved under Section 9(d) of this article must participate in consumer complaint resolution;~~

~~including participation in the mediation process and advertisement of the availability of mediation in all contracts or estimate proposals. Any complaint mediation that is not resolved to the mutual agreement of all parties shall be reported to the department. Consumers shall be advised of their rights to seek resolution directly from the department. The department shall adopt rules that ensure such notification is available to consumers in a form and manner consistent with its duties under Subsection (c) of this section].~~

(g) The department shall require motor carriers who are not required to register under Section 3 of this article to register their operations before transporting household goods for compensation. The department shall charge a motor carrier who registers under this subsection a fee that does not exceed the total of the fees imposed by Section 3 of this article.

SECTION 4.____. Section 10, Article 6675c, Revised Statutes, is amended to read as follows:

Sec. 10. CRIMINAL PENALTY. (a) A person commits an offense if the person fails to:

- (1) register as required by Section 3 or 8 of this article;
- (2) maintain insurance or proof of financial responsibility as required by Section 4 or 8 of this article; or
- (3) keep a cab card in the cab of a vehicle as required by Section 5(a) of this article.

(b) A person commits an offense if the person solicits the transportation of household goods for compensation without being registered as required by Section 3 or 8 of this article.

(c) An offense under this section is a Class C misdemeanor.

SECTION 4.____. Section 1(1), Article 6675d, Revised Statutes, is amended to read as follows:

(1) "Commercial motor vehicle" means a motor vehicle described by Section 548.001, Transportation Code ~~[has the meaning assigned by Section 140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)]~~.

SECTION 4.____. Section 5, Article 6675d, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) A rule adopted by the director under this article relating to hours of service, an operator's record of duty status, or an operator's daily log, for operations outside a 150-mile radius of the normal work-reporting location, also applies to and must be complied with by a motor carrier, as defined by Section 1, Article 6675c, Revised Statutes, of household goods not using a commercial motor vehicle.

SECTION 4.____. The study required by Section 8(f)(2), Article 6675c, Revised Statutes, as added by this Act, must be completed not later than July 1, 1998, and any resulting rules shall be made to take effect January 1, 1999.

Amendment No. 23 was adopted without objection.

(Brimer and Sadler now present)

Amendment No. 24

Representative Wilson offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

(1) In SECTION 5.01 of the bill by adding Section 1.01. Article 6687-1a, Revised Statutes, Subsection (3) is amended to read as follows:

(3) "Casual Sale" means the sale [~~at auction~~] of not more than ~~[one]~~ four nonrepairable motor vehicles, salvage vehicles or late model salvage motor vehicles to the same person during a calendar year.

(2) In SECTION 5.01 of the bill by adding Section 2.01. Article 6678-1a, Revised Statutes, Subsection (g) is amended to read as follows:

(g) Except as otherwise provided by this subsection, this article does not apply to a person who purchases a nonrepairable vehicle or salvage vehicle from a salvage pool operator or salvage vehicle dealer in a casual sale. The commission shall adopt rules as necessary to regulate casual sales and to enforce the subsection. A salvage vehicle pool operator or salvage vehicle dealer that sells a vehicle in a casual sale shall comply with each rule adopted by the commission regarding that sale.

Representative Bosse moved to table Amendment No. 24.

The motion to table was lost.

Amendment No. 24 was adopted without objection.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 6).

CSSB 370 - (consideration continued)

Amendment No. 25

Representative Berlanga offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections appropriately:

SECTION _____. Section 201.105, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) The commission may by rule require that:

(1) any product, or material, that is approved for use in any one district shall be approved for use by any other district.

(2) any product, service, material, or process that has been disapproved for use in any one district may not be used by any other district.

Amendment No. 25 was adopted without objection.

Amendment No. 26

Representative Talton offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of the bill accordingly:

SECTION _____. Section 9, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by adding Subsection (e) to read as follows:

(e) The holder of a license may not operate a vehicle storage facility that

allows a person who owns a vehicle that has been stored at the facility, or who is the representative of the owner of the vehicle, to remove the vehicle from the premises of the facility unless the person furnishes the license holder, or an employee of the license holder, evidence of financial responsibility for the vehicle described by Section 601.053(a), Transportation Code.

Amendment No. 26 was adopted without objection.

Amendment No. 27

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 7.10 of the bill as follows:

(1) In amended Section 361.132(a), Transportation Code (page 63, lines 21-22, house committee report), strike "or convenient".

(2) In proposed Section 361.132(d), Transportation Code (page 64, line 21 and line 24, house committee report), strike "or convenient" both times it appears.

Amendment No. 27 was adopted without objection.

Amendment No. 28

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill as follows:

(1) In SECTION 7.01 of the bill, proposed Section 222.103(a), Transportation Code (Committee Report page 55, lines 18-21), strike the second sentence.

(2) In SECTION 7.01 of the bill, proposed Section 222.103, Transportation Code (Committee Printing, page 55, after line 25), add a new Subsection (c) to read as follows:

(c) The department shall provide each member of the legislature a status report on all highway construction projects, by legislative district, that are under contract or awaiting funding. The report shall include projects that would be funded in any manner by state, federal, or toll funds. The report shall be provided before January 1 in each fiscal year. In addition, not less than 90 days before a loan is granted by the department for any project, the department shall notify each member of the legislature that represents any part of area affected by the project of the status of the project and how any other project in any other district would be affected.

Amendment No. 28 was withdrawn.

(Hochberg now present)

Amendment No. 29

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill as follows:

(1) In SECTION 7.01 of the bill, proposed Section 222.103(a), Transportation Code (Committee Report page 55, lines 18-21), strike the second sentence.

(2) In SECTION 7.01 of the bill, proposed Section 222.103, Transportation Code (Committee Printing, page 55, after line 25), add a new Subsection (c) to read as follows:

(c) The department shall provide each member of the legislature who wants to receive one status report on all highway construction projects, by legislative district, that are under contract or awaiting funding. The report shall include projects that would be funded in any manner by state, federal, or toll funds. The report shall be provided before January 1 in each fiscal year. In addition, not less than 90 days before a loan is granted by the department for any project, the department shall notify each member of the legislature that represents any part of area affected by the project of the status of the project and how any other project in any other district would be affected.

(d) The department shall ask each legislator whether the legislator wants to receive the report under this section.

Amendment No. 29 was adopted without objection.

Amendment No. 30

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 7.25 of the bill, proposed Section 366.003(11)(D), Transportation Code (page 78, line 24, house committee report), by striking "service station, hotel, motel, restaurant,".

Amendment No. 30 was adopted without objection.

Amendment No. 31

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 7.23 of the bill, amended Section 361.331(a)(1), Transportation Code (page 74, line 22, house committee report), by inserting between "hearing" and the semicolon "in each affected county".

Amendment No. 31 was adopted without objection.

Amendment No. 32

Representative Madden offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

On page 82, line 20, after the word "compensation" add "and benefits", retaining all other language as presently provided in subsection (8).

Amendment No. 32 was adopted without objection.

Amendment No. 33

Representative Davis offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Section 7.25 of the bill, proposed Section 366.251, Transportation Code (page 119, lines 10-12, house committee report), by striking Subsection (e) and substituting the following:

(e) All appointments to the board shall be made without regard to disability, sex, religion, age, or national origin. In making appointments under this subsection, the governor or a commissioners court shall attempt to create a board that is representative of the diversity of the authority.

Amendment No. 33 was adopted without objection.

Amendment No. 34

Representative Giddings offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 7.27 of the bill by adding a new Subsection (g) to read as follows:

(g) The North Texas Tollway Authority shall, within a reasonable period of time after the effective date of this Act, include and adequately fund a feasibility study for the construction of the Trinity Parkway in the southern part of Dallas County.

Amendment No. 34 was adopted without objection. (Burnam recorded voting no)

Amendment No. 35

Representative Madden offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

On page 122, lines 5 and 6, place a period after the word "year," and delete the remaining text that reads "unless the absence is excused by majority vote of the board."

Amendment No. 35 was adopted without objection.

Amendment No. 36

Representative Delisi offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 by adding the following appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. (a) Subsection (b), Section 545.352, Transportation Code, is amended to read as follows:

(b) Unless a special hazard exists that requires a slower speed for compliance with Section 545.351(b), the following speeds are lawful:

(1) 30 miles per hour in an urban district on a street other than an alley and 15 miles per hour in an alley;

(2) 70 miles per hour in daytime and 65 miles per hour in nighttime if the vehicle is a passenger car or motorcycle on a highway numbered by this state or the United States outside an urban district, including a farm-to-market or ranch-to-market road if that road has a pavement width greater than 20 feet;

(3) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a passenger car or motorcycle on a highway that is:

(A) outside an urban district and not a highway numbered by this state or the United States; or

(B) a farm-to-market or ranch-to-market road that has a pavement width of 20 feet or less;

(4) 60 miles per hour outside an urban district if a speed limit for the vehicle is not otherwise specified by this section; or

(5) outside an urban district:

(A) 45 miles per hour, if the vehicle is towing a house trailer of an actual or registered gross weight heavier than 4,500 pounds or larger than 32 feet, excluding the tow bar;

(B) 50 miles per hour if the vehicle is a school bus; or

(C) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a truck, other than a light truck, or if the vehicle is

a truck tractor, trailer, or semitrailer, or a vehicle towing a trailer, semitrailer, another motor vehicle or house trailer of an actual or registered gross weight lighter than 4,500 pounds and a length of 32 feet or shorter, excluding the tow bar.

(b) A change in a speed limit made by or under this section applies only to an offense committed on or after the effective date of the change. For purposes of this section, an offense was committed before the effective date of a change in a speed limit if any element of the offense occurred before that date. An offense committed before the effective date of a change in a speed limit is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 1.____. Section 545.353, Transportation Code, is amended by adding Subsection (h) to read as follows:

(h) A prima facie speed limit under Section 545.352(b)(3) may be increased if the commission determines from the results of an engineering and traffic investigation that a higher prima facie speed limit is reasonable and safe.

(Rabuck now present)

Amendment No. 36 was withdrawn.

Amendment No. 37

Representative Dukes offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to Article 7 of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION 7.____. (a) If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system:

(1) in selecting the route for the intermodal toll road, the department must give consideration for the character of the land along the proposed route of the toll road and its suitability for particular uses; and

(2) if the route is to be selected from among more than one alternative route, the department must give consideration for the character of the land along each alternative route and its suitability for particular uses.

Amendment No. 37 was adopted without objection.

Amendment No. 38

Representative Dukes offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to Article 7 of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION 7.____. (a) If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system:

(1) no portion of the toll road may be constructed within one mile of an existing public elementary or secondary school in this state;

Representative Bosse moved to table Amendment No. 38.

A record vote was requested.

The motion to table prevailed by (Record 461): 82 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bonnen; Bosse; Brimer; Carter; Chisum; Christian; Clark; Corte; Counts; Crabb; Craddick; Culberson; Danburg; Delisi; Denny; Driver; Eiland; Elkins; Flores; Gallego; Galloway; Glaze; Goodman; Goolsby; Gray; Grusendorf; Haggerty; Hartnett; Hawley; Heflin; Hightower; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter; Isett; Jackson; Janek; Jones, D.; Keffer; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; Marchant; McCall; Merritt; Moffat; Mowery; Nixon; Oakley; Palmer; Pickett; Pitts; Rabuck; Reyna, E.; Rhodes; Seaman; Serna; Shields; Siebert; Smith; Smithe; Solomons; Staples; Talton; Telford; Uher; Walker; Williams; Williamson; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Nays — Alvarado; Bailey; Berlanga; Burnam; Chavez; Cuellar; Davila; Davis; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Farrar; Finnell; Giddings; Greenberg; Gutierrez; Hamric; Hernandez; Hirschi; Hochberg; Hodge; Jones, J.; Kamel; Keel; King; Lewis, G.; Luna; Maxey; McClendon; McReynolds; Moreno; Naishtat; Olivo; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Solis; Thompson; Tillery; Torres; Turner, S.; Van de Putte; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; West.

Absent, Excused, Committee Meeting — Cook; Hupp; Patterson; Roman; Swinford; Turner, B.

Absent — Garcia; Hinojosa; Junell; Longoria; Oliveira; Sadler; Stiles.

Amendment No. 39

Representative Flores offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 1.23 of the bill, proposed Section 223.041(c), Transportation Code, (page 25, line 19, house committee report), by adding the following at the end of the subsection:

The department shall attempt to make at least 20 percent of the expenditures for engineering-related services with private sector providers under this subsection with historically underutilized businesses, as defined by Section 2161.001, Government Code.

Amendment No. 39 was adopted without objection.

Amendment No. 40

Representative Uher offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new appropriately numbered section to read as follows and by renumbering the remaining sections as appropriate:

SECTION _____. (a) Section 21.042, Property Code, is amended by amending Subsections (c)-(e) and adding Subsections (f) and (g) to read as follows:

(c) If a portion of a tract or parcel of real property is condemned and the property owner seeks an award for damage caused by the condemnation to the

property owner's remaining property, the total amount of the award for damage to the property condemned and to the remaining property is based on the difference in the local market value of the entire property immediately before the condemnation and the local market value of the remaining property immediately after the condemnation, considering any benefit or injury that the construction or operation of the condemnor's project has on the market value of the remaining property~~[- the special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property].~~

(d) Any increase or decrease in the market value of an entire tract or parcel of real property caused by the condemnor's proposed project before the condemnation may not be considered in estimating the market value of that property before condemnation. Any increase or decrease in the market value of any remaining real property caused by the condemnor's proposed project after the condemnation shall be considered in estimating the market value of that property after the condemnation [In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, but they may not consider an injury or benefit that the property owner experiences in common with the general community].

(e) In the case of a condemnation by or for the Texas Department of Transportation of real property for a state or federal highway, the estimation of the market value of property in the condemnation proceeding shall include consideration of the following factors:

- (1) access to and from and on and off the property;
- (2) traffic circulation and count in and around the property;
- (3) visibility and appearance of and from the property; and
- (4) productivity and convenience of use of the property, including its

highest and best use [If a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 304, Acts of the 50th Legislature, Regular Session, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes), that is eligible for designation as part of the state highway system, or for the use, construction, development, operation, or maintenance of an improvement or project by a metropolitan rapid transit authority created before January 1, 1980, with a principal city having a population of less than 1,200,000 and established under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, (Article 1118x, Vernon's Texas Civil Statutes), the special commissioners shall determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. In awarding compensation or assessing the damages, the special commissioners shall consider any special and direct benefits that arise from the highway improvement or the transit authority improvement or project that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property].

(f) The effect that the condemnation has on any of the market value characteristics required to be considered under Subsection (e) shall be considered in estimating the market value of any remaining portion of a tract or parcel of real property that is condemned regardless of whether any other property in the area is similarly affected by the condemnation.

(g) Notwithstanding any other provision of this section, if the property condemned is owned by a public entity or by a person organized and operated on a non-profit basis and the property is devoted to and needed by the property owner in good faith to perform a public function or to provide a non-profit educational, charitable, or eleemosynary service, the damage award may not be less than the financial cost of replacing the property.

(b) The changes in law made by this section apply only to assessment of damages in a condemnation proceeding for which a special commissioners' hearing begins on or after the effective date of this section. Assessment of damages in a condemnation proceeding for which a special commissioners' hearing began before the effective date of this section is governed by the law as it existed at the time the hearing began, and the former law is continued in effect for that purpose.

Amendment No. 40 was withdrawn.

Amendment No. 41

Representative Hilbert offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill by adding a new appropriately numbered section to read as follows and by renumbering the existing sections as appropriate:

SECTION 1. _____. (a) Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0195 to read as follows:

Sec. 21.0195. DISMISSAL OF CERTAIN CONDEMNATION PROCEEDINGS; TEXAS DEPARTMENT OF TRANSPORTATION. (a) This section applies only to the dismissal of a condemnation proceeding that involves the Texas Department of Transportation.

(b) The department may move to dismiss a proceeding it files, and the court shall conduct a hearing on the motion. The court may grant the motion only if the court determines that the property owner's interest will not be materially affected by the dismissal. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award.

(c) If a court dismisses a condemnation proceeding, the court shall make an allowance to the property owner for the value of the department's use of the property while in possession of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation, including reasonable and necessary fees for attorneys.

(b) The changes in law made by this section apply only to dismissal of a condemnation proceeding for which a motion is made on or after the effective date of this section. Dismissal of a condemnation proceeding for which a

motion is made before the effective date of this section is governed by the law in effect at the time the motion was made, and that law is continued in effect for that purpose.

Amendment No. 41 was adopted without objection.

Amendment No. 42

Representative Clark offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 2 of the bill, by adding the following section, appropriately numbered, and renumbering subsequent sections accordingly:

SECTION 2. Subchapter B, Chapter 391, Transportation Code, is amended by adding Section 391.0315 to read as follows:

Sec. 391.0315. REGULATION OF CERTAIN OUTDOOR ADVERTISING OF SEXUALLY ORIENTED BUSINESSES. (a) In this section, "sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(b) This section applies only to outdoor advertising that is located within five miles of the border between this state and another state, is erected for the purpose of having its message seen from the main-traveled way of a highway in the interstate system, and is designed, intended, or used to advertise a sexually oriented business, including outdoor advertising that is located on the premises of a multitenant commercial center in which a person is doing business and that displays the name or any portion of the name of the business, a name under which the business was formerly operated on those premises, or a name containing any reference to a sexually oriented business or terminology generally related to the sexually oriented business.

(c) To the extent of a conflict between this section and another provision of this chapter, this section prevails.

(d) A person commits an offense if:

(1) the person knowingly erects or maintains within 660 feet of the nearest edge of a right-of-way of a highway in the interstate system outdoor advertising designed, intended, or used to advertise a sexually oriented business; and

(2) the outdoor advertising is not in compliance with this section.

(e) A person may erect or maintain not more than two units of outdoor advertising for a particular sexually oriented business. The person who owns or operates the sexually oriented business shall designate one unit as the primary unit of outdoor advertising and one unit as the secondary unit of outdoor advertising.

(f) A primary unit of outdoor advertising:

(1) must be a square or rectangular flat plane;

(2) may:

(A) have no more than two display surfaces; and

(B) contain only the name of the sexually oriented business;

and

(3) may not:

(A) contain any flashing lights, photographs, silhouettes, drawings, or pictorial representations;

- (B) exceed four feet in height or eight feet in width; or
 - (C) exceed 32 square feet in area.
 - (g) A secondary unit of outdoor advertising:
 - (1) must be a square or rectangular flat plane;
 - (2) may:
 - (A) have only one display surface; and
 - (B) be affixed or attached only to the sexually oriented business that is the subject of the advertising; and
 - (3) may not exceed:
 - (A) four feet in height or five feet in width; or
 - (B) 20 square feet in area.
 - (h) For a unit of outdoor advertising that is not in compliance with this section and that was erected before September 1, 1997, the department may:
 - (1) permit the outdoor advertising to be maintained where erected under an amortization plan covering the lesser of two years or the useful life of the unit; or
 - (2) require the immediate removal of the outdoor advertising.
 - (i) If the department requires the removal of off-premise outdoor advertising, the compensable cost shall be computed in the manner prescribed by Section 216.008, Local Government Code, except that the base date is September 1, 1997. If the department requires the removal of on-premise outdoor advertising, the compensable value of the outdoor advertising shall be computed in the manner prescribed by Section 216.009, Local Government Code. In this subsection, "off-premise outdoor advertising" and "on-premise outdoor advertising" have the meanings assigned the terms "off-premise sign" and "on-premise sign," respectively, by Section 216.002, Local Government Code.
 - (j) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Each day an offense continues is a separate offense.
 - (k) To the extent of a conflict between this section and a municipal ordinance, the ordinance prevails.

Amendment No. 42 was adopted without objection.

Amendment No. 43

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by striking the first sentence of SECTION 8.02(b), (page 133, lines 16-18, house committee report), and substituting the following:

The comptroller shall conduct an audit of the records of the North Texas Turnpike Authority. The comptroller may contract with a private entity to perform the audit required by this section.

Amendment No. 43 was adopted without objection.

Amendment No. 44

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

In Section 8.02 of the bill add the following Subsection (c):

"(c) No later than October 1, 1997, as additional consideration for the transfer of the properties described in Subsection (b) of Section 8.01 of this Act, the North Texas Tollway Authority shall distribute the proceeds (assets less deferred study costs) from the Texas Turnpike Authority feasibility study fund that were assigned by the North Texas Tollway Authority on the effective date of this Act as follows:

(1) all proceeds necessary to pay contract commitments for feasibility studies for Laredo Bridge Number IV, Anzalduas Bridge, Port of Brownsville Bridge, U.S. 183A, S.H. 45/Loop 1, and S.H. 130, such amount not to be less than \$1,845,000, shall be distributed to the Texas Department of Transportation for deposit in the state highway fund;

(2) remaining proceeds necessary to pay contract commitments for feasibility studies, other than those studies listed in Subdivision (1) of this subsection, under contract as of the Texas Turnpike Authority's January 31, 1997 financial statements shall be distributed to the North Texas Tollway Authority; and

(3) any remaining proceeds shall be distributed to the Texas Department of Transportation for deposit in the state highway fund."

Amendment No. 44 was adopted without objection.

Amendment No. 45

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 of the bill by adding a appropriately numbered section to read as follows and by renumbering the existing sections as appropriate:

SECTION 1.____. Subtitle A, Title 4, Transportation Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. PORT AUTHORITY ADVISORY COMMITTEE

Sec. 53.001. PORT AUTHORITY ADVISORY COMMITTEE. (a) The port authority advisory committee consists of five members appointed by the Texas Transportation Commission to advise the commission and the Texas Department of Transportation on matters relating to port authorities, including:

(1) intermodal and multimodal transportation issues relating to Texas waterways and ports and port improvements; and

(2) the identification and development of funding mechanisms, including the state infrastructure bank, for addressing the issues described by Subdivision (1).

(b) The members shall be appointed as follows:

(1) one member who represents the Port of Houston Authority of Harris County, Texas;

(2) two members who represent ports other than Houston on the upper Texas coast; and

(3) two members who represent ports on the lower Texas coast.

(c) A committee member serves at the pleasure of the commission.

(d) A committee member may not receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing the member's duties.

(e) The commission may adopt rules to govern the operations of the committee.

Amendment No. 45 was adopted without objection.

Amendment No. 46

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

(1) In SECTION 7.01 of the bill, in proposed Section 222.102, Transportation Code (Committee Printing page 55, lines 12-13), by striking "if the commission determines the segment is subject to heavy passenger and commercial traffic" and substituting "after notice and a public hearing"

(2) In SECTION 7.04 of the bill, in proposed Section 361.031, Transportation Code (Committee Printing page 57, line 19), by striking "Chapter 362, and Subchapter E, Chapter 222, and substituting "and Chapter 362""

Amendment No. 46 was adopted without objection.

Amendment No. 47

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

(1) In SECTION 7.04, Sec. 361.031, add the following new Subsection (g):

(g) The commissioner shall employ a director of the authority who shall serve as the authority's chief administrative officer. The director shall serve at the pleasure of the commission.

(2) In SECTION 7.08, Sec. 361.042, Subsection (a), strike Subdivision (3) and renumber Subdivision (4) as Subdivision (3).

Amendment No. 47 was adopted without objection.

Amendment No. 48

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** as follows:

(1) Strike SECTION 7.12 of the bill and renumber the remaining sections as appropriate.

(2) In SECTION 7.25 of the bill, proposed Section 366.168 (page 103, after line 27, house committee report) add a new Subsection (c) to read as follows:

(c) The authority shall provide and maintain without charge a passageway over or under the turnpike project for the owner of the severed real property and the owner's employees and representatives. The authority is not required to furnish a passageway if the owner waives the requirement or the original tract involved is less than 80 acres.

Amendment No. 48 was adopted without objection.

Amendment No. 49

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in SECTION 7.25 of the bill, proposed Section 366.172(a), Transportation Code (page 108, after line 12, house committee report), by inserting the following between "Chapter 431" and the period:

only with the approval of the governing body of the entity to which the project is transferred

Amendment No. 49 was adopted without objection.

Amendment No. 50

Representative Gray offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 8, of the bill, by adding a new section, to read as follows, and renumbering subsequent sections in Article 8 accordingly:

SECTION 8.____. (a) The Texas Department of Transportation shall remit to the Comptroller of Public Accounts all money and other funds received by the department as a result of the abolition of the Texas Turnpike Authority and the creation of Texas Turnpike Authority division of the department, including all funds payable under Section 8.02 of this article and any money received for a feasibility study under Subchapter E, Chapter 361, Transportation Code.

(b) The comptroller shall deposit money received from the department under this section to the credit of a special account in the General Revenue Fund.

(c) Subsection (a) does not apply to money or other funds transferred to the North Texas Tollway Authority.

Amendment No. 50 was adopted without objection.

Amendment No. 51

Representative Heflin offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 1 of the bill, by adding the following section, appropriately numbered, and renumbering subsequent sections in Article 1 of the bill accordingly:

SECTION 1.____. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2703 to read as follows:

Sec. 502.2703. PROFESSIONAL SPORTS TEAM LICENSE PLATES.

(a) The department shall issue for passenger cars and light trucks specially designed license plates that include the name and insignia of a professional sports team located in this state.

(b) The department may not issue a license plate under this section for a particular professional sports team unless that team:

(1) certifies to the department that it has determined that at least 1,500 persons will apply for the plates; and

(2) plays its home games in a facility constructed or operated, in whole or in part, with public funds.

(c) Except as provided by Subsection (b), the department shall issue license plates under this section to a person who:

(1) applies to the county assessor-collector of the county in which the person resides on a form provided by the department; and

(2) pays an annual fee of \$35, in addition to the fee prescribed by Section 502.161 and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(d) Of each fee collected under this section, the department shall:

(1) send \$25 to the public entity that provided public funds for the construction or renovation of the facility in which the professional sports team

plays its home games or that provides public funds for the operation of that facility; and

(2) deposit \$10 to the credit of the state highway fund.

(e) Funds distributed under Subsection (d)(1) may be spent for maintenance or improvement of the facility, or for payments toward the retirement of bonds used for construction of the facility.

(f) If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the owner shall return the special license plates to the department.

(g) In this section:

(1) "Public entity" includes a municipality, county, industrial development corporation, or special district that is authorized to plan, acquire, establish, develop, construct, or renovate a facility in which a professional sports team plays its home games.

(2) "Professional sports team" means a sports team that is a member or an affiliate of a member of the National Football League, National Basketball Association, or National Hockey League or a major league baseball team.

Amendment No. 51 was adopted without objection.

Amendment No. 52

Representative Dukes offered the following amendment to **CSSB 370**:

Amend **CSSB 370** by adding a new section to Article 7 of the bill, appropriately numbered, to read as follows and renumbering subsequent sections of the bill appropriately:

SECTION 7.____. If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system and the department constructs any portion of the toll road within one mile of an existing public elementary or secondary school in this state the department shall construct sound barriers along that portion of the toll road.

Representative Bosse moved to table Amendment No. 52.

The motion to table prevailed.

Amendment No. 53

Representative McClendon offered the following amendment to **CSSB 370**:

Amend **CSSB 370**, in Article 1 of the bill, by adding the following section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of Article 1 accordingly:

SECTION 1____. (a) The Texas Department of Transportation is prohibited from selling motor vehicle certificate of title information or motor vehicle registration personal information that consists of the name, address, or date of birth of an individual unless the purchaser of the information agrees in writing with the department that the purchaser will not disseminate or publish the information on the internet, or permit another to disseminate or publish the information on the internet.

(b) As soon as practicable, the Texas Department of Transportation shall adopt emergency rules to implement this section.

Amendment No. 53 was adopted without objection.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Stiles requested permission for the Committee on Calendars to meet while the house is in session.

Permission to meet was granted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Calendars, 7:30 p.m. today, speakers committee room.

CSSB 370 - (consideration continued)

Amendment No. 54

Representative Delisi offered the following amendment to **CSSB 370**:

Amend **CSSB 370** in Article 1 by adding the following appropriately numbered sections to read as follows and by renumbering the remaining sections as appropriate:

SECTION 1.____. (a) Subsection (b), Section 545.352, Transportation Code, is amended to read as follows:

(b) Unless a special hazard exists that requires a slower speed for compliance with Section 545.351(b), the following speeds are lawful:

(1) 30 miles per hour in an urban district on a street other than an alley and 15 miles per hour in an alley;

(2) 70 miles per hour in daytime and 65 miles per hour in nighttime if the vehicle is a passenger car or motorcycle on a highway numbered by this state or the United States outside an urban district, including a farm-to-market or ranch-to-market road if that road has a pavement width greater than 20 feet;

(3) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a passenger car or motorcycle on a highway that is :

(A) outside an urban district and not a highway numbered by this state or the United States; or

(B) a farm-to-market or ranch-to-market road that has a pavement width of 20 feet or less in rolling terrain as defined by department rule;

(4) 60 miles per hour outside an urban district if a speed limit for the vehicle is not otherwise specified by this section; or

(5) outside an urban district:

(A) 45 miles per hour, if the vehicle is towing a house trailer of an actual or registered gross weight heavier than 4,500 pounds or larger than 32 feet, excluding the tow bar;

(B) 50 miles per hour if the vehicle is a school bus; or

(C) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a truck, other than a light truck, or if the vehicle is a truck tractor, trailer, or semitrailer, or a vehicle towing a trailer, semitrailer, another motor vehicle or house trailer of an actual or registered gross weight lighter than 4,500 pounds and length of 32 feet or shorter, excluding the tow bar.

(b) A change in a speed limit made by or under this section applies only to an offense committed on or after the effective date of the change. For

purposes of this section, an offense was committed before the effective date of a change in a speed limit if any element of the offense occurred before that date. An offense committed before the effective date of a change in a speed limit is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 1.____. Section 545.353, Transportation Code, is amended by adding Subsection (h) to read as follows:

(h) A prima facie speed limit under Section 545.352(b)(3) may be increased if the commission determines from the results of an engineering and traffic investigation that a higher prima facie speed limit is reasonable and safe.

Representative Junell moved to table Amendment No. 54.

The motion to table prevailed.

(Roman now present)

CSSB 370, as amended, was passed to third reading.

**GENERAL STATE CALENDAR
SENATE BILLS
THIRD READING**

The following bills were laid before the house and read third time:

**SB 298 ON THIRD READING
(Ramsay - House Sponsor)**

SB 298, A bill to be entitled An Act relating to juvenile court detention orders.

SB 298 was passed.

**SB 506 ON THIRD READING
(Thompson - House Sponsor)**

SB 506, A bill to be entitled An Act relating to the administration of decedents' estates.

Amendment No. 1

Representative Hartnett offered the following amendment to **SB 506**:

Amend **SB 506** on 3rd reading by amending Section 10B, Texas Probate Code, as added by Amendment No. 1 by Hartnett, adopted on 2nd reading, by adding "without further authorization" after "records" at the end of the last sentence of the section.

Amendment No. 1 was adopted without objection.

SB 506, as amended, was passed.

**SB 1028 ON THIRD READING
(Averitt - House Sponsor)**

SB 1028, A bill to be entitled An Act relating to clarifying the name of the College of Dentistry component of The Texas A&M University System.

SB 1028 was passed.

SB 759 ON THIRD READING
(Heflin - House Sponsor)

SB 759, A bill to be entitled An Act relating to the appraisal and ad valorem taxation of heavy equipment; providing penalties.

SB 759 was passed.

SB 89 ON THIRD READING
(Hightower - House Sponsor)

SB 89, A bill to be entitled An Act relating to a fictitious, forged, or counterfeit driver's license, personal identification certificate, or other instrument; providing penalties.

SB 89 was passed.

SB 197 ON THIRD READING
(Berlanga - House Sponsor)

SB 197, A bill to be entitled An Act relating to the regulation of alcohol awareness courses by the Texas Commission on Alcohol and Drug Abuse.

Amendment No. 1

Representative Madden offered the following amendment to **SB 197**:

Amend **SB 197**, on third reading, by adding the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill appropriately:

SECTION __. Section 461.012, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) Subsection (a)(18) does not apply to a 12-step or similar self-help alcohol dependency recovery program:

(1) that does not offer or purport to offer an alcohol dependency treatment program;

(2) that does not charge program participants; and

(3) in which program participants may maintain anonymity.

Amendment No. 1 was adopted without objection.

SB 197, as amended, was passed.

SB 426 ON THIRD READING
(Goodman and Naishtat - House Sponsors)

SB 426, A bill to be entitled An Act relating to the revision of the Uniform Interstate Family Support Act to comply with federal law.

SB 426 was passed.

SB 81 ON THIRD READING
(Hochberg, et al. - House Sponsors)

SB 81, A bill to be entitled An Act relating to the punishment for and the jurisdiction over certain traffic offenses committed by minors.

Amendment No. 1

Representative Solomons offered the following amendment to **SB 81**:

Amend **SB 81**, on third reading, by inserting the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION _____. Section 52.027(i), Family Code, is amended to read as follows:

(i) In this section, "child" means a person who:

(1) is at least 10 years of age and younger than 17 [18] years of age and who:

[(1)] is charged with or convicted of a traffic offense; or

(2) is at least 10 years of age and younger than 18 years of age and who:

(A) is charged with or convicted of an offense, other than public intoxication, punishable by fine only as a result of an act committed before becoming 17 years of age;

(B) [(2)] is a status offender and was taken into custody as a status offender for conduct engaged in before becoming 17 years of age; or

(C) [(3)] is a nonoffender and became a nonoffender before becoming 17 years of age.

Amendment No. 1 was adopted without objection.

SB 81, as amended, was passed.

SB 168 ON THIRD READING (Greenberg - House Sponsor)

SB 168, A bill to be entitled An Act relating to the distribution and use of performance incentives for public school principals.

SB 168 was passed.

SB 1081 ON THIRD READING (Maxey - House Sponsor)

SB 1081, A bill to be entitled An Act relating to the regulation of the conduct of certain nurses.

SB 1081 was passed.

SB 875 ON THIRD READING (Danburg, Allen, McClendon, and Eiland - House Sponsors)

SB 875, A bill to be entitled An Act relating to the applicability of the sex offender registration program to certain defendants, to the procedures used to register and monitor sex offenders, and to the imposition of criminal penalties.

Representative Danburg moved to postpone consideration of **SB 875** until 8 p.m. today.

The motion prevailed without objection.

GENERAL STATE CALENDAR SENATE BILLS SECOND READING

The following bills were laid before the house and read second time:

SB 172 ON SECOND READING
(Stiles and Berlanga - House Sponsors)

SB 172, A bill to be entitled An Act relating to coverage for childhood immunizations under certain health benefit plans.

(Cook now present)

Amendment No. 1

Representative Madden offered the following amendment to **SB 172**:

Amend **SB 172** in Section 2, Article 21.53F, as added by SECTION 1 of the bill (page 3, between lines 9 and 10, house committee printing), by inserting new Subsection (c) to read as follows:

(c) Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

Amendment No. 1 was adopted without objection.

SB 172, as amended, was passed to third reading.

SB 1460 ON SECOND READING
(Telford - House Sponsor)

SB 1460, A bill to be entitled An Act relating to the establishment of excess benefit plans in connection with the optional retirement program for higher education employees.

SB 1460 was passed to third reading.

CSSB 291 ON SECOND READING
(Haggerty - House Sponsor)

CSSB 291, A bill to be entitled An Act relating to the regulation of orthotists and prosthetists; providing a civil penalty.

Amendment No. 1

Representative Haggerty offered the following amendment to **CSSB 291**:

Amend **CSSB 291** by deleting Subsection (e) and replacing it with a new Subsection (e) to read as follows:

(e) A pharmacist licensed by the Texas State Board of Pharmacy or a person who is working under the direct supervision of a pharmacist may practice orthotics. Nothing in this Act shall preclude a pharmacist from being reimbursed by a state funded program for providing these services.

And amend **CSSB 291** by striking Section 24, and renumber the following sections as appropriate.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Madden offered the following amendment to **CSSB 291**:

Amend **CSSB 291** as follows:

On page 7, lines 3 and 4, place a period after the word "year," and delete the remaining text that reads "unless the absence is excused by majority vote of the board."

Amendment No. 2 was adopted without objection.

Amendment No. 3

On behalf of Representative Corte, Representative Haggerty offered the following amendment to **CSSB 291**:

Amend **CSSB 291** as follows:

(1) On page 13, line 26, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

(2) On page 14, line 2, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

Amendment No. 3 was adopted without objection.

CSSB 291, as amended, was passed to third reading. (Heflin recorded voting no)

CSSB 1514 ON SECOND READING (Flores - House Sponsor)

CSSB 1514, A bill to be entitled An Act relating to coordinating colonia initiatives.

Representative Grusendorf raised a point of order against further consideration of **CSSB 1514** under Rule 4, Section 9 of the House Rules on the grounds that the committee met while the house was in session without being granted permission.

The point of order was withdrawn.

Representative Flores moved to postpone consideration of **CSSB 1514** until 10 a.m. Wednesday, May 21.

The motion prevailed without objection.

CSSB 299 ON SECOND READING (Ramsay, Naishtat, and Goodman - House Sponsors)

CSSB 299, A bill to be entitled An Act relating to the date for a hearing on an application for a protective order.

Amendment No. 1

Representative Naishtat offered the following amendment to **CSSB 299**:

Amend **CSSB 299** as follows:

(1) Strike Sections 1 through 3.

(2) Add a new Section 1 as follows, and renumber the subsequent sections accordingly:

"SECTION 1. Section 84.002(a), Family Code, as added by **SB 797**, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

"On the request of a prosecuting attorney in a county with a population of more than 1.5 million or in a county in a judicial district that is composed of more than one county, the court shall set the hearing on a date and time not later than 20 days after the date the application is filed or 20 days after the date a request is made to reschedule a hearing under section 84.003."

Amendment No. 1 was adopted without objection.

CSSB 299, as amended, was passed to third reading.

CSSB 305 ON SECOND READING
(Berlanga - House Sponsor)

CSSB 305, A bill to be entitled An Act relating to the Interagency Council on Early Childhood Intervention.

Amendment No. 1

Representative Berlanga offered the following amendment to **CSSB 305**:

Amend **CSSB 305** by striking the date "2002" on page 17, line 2 and replacing it with the date "1999".

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Greenberg offered the following amendment to **CSSB 305**:

Amend **CSSB 305**, Section 73.0051 by adding on page 10 between lines 10 and 11 the following:

(i) The Council shall include parents when deciding the appropriate treatment for the needs of their child/children.

(j) The Council shall not limit services to solely natural environments, but shall also consider center based services.

Amendment No. 2 was adopted without objection.

Amendment No. 3

On behalf of Representative Corte, Representative Berlanga offered the following amendment to **CSSB 305**:

Amend **CSSB 305** as follows:

(1) On page 11, line 15, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

(2) On page 11, line 18, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

Amendment No. 3 was adopted without objection.

Amendment No. 4

On behalf of Representative Madden, Representative Berlanga offered the following amendment to **CSSB 305**:

Amend **CSSB 305** as follows:

On page 5, lines 25 and 26, place a period after the word "year," and delete the remaining text that reads "unless the absences are excused by a majority vote of the board."

Amendment No. 4 was adopted without objection.

CSSB 305, as amended, was passed to third reading.

SB 229 ON SECOND READING
(Kubiak - House Sponsor)

SB 229, A bill to be entitled An Act relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

Representative Wohlgemuth raised a point of order against further consideration of **SB 229** under Rule 4, Section 32(c)(4) of the House Rules on the grounds that the rulemaking authority is granted to the commissioner of Licensing and Regulation in Section 5 of the bill, but the rulemaking authority statement in the bill analysis fails to address the granting of rulemaking authority.

The speaker sustained the point of order.

The bill was returned to the Committee on Licensing and Administrative Procedures.

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

SB 875 ON THIRD READING
(Danburg, Allen, McClendon, and Eiland - House Sponsors)

SB 875, A bill to be entitled An Act relating to the applicability of the sex offender registration program to certain defendants, to the procedures used to register and monitor sex offenders, and to the imposition of criminal penalties.

SB 875 was read third time earlier today and was postponed until this time.

Amendment No. 1

Representative Danburg offered the following amendment to **SB 875**:

Amend **SB 875** on 3rd Reading in SECTION 1 of the bill, in proposed Chapter 62, Code of Criminal Procedure, by adding a new Article 62.011 to read as follows:

Art. 62.011. NONAPPLICABILITY. This chapter does not apply to:

(1) the commercial distribution, display, exhibition, sale, lease, or rental of any material; or

(2) material distributed, displayed, exhibited, lent, or transferred within a public library system.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Danburg offered the following amendment to **SB 875**:

Amend **SB 875** on 3rd reading as follows:

(1) In SECTION 1 of the bill, in proposed Article 62.01, Code of Criminal Procedure (house committee printing, page 3, between lines 18 and 19), insert the following:

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code;

(C) an offense under Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) an offense under Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of Subdivision (5); or

(E) an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D).

(7) "Sexually violent predator" means a person who has on two or more occasions been convicted of or received an order of deferred adjudication for a sexually violent offense.

(2) In SECTION 1 of the bill, in proposed Article 62.03(e), Code of Criminal Procedure (house committee printing, page 10, lines 19 and 20), between "Penal Code," and "the authority", insert "or if the offense for which the person is subject to registration is a sexually violent offense.".

(3) In SECTION 1 of the bill, in proposed Article 62.03(e), Code of Criminal Procedure (house committee printing, page 11, line 2), between "registration," and "the authority", insert "or if the offense for which the person is subject to registration is a sexually violent offense.".

(4) In SECTION 1 of the bill, in proposed Article 62.04(f), Code of Criminal Procedure (house committee printing, page 14, lines 9 and 10), between "Penal Code," and "the authority", insert "or if the offense for which the person is subject to registration is a sexually violent offense.".

(5) In SECTION 1 of the bill, in proposed Article 62.04(f), Code of Criminal Procedure (house committee printing, page 14, line 17), between "registration," and "the authority", insert "or if the offense for which the person is subject to registration is a sexually violent offense.".

(6) In SECTION 1 of the bill, in proposed Article 62.06, Code of Criminal Procedure (house committee printing, page 16, line 13), between "(a)" and "A local", insert the following:

"A person subject to registration under this chapter who is a sexually violent predator shall report to the local law enforcement authority with whom the person is required to register not less than once in each 90-day period

following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. A person subject to registration under this chapter based on a single conviction or order of deferred adjudication for a sexually violent offense shall report to the local law enforcement authority with whom the person is required to register once each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the date on which the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person.

(b)".

(7) In SECTION 1 of the bill, in proposed Article 62.06(b), Code of Criminal Procedure, as relettered by this amendment (formerly proposed Article 62.06(a)) (house committee printing, page 16, line 18), between "once" and "each year", insert "in each 90-day period following the date the person first registered under this chapter, if the person is a sexually violent predator, or, if the person is not a sexually violent predator, once".

(8) In SECTION 1 of the bill, in proposed Article 62.06(b), Code of Criminal Procedure, as relettered by this amendment (formerly proposed Article 62.06(a)) (house committee printing, page 16, line 20), between the period and "shall", strike "The authority" and substitute the following:

"A local law enforcement authority may not direct a person to report to the authority under this subsection if the person is required to report under Subsection (a) and is in compliance with the reporting requirements of that subsection.

(c) A local law enforcement authority with whom a person reports under this section".

(9) In SECTION 1 of the bill, in proposed Article 62.06, Code of Criminal Procedure (house committee printing, page 17, line 3), strike "(b)" and substitute "(d)".

(10) In SECTION 1 of the bill, in proposed Article 62.06, Code of Criminal Procedure (house committee printing, page 17, between lines 14 and 15), insert the following:

(e) A person subject to registration under this chapter who is a sexually violent predator may petition the district court in the county where the person resides for an order exempting the person from the requirements of this chapter relating to a sexually violent predator. After a hearing on the matter, the court may issue an order under this subsection if it appears by a preponderance of the evidence as presented by not fewer than two registered sex offender treatment providers and a licensed psychiatrist that:

(1) the person received mental health or other appropriate treatment during the person's term of confinement, parole, or community supervision and shows signs of successful rehabilitation; and

(2) there is reason to believe that the person no longer poses a significant threat to the community.

(11) In SECTION 1 of the bill, in proposed Article 62.12(b), Code of Criminal Procedure (house committee printing, page 21, lines 19 and 20), strike "violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code" and substitute "sexually violent offense [violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code]".

(12) In SECTION 1 of the bill, in proposed Article 62.12(c), Code of Criminal Procedure (house committee printing, page 22, line 4), strike "violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code" and substitute "sexually violent offense [violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code]".

(13) In SECTION 1 of the bill, in proposed Article 62.12, Code of Criminal Procedure (house committee printing, page 22, between lines 11 and 12), insert the following:

(d) The duty to register for a person with a reportable conviction or adjudication under this chapter, including a conviction or adjudication for a sexually violent offense, ends when the person dies unless, before death, the duty to register ended under Subsection (a), (b), or (c).

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Allen offered the following amendment to **SB 875**:

Amend **SB 875** on third reading as follows:

(1) Amend Committee Amendment No. 1 (house committee printing, page 32, line 2 through page 33, line 19), adopted on second reading, by striking the text of the amendment.

(2) In SECTION 1 of the bill, in proposed Article 62.01(4), Code of Criminal Procedure (house committee printing, page 1, line 23), between "paroled," and "or placed", insert "placed in a nonsecure community program for juvenile offenders,".

(3) In SECTION 1 of the bill, in proposed Article 62.01(5), Code of Criminal Procedure, strike Paragraphs (A) and (B) (house committee printing, page 2, lines 6-12), and substitute the following:

(A) a conviction for a violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code, or a conviction for a violation of Section 25.02 (Prohibited sexual conduct), Penal Code, if the defendant was a person 18 years of age or older at the time of the violation;

(B) a conviction for a violation of Section 43.03 (Promotion of prostitution), 43.04 (Aggravated promotion of prostitution), 43.05 (Compelling prostitution), 43.23 (Obscenity), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(4) In SECTION 1 of the bill, in proposed Article 62.01(5), Code of Criminal Procedure, strike Paragraph (E) (house committee printing, page 2, lines 22-23), and substitute the following:

(E) the second conviction for a violation of Section 21.07(a)(4) (Public lewdness), 21.08 (Indecent exposure), 43.22 (Obscene display or distribution), 43.24 (Sale, distribution, or display of harmful material to minor), or 43.251 (Employment harmful to children), Penal Code;

(5) In SECTION 1 of the bill, strike proposed Articles 62.01(5)(I) and (J), Code of Criminal Procedure (house committee printing, page 3, lines 11-18), and substitute the following:

(I) a conviction under the laws of another state or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), or (F) [of this subdivision]; or

(J) the second conviction under the laws of another state or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an [the] offense listed in Paragraph (E) [of indecent exposure].

(6) In SECTION 1 of the bill, in proposed Article 62.03(a), Code of Criminal Procedure (house committee printing, page 7, lines 7-8), between "institution," and "an official", insert "the Texas Department of Criminal Justice or Texas Youth Commission, as appropriate, shall determine the person's level of risk to the community and assign to the person a risk level using criteria established by the department or commission, as appropriate, and".

(7) In SECTION 1 of the bill, in proposed Article 62.03(b), Code of Criminal Procedure (house committee printing, page 8, line 25), between "form" and "to the department", insert "and risk level".

(8) In SECTION 1 of the bill, in proposed Article 62.03, Code of Criminal Procedure, strike Subsection (c) (house committee printing, page 9, lines 10-24), and substitute the following:

(c) If a person who is subject to registration under this chapter [article] receives an order deferring adjudication, placing the person on juvenile probation or community supervision, or imposing only a fine, the court pronouncing the order or sentence shall determine the person's risk level based on a recommendation submitted to the court under Subsection (d) and ensure that the prerelease notification and registration requirements specified in this article [section] are conducted on the day of entering the order or sentencing. If a representative of a community supervision and corrections department or juvenile probation department [representative] is available in court at the time a court pronounces an order or [a] sentence under this subsection [of deferred adjudication or community supervision], the representative shall immediately obtain the person's risk level from the court and conduct the prerelease notification and registration requirements specified in this article [section]. In any other case in which the court pronounces an order or [a] sentence under this subsection, the court shall designate another appropriate individual to obtain the person's risk level from the court and conduct the prerelease notification and registration requirements specified in this article [section].

(d) On request by a court, a representative of a community supervision and corrections department or juvenile probation department shall submit to the court a recommendation as to the appropriate risk level for a person who may be subject to registration under this chapter. The representative shall determine that risk level using the applicable risk assessment instrument developed under this subsection. The Texas Department of Criminal Justice, Texas Youth Commission, Texas Juvenile Probation Commission, and Council on Sex Offender Treatment shall consult and develop a standard risk assessment instrument for adults and a standard risk assessment instrument for juveniles to be used in determining risk levels under this subsection.

(9) In SECTION 1 of the bill, in proposed Article 62.03(d), Code of Criminal Procedure (house committee printing, page 9, line 25), strike "(d)" and substitute "(e) [(d)]".

(10) In SECTION 1 of the bill, in proposed Article 62.03(e), Code of Criminal Procedure (house committee printing, page 10, line 11), strike "(e)" and substitute "(f) [(e)]".

(11) In SECTION 1 of the bill, in proposed Article 62.03(f), Code of Criminal Procedure, as relettered by this amendment (formerly proposed Article 62.03(e)) (house committee printing, page 10, lines 15-19), strike the language that appears between "If the" and "an offense under Section 25.02, Penal Code" and substitute "~~[victim is a child younger than 17 years of age and the]~~ basis on which the person is subject to registration is ~~[not an adjudication of delinquent conduct or a deferred adjudication and is not]~~ a conviction for a felony offense listed in Article 62.01(5), other than".

(12) In SECTION 1 of the bill, in proposed Article 62.03(f), Code of Criminal Procedure, as relettered by this amendment (formerly proposed Article 62.03(e)), (house committee printing, page 10, line 25, to page 11, line 1), strike "If the victim is a child younger than 17 years of age, regardless" and substitute "Regardless [If the victim is a child younger than 17 years of age, regardless]".

(13) In SECTION 1 of the bill, in proposed Article 62.03(f), Code of Criminal Procedure, as relettered by this amendment (formerly proposed Article 62.03(e)) (house committee printing, page 11, lines 4-7), strike the language that appears between "administrator of any private" and the period at the end of the sentence, and substitute "primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the [district] office of the superintendent or administrator, as applicable. Regardless of the basis on which a person is subject to registration, if the authority knows that the person subject to registration intends to work at an address in a school district other than the school district in which the person intends to reside, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person intends to work by mail to the district office. Not later than the 14th day after receipt of a notice under this subsection, the superintendent or administrator shall release the information contained in the notice to appropriate school district or private school personnel, as applicable, including any peace officers and security personnel, principals, nurses, and counselors".

(14) In SECTION 1 of the bill, in proposed Article 62.03(f), Code of Criminal Procedure (house committee printing, page 11, line 8), strike "(f)" and substitute "(g) [(f)]".

(15) In SECTION 1 of the bill, in proposed Article 62.03(g), Code of Criminal Procedure (house committee printing, page 11, line 16), strike "(g)" and substitute "(h) [(g)]".

(16) In SECTION 1 of the bill, in proposed Article 62.04(f), Code of Criminal Procedure (house committee printing, page 14, lines 5-9), strike the language that appears between "If the" and "an offense under Section 25.02, Penal Code" and substitute "~~[victim is a child younger than 17 years of age and the]~~ basis on which the person is subject to registration is ~~[not an adjudication of delinquent conduct or a deferred adjudication and is not]~~ a conviction for a felony offense listed in Article 62.01(5), other than".

(17) In SECTION 1 of the bill, in proposed Article 62.04(f), Code of Criminal Procedure (house committee printing, page 14, lines 15-16), strike "If the victim is a child younger than 17 years of age, regardless" and substitute "Regardless [If the victim is a child younger than 17 years of age, regardless]".

(18) In SECTION 1 of the bill, in proposed Article 62.04(f), Code of

Criminal Procedure (house committee printing, page 14, lines 19-23), strike the language that appears between "administrator of any private" and the period at the end of the sentence, and substitute "primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the [district] office of the superintendent or administrator, as applicable. Regardless of the basis on which a person is subject to registration, if the authority knows that the person subject to registration intends to work at an address in a school district other than the school district in which the person intends to reside, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person intends to work by mail to the district office. Not later than the 14th day after receipt of a notice under this subsection, the superintendent or administrator shall release the information contained in the notice to appropriate school district or private school personnel, as applicable, including any peace officers and security personnel, principals, nurses, and counselors".

(19) In SECTION 1 of the bill, in proposed Article 62.06, Code of Criminal Procedure (house committee printing, page 17, between lines 14 and 15), after Subsection (b), insert the following:

(c) A person subject to registration under this chapter shall report to the local law enforcement authority with whom the person is registered not later than January 15 of each year to verify the information in the registration form maintained by the authority for that person. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is accurate, the person shall verify registration by signing the form. If the information is not accurate, the person shall make any necessary corrections before signing the form.

(20) In SECTION 1 of the bill, in proposed Article 62.08(a), Code of Criminal Procedure (house committee printing, page 18, line 8), between "chapter" and "[article]", insert "and the risk level assigned to the person under this chapter".

(21) In SECTION 1 of the bill, in proposed Article 62.08, Code of Criminal Procedure (house committee printing, at the bottom of page 18), after Subsection (c), insert the following:

(d) On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, the department shall release any information described by Subsection (a) to the licensing authority.

(e) For the purposes of Subsection (d):

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

(f) A private primary or secondary school or administrator of a private

primary or secondary school may release to the public information regarding a person required to register if the information is public information under this chapter and is released to the administrator under Article 62.03 or 62.04 of this chapter. A private primary or secondary school or administrator of a private primary or secondary school is not liable under any law for damages arising from conduct authorized by this subsection.

(22) In SECTION 1 of the bill, in proposed Article 62.10(b), Code of Criminal Procedure (house committee printing, page 19, lines 24-25), strike "state jail felony" and substitute "felony of the third degree".

(23) In SECTION 1 of the bill, in proposed Article 62.10(c), Code of Criminal Procedure (house committee printing, page 20, line 4), strike "felony of the third degree" and substitute "felony of the second [third] degree".

(24) In SECTION 1 of the bill, strike proposed Articles 62.11 and 62.12, Code of Criminal Procedure (house committee printing, page 20, line 5, to page 22, line 11), and substitute the following:

Art. 62.11 [Sec. 8]. APPLICABILITY [EXEMPTIONS]. [(a)] This chapter [article] applies only to a reportable conviction or adjudication[-:

[(+)] occurring on or after[:

[(A)] September 1, 1970, except that the provisions of Article 62.03 and Article 62.04 relating to the requirement of newspaper publication apply only to:

(1) a reportable conviction or adjudication occurring on or after September 1, 1997, if the conviction or adjudication relates to:

(A) an offense under Section 21.07, 43.03, 43.04, 43.05, 43.22, 43.23, 43.24, or 43.251, Penal Code; or

(B) an offense in which the victim is a person 17 years of age or older; or

(2) a reportable conviction or adjudication occurring on or after September 1, 1995, if the conviction or adjudication is not a conviction or adjudication described by Subdivision (1) [1991, if the conviction is for or the adjudication is based on an offense listed in Section 1(5)(A) of this article;

[(B)] September 1, 1993, if the conviction is for or the adjudication is based on an offense listed in Section 1(5)(B) of this article; or

[(C)] September 1, 1995, if the conviction is for an offense described under Section 1(5)(C), (D), (E), (F), (I), or (J) of this article; or

[(2)] for which an order of deferred adjudication is entered by the court on or after September 1, 1993].

[(b)] A person who has a reportable conviction or adjudication may petition a district judge in the county where the person resides or intends to reside for an exemption from this article. If the person shows good cause, the district judge shall grant the exemption.]

Art. 62.12 [Sec. 9]. EXPIRATION OF DUTY TO REGISTER. (a) The duty to register for a person with a reportable conviction or adjudication [under Section 1(5)(D) of this article] ends when the person dies unless, before death, the duty to register ended under Subsection (d).

(b) The duty to register for a person with a reportable conviction or adjudication under Article 62.01(5)(A), (B), (F), (G), (H), or (I) based on an offense under Section 25.02 or 43.03, Penal Code, an attempt, conspiracy, or solicitation to commit an offense under Section 25.02 or 43.03, Penal Code,

or an offense containing elements substantially similar to an offense under Section 25.02 or 43.03, Penal Code, ends as provided by Subsection (d).

(c) The duty to register for a person with a reportable conviction or adjudication under Article 62.01(5)(E), (G), or (J) based on two violations of an offense under Section 21.07(a)(4), 21.08, 43.22, 43.24, or 43.251, Penal Code, or two violations of an offense containing elements substantially similar to an offense under Section 21.07(a)(4), 21.08, 43.22, 43.24, or 43.251, Penal Code, ends as provided by Subsection (d).

(d) The duty to register for a person with a reportable conviction or adjudication described by Subsection (b) or (c) ends:

(1) if the person's duty to register is based on an adjudication of delinquent conduct, on the 10th anniversary of the date on which:

[(1) the person ceases to be under the supervision of the Texas Youth Commission, if the person was committed to the Texas Youth Commission other than under a determinate sentence;

[(2) the person is discharged from the Texas Youth Commission or the Texas Department of Criminal Justice, whichever date is later, if the person was committed to the Texas Youth Commission under a determinate sentence; or

[(3)] the disposition is made or the person completes the terms of the disposition, whichever date is later; or

(2) if the person's duty to register is based on a conviction or on an order of deferred adjudication, [if the person received a disposition that did not include a commitment to the Texas Youth Commission.

[(b) The duty to register for a person with a reportable conviction, other than a conviction for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, ends] on the 10th anniversary of the date on which the court dismisses the criminal proceedings against the person and discharges the person, the person is released from county jail, [the institutional division of the Texas Department of Criminal Justice] or the person discharges [parole or] community supervision, whichever date is later.

[(c) The duty to register for a person with a reportable conviction or adjudication based on an order of deferred adjudication under Section 1(5)(E) of this article, other than an order of deferred adjudication for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, ends on the 10th anniversary of the date on which:

[(1) the court dismisses the criminal proceedings against the person and discharges the person; or

[(2) the person is released from the institutional division of the Texas Department of Criminal Justice or the person discharges parole or community supervision, if the court proceeded to final adjudication in the case.]

(25) In SECTION 11(a) of the bill (house committee printing, page 30, lines 13-16), strike the language that appears between "(a) The" and "only to" and substitute "changes in law made by this Act to Articles 62.11 and 62.12, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Sections 8(a) and 9, Article 6252-13c.1, Revised Statutes, respectively), apply".

(26) In SECTION 11(b) of the bill (house committee printing, page 31, lines 8-10), strike the language that appears between "in effect under" and "redesignated" and substitute "Sections 8(a) and 9, Article 6252-13c.1, Revised Statutes, before those sections were".

Amendment No. 3 was adopted without objection.

SB 875, as amended, was passed.

CSSB 1246 ON SECOND READING

(Berlanga, Glaze, Hightower, Place, and McReynolds - House Sponsors)

CSSB 1246, A bill to be entitled An Act relating to the establishment of a statewide rural health care system.

Amendment No. 1

Representative Berlanga offered the following amendment to **CSSB 1246**:

Amend **CSSB 1246** as follows:

(1) In Article 20C.14(a), Insurance Code, as added by SECTION 1 of the bill (page 9, line 17, House Committee Printing), strike "The state" and substitute "To the extent consistent with federal law, the state".

(2) In Article 20C.14(b), Insurance Code, as added by SECTION 1 of the bill (page 9, line 26, House Committee Printing), strike "state fiscal biennium." and substitute "state fiscal biennium, except that the system shall receive a subcontract from the funding entity to provide services to those children if the system elects to receive a subcontract not later than November 1, 1997, the system provides the state share of matching funds for the entire population covered by the subcontract, and the subcontract does not cover an area that is included in the statutory territorial jurisdiction of a hospital district. If the system elects not to receive a subcontract or to provide the state share of matching funds, then any entity that is selected by the state Medicaid contracting entity to provide health care to those children shall use existing local health care providers and hospital providers in establishing its provider network."

(3) In Article 20C.14, Insurance Code, as added by SECTION 1 of the bill (page 10, between lines 20 and 21, House Committee Printing), insert a new Subsection (f) to read as follows:

"(f) The state retains the right to cancel a contract awarded under this article if the system is sold or dissolved."

Amendment No. 1 was adopted without objection.

CSSB 1246, as amended, was passed to third reading.

CSSB 381 ON SECOND READING

(Goodman, Danburg, and McClendon - House Sponsors)

CSSB 381, A bill to be entitled An Act relating to the civil and criminal consequences of a grant of deferred adjudication for a sexual offense or a sexually assaultive offense and to the prosecution of certain defendants charged with or convicted of those offenses.

Amendment No. 1

Representative Goodman offered the following amendment to **CSSB 381**:

Amend **CSSB 381** as follows:

(1) On page 2, line 7, between "case" and ",", insert "and except as otherwise provided by this subsection".

(2) On page 2, line 12, between "years" and ".", insert "or more than 20 years".

Amendment No. 1 was adopted without objection.

CSSB 381, as amended, was passed to third reading.

CSSB 694 ON SECOND READING
(Greenberg - House Sponsor)

CSSB 694, A bill to be entitled An Act relating to the use of alternative dispute resolution procedures by state agencies.

CSSB 694 was passed to third reading.

CSSB 461 ON SECOND READING
(Maxey - House Sponsor)

CSSB 461, A bill to be entitled An Act relating to the authority of the comptroller to contract for certain tax collection services.

CSSB 461 was passed to third reading.

SB 823 ON SECOND READING
(Naishtat - House Sponsor)

SB 823, A bill to be entitled An Act relating to payroll deductions in certain municipalities.

Amendment No. 1

Representative Wohlgemuth offered the following amendment to **SB 823**:

Amend **SB 823**, in SECTION 1 of the bill, in proposed Section 141.008, Local Government Code (Committee Printing page 2, between lines 14 and 15), by inserting the following subsection:

(g) A payroll deduction made under this section may not be made for the purpose of a reportable activity and may not be paid, directly or indirectly, to a general-purpose committee or specific-purpose committee for any purpose. In this subsection, "reportable activity," "general-purpose committee," and "specific-purpose committee" have the meanings assigned by Section 251.001, Election Code.

Amendment No. 1 was adopted without objection.

SB 823, as amended, was passed to third reading.

SB 551 ON SECOND READING
(Thompson - House Sponsor)

SB 551, A bill to be entitled An Act relating to the exemption of certain persons from jury service.

SB 551 was passed to third reading.

SB 1702 ON SECOND READING
(Hunter - House Sponsor)

SB 1702, A bill to be entitled An Act relating to the records of the executive office of the governor.

SB 1702 was passed to third reading.

SB 271 ON SECOND READING
(Wilson - House Sponsor)

SB 271, A bill to be entitled An Act relating to the geographic area where certain holders of a local distributor's permit may sell a brand of ale, beer, or malt liquor.

Amendment No. 1

Representative Wilson offered the following amendment to **SB 271**:

Amend **SB 271** as follows:

(1) In SECTION 1 of the bill, in proposed Section 102.56(a), Alcoholic Beverage Code (Committee Printing page 1, line 11), insert after the period the following: "Subsections (b) and (d) apply only to the delivery of a brand of ale, beer, or malt liquor to a holder of a mixed beverage permit or a private club permit whose premises is located in a county in which 8,000 or more alcoholic beverage licenses or permits of any type have been issued under this code and are in effect."

(2) In SECTION 1 of the bill, in proposed Section 102.56(b), Alcoholic Beverage Code (Committee Printing page 1, line 18), insert between "located" and "outside": "inside that county and".

(3) In SECTION 1 of the bill, in proposed Section 102.56(d), Alcoholic Beverage Code (Committee Printing page 2, line 5), insert between "located" and "outside": "inside that county and".

Amendment No. 1 was adopted without objection.

SB 271, as amended, was passed to third reading.

HR 1020 - ADOPTED
(by Flores)

Representative Flores moved to suspend all necessary rules to take up and consider at this time **HR 1020**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1020, Honoring members of the Hidalgo County Sheriff's Department for their courageous actions on February 9, 1997.

HR 1020 was adopted without objection.

HR 1017 - ADOPTED
(by Crabb)

Representative Crabb moved to suspend all necessary rules to take up and consider at this time **HR 1017**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1017, Commending the Reverend John E. Birkelbach for his outstanding service to the Christian ministry.

HR 1017 was adopted without objection.

HCR 283 - ADOPTED
(by Dutton)

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HCR 283**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 283, In memory of Donna Ringoringo.

HCR 283 was unanimously adopted by a rising vote.

HR 1022 - ADOPTED
(by Crabb)

Representative Crabb moved to suspend all necessary rules to take up and consider at this time **HR 1022**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1022, Honoring Dr. Norman Hall on his retirement as superintendent of schools with the Huffman Independent School District.

HR 1022 was adopted without objection.

RULES SUSPENDED

Representative Berlanga moved to suspend the 5-day posting rule to allow the Committee on Public Health to consider **HCR 279**.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Local and Consent Calendars, on recess today, 2W.25, Capitol Building, to consider amendments.

Public Safety, on recess today, Desk 43, to consider **SB 322** and **HCR 278**.

Civil Practices, on recess today, Desk 6, to consider **SB 220**.

Rules and Resolutions, on recess today, Desk 133, to consider the calendar.

Licensing and Administrative Procedures, on recess today, Desk 66, to consider pending bills.

Pensions and Investments, on recess today, E1.010, Capitol Extension.

Public Education, on recess today, Desk 102.

RECESS

Representative Dutton moved that the house recess until 10 a.m. tomorrow in memory of Ms. Donna Ringoringo.

The motion prevailed without objection.

The house accordingly, at 8:44 p.m., recessed until 10 a.m. tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HCR 274 (by G. Lewis), Recognizing the Tarrant County Employment Network for its service to the citizens of Tarrant County.

To Rules & Resolutions.

HCR 277 (by J. Jones), Congratulating Willie Lee Campbell Glass on her receipt of an Iowa State University alumni award.

To Rules & Resolutions.

HCR 278 (by McClendon), Directing the Department of Public Safety to study the feasibility of implementing a COP program statewide.

To Public Safety.

HCR 279 (by McClendon), Directing the Texas Department of Health to study the state's implementation of the federal requirements under EPCRA.

To Public Health.

HCR 280 (by West), Commemorating the birth of Tiffany Sheree Satterwhite.

To Rules & Resolutions.

HCR 281 (by Goolsby), Directing the General Services Commission to request that the Texas Jewelers Association conduct a design contest.

To House Administration.

HR 982 (by Dukes), Commemorating the recent visit to the Capitol by students from Austin's Dobie Middle School.

To Rules & Resolutions.

HR 983 (by Davis), Congratulating Duncanville High School students on taking first place honors in the 11th annual American Set a Good Example Contest.

To Rules & Resolutions.

HR 986 (by West), Recognizing Permian High School as a finalist for the 1997 Governor's Awards for Environmental Excellence.

To Rules & Resolutions.

HR 990 (by G. Lewis), Honoring Pamela Dunlop Gates for her service to the community.

To Rules & Resolutions.

HR 994 (by Raymond), Honoring Judge Albert Leonard Sodrok for his outstanding public service.

To Rules & Resolutions.

HR 996 (by J. Jones), Honoring Eucolia Erby, Sr., for his contributions to the community.

To Rules & Resolutions.

HR 998 (by Holzheuser), Congratulating William S. and Betty Dickson Clements Fly on their 50th wedding anniversary.

To Rules & Resolutions.

HR 999 (by Williams), Honoring Rusty Pierce for his athletic achievements.

To Rules & Resolutions.

HR 1000 (by Farrar), Recognizing the Urban Experience Program for its many achievements in the field of education.

To Rules & Resolutions.

HR 1001 (by Davis), Commemorating the Ector High School basketball team's 1972 Class 3A state championship.

To Rules & Resolutions.

HR 1002 (by Counts), In memory of J. M. Kayser.

To Rules & Resolutions.

HR 1003 (by West), Recognizing Ireland Magnet Elementary School as a finalist for the 1997 Governor's Awards for Environmental Excellence.

To Rules & Resolutions.

SB 851 to State Affairs.

SB 946 to Transportation.

SB 1497 to Appropriations.

SB 1689 to Civil Practices.

SB 1798 to Financial Institutions.

SB 1814 to Agriculture & Livestock.

SB 1942 to Natural Resources.

SB 1943 to Natural Resources.

SB 1949 to Natural Resources.

SB 1952 to Judicial Affairs.

SB 1954 to Environmental Regulation.

SB 1955 to Natural Resources.

SB 1956 to Judicial Affairs.

SCR 3 to Civil Practices.

SCR 97 to Rules & Resolutions.

SCR 98 to Rules & Resolutions.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 59

HB 9, HB 385, HB 473, HB 571, HB 574, HB 732, HB 740, HB 808, HB 984, HB 1029, HB 1085, HB 1135, HB 1217, HB 1288, HB 1291, HB 1338, HB 1540, HB 1556, HB 1577, HB 1610, HB 1805, HB 1823, HB 1825, HB 2007, HB 2083, HB 2220, HB 2411, HB 2445, HB 2696, HB 2923, HB 3060, HB 3100, HB 3252, HB 3271, HB 3559, HB 3565, HCR 55, HCR 165, HCR 227, HCR 260, HCR 270, HCR 271, HJR 83

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1**MESSAGE FROM THE SENATE****SENATE CHAMBER**

Austin, Texas

Tuesday, May 20, 1997

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 2846 Berlanga SPONSOR: Madla

Relating to the provision of health care services by advanced practice nurses and physician assistants in collaborative practice with physicians.

(AMENDED)

HB 3579 Zbranek SPONSOR: Galloway

Relating to the creation, administration, powers, and authority of the Chambers County-Cedar Bayou Navigation District.

HB 3594 Nixon, Joe SPONSOR: Lindsay

Relating to granting additional powers to the Westchase District, formerly known as the Westchase Area Management District.

HCR 248 Horn SPONSOR: Nelson

Congratulating Ben E. Harmon on his retirement as assistant superintendent for student services in the Lewisville Independent School District.

HCR 259 Galloway, Carolyn SPONSOR: Shapiro

Congratulating Dr. John L. Rumley on being named 1997 Dentist of the Year by the Dallas County Dental Society.

SB 1942 Madla

Relating to the creation, administration, powers, duties, operation, and financing of the Culberson County Groundwater Conservation District; granting the power of eminent domain; authorizing the issuance of bonds and the imposition of taxes.

SCR 99 Wentworth

Requesting the governor to return Senate Bill No. 1437 to the house for further consideration.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 29 (viva-voce vote)

Respectfully,

Betty King
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Tuesday, May 20, 1997 - 2

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 1595 Alexander SPONSOR: Cain

Relating to the regulation of motor vehicle dealers and manufacturers.
(COMMITTEE SUBSTITUTE/AMENDED)

Respectfully,

Betty King
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Tuesday, May 20, 1997 - 3

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 131 Madden SPONSOR: Ellis
Relating to political contributions made in connection with certain judicial offices.

HB 325 Pickett SPONSOR: Shapleigh
Relating to the required distance between certain businesses that sell alcoholic beverages and a day-care center or child-care facility.
(AMENDED)

HB 422 Farrar SPONSOR: Gallegos, Jr.
Relating to the regulation by the Texas Transportation Commission of fences along a road or highway in the state highway system in certain municipalities; providing a criminal penalty.

HB 966 Oakley SPONSOR: Barrientos
Relating to water safety; providing penalties.
(AMENDED)

HB 979 Junell SPONSOR: Barrientos
Relating to the duration of certain agreements between a local government and this state or the United States in connection with an airport or air navigation facility.

HB 1052 Gutierrez SPONSOR: Ogden
Relating to standards for the storage of eggs.

HB 1055 Tillery SPONSOR: Carona
Relating to denial of a driver's license to a juvenile for failure to appear in court or pay a fine in connection with a misdemeanor.

HB 1216 Edwards SPONSOR: Patterson
Relating to the creation and operation of the Texas Emancipation Juneteenth Cultural and Historical Commission.

HB 1521 Raymond SPONSOR: Truan
Relating to notice by the comptroller concerning certain unclaimed property.

HB 1637 Alvarado SPONSOR: Carona
Relating to increased penalties for fraudulent or other unlawful acts committed under the state Medicaid program that result in injury to a child.
(AMENDED)

HB 1640 Raymond SPONSOR: Ellis
Relating to assessment of adult education programs and program participants.
(COMMITTEE SUBSTITUTE)

HB 2254 Jones, Delwin SPONSOR: Barrientos
Relating to reapportionment of certain state representative districts.

HB 2353 Finnell SPONSOR: Luna
Relating to rural rail transportation districts.

HB 2644 Telford SPONSOR: Armbrister
Relating to systems and programs administered by the Teacher Retirement System of Texas.
(COMMITTEE SUBSTITUTE/AMENDED)

HB 2877 Greenberg SPONSOR: Barrientos
Relating to the issuance of bonds for projects by the Texas Public Finance Authority.

HB 3112 Rangel SPONSOR: Bivins
Relating to the authorization of payroll deductions by employees of institutions of higher education for parking fees or parking permits.
(COMMITTEE SUBSTITUTE)

HB 3250 Hartnett SPONSOR: Wentworth
Relating to dog and cat sterilization and the issuance of Animal Friendly license plates.

HB 3366 Junell SPONSOR: Lindsay
Relating to the authority of the General Services Commission to sell or dispose of real property.

HB 3367 Junell SPONSOR: Lindsay
Relating to state buildings and to the authority of the General Services Commission to obtain title to and retain control of certain property located outside of Austin.

HB 3581 Hightower SPONSOR: Ogden
Relating to the termination of certain receiverships.
(AMENDED)

HB 3585 Greenberg SPONSOR: Barrientos
Relating to authorizing the General Services Commission to convey certain state-owned property to the City of Austin.

HCR 44 Delisi SPONSOR: Moncrief
Directing the Texas Department of Health, the Lyndon Baines Johnson School of Public Affairs, the Blackland Research Center and the School of Rural Public Health, to study the role of local governments in providing public health services.
(AMENDED)

Respectfully,

Betty King
Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Tuesday, May 20, 1997 - 4

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 92 Brimer SPONSOR: Whitmire
Relating to the financing of sports and community venues and related infrastructure; authorizing the imposition of certain local taxes and the issuance of local bonds; providing penalties.
(COMMITTEE SUBSTITUTE/AMENDED)

HB 1039 Naishtat SPONSOR: Moncrief
Relating to court-ordered mental health services.
(AMENDED)

HB 1548 Turner, Sylvester SPONSOR: Galloway
Relating to tuition and fees for certain students registered in a public junior college.
(COMMITTEE SUBSTITUTE/AMENDED)

HB 2777 Junell SPONSOR: Ratliff
Relating to the eligibility determination and service delivery by health and human service agencies, the Texas Workforce Commission and other agencies.
(COMMITTEE SUBSTITUTE/AMENDED)

SB 1958 Luna, Gregory
Relating to the creation of three county courts at law in Bexar County.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 331 (viva-voce vote)

SB 712 (viva-voce vote)

SB 1534 (viva-voce vote)

SB 1622 (31 YEAS, 0 NAYS)

SB 1899 (viva-voce vote)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 361
Senate Conferees: Madla - Chair/Gallegos/Galloway, Michael/Nixon, Drew/Patterson, Jerry/

SB 932
Senate Conferees: Sibley - Chair/Bivins/Cain/Ellis/Shapiro/

SB 1310
Senate Conferees: Ellis - Chair/Cain/Gallegos/Lindsay/Whitmire/

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 1212

Senate Conferees: Sibley - Chair/Duncan/Ellis/Patterson, Jerry/Shapleigh/

HB 1410

Senate Conferees: Ellis - Chair/Lucio/Ratliff/Shapiro/Sibley/

HB 1550

Senate Conferees: Harris - Chair/Cain/Ellis/Shapleigh/West, Royce/

HB 1836

Senate Conferees: Carona - Chair/Cain/Gallegos/Ratliff/Shapiro/

HB 2542

Senate Conferees: Brown - Chair/Armbrister/Haywood/Lucio/Truan/

Respectfully,

Betty King
Secretary of the Senate

Message No. 5

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Tuesday, May 20, 1997 - 5

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 66

Cuellar

SPONSOR: Zaffirini

Relating to unfunded state mandates on political subdivisions.
(AMENDED)

HB 332

Danburg

SPONSOR: Patterson

Relating to election precincts and polling places; providing a criminal penalty.
(COMMITTEE SUBSTITUTE)

HB 381

Swinford

SPONSOR: Madla

Relating to farm, industrial, off-road construction, or outdoor power equipment.
(COMMITTEE SUBSTITUTE/AMENDED)

HB 564

Oliveira

SPONSOR: Ellis

Relating to certain hearings and investigations conducted by the Texas Workforce Commission.

HB 1209 Maxey SPONSOR: Ellis
Relating to payments to vendors doing business with state government.

HB 1445 Gray SPONSOR: Armbrister
Relating to the continuation and functions of the Texas Racing Commission and to the transfer of certain commission functions to the Texas Department of Commerce; providing penalties.
(COMMITTEE SUBSTITUTE/AMENDED)

HB 1865 Maxey SPONSOR: Shapleigh
Relating to payment of accelerated life insurance benefits.

HB 2618 Naishtat SPONSOR: Moncrief
Relating to disciplinary proceedings and investigation of a complaint against a social worker.

HB 2776 Jackson SPONSOR: Brown
Relating to the regulation of state superfund sites.
(COMMITTEE SUBSTITUTE)

HB 2778 Junell SPONSOR: Ratliff
Relating to directing payment, after approval, of certain miscellaneous claims and judgments against the state out of funds designated by this Act; making appropriations.
(COMMITTEE SUBSTITUTE)

HB 3590 Hawley SPONSOR: Truan
Relating to the creation, administration, powers, duties, operation, and financing of the San Patricio Groundwater Conservation District.
(AMENDED)

SCR 44 Sibley
Encouraging the Texas Board of Criminal Justice, Texas Youth Commission, Juvenile Probation Commission, county commissioners, and sheriffs to support faith-based correctional programming and facilities.

Respectfully,

Betty King
Secretary of the Senate

Message No. 6

MESSAGE FROM THE SENATE
SENATE CHAMBER

Austin, Texas
Tuesday, May 20, 1997 - 6

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 625 Hernandez SPONSOR: Madla
Relating to the disclosure of certain information submitted to a governmental entity by a potential vendor or contractor.

HB 2029 Turner, Bob SPONSOR: Carona
Relating to retirement because of disability under the Employees Retirement System of Texas.

HB 2482 Smithee SPONSOR: Sibley
Relating to the establishment of an accreditation program for child-care facilities and child-placing agencies as an alternative to state licensure; providing a criminal penalty.
(AMENDED)

HB 3016 Price SPONSOR: Galloway
Relating to the transfer of certain state property from the Texas Department of Criminal Justice to Jefferson County.
(AMENDED)

HB 3031 Eiland SPONSOR: Patterson
Relating to the authority of the commissioner of insurance to approve higher deductibles on coverage provided under certain policies issued through the Texas Catastrophe Property Insurance Association.

HB 3448 Jones, Jesse SPONSOR: Carona
Relating to the authorization of a closed meeting by the commissioners court of a county to deliberate certain personnel actions affecting a member of an advisory body.

HB 3492 Holzheuser SPONSOR: Brown
Relating to the Texas Committee on Energy Policy and the Texas Energy Coordination Council.

Respectfully,

Betty King
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

April 18

Land & Resource Management - **HB 3515**

May 7

Urban Affairs - **HB 2904**

May 8

Insurance - **HB 1662**

State, Federal & International Relations - **HB 2356**

May 9

Transportation - **SB 1568**

May 12

Business & Industry - **HB 374**

Criminal Jurisprudence - **HB 2435**

Insurance - **HB 3270**

State Affairs - **SB 1055**

May 13

Insurance - **HB 2959**

May 19

Corrections - **SB 108**

County Affairs - **SB 17**

Economic Development - **SB 216, SB 1263**

Environmental Regulation - **SB 1874**

Higher Education - **SB 1907**

Human Services - **SB 775**

Insurance - **SB 383, SB 1291, SB 1948**

Judicial Affairs - **SB 711, SB 756, SB 1500**

Licensing & Administrative Procedures - **SB 1100**

Natural Resources - **SB 28, SB 844**

Pensions & Investments - **SB 1328**

Public Education - **SB 232, SB 247, SB 280, SB 462, SB 517, SB 520, SB 656, SB 780, SB 1893**

Public Health - **SB 276, SB 940, SB 1066, SB 1566**

State Affairs - **SB 253**

Urban Affairs - **SB 336, SB 629**

Ways & Means - **SB 1407, SB 1440, SB 1613**

ENROLLED

May 9 - **HB 327, HB 485, HB 699, HB 1532**

May 19 - **HB 473, HB 574, HB 732, HB 740, HB 808, HB 1029,**

**HB 1288, HB 1540, HB 1610, HB 2083, HB 2445, HB 3252, HB 3559,
HB 3565, HCR 165, HCR 227, HJR 83**

SENT TO THE GOVERNOR

May 19 - **HB 138, HB 336, HB 423, HB 460, HB 475, HB 480, HB 540,
HB 546, HB 598, HB 621, HB 663, HB 726, HB 770, HB 906, HB 1112,
HB 1177, HB 1193, HB 1203, HB 1306, HB 1316, HB 1407, HB 1524,
HB 1602, HB 1632, HB 1719, HB 1977, HB 2064, HB 2141, HB 2179,
HB 2300, HB 2499, HB 2510, HB 2699, HB 2734, HB 2851, HB 3212,
HB 3490, HB 3504, HB 3558, HCR 64, HCR 79, HCR 231, HCR 238,
HCR 244, HCR 257**

SIGNED BY THE GOVERNOR

May 19 - **HB 6, HB 8, HB 566, HB 614, HB 794, HB 1404, HB 1474,
HB 1520, HB 1741, HB 1955, HB 2185**

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