

HOUSE JOURNAL

SEVENTY-FIFTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-SIXTH DAY — THURSDAY, MAY 29, 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 593).

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; 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; 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; 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 Robert Tyler, pastor, Hilltop Baptist Temple, Cedar Park, as follows:

Our Heavenly Father, we thank you for allowing us to gather in this place today. A place where so many distinguished men and women of all faiths, colors, cultures, and backgrounds have come together over the past five months to debate the important issues confronting Texas. We ask you to bless their efforts. Not every action suited everyone. We are a large state made up of people with diverse interests, many constituencies, and a wide range of views.

However, I do ask that you bless these folks and their families. They have spent countless hours trying to make Texas a better place in which to live. Our prayer is that they will have achieved their collective goals and that Texans will appreciate their efforts.

We trust that in a few days, our representatives will go home with a feeling of accomplishment in their hearts.

We pray for the city of Jarrell, Texas. Continue to send relief to that community. Heal those families, especially those who lost loved ones. Bind them in your perfect love. In Jesus' name. Amen.

(Thompson in the chair)

CAPITOL PHYSICIAN

The chair recognized Representative Shields who presented Dr. John Dennis Blackburn of San Antonio as the "Doctor for the Day."

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

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. 74).

(Speaker in the chair)

HR 1228 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1228**, suspending the limitations on the conferees for **HB 1**.

HR 1230 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1230**, suspending the limitations on the conferees for **HB 298**.

HCR 310 - ADOPTED (by Craddick)

Representative Craddick moved to suspend all necessary rules to take up and consider at this time **HCR 310**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 310, Honoring the chairman and board of directors of International Isotopes, Inc.

HCR 310 was adopted without objection.

HCR 311 - ADOPTED (by Craddick)

Representative Craddick moved to suspend all necessary rules to take up and consider at this time **HCR 311**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 311, Honoring Beverly Pevehouse and the late Joe Pevehouse for their contributions to Midland College.

HCR 311 was adopted without objection.

HR 1224 - ADOPTED (by Uher)

Representative Uher moved to suspend all necessary rules to take up and consider at this time **HR 1224**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1224, Commemorating the 50th anniversary of Phillips Petroleum Company's Sweeny facility.

HR 1224 was adopted without objection.

HR 1217 - ADOPTED
(by S. Turner)

Representative S. Turner moved to suspend all necessary rules to take up and consider at this time **HR 1217**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1217, Honoring Steven Craig Little II for his service to the community.

HR 1217 was read and was adopted without objection.

On motion of Representative Thompson, the names of all the members of the house were added to **HR 1217** as signers thereof.

HR 1226 - ADOPTED
(by Kubiak)

Representative Kubiak moved to suspend all necessary rules to take up and consider at this time **HR 1226**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1226, Congratulating Raschel Alison Richter and James Prescott York on the occasion of their wedding.

HR 1226 was read and was adopted without objection.

On motion of Representative B. Turner, the names of all the members of the house were added to **HR 1226** as signers thereof.

HR 1233 - ADOPTED
(by Kubiak)

Representative Kubiak moved to suspend all necessary rules to take up and consider at this time **HR 1233**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1233, Congratulating Kody Earl Kubiak on his graduation from Rockdale High School.

HR 1233 was adopted without objection.

On motion of Representative Edwards, the names of all the members of the house were added to **HR 1233** as signers thereof.

HR 1235 - ADOPTED
(by Greenberg)

Representative Greenberg moved to suspend all necessary rules to take up and consider at this time **HR 1235**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1235, Recognizing Dr. Ying Li as a Special Envoy from Texas to the People's Republic of China.

HR 1235 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 1235** as signers thereof.

INTRODUCTION OF GUEST

The speaker recognized Representative Greenberg, who introduced Dr. Ying Li.

HR 1124 - ADOPTED
(by Dunnam)

Representative Dunnam moved to suspend all necessary rules to take up and consider at this time **HR 1124**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1124, Congratulating Robert Hawkins on his receipt of the Lone Star Distinguished Service Medal.

HR 1124 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 1124** as signers thereof.

HR 1234 - ADOPTED
(by B. Turner)

Representative B. Turner moved to suspend all necessary rules to take up and consider at this time **HR 1234**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1234, Honoring Beverly Grant Harden for his service to the community of Llano.

HR 1234 was adopted without objection.

HCR 290 - ADOPTED
(by West)

Representative West moved to suspend all necessary rules to take up and consider at this time **HCR 290**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 290, Congratulating the Reverend Curtis Thorpe on the occasion of his 50th anniversary as pastor of Odessa's Temple Baptist Church.

HCR 290 was adopted without objection.

HCR 298 - ADOPTED
(by West)

Representative West moved to suspend all necessary rules to take up and consider at this time **HCR 298**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 298, In memory of W. G. "Cotton" Kirklin.

HCR 298 was unanimously adopted by a rising vote.

On motion of Speaker Laney, the names of all the members of the house were added to **HCR 298** as signers thereof.

HR 1154 - ADOPTED
(by West)

Representative West moved to suspend all necessary rules to take up and consider at this time **HR 1154**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1154, Congratulating the Ector County Independent School District on receiving a 1997 Award for Excellence in Texas School Health.

HR 1154 was adopted without objection.

HCR 313 - ADOPTED
(by West)

Representative West moved to suspend all necessary rules to take up and consider at this time **HCR 313**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 313, Commemorating the Legislative Ladies Club "Taste of Texas" luncheon.

HCR 313 was adopted without objection.

HR 720 - ADOPTED
(by Gallego)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 720**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 720, Honoring Adalberto and Mary Padilla on the occasion of their 50th wedding anniversary.

HR 720 was adopted without objection.

HR 1172 - ADOPTED
(by Garcia)

Representative Garcia moved to suspend all necessary rules to take up and consider at this time **HR 1172**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1172, Honoring Ralph David Castro, Jr., owner of Dyer Koach Kraft Paint & Body, on his civic contributions.

HR 1172 was adopted without objection.

HR 1171 - ADOPTED
(by Palmer)

Representative Palmer moved to suspend all necessary rules to take up and consider at this time **HR 1171**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1171, Commemorating the 50th anniversary of the River Oaks Police Department.

HR 1171 was adopted without objection.

HCR 317 - ADOPTED
(by Krusee)

Representative Krusee moved to suspend all necessary rules to take up and consider at this time **HCR 317**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 317

WHEREAS, Words cannot adequately convey the deep shock felt by citizens throughout the state, and indeed the nation, at the devastation wreaked by severe weather in the Central Texas communities of Jarrell and Cedar Park; and

WHEREAS, On May 27, 1997, at 4:05 p.m. a tornado swept through Williamson County and touched down in Jarrell; with stunning swiftness, the storm leveled 50 homes, claiming the lives of approximately 30 people and injuring countless more; today, the death toll continues to rise and some 23 people remain missing; and

WHEREAS, From there, the storm continued on its path of destruction, ravaging homes in the Buttercup Creek subdivision of Cedar Park, where it also collapsed the roof of an Albertson's store, injuring several individuals inside; and

WHEREAS, Sadly, this is not the first time tragedy has struck Williamson County, for on May 17, 1989, another deadly tornado struck the town of Jarrell, killing one individual and causing \$3 million in property damage; and

WHEREAS, While those involved struggle to rebuild their lives in the aftermath of this devastating incident, our thoughts and prayers are with them, and we wish to encourage all Texans to extend a helping hand to their neighbors in need and to react to this tragedy with the utmost compassion, generosity, and commitment; now, therefore, be it

RESOLVED, That the 75th Legislature of the State of Texas hereby honor the memory of the Texans who died as a result of the tornadoes that hit Central Texas and extend deepest sympathy to all those whose lives have been profoundly affected by this terrible tragedy; and, be it further

RESOLVED, That when the Texas House of Representatives and Senate adjourn this day, they do so in memory of the innocent victims of the Central Texas tornadoes.

HCR 317 was read.

ADDRESS BY REPRESENTATIVE KRUSEE

Yesterday morning I toured Jarrell with the governor. The devastation is unimaginable. It was as if every bit of life had been literally sucked out of the land. About thirty people are dead, and while I have never been so sad for my county, I have never been so proud. It is tragedy like this that shows what kind of community we have built in Williamson County and the character of the people who live there.

There are some people whom I think I should single out. My constables were on the scene before the tornado had left. One of them, Gary Griffin, as he watched the tornado hit, gathered people under an overpass for safety. Immediately after the tornado had left, he rushed in to help and he was there as they lifted a wall up and found a little girl still clinging to her mother, even in death. They were surrounded by pillows in a desperate effort on behalf of the mother to save her little girl.

I want to recognize the efforts of Gary, of Dennis Jaroszewski, of Marty Ruble, of the DPS who sent out over 200 trainees immediately, of the Williamson County sheriff's department, of Wal-Mart who immediately sent a semi-truck full of help, and of HEB who did the same thing.

There have been several members who have told me that they would like to make contributions to help the relief effort. If you would like to do so, please make your checks out to the American Red Cross and leave them at my desk. Thank you very much.

HCR 317 was unanimously adopted by a rising vote.

On motion of Representative Hilderbran, the names of all the members of the house were added to **HCR 317** as signers thereof.

REMARKS ORDERED PRINTED

Representative Wilson moved to print remarks by Representative Krusee.

The motion prevailed without objection.

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, Senate List No. 38).

**HR 691 - ADOPTED
(by Haggerty)**

Representative Haggerty moved to suspend all necessary rules to take up and consider at this time **HR 691**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 691, In memory of Kenneth K. Brimer, Sr.

HR 691 was read and was unanimously adopted by a rising vote.

On motion of Representative Jackson, the names of all the members of the house were added to **HR 691** as signers thereof.

INTRODUCTION OF GUEST

The speaker recognized Representative Haggerty, who introduced Frances Hughes Brimer, Kenneth K. Brimer, Sr.'s, widow and Representative Brimer's mother.

**HR 1241 - ADOPTED
(by Maxey)**

Representative Maxey moved to suspend all necessary rules to take up and consider at this time **HR 1241**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1241, Commending Brooke Holloway for her service to Texas.

HR 1241 was adopted without objection.

**HR 1117 - ADOPTED
(by King)**

Representative King moved to suspend all necessary rules to take up and consider at this time **HR 1117**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1117, Honoring Mary Nan West.

HR 1117 was adopted without objection.

On motion of Representative Kuempel, the names of all the members of the house were added to **HR 1117** as signers thereof.

RESOLUTIONS 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.)

**HR 1228 - ADOPTED
(by Junell)**

The speaker laid before the house the following privileged resolution:

HR 1228

[Please refer to the supplement to today's daily journal, at the end of this volume, for the text to **HR 1228**, suspending the limitations on conference committee jurisdiction for **HB 1**, the general appropriations bill.]

HR 1228 was adopted without objection.

**HR 1230 - ADOPTED
(by Madden)**

The speaker laid before the house the following privileged resolution:

HR 1230

BE IT RESOLVED by the House of Representatives of the State of Texas, 75th Legislature, Regular Session, 1997, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 298 to consider and take action on the following specific matters:

(1) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text not in disagreement in Section 6 of the bill, adding a new section to Subchapter A, Chapter 41, Election Code, to read as follows:

Sec. 41.0053. ELECTIONS ON SPRING UNIFORM DATE IN CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to:

(1) a city with a population of more than 450,000 in which all members of the city's governing body are elected at large;

(2) an independent school district or public junior college district with a service area that is primarily the same as that of a city described by Subdivision (1); and

(3) a metropolitan transit authority with a principal city described by Subdivision (1).

(b) A general or special election of officers of a political subdivision covered by this section shall be held on the spring uniform election date.

Explanation: This change is necessary to ensure that the elections are held on a prescribed uniform election date.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text not in disagreement in Section 6 of the bill, amending Section 7(c), Chapter 429, Acts of the 70th Legislature, Regular Session, 1987, to read as follows:

(c) The directors elected at the first election shall draw lots for three four-year terms and two two-year terms. Thereafter, all directors shall serve four-year terms, and all director's elections shall occur on the spring uniform [~~May general~~] election date of even-numbered years.

HR 1230 was adopted without objection.

**SB 383 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Smithee, the house granted the request of the senate for the appointment of a conference committee on **SB 383**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 383**: Smithee, chair, Averitt, Berlanga, Roman, and Van de Putte.

**SB 384 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Smithee, the house granted the request of the senate for the appointment of a conference committee on **SB 384**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 384**: Smithee, chair, Averitt, Berlanga, Eiland, and Van de Putte.

**SB 385 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Smithee, the house granted the request of the senate for the appointment of a conference committee on **SB 385**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 385**: Smithee, chair, Averitt, Berlanga, Janek, and Van de Putte.

**SB 534 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Maxey, the house granted the request of the senate for the appointment of a conference committee on **SB 534**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 534**: Maxey, chair, Christian, Hilderbran, McReynolds, and Naishtat.

**SB 700 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Rhodes, the house granted the request of the senate for the appointment of a conference committee on **SB 700**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 700**: Rhodes, chair, Brimer, Dukes, Smith, and Solomons.

**SB 1355 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Maxey, the house granted the request of the senate for the appointment of a conference committee on **SB 1355**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1355**: Maxey, chair, Counts, McCall, Swinford, and Wise.

**SB 1856 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Chisum, the house granted the request of the senate for the appointment of a conference committee on **SB 1856**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1856**: Chisum, chair, Chavez, Hamric, Jackson, and Talton.

**SB 1907 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Swinford, the house granted the request of the senate for the appointment of a conference committee on **SB 1907**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1907**: Swinford, chair, Rabuck, Rangel, E. Reyna, and Solis.

**SJR 43 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Tillery, the house granted the request of the senate for the appointment of a conference committee on **SJR 43**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SJR 43**: Hilbert, chair, Chisum, Hernandez, Williamson, and Wilson.

HB 1 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the following conference committee report on **HB 1**:

Austin, Texas, May 26, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ratliff

Brown

Sibley

Truan

Zaffirini

On the part of the Senate

Junell

Coleman

Delisi

Gallego

Swinford

On the part of the House

Representative Junell moved to adopt the conference committee report on **HB 1**.

A record vote was requested.

The motion prevailed by (Record 594): 143 Yeas, 1 Nay, 5 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; 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; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nay — Clark.

Present, not voting — Mr. Speaker(C); Garcia; Hilderbran; Raymond; Talton.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 594. I intended to vote present, not voting.

Place

I was shown voting yes on Record No. 594. I intended to vote present, not voting.

Stiles

STATEMENT BY REPRESENTATIVE CLARK

I voted "no" on the conference committee report on **HB 1** even though I recognize that Chairman Junell and the committee did a good job under difficult conditions in balancing the competing demands for limited resources. However, I still feel we are sending the wrong message to taxpayers and state employees when we paid \$140 million in the "Tejas" settlement, cutting that money from other items.

Clark

HB 381 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Swinford submitted the following conference committee report on **HB 381**:

Austin, Texas, May 26, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 381** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Madla	Swinford
Sibley	Chisum
Galloway	Elkins
Gallegos	Patterson
Lucio	

On the part of the Senate On the part of the House

HB 381, A bill to be entitled An Act relating to warranties and warranty claims concerning farm, industrial, or outdoor power equipment.

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

SECTION 1. Subchapter B, Chapter 19, Business & Commerce Code, is amended by adding Section 19.28 to read as follows:

Sec. 19.28. WARRANTY CLAIM. (a) This section applies to a warranty claim submitted by a dealer:

(1) while the dealer agreement is in effect; or

(2) after the termination of the dealer agreement, if the claim is for work performed before the effective date of the termination.

(b) Not later than the 30th day after the date a supplier receives a warranty claim from a dealer, the supplier shall accept or reject the claim. A claim not rejected before that deadline is deemed accepted.

(c) Not later than the 30th day after the date the claim is accepted or rejected, the supplier shall:

(1) pay an accepted claim; or

(2) send the dealer written notice of the grounds for rejection of a rejected claim.

(d) A supplier that pays a claim, including a supplier of an electric engine or motor, may not pay less than the hourly labor rate and other expenses involved in the work that the dealer regularly charges to a retail customer who does not assert a warranty and the dealer's net price plus 15 percent for parts. The number of hours of labor claimed may not exceed 1-1/2 times the supplier's recommended hours for the repair involved.

(e) After payment of a claim, a supplier may not charge back, set off, or otherwise attempt to recover all or part of the amount of the claim unless:

(1) the claim was fraudulent;

(2) the work for which the claim was made was not properly performed or was unnecessary to comply with the warranty; or

(3) the dealer did not substantiate the claim according to the written

requirements of the supplier in effect when the claim arose.

(f) A dealer or supplier authorized to sell new farm, industrial, or outdoor power equipment shall give the purchaser a written warranty agreement including replacement or cash refund. If the dealer determines the equipment cannot be made usable, the manufacturer is liable to the purchaser for the replacement or cash refund.

SECTION 2. Section 19.46, Business & Commerce Code, is repealed.

SECTION 3. The change in law made by this Act applies only to a warranty claim received by a supplier on or after the effective date of this Act. A warranty claim received before the effective date of this Act is governed by the law in effect when the claim was received, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1997.

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

Representative Swinford moved to adopt the conference committee report on **HB 381**.

The motion prevailed.

HB 1228 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Jackson submitted the following conference committee report on **HB 1228**:

Austin, Texas, May 26, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1228** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Brown	Jackson
Barrientos	Dukes
Haywood	Howard
Lucio	Kuempel
Truan	Puente

On the part of the Senate On the part of the House

HB 1228, A bill to be entitled An Act relating to consolidated permit processing by the Texas Natural Resource Conservation Commission.

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

SECTION 1. Chapter 5, Water Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. CONSOLIDATED PERMIT PROCESSING

Sec. 5.401. CONSOLIDATED PERMIT PROCESSING. (a) If a plant, facility, or site is required to have more than one permit issued by the commission and the applications for all permits required by the commission are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one consolidated permit hearing on all permits requested to be consolidated by the applicant and may issue one consolidated permit. On request of the applicant, the commission shall issue one consolidated permit.

(b) The executive director shall designate one permit program as the lead program for coordination, and that program is the point of contact regarding the consolidated permit.

(c) The executive director may require separate processing of consolidated applications or may return to the applicant parts of an application if the executive director determines that the applicant has submitted an incomplete application or if the applicant does not respond as requested to notices of deficiency.

(d) A federal operating permit governed by the requirements of Sections 382.054-382.0543, Health and Safety Code, may not be consolidated with other permits under this subchapter.

Sec. 5.402. REQUEST FOR SEPARATE PROCESSING. (a) At any time before the public notice of the opportunity to request a hearing on a permit application, the applicant may request that consolidated applications be processed separately as determined by the executive director. The executive director shall process the applications separately if the applicant submits a timely request under this subsection.

(b) At any time after the notice of opportunity to request a hearing but before referral of the matter to the State Office of Administrative Hearings, the executive director may separate the applications for processing on a showing of good cause by the applicant that the applications should be processed separately. For purposes of this subsection, "good cause" includes a change in the statutory or regulatory requirements governing a permit or a substantial change in the factual circumstances surrounding the applications for permits.

(c) After an application has been referred to the State Office of Administrative Hearings, the applicant may have the applications processed separately only on a showing of compliance with commission procedural rules regarding the withdrawal of applications.

Sec. 5.403. RENEWAL PERIOD FOR CONSOLIDATED PERMIT. The renewal period for a consolidated permit issued under this subchapter is the shortest term set by any state or federal statute or rule governing one or more of the authorizations sought in the consolidated permit.

Sec. 5.404. RENEWAL OF PERMITS. A permit issued under this subchapter or a permit issued before and effective on September 1, 1997, that authorizes more than one permit program may be renewed, amended, or modified as a consolidated permit or may be separated by program and the permits may be processed separately and subject to the renewal, amendment, or modification requirements of applicable law governing operations at the facility, plant, or site.

Sec. 5.405. FEES. (a) Except as provided by Subsection (b), the fee for a consolidated permit shall be computed as if the permits consolidated had been processed separately.

(b) The commission by rule may reduce the fee for a consolidated permit below the total amount that the applicant would have paid for processing the applications separately if the commission finds that consolidated processing results in savings to the agency.

Sec. 5.406. RULES. The commission may adopt rules to effectuate the purposes of this subchapter, including rules providing for:

(1) combined public notices of permits issued under the authority of this section; or

(2) procedures for the processing and issuing of consolidated permits.

SECTION 2. This Act takes effect September 1, 1997, and applies only to a permit application that is filed with the Texas Natural Resource Conservation Commission on or after that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Jackson moved to adopt the conference committee report on **HB 1228**.

The motion 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. 1).

HB 1410 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hill submitted the following conference committee report on **HB 1410**:

Austin, Texas, May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1410** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis
Lucio
Sibley

Hill
Ehrhardt
Yarbrough
Seaman
Bailey

On the part of the Senate

On the part of the House

HB 1410, A bill to be entitled An Act relating to projects and reports of certain economic development corporations; providing an administrative penalty.

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

SECTION 1. Section 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Project" means land, buildings, equipment, facilities, and improvements included in the definition of that term under Section 2 of this Act, including recycling facilities, and land, buildings, equipment, facilities, and improvements found by the board of directors to:

(A) be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, learning centers, parks and park facilities, open space improvements, municipal buildings, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items; ~~or~~

(B) promote or develop new or expanded business enterprises, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, as well as any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises; or

(C) be required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745.

SECTION 2. The Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is amended by adding Section 4C to read as follows:

Sec. 4C. (a) Not later than February 1 of each year, the board of directors of a corporation created under Section 4A or 4B of this Act shall submit to the comptroller a report in the form required by the comptroller.

(b) The reporting form shall not exceed one page in length and must include:

(1) a statement of the corporation's primary economic development objectives;

(2) a statement of the corporation's total revenues during the preceding fiscal year;

(3) a statement of the corporation's total expenditures during the preceding fiscal year;

(4) a statement of the corporation's total expenditures during the preceding fiscal year in each of the following categories:

(A) administration;

(B) personnel;

(C) marketing or promotion;

(D) direct business incentives;

- (E) debt service;
- (F) capital costs;
- (G) affordable housing; and
- (H) payments to taxing units, including school districts;

(5) a list of the corporation's capital assets, including land and buildings; and

(6) any other information the comptroller requires to determine the use of the sales and use tax imposed under Section 4A or 4B of this Act to encourage economic development in this state.

(c) If a corporation fails to file a report in accordance with this section or fails to include sufficient information in the report, the comptroller shall provide to the corporation written notice of this failure. The written notice must include information on how to correct the failure.

(d) The comptroller may impose an administrative penalty of \$200 against a corporation that does not correct the failure before the 31st day after the date the corporation receives the written notice under Subsection (c) of this section.

(e) The comptroller by rule shall prescribe the procedures for the imposition of an administrative penalty under this section. The rules must protect the due process rights of a corporation.

(f) Not later than November 1 of each even-numbered year, the comptroller shall submit to the legislature a report on the use of the sales and use tax imposed under Sections 4A and 4B of this Act to encourage economic development in this state.

(g) On request, the comptroller shall provide without charge a copy of the report required by Subsection (f) of this section to a corporation organized under Section 4A or 4B of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Hill moved to adopt the conference committee report on **HB 1410**.

A record vote was requested.

The motion prevailed by (Record 595): 146 Yeas, 0 Nays, 1 Present, not voting.

Yeas — 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; 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; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; 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.

Present, not voting — Mr. Speaker(C).

Absent — Ehrhardt; Keel.

HB 2644 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Telford submitted the following conference committee report on **HB 2644**:

Austin, Texas, May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2644** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Telford
Harris	Rangel
Lucio	Tillery
Barrientos	Gray
Nixon	Bosse
On the part of the Senate	On the part of the House

HB 2644, A bill to be entitled An Act relating to systems and programs administered by the Teacher Retirement System of Texas.

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

SECTION 1. Section 822.005(c), Government Code, is amended to read as follows:

(c) A person is not entitled to withdraw contributions who is employed, has applied for employment, or has received a promise of employment, in a position covered by the retirement system.

SECTION 2. Section 822.201(c), Government Code, is amended to read as follows:

(c) Excluded from salary and wages are expense payments, allowances, payments for unused vacation or sick leave, maintenance or other nonmonetary compensation, fringe benefits, deferred compensation other than as provided by Subsection (b)(3), compensation that is not made pursuant to a valid employment agreement, payments received by an employee in [~~the 1995-1996~~ or] a [~~subsequent~~] school year that exceed \$5,000 for teaching a driver

education and traffic safety course that is conducted outside regular classroom hours, and any compensation not described in Subsection (b).

SECTION 3. Section 823.004, Government Code, is amended to read as follows:

Sec. 823.004. COMPUTATION OF AND PAYMENT FOR CREDIT. (a) All credit for military service, out-of-state service, developmental leave, service previously waived, and service transferred to the retirement system under Chapter 805 shall be computed on a September 1 through August 31 school year. Payments for service described by this section must be completed not later than the later of the member's retirement date or the last day of the month in which the member submits a retirement application.

(b) The retirement system by rule may establish an irrevocable employer pick-up of member contributions as described by Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C. Section 414(h)(2)) for the purchase of any service credit authorized by law.

SECTION 4. Section 823.202(b), Government Code, is amended to read as follows:

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to:

(1) the contributions [~~and membership fees~~] that the person would have paid had the person been a member of the retirement system during that year; plus

(2) interest computed at an annual rate of five percent of the amount of each payment that would have been due had the person been a member, from the hypothetical payment due date to the date of deposit.

SECTION 5. Section 823.301(b), Government Code, is amended to read as follows:

(b) A member may not establish more than five years of service credit in the retirement system under this subchapter for military service. Service may be established in one-year increments except as otherwise provided by this subchapter.

SECTION 6. Section 823.3021(d), Government Code, is amended to read as follows:

(d) A member eligible to establish credit under this section may not qualify for insurance coverage under the Texas Public School [~~Retired~~] Employees Group Insurance Act (Article 3.50-4, Insurance Code) unless the member retires with 10 or more years of membership service credit for actual service in public schools and complies with any other requirements for coverage provided by that article.

SECTION 7. Section 823.303, Government Code, is amended to read as follows:

Sec. 823.303. MILITARY LEAVE CREDIT. A member who performs military service creditable in the retirement system but who does not establish credit for the service by making the deposits required by Section 823.302 is entitled to credit of a year for each year of military service performed, if the member requests the credit in writing before the later of the date of application for retirement or the effective date of retirement. The credit is usable only in determining eligibility for, but not the amount of, benefits under Section 824.406.

SECTION 8. Sections 823.401(a) and (d), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), an eligible member may establish equivalent membership service credit for employment with a public school system maintained wholly or partly by another state or territory of the United States or by the United States for children of its citizens. A school receiving funds under 22 U.S.C. Section 2701 is considered a public school for the purposes of this section.

(d) A member may establish credit under this section by depositing with the retirement system for each year of service claimed a contribution computed at the rate of:

(1) 12 percent of the full-time rate of the member's annual compensation, plus any additional eligible compensation received, during the first year of service for which the member received membership credit in the retirement system that is both after the service for which credit is sought and after September 1, 1956; or

(2) 12 percent of the full-time rate of the member's annual compensation, plus any additional eligible compensation received, during the most recent year of service for which the member received membership credit that is after the service for which credit is sought, if the member has performed no service in Texas since September 1, 1956.

SECTION 9. Section 823.402(e), Government Code, is amended to read as follows:

(e) A member may establish credit under this section by depositing with the retirement system for each year of developmental leave claimed an amount equal to the sum of:

(1) the rate of member contributions required during the year of leave, times the member's annual rate of compensation during the member's most recent year of creditable service that preceded the year of leave; plus

(2) the amount that the state would have contributed had the member performed membership service during the year of leave at the member's annual rate of compensation during the most recent year of service that preceded the leave; ~~plus~~

~~[(3) any membership fees in effect during the year of leave].~~

SECTION 10. Section 823.501, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (e) and (f) to read as follows:

(b) A person eligible to reinstate service credit under this section is one who is a contributing member of the retirement system at the time the service is reinstated ~~[resumes membership service in the retirement system].~~

(c) A member may reinstate canceled credit under this section by depositing with the retirement system:

(1) the amount withdrawn or refunded; plus

(2) ~~[membership fees for the period that membership was terminated;~~
plus

~~[(3)]~~ a reinstatement fee of six percent, compounded annually, of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

(e) Service credit canceled by a withdrawal of contributions not authorized by Section 822.005 is required to be reinstated under this section.

(f) A contributing member may have an account that was terminated by absence from service reactivated by requesting the reactivation in writing. The beneficiary of a decedent who was a contributing member at the time of death may have an account that was terminated by the decedent's absence from service reactivated by requesting the reactivation in writing before the first payment of a death benefit.

SECTION 11. Section 823.502(c), Government Code, is amended to read as follows:

(c) A person may resume membership and claim credit under this section by depositing with the retirement system:

(1) an amount equal to service retirement benefits received; plus

(2) a reinstatement fee of six percent, compounded annually, of the amount determined under Subdivision (1) from the date of the person's return to service to the date of redeposit; plus

(3) an amount equal to the total contributions that would have been deducted from the person's annual compensation each year after the return to service had the person been a member of the retirement system; plus

(4) a reinstatement fee of six percent, compounded annually, of the amount determined under Subdivision (3) from the end of each year of service after the return to service to the date of deposit; ~~plus~~

~~[(5) membership fees for the years after the return to service].~~

SECTION 12. Section 824.101, Government Code, is amended by amending Subsections (c) and (d) and adding Subsections (f) and (g) to read as follows:

(c) Only one person may be designated as beneficiary of an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5), and a designation of beneficiary under any [either] of those options may not be made, changed, or revoked, except as provided by Sections 824.1011 and 824.1012, after the later of the date on which the retirement system makes the first annuity payment to the retiree or the date the first payment becomes due. For purposes of this section, the term "makes payment" includes the depositing in the mail of a payment warrant or the crediting of an account with payment through electronic funds transfer.

(d) Unless a contrary intention is clearly indicated by a written designation of beneficiary and except as otherwise provided by this section [law], the most recent designation of beneficiary by a member or annuitant applies to all benefits payable on the death of the member or annuitant.

(f) A beneficiary designation, change in beneficiary, or revocation of beneficiary is not effective unless it is authorized by this subchapter. Except as provided by Subsection (g), any authorized beneficiary designation, change in beneficiary, or revocation of beneficiary, including any modification ordered by a court or contemplated in a trust or testamentary document, must be executed by the member or annuitant in a form prescribed by the retirement system and must be received by the retirement system before the member's or annuitant's death or, for a beneficiary named to receive continued optional service or disability retirement payments, not later than the deadline established elsewhere in this subtitle.

(g) Receipt by the retirement system of a certified copy of a divorce decree between a member or annuitant and a designated beneficiary revokes any designation of the former spouse as beneficiary of any death benefits payable under Subchapter E or F of this chapter that was effective before the date of divorce, if the decree is received by the retirement system before the payment of any part of the death benefit to any beneficiary.

SECTION 13. Section 824.1011(a), Government Code, is amended to read as follows:

(a) A retiree who is receiving a standard service or disability retirement annuity under Section 824.203 or 824.304(b) and who marries after the date of the person's retirement may replace the annuity by selecting an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or under Section 824.308(c)(1), (c)(2), or (c)(5), as applicable, and designating the person's spouse as beneficiary before the first anniversary of the marriage in the same manner as an annuity selection and designation of beneficiary may be made before retirement.

SECTION 14. Subchapter B, Chapter 824, Government Code, is amended by adding Section 824.1012 to read as follows:

Sec. 824.1012. CHANGE OF BENEFICIARY AFTER RETIREMENT.

(a) A retiree receiving an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or Section 824.308(c)(1), (c)(2), or (c)(5) may change the designated beneficiary as provided by this section for the benefits payable after the retiree's death under those sections.

(b) If the beneficiary designated at the time of the retiree's retirement is the spouse or former spouse of the retiree:

(1) the spouse or former spouse must give written, notarized consent to the change; or

(2) a court with jurisdiction over the marriage must have ordered the change.

(c) A beneficiary designated under this section is entitled on the retiree's death to receive monthly payments of the survivor's portion of the retiree's optional retirement annuity for the shorter of:

(1) the remainder of the life expectancy of the beneficiary designated as of the effective date of the retiree's retirement; or

(2) the remainder of the new beneficiary's life.

(d) A retiree may not change a beneficiary under this section after retirement if the retiree has previously changed or designated after retirement a beneficiary for optional retirement annuity payments under this subtitle.

SECTION 15. Sections 824.202(a) and (c), Government Code, are amended to read as follows:

(a) A member is eligible to retire and receive a standard service retirement annuity if ~~the member~~:

(1) the member is at least 65 years old and has at least five years of service credit in the retirement system;

(2) the member is at least 60 years old and has at least 20 years of service credit in the retirement system; ~~or~~

(3) the member is at least 50 years old and has at least 30 years of service credit in the retirement system; or

(4) the sum of the member's age and amount of service credit in the retirement system equals the number 80.

(c) If a member is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(2), to a percentage derived from the following table:

Years of Service	Age at Date of Retirement					
	55	56	57	58	59	60
at least 20 but less than 21	90%	92%	94%	96%	98%	100%
at least 21 but less than 22	92%	94%	96%	98%	<u>100%</u>	100%
					[98%]	
at least 22 but less than 23	94%	96%	98%	<u>100%</u>	<u>100%</u>	100%
				[98%]	[98%]	
at least 23 but less than 24	96%	98%	<u>100%</u>	<u>100%</u>	<u>100%</u>	100%
			[98%]	[98%]	[98%]	
at least 24 but less than <u>25</u>	98%	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	100%
[30]		[98%]	[98%]	[98%]	[98%]	
[30 or more	100%	100%	100%	100%	100%	100%

SECTION 16. Section 824.203(d), Government Code, is amended to read as follows:

(d) In no case may the standard service retirement annuity be less than ~~[\$6.50 a month for each year of service credit or, for a member who is at least 65 years old at the time of retirement, less than the greater of \$6.50 a month for each year of service credit, or] \$150 a month.~~ The minimum benefits provided by this section are subject to reduction in the same manner as other benefits because of early retirement or selection of an optional retirement annuity.

SECTION 17. Section 824.204(d), Government Code, is amended to read as follows:

(d) If a person who is nominated by a retiree in the written designation under Section 824.101 predeceases the retiree, the reduced annuity of a retiree who has elected an optional service retirement annuity under Subsection (c)(1), ~~(c)(2), or (c)(5) [or (2)]~~ shall be increased to the standard service retirement annuity that the retiree would otherwise be entitled to receive if the retiree had not selected that annuity option. The standard service retirement annuity shall be adjusted as appropriate for:

- (1) early retirement as provided by Section 824.202; and
- (2) postretirement increases in retirement benefits authorized by law after the date of retirement.

SECTION 18. Section 824.304, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) If a member has a total of at least 10 years of service credit in the retirement system on the date of disability retirement, the retirement system shall pay the person for the duration of the disability a disability retirement annuity in an amount equal to the greater of:

- (1) a standard service retirement annuity computed under Section 824.203; or

(2) [~~\$6.50 a month for each year of service credit on the date of retirement; or~~

~~[(3)] \$150 a month.~~

(d) The minimum benefits provided by this section are subject to reduction in the same manner as other benefits because of the selection of an optional retirement annuity.

SECTION 19. Sections 824.404(b), (c), and (d), Government Code, are amended to read as follows:

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of \$200 [~~\$150~~], beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of \$300 [~~\$250~~] payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of \$200 [~~\$150~~], beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of \$300 [~~\$250~~], payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of \$200 [~~\$150~~], payable as long as only one child is less than 18 years old.

SECTION 20. Section 824.602, Government Code, is amended by adding Subsection (l) to read as follows:

(l) This subchapter does not apply to payments under Section 824.804(b).

SECTION 21. Chapter 824, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. DEFERRED RETIREMENT OPTION PLAN

Sec. 824.801. DEFINITION. In this subchapter, "plan" means the deferred retirement option plan provided by this subchapter.

Sec. 824.802. PARTICIPATION IN PLAN. (a) A contributing member who is eligible under Section 824.202 to retire and receive a standard service retirement annuity that is not reduced for retirement at an early age and who has at least 25 years of service credit in the retirement system may, if the member remains an employee, elect to participate in the deferred retirement option plan.

(b) An election to participate in the plan must be on a form prescribed by and filed with the retirement system. An election may be made only once and must state the period that the member wishes to participate in the plan. The period must be a minimum of 12 consecutive months and be in 12-month increments. The maximum period a member may participate in the plan is 60 consecutive months. An election under this section is irrevocable after filing.

The filing of an election under this section is not considered for any purpose an application for retirement, and a person is not considered a retiree for any purpose because of the filing.

(c) The effective date of a member's participation in the plan is the first day of the month after the month in which an election is received and approved by the retirement system. The retirement system shall approve the election filed by a member who is eligible to make the election.

Sec. 824.803. COMPUTATION OF PARTICIPANT'S SERVICE AND ANNUITY. (a) A person participating in the plan remains a member of the retirement system during the period of participation, unless the member terminates membership under Section 822.003, but the member may not, during participation, accrue additional service credit. The member shall make employee contributions to the retirement system, and the state and the member's employing district, if applicable, shall make contributions for the member's service performed during the member's participation in the plan. Member contributions made during the period of participation in the plan are not eligible for withdrawal by the participant and are deposited in the retired reserve account. The member and the state retain the obligation to contribute under Section 16, Texas Public School Employees Group Insurance Act (Article 3.50-4, Insurance Code), during the member's participation in this plan.

(b) For purposes of the plan, the computation of the service retirement annuity of a member participating in the plan is determined as of the effective date of participation. A participating member is not eligible to receive a postretirement increase made applicable to annuitants during the member's participation in the plan.

(c) An election to participate in the plan constitutes a deadline for the purchase of special service credit.

Sec. 824.804. BENEFITS UNDER PLAN. (a) On the effective date of a member's participation in the plan, the retirement system shall make the transfers required by Section 825.309 to the retired reserve account as if the member had retired on that date. The retirement system shall transfer monthly, during the period of the member's participation in the plan, from the retired reserve account to an account for the member in the deferred retirement option account an amount equal to 79 percent of the amount the member would have received that month under a standard service retirement annuity if the member had retired on the effective date of plan participation.

(b) When a member who has participated in the plan retires from the retirement system, the person is entitled to the accumulated amount in the member's account in the deferred retirement option account, including creditable interest. The amount is payable in a lump sum, in periodic installments, or as provided by Section 825.509, at the option of the member. The board of trustees by rule shall determine the number and frequency of installment payments.

(c) If a member dies during participation in the plan or after participation but before retirement, the decedent's designated beneficiary is entitled to the accumulated amount in the decedent's account in the deferred retirement option account, including creditable interest. The beneficiary is also entitled to a death benefit based on compensation and years of service on the effective date of participation in the plan and on age on the date of death.

(d) Payment of the benefit provided under the plan is in addition to any annuity otherwise payable under this subtitle.

Sec. 824.805. TERMINATION OF PARTICIPATION IN PLAN. A member terminates participation in the plan by:

(1) retirement;

(2) death; or

(3) expiration of the period for which participation was approved.

Sec. 824.806. BENEFITS FOR SERVICE AFTER PLAN PARTICIPATION. (a) Any eligible service credit accrued after termination of participation in the plan and before retirement shall be credited in the retirement system.

(b) At the time a member retires or dies, the retirement system shall compute the value of the additional service credit at the rate provided under Section 824.203, based on the lesser of the three years of service after the member's termination of plan participation, or the member's actual years of service after the termination, in which the member received the highest annual compensation. The retirement system shall add the amount computed under this subsection to the amount determined on the effective date of plan participation, and the sum is payable, subject to actuarial reduction if applicable, as the monthly annuity payment.

Sec. 824.807. INTEREST. Interest is creditable to a member's account in the deferred retirement option account at an annual, prorated rate equal to five percent during the period of participation in the plan and until all benefits are distributed.

SECTION 22. Section 825.206, Government Code, is amended by adding Subsection (f) to read as follows:

(f) An actuarial audit shall be performed in conjunction with an actuarial experience study or at least once every five years. The audit must include:

(1) an analysis of the appropriateness of the actuarial assumptions;

(2) a review of the assumptions and methodology for compliance with the funding standards;

(3) verification of demographic data; and

(4) confirmation of the valuation results, including a determination of actuarial accrued liability, normal cost, expected employee contributions, and the effects of any recent legislation.

SECTION 23. Section 825.207, Government Code, is amended to read as follows:

Sec. 825.207. COMPTROLLER [STATE TREASURER]. (a) Except as provided by Section 825.302 or 825.303 or by Subsection (e) of this section, the ~~comptroller~~ [state treasurer] is the custodian of all securities and cash of the retirement system, including securities held in the name of a nominee of the retirement system.

(b) The ~~comptroller~~ [state treasurer] shall pay money from the accounts of the retirement system on warrants drawn by the comptroller [of public accounts] and authorized by vouchers signed by the executive director or other persons designated by the board of trustees.

(c) The ~~comptroller~~ [state treasurer] annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the ~~comptroller's~~ [treasurer's] custody.

(d) The comptroller [~~state treasurer~~] is not responsible, under either civil or criminal law, for any action or losses with respect to assets of the retirement system while the assets are in the custody of a commercial bank as provided by Section 825.302 or 825.303 or by Subsection (e) of this section.

(e) The board of trustees may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of all or part of the retirement system's assets.

SECTION 24. Sections 825.209(a), (b), and (c), Government Code, are amended to read as follows:

(a) The comptroller [~~state treasurer~~] shall give a surety bond in an [~~the~~] amount of at least \$50,000.

(b) The executive director shall give a surety bond in an [~~the~~] amount of at least \$25,000.

(c) The board of trustees may require any trustee or employee of the board [~~other than the executive director;~~] to give a surety bond in an amount determined by the board and may increase the minimum amount of a bond required by Subsection (a) or (b).

SECTION 25. Section 825.301(a), Government Code, is amended to read as follows:

(a) The board of trustees shall invest and reinvest assets of the retirement system without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code.

SECTION 26. Section 825.306, Government Code, is amended to read as follows:

Sec. 825.306. CREDITING SYSTEM ASSETS. The assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following accounts:

- (1) member savings account;
- (2) state contribution account;
- (3) retired reserve account;
- (4) interest account; [~~or~~]
- (5) expense account; or
- (6) deferred retirement option account.

SECTION 27. Subchapter D, Chapter 825, Government Code, is amended by adding Section 825.3121 to read as follows:

Sec. 825.3121. DEFERRED RETIREMENT OPTION ACCOUNT. (a) The retirement system shall deposit in the deferred retirement option account the amounts required to be deposited in the account by Section 824.804(a) and interest as required by Section 824.807.

(b) The retirement system shall pay from the account all benefits accrued during participation in the deferred retirement option plan.

SECTION 28. Section 825.410, Government Code, is amended to read as follows:

Sec. 825.410. PAYROLL DEDUCTIONS OR INSTALLMENT PAYMENTS FOR SPECIAL SERVICE CREDIT. (a) Payments to establish

special service credit as authorized in Sections 805.002, ~~[823.202,]~~ 823.302, 823.304, 823.401, ~~[823.402,]~~ 823.501, and 825.403 may be made in a lump sum by a monthly payroll deduction in an amount not less than one-twelfth of the contribution required to establish at least one year of service credit, or in equal monthly installments over a period not to exceed the lesser of the number of years of credit to be purchased or 60 months. Installment and payroll deduction payments are due on the first day of each calendar month in the payment period. If an installment or payroll deduction payment is not made in full within 60 days after the due date, the retirement system may refund all installment or payroll deduction payments less fees paid on the lump sum due when installment or payroll deduction payments began. Partial payment of an installment or payroll deduction payment may be treated as nonpayment. A check returned for insufficient funds or a closed account shall be treated as nonpayment. When two or more consecutive monthly payments have a returned check, a refund may be made. If the retirement system refunds payments pursuant to this subsection, the member is not permitted to use the installment method of payment or the payroll deduction method, as applicable, for the same service for [a period of] three years after [from] the date of the refund. A member who requests and receives a refund of installment or payroll deduction payments also is not permitted to use the same method of payment for the same service for three years after the date of the refund.

(b) Service credit shall be established pursuant to the following provisions:

(1) The retirement system shall credit a member's payments made under this section to a suspense account in the trust fund until the sum of the payments equals the amount required for one year of service credit, at which time the retirement system shall deposit the payments in the appropriate accounts in the trust fund and grant the applicable amount of service credit. No credit shall be established for service pursuant to Section 823.501 or Section 825.403 until a lump sum has been paid or all payroll deduction or installment payments have been completed.

(2) No credit shall be established for other service when the cost of establishing the service has been determined by using withdrawn service to be reinstated pursuant to Section 823.501 or previously unreported service to be established pursuant to Section 825.403 until a lump sum or all payroll deductions or installments for the withdrawn or previously unreported service have been paid.

(3) All other service shall be credited when sufficient payroll deductions or installments have been completed to satisfy the cost requirements for a year of service.

(c) All installment and payroll deduction payments must be made on or before the service retirement date or the last day of the month in which the member's application for service retirement is submitted, whichever is later, or before the 31st day following the date on which the medical board certifies a member's disability. The installment payment method or payroll deduction method may not be used to establish service credit after retirement.

(d) If a member who has made at least one payroll deduction or installment payment and who is using the payroll deduction or installment method of payment dies before completing the [installment] payments, the retirement system may:

(1) return to the beneficiary determined under Sections 824.101 and 824.103 the [installment] payments less fees paid on the lump sum due when [installment] payments began and less payments which have resulted in credited service being established; or

(2) permit the beneficiary determined under Sections 824.101 and 824.103 to complete payment of the unpaid balance remaining at the time of the member's death.

(e) If the beneficiary requests a return of the installment or payroll deduction payments under Subsection (d)(1), the retirement system [TRS] shall return the payments in a lump sum. No additional service credit shall be established that has not been established in compliance with this section. If service credit has been established by installment or payroll deduction payments, the retirement system [TRS] shall not refund the payments, less any applicable fees, used to establish such credit unless a refund of total accumulated contributions is made to a member or beneficiary.

(f) If the beneficiary elects to complete the payments under Subsection (d)(2), the beneficiary shall make full payment in a lump sum of the unpaid balance before the issuance of any warrant to him in full or partial payment of death or survivor benefits.

(g) A member seeking to establish service credit by using the installment or payroll deduction payment method shall pay an additional fee of nine percent per annum calculated on a declining balance method on the lump sum due at the time the [installment] payment process begins. For purposes of this subsection, the installment or payroll deduction payment process begins on the first business day of the month in which the first [installment] payment becomes due. None of the additional fees shall be returned to the member or a beneficiary.

(h) The board of trustees has authority to adopt rules to implement this section, including rules establishing a minimum amount for monthly installment or payroll deduction payments.

(i) The actuary designated by the board of trustees shall, in investigating the experience of the members of the system, note any significant increase in the establishment of special service credit and determine the extent to which any increase has been caused by the installment or payroll deduction payment method. If the actuary certifies in writing to the retirement system that sound actuarial funding of the retirement system's benefits is endangered by continuation of the installment or payroll deduction payment method, the board of trustees may determine that the [installment] payment method will not be available, other than to those who are using the method at the time of the determination.

(j) Payments to establish service credit by a member who plans to retire in less than a year may be made by payroll deduction for a period determined by the retirement system.

(k) Each employer shall establish a payroll deduction plan to facilitate the payroll deductions authorized by this section and shall cooperate with the retirement system in implementing the payroll deduction method of payment for service credit.

SECTION 29. Section 825.512(e), Government Code, is amended to read as follows:

(e) The retirement system shall submit an annual investment performance report not later than the 45th day after the end of [~~25th day of the month following~~] each fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, the executive director of the State Pension Review Board, the legislative audit committee, the committees of the senate and the house of representatives having jurisdiction over appropriations, the committees of the senate and the house of representatives having principal jurisdiction over legislation governing the retirement system, and the Legislative Budget Board. The report shall include a listing of all commissions and fees paid by the system during the reporting period for the sale, purchase, or management of system assets. The report shall be in a form recommended by the evaluating firm.

SECTION 30. Subchapter F, Chapter 825, Government Code, is amended by adding Section 825.516 to read as follows:

Sec. 825.516. NONPROFIT ASSOCIATION DUES. (a) A retiree who is receiving an annuity from the retirement system may request the system to withhold from the retiree's monthly annuity payment membership dues for a nonprofit association of retired school employees in this state. The request for withholding must be on a form provided by the retirement system.

(b) After the retirement system receives a request authorized by this section, the system shall make the requested deductions until the earlier of:

(1) the date the annuity is terminated; or

(2) the first payment of the annuity after the date the system receives a written request signed by the retiree canceling the request for the withholding.

(c) The retirement system shall send all dues withheld under this section to the nonprofit association after each monthly payment of annuities.

SECTION 31. Subchapter F, Chapter 825, Government Code, is amended by adding Section 825.517 to read as follows:

Sec. 825.517. EXCESS BENEFIT ARRANGEMENT. (a) A separate, nonqualified, unfunded excess benefit arrangement is created outside the trust fund of the retirement system. This excess benefit arrangement shall be administered as a governmental excess benefit arrangement under Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)). The purpose of the excess benefit arrangement is to pay to annuitants of the retirement system benefits otherwise payable by the retirement system that exceed the limitations on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)).

(b) The board of trustees is responsible for the administration of this arrangement. Except as otherwise provided by this section, the board has the same rights, duties, and responsibilities concerning the excess benefit arrangement as it has to the trust fund.

(c) Benefits under this section are exempt from execution to the same extent as provided by Section 821.005. Contributions to this arrangement are not held in trust and may not be commingled with other funds of the retirement system.

(d) An annuitant is entitled to a monthly benefit under this section in an amount equal to the amount by which the benefit otherwise payable by the retirement system has been reduced by the limitation on benefits imposed by

Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)). The benefit payable by this arrangement is payable at the times and in the form that the benefit payable under the trust fund is paid.

(e) The benefit payable under this section shall be paid from state contributions that otherwise would be made to the trust fund under Section 825.404. In lieu of deposit in the state contribution account, an amount determined by the retirement system to be necessary to pay benefits under this section shall be paid monthly to the credit of a dedicated account in the general revenue fund maintained only for the excess benefit arrangement. The account may include amounts needed to pay reasonable and necessary expenses of administering this arrangement. The monthly amount to be paid to the credit of the account shall be transferred to the account at least 15 days before the date of a monthly disbursement under this section.

(f) The board of trustees may adopt rules governing the excess benefit arrangement that are necessary for the efficient administration of the arrangement in compliance with Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)).

SECTION 32. The heading of Article 3.50-4, Insurance Code, is amended to read as follows:

ARTICLE 3.50-4. TEXAS PUBLIC SCHOOL ~~[RETIRED]~~ EMPLOYEES
GROUP INSURANCE PROGRAM

SECTION 33. Sections 7A(a) and (e), Article 3.50-4, Insurance Code, are amended to read as follows:

(a) A public school district may elect to participate in the program provided under this article. A district that elects to participate must accept the schedule of costs adopted by the trustee. A district [and] may [not] offer an alternative health benefit plan to its active employees during the period of its participation in the program if the trustee approves the plan as providing contributions, participation, and a design that are in accordance with sound group benefit underwriting principles.

(e) Each participating school district shall contribute for each district employee covered by the program an amount equal to not less than 75 percent of the cost for the employee only of the plans of group coverages authorized by the trustee for active employees. The district shall certify to the trustee the amount the district will contribute monthly toward the cost of coverage. The trustee shall determine if the amount is sufficient to underwrite the plan for the district based on sound group benefit underwriting principles. A determination by the trustee under this subsection is final, ~~except that the school district's contribution may not exceed the amount contributed for each state employee by the state under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).~~

SECTION 34. Section 8, Article 3.50-4, Insurance Code, is amended to read as follows:

Sec. 8. PURCHASE OF GROUP HEALTH CARE BENEFITS ~~[INSURANCE]~~. (a) The trustee shall be designated as the group policyholder for any plan or plans established in this article. The trustee has authority to establish one or more plans that are self-insured.

(b) The ~~[group insurance]~~ coverages provided under the plan or plans may include but are not limited to life insurance, accidental death and

dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, long-term care, prescribed drugs, medicines, and prosthetic devices, and other supplemental benefits, supplies, and services as provided by this article, protection against loss of salary, and other coverages considered advisable.

(c) The trustee may provide different plans for retirees and surviving spouses covered by Medicare than the plans provided for retirees and surviving spouses who are not covered by Medicare.

(d) Each basic plan must cover preexisting conditions.

(e) The trustee may contract for and make available to all retirees, dependents, surviving spouses, and surviving dependent children optional group health ~~[insurance]~~ benefit plans in addition to the basic plans. The optional coverage may include a smaller deductible, lower coinsurance, or additional categories of benefits permitted under Subsection (b) of this section to provide additional levels of coverages and benefits. The trustee may utilize a portion of the funds received for the Texas Public School Employees Group Insurance Program to offset some portion of costs paid by the retiree for optional coverage if such utilization does not reduce the period the program is projected to remain financially solvent by more than one year in a biennium. Any additional contributions for these optional plans shall be paid for by the retiree, surviving spouse, or surviving dependent children.

~~(f) [The trustee shall enter into a contract or contracts with a carrier or carriers for the plan or plans that will provide that the method of paying expenses, paying claims, and establishing reserves shall be under the minimum premium approach to financing; and the contract shall be referred to as a minimum premium contract.]~~

~~[(g)]~~ New contracts for coverages under this program shall be submitted for competitive bidding at least every six years. ~~[Contracts between the trustee and carriers for the group insurance pool may provide for renegotiation.]~~

(g) ~~[(h)]~~ Each contract shall be based on the terms and conditions agreed on between the trustee and the entity ~~[carrier or carriers]~~ selected to provide the ~~[insurance]~~ coverage and benefits. Any contract for group benefits ~~[insurance]~~ awarded by the trustee must meet the minimum benefit and financial standards adopted by the trustee.

(h) ~~[(i)]~~ The coverage provided by the plan or plans may be secondary to all other benefit coverage to which the retiree, surviving spouse, dependent, or surviving dependent child is entitled. In the event the retiree, surviving spouse, dependent, or surviving dependent child is entitled to receive medicare hospital insurance benefits at no charge, then the coverage provided by the plan or plans shall be secondary to medicare hospital and medical insurance to the extent permitted by federal law.

(i) ~~[(j)]~~ In contracting for any benefits ~~[insurance]~~ under this article, competitive bidding shall be required under rules adopted by the trustee. The rules must require that prospective bidders provide information, for each area consisting of a county and all adjacent counties, on the number and types of qualified providers willing to participate in the coverage or plan for which the bid is made. The rules may provide criteria to determine qualified providers. The trustee shall consider the information before awarding a contract but may

not require a bidder to demonstrate a minimum standard of provider participation. The trustee is not required to select the lowest bid but may consider also ability to service contracts, past experiences, financial stability, and other relevant criteria. If the trustee awards a contract to an entity [a carrier] whose bid deviates from that advertised, the deviation shall be recorded and the reasons for the deviation shall be fully justified in the minutes of the next meeting of the trustee.

(j) [~~(k)~~] Notwithstanding any other provisions of this article, the trustee providing programs of benefits under this article is authorized to self-insure any and all programs available under this article and may, at its discretion, engage private entities to collect contributions from or to settle claims in connection with plans established by the trustee under this section [~~Section 8 of this article~~].

(k) [~~(l)~~] The trustee may contract directly with health care providers, including health maintenance organizations, preferred provider organizations, carriers, administrators, and other qualified vendors, to provide benefits to participants in the program. [~~Those benefits may include dental care, eye care, hospital care, surgical care and treatment, medical care and treatment, obstetrical care, and prescription drugs, medicines, and prosthetic devices.~~]

SECTION 35. Section 15(c), Article 3.50-4, Insurance Code, is amended to read as follows:

(c) Expenses for the development and administration of the program shall be spent as provided by a budget adopted by the trustee. [~~Expenses in any fiscal year may not exceed one percent of the contributions to the program for that year by the state, the active employees, and the covered participants in the program.~~]

SECTION 36. Section 16(b), Article 3.50-4, Insurance Code, is amended to read as follows:

(b) The state shall contribute as the state's contribution to the fund each fiscal year [the following amounts:

[~~(1) for the state fiscal year beginning September 1, 1986, an amount equal to .35 percent of the salary of each active employee;~~

[~~(2) for the state fiscal year beginning September 1, 1987, an amount equal to .40 percent of the salary of each active employee;~~

[~~(3) for the state fiscal year beginning September 1, 1988, an amount equal to .45 percent of the salary of each active employee;~~

[~~(4) for the state fiscal year beginning September 1, 1989, an amount equal to .50 percent of the salary of each active employee; and~~

[~~(5) for the state fiscal year beginning September 1, 1990, and each subsequent fiscal year;~~] an amount equal to .50 percent of the salary of each active employee. The state may contribute amounts in addition to the contribution required by this subsection.

SECTION 37. Section 22.004, Education Code, is amended to read as follows:

Sec. 22.004. GROUP HEALTH BENEFITS FOR SCHOOL EMPLOYEES.

(a) Each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group

contract issued by an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code). The coverage must meet the substantive coverage requirements of Article 3.51-6, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury [~~or intervention that has a significant recovery period, presents a significant risk, employs a general anesthetic, or, in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation~~]. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the copayment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(b) The cost of the coverage may be shared by the employees and the district.

(c) Each district shall report [certify] the district's compliance with this subsection to the executive director of the Teacher Retirement System of Texas not later than November 1 of each year in the manner required by the board of trustees of the Teacher Retirement System of Texas. The report [certification] must be based on the district group health coverage plan in effect on November 1 and must include:

(1) appropriate documentation of:

(A) [a copy of] the district's [current] contract for group health coverage with a provider licensed to do business in this state by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the district authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the district and employee;

(4) the number of employees covered by each health coverage plan offered by the district; and

(5) any other information considered appropriate by the executive director of the Teacher Retirement System of Texas.

(d) Based on the criteria prescribed by Subsection (a), the executive director of the Teacher Retirement System of Texas shall certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). If the executive director of the Teacher Retirement System of Texas determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than January 1 of each odd-numbered year describing the status of each district's group health coverage program based on the information contained in the report required by Subsection (c) and the certification required by this subsection.

(e) [(b)] A school district may not contract with an insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization to issue a policy or contract under this section, or with any person to assist the school district in obtaining or managing the policy or contract unless, before the contract is entered into, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person.

(f) [(c)] An insurer, a company subject to Chapter 20, Insurance Code, or a health maintenance organization that issues a policy or contract under this section and any person that assists the school district in obtaining or managing the policy or contract for compensation shall provide an annual audited financial statement to the school district showing the financial condition of the insurer, company, organization, or person.

(g) [(d)] An audited financial statement provided under this section must be made in accordance with rules adopted by the commissioner of insurance or state auditor, as applicable.

SECTION 38. (a) The Teacher Retirement System of Texas shall adjust the monthly benefits of a person who retired under a service retirement annuity after April 30, 1997, but before September 1, 1997, to the amount that the person would have received if Section 824.202, Government Code, as amended by this Act, had been in effect on the effective date of the person's retirement.

(b) The benefit recomputation under this section shall include the appropriate reduction to an actuarial equivalent for any optional retirement annuity selected under Section 824.204, Government Code, at the time of retirement.

(c) Any adjustment required by this section becomes effective with the monthly benefit payable at the end of September 1997.

SECTION 39. (a) Monthly payments of a death or retirement benefit annuity by the Teacher Retirement System of Texas are increased beginning with the payment due at the end of September 1997.

(b) The increase does not apply to payments under Section 824.304(a), 824.404, or 824.501, Government Code.

(c) The amount of the monthly increase is computed by multiplying the previous monthly benefit by a percentage determined in accordance with the following table:

LATEST RETIREMENT DATE OR, IF APPLICABLE, DATE OF DEATH	INCREASE
Before September 1, 1971	5%
On or after September 1, 1971, but before September 1, 1972	6%
On or after September 1, 1972, but before September 1, 1973	5%
On or after September 1, 1973, but before September 1, 1974	8%
On or after September 1, 1974, but before September 1, 1975	5%
On or after September 1, 1975, but before September 1, 1976	2%
On or after September 1, 1976, but before September 1, 1977	14%
On or after September 1, 1977, but before September 1, 1978	13%
On or after September 1, 1978, but before September 1, 1979	12%
On or after September 1, 1979, but before September 1, 1981	10%
On or after September 1, 1981, but before September 1, 1984	9%
On or after September 1, 1984, but before September 1, 1985	10%
On or after September 1, 1985, but before September 1, 1986	9%
On or after September 1, 1986, but before September 1, 1987	10%
On or after September 1, 1987, but before September 1, 1988	8%
On or after September 1, 1988, but before September 1, 1989	10%
On or after September 1, 1989, but before September 1, 1990	9%
On or after September 1, 1990, but before September 1, 1992	6%
On or after September 1, 1992, but before September 1, 1993	5%
On or after September 1, 1993, but before September 1, 1994	7%
On or after September 1, 1994, but before September 1, 1995	5%
On or after September 1, 1995, but before September 1, 1996	3%

SECTION 40. The change in law made by this Act in Section 822.201(c), Government Code, applies to all determinations of compensation that are made on or after the effective date of this Act for the purpose of computing an annuity that begins on or after that date or making contributions for the purchase of service credit on or after that date.

SECTION 41. An employee of the Baylor College of Dentistry who is not a faculty member, who was transferred to The Texas A&M University System under Chapter 403, Acts of the 74th Legislature, Regular Session, 1995, who previous to the transfer was a participant in a retirement program similar to the optional retirement program established under Chapter 830, Government Code, and who at the time of transfer elected to participate in the optional retirement program rather than the Teacher Retirement System of Texas shall continue participation in that program as if the person were eligible for participation beginning on the first day of employment with The Texas A&M University System.

SECTION 42. This Act takes effect September 1, 1997. The amendment

made by this Act to Section 22.004, Education Code, applies beginning with the 1998-1999 school year.

SECTION 43. 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.

Representative Telford moved to adopt the conference committee report on **HB 2644**.

The motion prevailed.

HB 2777 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the following conference committee report on **HB 2777**:

Austin, Texas, May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2777** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ratliff	Junell
Zaffirini	Naishtat
Nelson	Berlanga
Moncrief	Krusee
Wentworth	Eiland
On the part of the Senate	On the part of the House

HB 2777, A bill to be entitled An Act relating to eligibility determination and service delivery of health and human services.

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

SECTION 1. Section 9.12, Chapter 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsections (a), (b), and (d) and adding Subsections (f) and (g) to read as follows:

(a) In consultation and coordination with the Texas Integrated Enrollment Services Legislative Oversight Committee established under Section 531.202, Government Code, the Health and Human Services Commission, subject to the approval of the governor and the Legislative Budget Board, shall develop and implement a plan for the integration of services and functions relating to eligibility determination and service delivery by health and human services agencies, the Texas Workforce Commission, and other agencies. [Not later than September 1, 1996, the Health and Human Services Commission, subject to the availability of funds to the commission and to health and human services agencies, shall have completed the development and substantial implementation

~~of a plan for an integrated eligibility determination and service delivery system for health and human services at the local and regional levels.]~~ The plan must include a reengineering of eligibility determination business processes, streamlined service delivery, a unified and integrated process for the transition from welfare to work, and improved access to benefits and services for clients. In developing and implementing the plan, the Health and Human Services Commission:

(1) shall give priority to the design and development of computer hardware and software for and provide technical support relating to the integrated eligibility determination system;

(2) shall consult with agencies whose programs are included in the plan, including the Texas Department of Human Services, the Texas Department of Health, and the Texas Workforce Commission;

(3) may contract for appropriate professional and technical assistance;
and

(4) may use the staff and resources of agencies whose programs are included in the plan [shall specify the dates by which all elements of the plan must be implemented].

(b) The integrated eligibility determination and service delivery system shall be developed and implemented to achieve increased quality of and client access to services and [at least a one-percent] savings in the cost of providing administrative and other services and staff resulting from streamlining and eliminating duplication of services. The commission, subject to any spending limitation prescribed in the General Appropriations Act, may [shall] use the resulting savings to further develop the integrated system and to provide other health and human services.

(d) On receipt by the state of any necessary federal approval and subject to the approval of the governor and the Legislative Budget Board [In consultation and coordination with the State Council on Competitive Government, the commission shall make and implement recommendations on services or functions of the integrated eligibility determination and service delivery system that could be provided more effectively through the use of competitive bidding or by contracting with local governments and other appropriate entities. If the commission determines that private contracting may be effective], the commission may contract for implementation of all or part of the plan required by Subsection (a) of this section if the commission determines that contracting may advance the objectives of Subsections (a) and (b) of this section and meets the criteria set out in the cost-benefit analysis described in this subsection. Before the awarding of a contract, the commission shall provide a detailed cost-benefit analysis to the governor, the Legislative Budget Board, and the Texas Integrated Enrollment Services Legislative Oversight Committee established under Section 531.202, Government Code. The analysis must demonstrate the cost-effectiveness of the plan, mechanisms for monitoring performance under the plan, and specific improvements to the service delivery system and client access made by the plan. The commission shall make the analysis available to the public. Within 10 days after the release of a request for bids, proposals, offers, or other applicable expressions of interest relating to the development or implementation of the plan required by

Subsection (a) of this section, the commission shall hold a public hearing and receive public comment on the request. The commission may coordinate with a legislative committee to hold the hearings [automate the determination of client eligibility by contracting with a private firm to conduct application processing].

(f) If requested by the Health and Human Services Commission, the agencies whose programs are included in the plan required by Subsection (a) of this section shall cooperate with the commission to provide available staff and resources that will be subject to the direction of the commission.

(g) The design, development, and operation of an automated data processing system to support the plan required by Subsection (a) of this section may be financed through the issuance of bonds or other obligations under the Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes).

SECTION 2. Chapter 531, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. LEGISLATIVE OVERSIGHT

Sec. 531.201. DEFINITION. In this subchapter, "committee" means the Texas Integrated Enrollment Services Legislative Oversight Committee.

Sec. 531.202. COMPOSITION OF COMMITTEE; PRESIDING OFFICER.

(a) The committee is composed of:

(1) three members of the senate appointed by the lieutenant governor; and

(2) three members of the house of representatives appointed by the speaker of the house of representatives.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Sec. 531.203. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at the call of the presiding officer;

(2) receive information about rules proposed or adopted by the commission;

(3) review specific recommendations for legislation proposed by the commission; and

(4) hold public hearings concerning the development and implementation of the plan required by Section 9.12(a), Chapter 655, Acts of the 74th Legislature, Regular Session, 1995, in at least four geographically diverse locations in the state.

(b) The committee shall advise the commission in the development of the plan and monitor the implementation and efficiency of the Texas Integrated Enrollment Services.

(c) The commission shall, at the committee's request, provide reports and other information relating to the operation of the integrated enrollment system.

(d) The committee may use staff of standing committees in the senate and

house of representatives with appropriate jurisdiction, the Department of Information Resources, the state auditor, the Texas Legislative Council, and the Legislative Budget Board in carrying out its responsibilities.

Sec. 531.204. REPORT. (a) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each year.

(b) The report must include:

(1) identification of significant problems in the Texas Integrated Enrollment Services, with recommendations for action by the commissioner;

(2) the status of the effectiveness of the Texas Integrated Enrollment Services in providing necessary services to the people of this state, with recommendations for any necessary research; and

(3) recommendations for legislative action.

Sec. 531.205. DURATION OF COMMITTEE. The committee is abolished September 1, 2002.

SECTION 3. Sections 11(d) and 12, Chapter 885, Acts of the 74th Legislature, Regular Session, 1995, are repealed.

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

Representative Junell moved to adopt the conference committee report on **HB 2777**.

A record vote was requested.

The motion prevailed by (Record 596): 147 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; 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; 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; 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.

Present, not voting — Mr. Speaker(C).

Absent — Rabuck.

**HB 156 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 156, A bill to be entitled An Act relating to prohibiting contact with the victim as a mandatory condition of parole or mandatory supervision for certain offenders and to facilitating victim-offender mediation in certain circumstances.

On motion of Representative Driver, the house concurred in the senate amendments to **HB 156**.

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

Amend **HB 156** as follows:

On page 2, line 2, between "not" and "communicate," add "intentionally or knowingly".

Senate Amendment No. 2 (Senate Committee Amendment No. 2)

Amend **HB 156** by adding appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Chapter 498, Government Code, is amended by adding Section 498.0042 to read as follows:

Sec. 498.0042. FORFEITURE FOR CONTACTING VICTIMS. (a) The department shall adopt policies that prohibit an inmate in the institutional division or in a transfer facility from contacting by letter, telephone, or any other means, either directly or indirectly, a victim of the offense for which the inmate is serving a sentence, if:

(1) the victim was younger than 17 years of age at the time of the commission of the offense; and

(2) the department has not, before the inmate makes contact:

(A) received written consent to the contact from:

(i) a parent of the victim, other than the inmate;

(ii) a legal guardian of the victim; or

(iii) the victim, if the victim is 17 years of age or older at the time of giving the consent; and

(B) provided the inmate with a copy of the consent.

(b) If, during the actual term of imprisonment of an inmate in the institutional division or a transfer facility, the inmate violates a policy adopted under Subsection (a), the department shall forfeit all or any part of the inmate's accrued good conduct time. The department may not restore good conduct time forfeited under this subsection.

SECTION _____. The change in law made by this Act applies to an inmate who violates a rule adopted by the Texas Board of Criminal Justice under Section 498.0042, Government Code, as added by this Act, on or after the effective date of the rule, regardless of whether the inmate is serving a sentence for an offense committed before, on, or after the effective date of the rule.

Senate Amendment No. 3

Amend **HB 156** as follows:

(1) In SECTION 2 of the bill, in the first sentence of added Section 8C(a), Article 42.18, Code of Criminal Procedure (senate committee printing, page 2, lines 13-15, strike "or go near a residence, school, place of employment, business, or other location frequented by a victim" and substitute "or intentionally or knowingly go near a residence, school, place of employment, or business of a victim".

(2) In SECTION 2 of the bill, in added Section 8C, Article 42.18, Code of Criminal Procedure (senate committee printing, page 2, lines 20-23), strike Subsection (b).

(3) In SECTION 2 of the bill, in added Section 8C(c), Article 42.18, Code of Criminal Procedure (senate committee printing, page 2, line 24), strike "(c) Notwithstanding" and substitute "(b) Notwithstanding".

(4) In SECTION 2 of the bill, in added Section 8C, Article 42.18, Code of Criminal Procedure (senate committee printing, page 2, lines 28 and 29), strike Subsection (d) and substitute the following: "(c) In this section, "victim" has the meaning assigned by Article 56.01(3)."

(5) Add an appropriately numbered SECTION to the bill to read as follows and renumber existing SECTIONS accordingly:

SECTION _____. Article 56.03, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i) In addition to the information described by Subsections (b)(1)-(8), the victim impact statement must be in a form designed to collect information on whether, if the victim is a child, there is an existing court order granting to the defendant possession of or access to the victim. If information collected under this subsection indicates the defendant is granted access or possession under court order and the defendant is subsequently confined by the Texas Department of Criminal Justice as a result of the commission of the offense, the victim services office of the department shall contact the court issuing the order before the defendant is released from the department on parole or mandatory supervision.

Senate Amendment No. 4

Amend **HB 156** by adding appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Article 56.11, Code of Criminal Procedure, as amended by **SB 97**, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Art. 56.11. NOTIFICATION TO ~~[STALKING]~~ VICTIM OF RELEASE OR ESCAPE OF DEFENDANT. (a) ~~The [institutional division of the] Texas Department of Criminal Justice or the sheriff, whichever has custody of the defendant in the case of a felony, or the sheriff in the case of a misdemeanor, shall notify the victim of the offense [and local law enforcement officials in the county where the victim resides] whenever a person convicted of an [a felony] offense described by Subsection (c) [under Subsection (a) as enhanced by Subsection (b) of Section 42.072, Penal Code]:~~

(1) completes the person's sentence and is released; or

(2) escapes from a correctional facility [~~operated by the institutional division~~].

(b) If the Texas Department of Criminal Justice is required by Subsection (a) to give notice to the victim of an offense, the department shall also give notice to local law enforcement officials in the county in which the victim resides.

(c) This article applies to a person convicted of an offense involving family violence, stalking, or violation of a protective order or magistrate's order.

(d) It is the responsibility of a [the] victim desiring notification of the offender's release to provide the Texas Department of Criminal Justice or the sheriff, as appropriate, with the address and telephone number of the victim or other person through whom the victim may be contacted and to notify the department or the sheriff [institutional division of the Texas Department of Criminal Justice] of any change of address or telephone number of the victim or other person. Information obtained and maintained by the Texas Department of Criminal Justice or a sheriff under this subsection is privileged and confidential.

(e) [(c)] The [institutional division of the] Texas Department of Criminal Justice or the sheriff, as appropriate, shall make a reasonable attempt to give the notice required by Subsection (a) [of this article]:

(1) not later than the 30th day before the person completes the sentence and is released; or

(2) immediately if the person escapes from the correctional facility [~~operated by the institutional division~~].

(f) An attempt by the Texas Department of Criminal Justice or the sheriff to give notice to the victim at the victim's last known address, as shown on the records of the department or agency, constitutes a reasonable attempt to give notice under this article.

(g) In this article:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Family violence" has the meaning assigned by Section 71.01, Family Code.

SECTION _____. The change in law made by this Act to Article 56.11, Code of Criminal Procedure, applies to the notification of a victim about the release or escape of an inmate only if the release or escape occurs on or after October 1, 1997. Notification of a victim about the release or escape of an inmate if the release or escape occurs before October 1, 1997, is covered by the law in effect when the release or escape occurs, and the former law is continued in effect for this purpose.

HB 591 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 591, A bill to be entitled An Act relating to fees and costs for certain mental health proceedings.

On motion of Representative Thompson, the house concurred in the senate amendments to **HB 591**. (Finnell recorded voting no)

Senate Amendment No. 1

Amend **HB 591** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 574.031, Health and Safety Code, is amended by amending Subsection (h) and adding Subsections (j) and (k) to read as follows:

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payment of costs under Section 571.018. [~~The expenses shall be collected as court costs.~~]

(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

SECTION 2. Section 571.018(c), Health and Safety Code, is amended to read as follows:

(c) Costs under this section include:

- (1) attorney's fees;
- (2) physician examination fees;
- (3) compensation for court-appointed personnel listed under Section 571.017; [~~and~~]
- (4) expenses of transportation to a department mental health facility or to a federal agency;
- (5) costs and salary supplements authorized under Sections 574.031(i) and (j); and
- (6) prosecutor's fees authorized under Section 574.031(k).

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence temporarily for today to attend a meeting of the conference committee on **SB 1**:

R. Lewis on motion of Wolens.

Walker on motion of Wolens.

Cook on motion of Wolens.

Puente on motion of Wolens.

Counts on motion of Wolens.

**HB 607 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 607, A bill to be entitled An Act relating to the creation of a durable medical equipment and assistive technology listing.

On motion of Representative Maxey, the house concurred in the senate amendments to **HB 607** by (Record 597): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Carter; Chavez; Chisum; Christian; Clark; Coleman; Corte; 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; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; 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; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Counts; Lewis, R.; Puente; Walker.

Absent — Burnam.

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

Amend **HB 607** in Section 116.002, Human Resources Code, as added by SECTION 1 of the bill, by inserting after Subsection (f) (page 2, between lines 12 and 13, engrossed version) the following:

(g) Subsection (e) does not apply to orthotic or prosthetic devices. A retailer of orthotic or prosthetic devices shall prominently display in the retailer's place of business the information to be included on the sticker described by Subsection (c).

Senate Amendment No. 2 (Senate Committee Amendment No. 2)

Amend **HB 607** as follows:

(1) After Section 116.005, Human Resources Code, as added by SECTION 1 of the bill (page 3, between lines 2 and 3, engrossed version), insert the following:

Sec. 116.006. LISTING AVAILABILITY ON THE INTERNET. The commission shall make the durable medical equipment and assistive technology listing available to the public through the Internet.

(2) Renumber Section 116.006, Human Resources Code, as added by SECTION 1 of the bill (page 3, line 3, engrossed version), as Section 116.007.

HB 677 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 677, A bill to be entitled An Act relating to the punishment for certain persons who sell, manufacture, distribute, or possess a document that is deceptively similar to a driver's license.

On motion of Representative Solomons, the house concurred in the senate amendments to **HB 677**.

Senate Committee Substitute

CSHB 677, A bill to be entitled An Act relating to the punishment for certain persons who sell, manufacture, distribute, or possess a document that is deceptively similar to a driver's license.

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

SECTION 1. Section 521.453, Transportation Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In addition to the punishment provided by Subsection (d), a court, if the court is located in a municipality or county that has established a community service program, may order a person younger than 21 years of age who commits an offense under this section to perform eight hours of community service unless the person is shown to have previously committed an offense under this section, in which case the court may order the person to perform 12 hours of community service.

(i) If the person ordered to perform community service under Subsection (h) is younger than 17 years of age, the community service shall be performed as if ordered by a juvenile court under Section 54.044(a), Family Code, as a condition of probation under Section 54.04(d), Family Code.

SECTION 2. Section 54.044, Family Code, is amended by adding Subsection (i) to read as follows:

(i) In a disposition hearing under Section 54.04 in which the court finds that a child engaged in conduct violating Section 521.453, Transportation Code, the court, in addition to any other order authorized under this title and if the court is located in a municipality or county that has established a community service program, may order the child to perform eight hours of community service as a condition of probation under Section 54.04(d) unless the child is shown to have previously engaged in conduct violating Section 521.453, Transportation Code, in which case the court may order the child to perform 12 hours of community service.

SECTION 3. (a) The change in law made by this Act applies only to an offense committed or, for purposes of Title 3, Family Code, to conduct that

occurs on or after the effective date of this Act. For purposes of this section, an offense is committed on or after the effective date of this Act if every element of the offense occurs on or after that date and conduct violating a penal law of the state occurs on or after the effective date of this Act if every element of the violation occurs on or after that date.

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

SECTION 4. This Act takes effect September 1, 1997.

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

HB 1161 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1161, A bill to be entitled An Act relating to uniform competitive bidding requirements for municipalities.

On motion of Representative Clark, the house concurred in the senate amendments to **HB 1161**.

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

Amend **HB 1161** by adding a new appropriately numbered section to read as follows, and renumbering existing sections accordingly:

SECTION _____. Section 252.043(a), Local Government Code, is amended to read as follows:

(a) If the competitive sealed bidding requirement applies to the contract, the contract must be awarded to the lowest responsible bidder. The governing body may reject any and all bids. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

HB 1362 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1362, A bill to be entitled An Act relating to exemptions from regulation as a food manufacturer or wholesaler.

On motion of Representative Giddings, the house concurred in the senate amendments to **HB 1362**.

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

Amend **HB 1362** by striking Section 431.221(5)(A), Health and Safety Code, as added by SECTION 1 of the bill (page 1, lines 8-11, House engrossed version) and substituting the following:

(A) who is not affiliated with a permanent retail establishment and who engages in the business of:

(i) in-person sales of prepackaged nonperishable foods, including dietary supplements, to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home; or

(ii) sales of prepackaged nonperishable foods, including dietary supplements, in a home;

**HB 1370 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1370, A bill to be entitled An Act relating to the punishment for the offense of criminal mischief.

On motion of Representative Garcia, the house concurred in the senate amendments to **HB 1370**.

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

Amend **HB 1370** in SECTION 1 of the bill, in amended Section 28.03(b), Penal Code (house engrossment, page 2, lines 1-8), by striking Subdivisions (4) and (5) and substituting the following:

"(4) a state jail felony if the amount of pecuniary loss is:

(A) \$1,500 or more but less than \$20,000; or

(B) less than \$1,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(5) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;"

**HB 1525 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1525, A bill to be entitled An Act relating to the administration and financing of certain industrial development corporations.

Representative Oliveira 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 1525**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1525**: Oliveira, chair, Greenberg, Keffer, Seaman, and Yarbrough.

**HB 1526 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1526, A bill to be entitled An Act relating to information and assistance concerning reinvestment zones.

Representative Oliveira 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 1526**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1526**: Oliveira, chair, Luna, Raymond, Seaman, and Yarbrough.

**HB 1528 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1528, A bill to be entitled An Act relating to the smart jobs fund program.

Representative Oliveira 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 1528**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1528**: Oliveira, chair, Keffer, Siebert, Van de Putte, and Yarbrough.

**HB 1391 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1391, A bill to be entitled An Act relating to continuing education requirements for air conditioning and refrigeration contractors.

Representative Torres 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 1391**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1391**: Torres, chair, Corte, Yarbrough, Kubiak, and Haggerty.

**HB 1542 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1542, A bill to be entitled An Act relating to the authorization of the Texas Natural Resource Conservation Commission to issue general permits by rule for the discharge of waste into or adjacent to water in the state.

Representative Hawley 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 1542**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1542**: Counts, chair, Corte, Culberson, King, and Moffat.

HB 1716 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1716, A bill to be entitled An Act relating to the membership and duties of the statewide health coordinating council.

On motion of Representative Maxey, the house concurred in the senate amendments to **HB 1716**.

Senate Committee Substitute

CSHB 1716, A bill to be entitled An Act relating to the membership and duties of the statewide health coordinating council.

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

SECTION 1. Section 104.011, Health and Safety Code, is amended to read as follows:

Sec. 104.011. COMPOSITION OF COUNCIL. (a) The statewide health coordinating council is composed of 17 [~~15~~] members determined as follows:

(1) the commissioner of health and human services or a representative designated by the commissioner;

(2) the presiding officer of the Texas Higher Education Coordinating Board or a representative designated by the presiding officer;

(3) the presiding officer of the department or a representative designated by the presiding officer;

(4) the presiding officer of the Texas Health Care Information Council or a representative designated by the presiding officer;

(5) the presiding officer of the Texas Department of Mental Health and Mental Retardation or a representative designated by the presiding officer; and

(6) the following members appointed by the governor:

(A) three health care professionals from the allied health, dental, medical, mental health, nursing, and pharmacy professions, no two of whom may be from the same profession;

(B) two representatives of a university or health-related institution of higher education;

(C) one representative of a junior or community college;

(D) one hospital administrator;

(E) one managed care administrator; and

(F) four public members [~~The governor shall appoint three members who represent health care professionals, three members who represent institutions of higher education, three members who are consumer advocates, and six public members~~].

(b) The appointments of the governor shall be with the advice and consent of the senate.

SECTION 2. Subchapter B, Chapter 104, Health and Safety Code, is amended by adding Section 104.015 to read as follows:

Sec. 104.015. ADVISORY BOARDS AND AD HOC COMMITTEES. The statewide health coordinating council may form advisory boards or ad hoc committees composed of health care experts from the public and private sectors to review policy matters related to the council's purpose.

SECTION 3. Section 105.001, Health and Safety Code, is amended to read as follows:

Sec. 105.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Health" [~~"health~~] profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(2) "Council" means the statewide health coordinating council.

SECTION 4. Section 105.002, Health and Safety Code, is amended to read as follows:

Sec. 105.002. ESTABLISHMENT OF CENTER. In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the council [~~department~~] shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

SECTION 5. Section 105.003, Health and Safety Code, is amended to read as follows:

Sec. 105.003. COLLECTION OF DATA. (a) The council [~~department~~] shall place a high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) data concerning the health professions in which shortages occur in rural areas.

(b) To the extent possible, the council [~~department~~] may collect the data from existing sources that the council [~~department~~] determines are credible. The council [~~department~~] may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(c) At a minimum, the data collected by the council [~~department~~] must include the following in regard to health professionals:

(1) their number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

SECTION 6. Section 105.004, Health and Safety Code, is amended to read as follows:

Sec. 105.004. REPORTS. The council [~~department~~] may use the data collected and analyzed under this chapter to publish reports regarding:

- (1) the educational and employment trends for health professions;
- (2) the supply and demand of health professions; and
- (3) other issues, as necessary, concerning health professions in this state.

SECTION 7. Section 105.007, Health and Safety Code, is amended to read as follows:

Sec. 105.007. CLEARINGHOUSE. (a) As part of the comprehensive health professions resource center, the council [~~department~~] shall develop and establish a clearinghouse for health professionals seeking collaborative practice.

(b) The council [~~department~~] may:

- (1) set and collect a reasonable fee to offset the cost of complying with this section;
- (2) solicit, receive, and spend grants, gifts, and donations from public and private sources to comply with this section; and
- (3) contract with public or private entities in the performance of its responsibilities under this section.

SECTION 8. Subchapter D, Chapter 104, Health and Safety Code, is amended by adding Section 104.0421 to read as follows:

Sec. 104.0421. STATEWIDE DATA COLLECTION AND COORDINATION. (a) The statewide health coordinating council shall work with appropriate health professional licensing agencies to develop uniform standards for health professional data collected by those agencies to enable the council to maintain a comprehensive health professional database.

(b) The council shall retrieve data on health professionals from the appropriate licensing agencies. The council may seek the assistance of the appropriate licensing agency or department in the retrieval of data on health professionals.

(c) The council shall monitor and evaluate long-term regional, statewide, and local health needs. The council shall use this evaluation for developing recommendations relating to health education, training, and regulation.

(d) The council shall use data collected under this section to develop workforce goals for health professionals and to recommend the appropriate level and distribution of state funding for education and training to achieve these goals. The council shall evaluate the short-term and long-term effects of the recommendations made under this subsection.

(e) The council shall, with the assistance of higher education agencies and institutions, area health education centers, teaching hospitals, and health education institutions, improve coordination of statewide health planning. The council may seek the assistance of the National Association of Health Data Organizations, the Association of American Medical Colleges, the National Council of State Legislatures, the American Association of Colleges of Osteopathic Medicine, the Association of American Health Centers, and any other appropriate entities.

(f) The department shall continue to assist the council and the health

professions resource center with the development of the state health plan. The council shall coordinate related health planning functions within the department. The staff of the health professions resource center shall continue to be department employees but are governed by the council. The staff of the Bureau of State Health Data and Policy Analysis that previously assisted the council shall continue to assist the council.

SECTION 9. This Act takes effect September 1, 1997.

SECTION 10. (a) The statewide health coordinating council that existed immediately before the effective date of this Act is abolished on the effective date of this Act.

(b) In appointing the initial members of the statewide health coordinating council as reconstituted by this Act, the governor shall appoint four members to terms expiring August 1, 1999; four to terms expiring August 1, 2001; and four to terms expiring August 1, 2003.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 1843 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1843, A bill to be entitled An Act relating to funeral merchandise and services and other funeral benefits.

On motion of Representative Marchant, the house concurred in the senate amendments to **HB 1843**.

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

Amend **HB 1843** in SECTION 1, Section 1(b)(9) (page 1, line 10), by striking "[~~or cemetery~~]" and substitute "or cemetery".

HB 1971 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1971, A bill to be entitled An Act relating to usury and the regulation of lenders.

Representative Marchant moved to discharge the conferees and concur in the senate amendments to **HB 1971**.

The motion prevailed without objection.

Senate Committee Substitute

CSHB 1971, A bill to be entitled An Act relating to usury and the regulation of lenders.

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

SECTION 1. Subtitle 1, Title 79, Revised Statutes, is amended by adding Chapters 1B-1H to read as follows:

CHAPTER 1B. GENERAL PROVISIONS

Art. 1B.001. SHORT TITLE. This title may be cited as the Texas Credit Title.

Art. 1B.002. DEFINITIONS. (a) In this subtitle:

(1) "Contract interest" means interest that an obligor has paid or agreed to pay to a creditor under a written contract of the parties. The term "contract interest" does not include judgment interest.

(2) "Credit card transaction" means a transaction for personal, family, or household use in which a credit card, plate, coupon book, or credit card cash advance check may be used or is used to debit an open-end account in connection with:

(A) a purchase or lease of goods or services; or

(B) a loan of money.

(3) "Creditor" means a person who loans money or otherwise extends credit. The term "creditor" does not include a judgment creditor.

(4) "Interest" means compensation for the use, forbearance, or detention of money. The term "interest" does not include time price differential, regardless of how it is denominated.

(5) "Judgment creditor" means a person to whom a money judgment is payable.

(6) "Judgment debtor" means a person obligated to pay a money judgment.

(7) "Judgment interest" means interest on a money judgment, whether the interest accrues before, on, or after the date the judgment is rendered.

(8) "Legal interest" means interest charged or received in the absence of any agreement by an obligor to pay contract interest. The term "legal interest" does not include judgment interest.

(9) "Lender credit card agreement":

(A) means an agreement between a creditor and an obligor that provides:

(i) the obligor, by means of a credit card transaction for personal, family, or household use, may:

(a) obtain loans from the creditor directly or through other participating persons; and

(b) lease or purchase goods or services from more than one participating lessor or seller who honors the creditor's credit card;

(ii) the creditor or another person acting in cooperation with the creditor is to reimburse the participating persons, lessors, or sellers for the loans or the goods or services purchased or leased;

(iii) the obligor is to pay the creditor the amount of the loan or cost of the lease or purchase;

(iv) the unpaid balance of the loan, lease, or purchase and interest on that unpaid balance are debited to the obligor's account under the agreement;

(v) interest may be computed on the balances of the obligor's account but is not precomputed; and

(vi) the obligor and the creditor may agree that payment of part of the balance may be deferred;

(B) includes an agreement under Article 3A.805, 15.01(k), or 15.01(l) for an open-end account under which credit card transactions may be made or a merchant discount may be taken; and

(C) does not include:

(i) an agreement, including an open-end account credit agreement, between a seller and a buyer or between a lessor and a lessee; or

(ii) an agreement under which:

(a) the entire balance is due in full each month; and

(b) no interest is charged if the obligor pays the entire balance each month.

(10) "Loan" means an advance of money that is made to or on behalf of an obligor, the principal amount of which the obligor has an obligation to pay the creditor. The term "loan" does not include a judgment.

(11) "Merchant discount" means the consideration, including a fee, charge, discount, or compensating balance, that a creditor requires, or that a creditor, subsidiary, or parent company of the creditor, or subsidiary of the creditor's parent company, receives directly or indirectly from a person other than the obligor in connection with a credit card transaction under a lender credit card agreement between the obligor and the creditor. The term "merchant discount" does not include consideration received by a creditor from the obligor in connection with the credit card transaction.

(12) "Money judgment" means a judgment for money entered by a court of competent jurisdiction. For purposes of this subtitle, the term "money judgment" includes legal interest or contract interest, if any, that is payable to a judgment creditor under a judgment.

(13) "Obligor" means a person to whom money is loaned or credit is otherwise extended. The term "obligor" does not include:

(A) a judgment debtor; or

(B) a surety, guarantor, or similar person.

(14) "Open-end account":

(A) means an account under a written contract between a creditor and an obligor that:

(i) the creditor reasonably contemplates repeated transactions and the obligor is authorized to make purchases or borrow money;

(ii) interest or time price differential may be charged from time to time on an outstanding unpaid balance; and

(iii) the amount of credit that may be extended during the term of the account is generally made available to the extent that any outstanding balance is repaid; and

(B) includes an account under an agreement described by Article 3A.805 or Chapter 6 or 15.

(15) "Person" means an individual, partnership, corporation, joint

venture, trust, association, limited liability company, or any legal entity however organized.

(16) "Prepayment penalty" means consideration agreed on and contracted for a discharge and release of a loan before its maturity or its regularly scheduled date or dates of payment, as a result of an election by the obligor to pay all of the principal amount before its stated maturity or its regularly scheduled date or dates of payment.

(17) "Time price differential" means an amount, however denominated or expressed, that is:

(A) added to the price at which a seller offers to sell services or real or personal property to a purchaser for cash payable at the time of sale; and

(B) paid or payable to the seller by the purchaser for the privilege of paying the offered sales price after the time of sale.

(18) "Usury" or "usurious interest" means interest that exceeds the applicable maximum amount allowed by law.

(b) These definitions shall be liberally construed to accomplish the purposes of this subtitle.

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

CHAPTER 1C. INTEREST RATES

SUBCHAPTER A. USURY

Art. 1C.001. USURIOUS RATE OF INTEREST. (a) A creditor may contract for, charge, and receive from an obligor interest or time price differential.

(b) The maximum rate or amount of interest is 10 percent a year except as otherwise provided by law. A greater rate of interest than 10 percent a year unless otherwise provided by law is usurious. All contracts for usury are contrary to public policy and subject to the appropriate penalty prescribed by Chapter 1F.

(c) To determine the interest rate of a loan under this subtitle, all interest at any time contracted for shall be aggregated and amortized using the actuarial method during the stated term of the loan.

Art. 1C.002. ACCRUAL OF INTEREST WHEN NO RATE SPECIFIED. If a creditor has not agreed with an obligor to charge the obligor any interest, the creditor may charge and receive from the obligor legal interest at the rate of six percent a year on the principal amount of the credit extended by the creditor to the obligor beginning on the 30th day after the date on which the amount is due. If an obligor has agreed to pay to a creditor any compensation that constitutes interest, the obligor is considered to have agreed on the rate produced by the amount of that interest, regardless of whether that rate is stated in the agreement.

SUBCHAPTER B. OTHER RATES AND PROVISIONS

ON LOANS SECURED BY REAL PROPERTY

Art. 1C.101. DETERMINING RATES OF INTEREST BY SPREADING. (a) To determine whether a loan secured in any part by an interest in real property, including a lien, mortgage, or security interest, is usurious, the interest rate is computed by amortizing or spreading, using the actuarial method during

the stated term of the loan, all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a loan described in Subsection (a) is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower; or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

Art. 1C.102. PROHIBITION ON PREPAYMENT CHARGE OR PENALTY. If a loan for property that is to be the residential homestead of the borrower is made at an interest rate that is greater than a rate of 12 percent a year, a prepayment charge or penalty may not be collected on the loan unless the charge or penalty is required by an agency created by federal law.

Art. 1C.103. EFFECT OF FEDERAL PREEMPTION ON LATE CHARGES. On loans subject to 12 U.S.C. Sections 1735f-7 and 1735f-7a, as amended, late charges, if assessed, are interest that is included in computing the amount or rate of interest on the loan and, therefore, covered by the federal preemption of state interest rate limitations.

CHAPTER 1D. OPTIONAL RATE CEILINGS

SUBCHAPTER A. RATE CEILINGS: APPLICABILITY, COMPUTATION, AND PUBLICATION

Art. 1D.001. USE OF CEILINGS. (a) Except as provided by Subchapter B, a person may contract for, charge, or receive a rate or amount that does not exceed the applicable interest rate ceiling provided by this chapter. The use of a ceiling provided by this chapter for any contract is optional, and a contract may provide for a rate or amount allowed by other applicable law.

(b) A contract, including a contract for an open-end account, that is subject to Chapter 3A, 6, 6A, or 7 may, as an alternative to an interest rate or amount of time price differential allowed under that chapter, provide for a simple or precomputed rate or amount of time price differential that does not exceed the applicable ceiling provided by this chapter or by the equivalent yield authorized by Chapter 3A, 6, 6A, or 7.

(c) Except as inconsistent with this chapter, a party to a contract that is subject to Chapter 3A, 6, 6A, or 7, or the party's assignee, has all rights, duties, and obligations under the applicable chapter, including those relating to refund credits on prepayment or acceleration.

Art. 1D.002. WEEKLY CEILING. The parties to a written agreement may agree to an interest rate, or in an agreement described in Chapter 6, 6A, or 7, an amount of time price differential producing a rate, that does not exceed the applicable weekly ceiling.

Art. 1D.003. COMPUTATION OF WEEKLY CEILING. (a) The weekly ceiling is computed by:

(1) multiplying the auction rate by two; and

(2) rounding the result obtained under Subdivision (1) to the nearest one-quarter of one percent.

(b) The weekly rate ceiling becomes effective on Monday of each week and remains in effect through the following Sunday.

(c) In this article, "auction rate" means the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the weekly rate ceiling is to take effect.

Art. 1D.004. MONTHLY CEILING. (a) The monthly ceiling may be used as an alternative to the weekly ceiling only for a contract that:

(1) provides for a variable rate, including a contract for an open-end account; and

(2) is not made for personal, family, or household use.

(b) A contract that provides for the use of the monthly ceiling may not provide for the use of another rate ceiling provided under this subchapter.

Art. 1D.005. COMPUTATION OF MONTHLY CEILING. (a) The consumer credit commissioner shall compute the monthly ceiling on the first business day of the calendar month in which the rate applies. The monthly ceiling is effective for one month beginning on the first calendar day of each month. If the parties agree that the rate is subject to being adjusted on a monthly basis, they may further contract that the rate from time to time in effect may not exceed the monthly ceiling from time to time in effect under this article and the monthly ceiling from time to time in effect is the ceiling on those contracts.

(b) The monthly ceiling is computed by averaging all of the weekly ceilings computed using rates from auctions held during the calendar month preceding the computation date of the monthly ceiling.

Art. 1D.006. QUARTERLY CEILING. (a) A written contract, including a contract that involves an open-end account, may, as an alternative to the weekly ceiling, provide for an interest rate or an amount of time price differential producing a rate that does not exceed the applicable quarterly ceiling.

(b) A variable rate contract authorized under Article 1D.015 may not provide for use of both the weekly ceiling and the quarterly ceiling.

Art. 1D.007. ANNUALIZED CEILING. The annualized ceiling may be used as an alternative to the weekly ceiling only for a written contract that involves an open-end account.

Art. 1D.008. COMPUTATION OF QUARTERLY AND ANNUALIZED CEILING. (a) On December 1, March 1, June 1, and September 1 of each year, the consumer credit commissioner shall compute the quarterly ceiling and annualized ceiling for the calendar quarter beginning the following January 1, April 1, July 1, and October 1, respectively. The quarterly ceiling becomes effective for three-month periods beginning on the four calendar dates set out in this subsection and is subject to adjustment after each three-month period. The annualized ceiling becomes effective on each of the four calendar dates set out in this subsection and remains in effect for a period of 12 months, at which time it is subject to adjustment.

(b) The quarterly ceiling and annualized ceiling are computed by averaging all of the weekly ceilings computed using average auction rates during the three calendar months preceding the computation date of the ceiling.

Art. 1D.009. MAXIMUM AND MINIMUM WEEKLY, MONTHLY, QUARTERLY, OR ANNUALIZED CEILING. (a) If the rate computed for the weekly, monthly, quarterly, or annualized ceiling is less than 18 percent a year, the ceiling is 18 percent a year.

(b) Except as provided by Subsection (c) or (d), if the rate computed for the weekly, monthly, quarterly, or annualized ceiling is more than 24 percent a year, the ceiling is 24 percent a year.

(c) For a contract made, extended, or renewed under which credit is extended for a business, commercial, investment, or similar purpose and the amount of the credit extension is \$250,000 or more, the 24-percent limitation on the ceilings in Subsection (b) does not apply, and the limitation on the ceilings determined by those computations is 28 percent a year.

(d) For an open-end account credit agreement that provides for credit card transactions on which a merchant discount is not imposed or received by the creditor, if the rate computed for the weekly ceiling, monthly ceiling, quarterly ceiling, or annualized ceiling is more than 21 percent a year, the ceiling is 21 percent a year.

(e) In this chapter, "weekly ceiling," "monthly ceiling," "quarterly ceiling," or "annualized ceiling" refers to that ceiling as determined after the application of this article.

Art. 1D.010. COMPUTATION OF CEILING IF INFORMATION UNAVAILABLE. If any of the information required to compute a rate ceiling is discontinued or is no longer available to the consumer credit commissioner from the Federal Reserve Board in the time required for the computation, the ceiling last computed remains in effect until the information becomes available and a new ceiling is computed from the obtained information.

Art. 1D.011. PUBLICATION OF RATE CEILINGS. (a) The consumer credit commissioner shall send the rate ceilings computed under this subchapter to the secretary of state for publication in the Texas Register.

(b) The monthly, quarterly, or annualized ceiling shall be published before the 11th day after the date on which the ceiling is computed.

Art. 1D.012. JUDICIAL NOTICE. A court may take judicial notice of interpretations issued by the consumer credit commissioner or information published in the Texas Register under Article 1D.011.

Art. 1D.013. DETERMINATION OF CEILING FOR CONTRACT TO RENEW OR EXTEND DEBT PAYMENT. The rate ceiling for a contract to renew or extend the terms of payment of a debt is the ceiling in effect under this chapter when the contract for renewal or extension is made, regardless of when the debt is incurred.

Art. 1D.014. RATE FOR LENDER CREDIT CARD AGREEMENT WITH MERCHANT DISCOUNT. On an amount owed for a credit card transaction under a lender credit card agreement that imposes or allows the creditor to receive a merchant discount, the creditor may not contract for, charge, or receive:

- (1) a rate that exceeds the ceiling provided under Article 15.02; or
- (2) a fee or charge that:
 - (A) is not allowed under Chapter 15; or
 - (B) exceeds the amount allowed under Chapter 15.

Art. 1D.015. VARIABLE RATE. (a) The parties to a contract, including a contract for an open-end account, may agree to any index, formula, or provision of law by which the interest rate or amount of time price differential will be determined, but the agreed rate of interest or yield from an amount of time price differential may not exceed the amount that would be produced by the rate ceiling applicable to the contract.

(b) A variable contract rate described by this article may not be used in a contract in which the interest or time price differential is precomputed and added into the amount of the contract at the time the contract is made.

(c) A variable rate agreement for credit extended primarily for personal, family, or household use must have the disclosures identified for variable rate contracts as specified by the regulations issued by the Federal Reserve Board under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, or if that Act does not apply to a transaction for personal, family, or household use due to the amount of the transaction, the following disclosure must be given in a size equal to at least 10-point type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous:

"NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR."

Art. 1D.016. CHARGING OF RATE LOWER THAN AGREED RATE. A creditor may charge an interest rate or amount of time price differential that is lower than the rate agreed to in the contract.

SUBCHAPTER B. OPEN-END ACCOUNTS

Art. 1D.101. OPEN-END ACCOUNT: CEILINGS. (a) To use the quarterly or annualized ceiling for setting the interest rate on current and future open-end account balances, the agreement must provide for use of the ceiling, and the creditor must give notice of the interest rate after the date on which the quarterly or annualized ceiling is computed but before the last day of the next succeeding calendar quarter.

(b) If the annualized ceiling is used, the rate is effective for the 12-month period beginning on the date on which the rate takes effect for the account.

(c) If the quarterly ceiling is used, the rate is effective for the three-month period beginning on the date on which the rate takes effect for the account.

(d) If a quarterly or annualized ceiling is being used for an account and if the rate for the applicable period is less than or equal to the ceiling to be in effect for the succeeding period of equal length, the creditor may leave that rate in effect for the succeeding period.

(e) A creditor who has disclosed to an obligor that an election may be renewed under Subsection (d) is not required to give additional notice of a renewal under that subsection.

(f) To increase a previously agreed rate, a creditor shall comply with Article 1D.103 before the end of the last calendar quarter of the period in which the rate previously agreed to is in effect. The ceiling in effect for that period remains the ceiling until the parties to the agreement agree to a new rate.

Art. 1D.102. VARIABLE RATE OPEN-END ACCOUNT: CEILINGS. The applicable rate ceiling for an open-end account agreement that provides for

a variable rate or amount according to an index, formula, or provision of law disclosed to the obligor, other than a variable rate commercial contract that is subject to Article 1D.004, is the annualized, quarterly, or weekly ceiling as disclosed to the obligor. The annualized ceiling shall be adjusted after each 12-month period, the quarterly ceiling shall be adjusted after each three-month period, and the weekly ceiling shall be adjusted weekly.

Art. 1D.103. OPEN-END ACCOUNT: CHANGE OF ANY AGREEMENT TERM. (a) An agreement covering an open-end account may provide that the creditor may change the terms of the agreement for current and future balances of that account by giving notice of the change to the obligor.

(b) A notice under this article to change a provision of an account, including the rate, or the index or formula used to compute the rate, must include:

(1) the new provision, the new rate, or the index or formula to be used to compute the rate;

(2) the date on which the change is to take effect;

(3) the period for which the change is to be effective or after which the rate will be adjusted;

(4) a statement of whether the change is to affect current and future balances; and

(5) the obligor's rights under this article and the procedures for the obligor to exercise those rights.

(c) A creditor who increases a rate shall include with a notice required by this article a form that may be returned at the expense of the creditor and on which the obligor may indicate by checking or marking an appropriate box or by a similar arrangement the obligor's decision not to continue the account. The form may be included on a part of the account statement that is to be returned to the creditor or on a separate sheet. In addition to the requirements of Subsection (b), the notice must include:

(1) the address to which the obligor may send notice of the obligor's election not to continue the open-end account; and

(2) the following statement printed in not less than 10-point type or computer equivalent:

"YOU MAY TERMINATE THIS AGREEMENT IF YOU
DO NOT WISH TO PAY THE NEW RATE."

(d) An obligor is considered to have agreed to a change under this article if the creditor mails a notice required by this article to the obligor's most recent address shown in the creditor's records and:

(1) the obligor chooses to retain the privilege of using the open-end account;

(2) the obligor or a person authorized by the obligor accepts or uses an extension of credit after the fifth day after the date on which the notice is mailed; or

(3) the obligor does not notify the creditor in writing before the 21st day after the date on which the notice is mailed that the obligor does not wish to continue to use the open-end account.

(e) An obligor who rejects a rate change in accordance with this article is entitled to pay the balance on the open-end account at the rate and over the

period in effect immediately before the date of the proposed change and under the same minimum payment terms provided by the agreement. Rejection of a new rate does not accelerate payment of the balance due.

(f) The procedure provided by this article for changing the terms of an agreement is in addition to other means of amending the agreement provided by law.

Art. 1D.104. OPEN-END ACCOUNT: DISCLOSURE OF CERTAIN RATE VARIATIONS. (a) Except as provided by Subsection (b), a variation in an interest rate on an account resulting from operation of the previously disclosed index, formula, or provision of law is not required to be disclosed under Article 1D.101 or 1D.103.

(b) Except as inconsistent with federal law, the creditor on an open-end account agreement that provides for a variable interest rate according to an index, formula, or provision of law, that is primarily for personal, family, or household use, and that is subject to this chapter shall give to the obligor notice of a change in the rate resulting from operation of the index, formula, or provision of law. The notice must be given:

(1) by a document mailed on or before the beginning of the first cycle for which the change becomes effective; or

(2) on or with:

(A) the billing statement for a billing cycle that precedes the cycle for which the change becomes effective, if the account is covered by Article 15.02(d); or

(B) any billing statement, if the account is not covered by Article 15.02(d).

Art. 1D.105. OPEN-END ACCOUNT: CEILING FOR PLAN OR ARRANGEMENT. If a creditor implements a quarterly or annualized ceiling for a majority of the creditor's open-end accounts that are under a particular plan or arrangement and that are for obligors in this state, that ceiling is also the ceiling for all open-end accounts that are opened or activated under that plan for obligors in this state during the period that the election is in effect.

SUBCHAPTER C. OTHER PROVISIONS

Art. 1D.201. CONSUMER LOANS AND SECONDARY MORTGAGE LOANS. (a) A loan for which the rate is authorized under this chapter is subject to Chapter 3A if the loan is:

(1) extended primarily for personal, family, or household use and not extended for a business, commercial, investment, agricultural, or other similar purpose;

(2) not secured by a lien on real estate; and

(3) made by a person engaged in the business of making or negotiating those types of loans.

(b) A loan for which the rate is authorized is subject to Chapter 3A if the loan is:

(1) extended primarily for personal, family, or household use and not for a business, commercial, investment, agricultural, or other similar purpose;

(2) predominantly payable in monthly installments;

(3) described by Article 3A.001(3), 3A.501, or 3A.806; and

(4) made, negotiated, or arranged by a person engaged in the business of making, negotiating, or arranging those types of loans.

(c) A person other than a bank, savings bank, or savings and loan association engaged in the business of making loans described by Subsection (a) or (b) must obtain a license under Chapter 3A.

(d) Except as inconsistent with this chapter:

(1) a person engaged in the business of extending open-end credit primarily for personal, family, or household use and who charges on an open-end account a rate or amount under authority of this chapter is subject to the applicable chapter in Subtitle 2 or Chapter 15; and

(2) a party to an account described in Subdivision (1) or the party's assignees has all the rights, duties, and obligations under that applicable chapter.

(e) Subsection (c) does not apply to a person who is subject to Chapter 24, Insurance Code.

SUBCHAPTER D. LIMITATIONS ON APPLICABILITY OF CHAPTER

Art. 1D.301. AGREEMENT TO WHICH CHAPTER DOES NOT APPLY.

The rate ceilings provided by this chapter do not apply to an agreement:

(1) under which credit is extended by the seller, or an owner, subsidiary, or corporate affiliate of the seller, for a home solicitation transaction as defined by Chapter 13; and

(2) that is secured by a lien on the obligor's homestead.

Art. 1D.302. REQUIREMENTS INCONSISTENT WITH FEDERAL LAW. (a) A person is not required to comply with a disclosure or notice requirement of this chapter that is inconsistent with federal law or regulation.

(b) A creditor may modify a disclosure or notice requirement of this chapter to conform to federal law.

SUBCHAPTER E. ENFORCEMENT

Art. 1D.401. WHEN ACT OR OMISSION NOT VIOLATION. An act or omission does not violate this title if the act or omission conforms to an interpretation of this title that is in effect at the time of the act or omission and that was made by:

(1) the consumer credit commissioner under Article 2.02A(10) of this title; or

(2) an appellate court of this state or the United States.

Art. 1D.402. PENALTY FOR VIOLATION OF CHAPTER FOR CERTAIN CONTRACTS SUBJECT TO SUBTITLE 2. (a) A person who contracts for, charges, or receives under a contract subject to Chapter 3A, 6, 6A, 7, or 15, including a contract for an open-end account, a rate or amount of time price differential that exceeds the maximum applicable rate or amount authorized by the applicable chapter or this chapter is subject to a penalty for that violation determined under Chapter 8.

(b) For a contract described in Subsection (a) that contains a rate or amount authorized under this chapter, the failure to perform a duty or comply with a prohibition provided by this chapter is subject to Chapter 8 as if this chapter were in Subtitle 2.

Art. 1D.403. PENALTY FOR VIOLATION OF CEILING IN CERTAIN CONTRACTS. A written contract, other than a contract to which Article 1D.402 applies, that directly or indirectly provides for a rate that exceeds the rate authorized by this chapter and that is not otherwise authorized by law, is subject to the penalty prescribed by Chapter 1F.

Art. 1D.404. ENFORCEMENT BY CONSUMER CREDIT COMMISSIONER. Subject to Article 2.01, the consumer credit commissioner shall enforce Chapters 2, 3A, 6, 6A, 7, 8, 15, and 51 as they apply to contracts subject to those chapters.

Art. 1D.405. EXAMINATION OF RECORDS; INSPECTIONS; RULES.

(a) Article 3A.902 applies to a transaction:

(1) that is made by a person who holds a license under Chapter 3A;

(2) that is subject to Chapter 15 or 3A; and

(3) the rate of which is authorized by this chapter.

(b) Subchapter L, Chapter 3A, applies to a loan:

(1) that is subject to Chapter 3A; and

(2) the rate of which is authorized by this chapter.

Art. 1D.406. ENFORCEMENT BY CREDIT UNION COMMISSIONER.

The credit union commissioner shall enforce this chapter as it applies to contracts subject to the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes).

Art. 1D.407. ENFORCEMENT BY DEPARTMENT OF INSURANCE.

The Texas Department of Insurance shall enforce this chapter as it applies to contracts subject to Chapter 24, Insurance Code.

SUBCHAPTER F. EFFECT ON OTHER STATUTES OF USING OPTIONAL RATE

Art. 1D.501. APPLICABILITY OF CREDIT UNION ACT. Except as inconsistent with this chapter:

(1) a person subject to the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes) who contracts for, charges, or receives a rate or amount authorized by this chapter remains subject to that Act; and

(2) a party to a transaction described by Subdivision (1) has all the rights provided by that Act.

Art. 1D.502. APPLICABILITY OF CHAPTER 24, INSURANCE CODE.

(a) Except as inconsistent with this chapter:

(1) a person subject to Chapter 24, Insurance Code, who contracts for, charges, or receives an interest rate authorized by this chapter remains subject to that chapter; and

(2) a party to an insurance premium finance agreement, including an agreement for an open-end account, has all the rights provided by Chapter 24, Insurance Code.

(b) The licensing requirements of Chapter 3A do not apply to a transaction described by Subsection (a)(1). The penalty provisions of this title do not apply to a transaction described in Subsection (a)(1).

CHAPTER 1E. JUDGMENT INTEREST SUBCHAPTER A. GENERAL PROVISIONS

Art. 1E.001. INTEREST RATE REQUIRED IN JUDGMENT. A money judgment of a court in this state must specify the postjudgment interest rate applicable to that judgment.

Art. 1E.002. JUDGMENT INTEREST RATE: INTEREST RATE OR TIME PRICE DIFFERENTIAL IN CONTRACT. A money judgment of a court of this state on a contract that provides for interest or time price differential earns postjudgment interest at a rate equal to the lesser of:

(1) the rate specified in the contract, which may be a variable rate;

or

(2) 18 percent a year.

Art. 1E.003. JUDGMENT INTEREST RATE: INTEREST RATE OR TIME PRICE DIFFERENTIAL NOT IN CONTRACT. (a) A money judgment of a court of this state to which Article 1E.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns postjudgment interest at the rate determined under this article.

(b) On the 15th day of each month, the consumer credit commissioner shall determine the postjudgment interest rate to be applied to a money judgment rendered during the succeeding calendar month.

(c) The postjudgment interest rate is:

(1) the auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as most recently published by the Federal Reserve Board before the date of computation;

(2) 10 percent a year if the auction rate described by Subdivision (1) is less than 10 percent; or

(3) 20 percent a year if the auction rate described by Subdivision (1) is more than 20 percent.

Art. 1E.004. PUBLICATION OF JUDGMENT INTEREST RATE. The consumer credit commissioner shall send to the secretary of state the postjudgment interest rate for publication, and the secretary shall publish the rate in the Texas Register.

Art. 1E.005. ACCRUAL OF JUDGMENT INTEREST. (a) Except as provided by Subsection (b), postjudgment interest on a money judgment of a court in this state accrues during the period beginning on the date the judgment is rendered and ending on the date the judgment is satisfied.

(b) If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a claimant at trial, interest does not accrue for the period of extension.

Art. 1E.006. COMPOUNDING OF JUDGMENT INTEREST. Postjudgment interest on a judgment of a court in this state compounds annually.

Art. 1E.007. JUDICIAL NOTICE OF JUDGMENT INTEREST RATE. A court of this state shall take judicial notice of a published postjudgment interest rate.

SUBCHAPTER B. PREJUDGMENT INTEREST IN WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CASE

Art. 1E.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a wrongful death, personal injury, or property damage case of a court of this state.

Art. 1E.102. PREJUDGMENT INTEREST REQUIRED IN CERTAIN CASES. A judgment in a wrongful death, personal injury, or property damage case earns prejudgment interest.

Art. 1E.103. PREJUDGMENT INTEREST RATE FOR WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CASE. The prejudgment interest rate is equal to the postjudgment interest rate applicable at the time of judgment.

Art. 1E.104. ACCRUAL OF PREJUDGMENT INTEREST. Except as provided by Article 1E.105 or 1E.108, prejudgment interest accrues on the amount of a judgment during the period beginning on the earlier of the 180th day after the date the defendant receives written notice of a claim or the date the suit is filed and ending on the day preceding the date judgment is rendered. Prejudgment interest is computed as simple interest and does not compound.

Art. 1E.105. EFFECT OF SETTLEMENT OFFER ON ACCRUAL OF PREJUDGMENT INTEREST. (a) If judgment for a claimant is equal to or less than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the judgment during the period that the offer may be accepted.

(b) If judgment for a claimant is more than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the settlement offer during the period that the offer may be accepted.

Art. 1E.106. SETTLEMENT OFFER REQUIREMENTS TO PREVENT PREJUDGMENT INTEREST ACCRUAL. To prevent the accrual of prejudgment interest under this subchapter, a settlement offer must be in writing and delivered to the claimant or the claimant's attorney or representative.

Art. 1E.107. VALUE OF SETTLEMENT OFFER FOR COMPUTING PREJUDGMENT INTEREST. If a settlement offer does not provide for cash payment at the time of settlement, the amount of the settlement offer for the purpose of computing prejudgment interest is the cost or fair market value of the settlement offer at the time it is made.

Art. 1E.108. ACCRUAL OF PREJUDGMENT INTEREST DURING PERIODS OF TRIAL DELAY. (a) In addition to the exceptions provided by Article 1E.105, a court may order that prejudgment interest does not accrue during periods of delay in the trial.

(b) A court shall consider:

(1) periods of delay caused by a defendant; and

(2) periods of delay caused by a claimant.

SUBCHAPTER C. OTHER PREJUDGMENT INTEREST PROVISIONS

Art. 1E.201. PREJUDGMENT INTEREST RATE FOR CONDEMNATION CASE. The prejudgment interest rate in a condemnation case is equal to the postjudgment interest rate at the time of judgment and is computed as simple interest.

SUBCHAPTER D. EXCEPTIONS TO APPLICATION OF CHAPTER

Art. 1E.301. EXCEPTION FOR DELINQUENT TAXES. This chapter does not apply to a judgment that earns interest at a rate set by Title 2, Tax Code.

Art. 1E.302. EXCEPTION FOR DELINQUENT CHILD SUPPORT. This chapter does not apply to interest that accrues on an amount of unpaid child support under Section 157.265, Family Code.

CHAPTER 1F. PENALTIES AND REMEDIES

SUBCHAPTER A. CIVIL LIABILITY; CRIMINAL PENALTY

Art. 1F.001. LIABILITY FOR USURIOUS INTEREST. (a) A creditor who contracts for, charges, or receives interest that is greater than the amount authorized by this subtitle is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for, charged, or received; or

(2) \$2,000 or 20 percent of the amount of the principal, whichever is less.

(b) This article applies only to a contract or transaction subject to this subtitle.

(c) A creditor who charges or receives interest in excess of the amount contracted for, but not in excess of the maximum amount authorized by law, is not subject to penalties for usury but may be liable for other remedies and relief as provided by law.

Art. 1F.002. ADDITIONAL LIABILITY FOR MORE THAN TWICE AUTHORIZED RATE OF INTEREST. (a) In addition to the amount determined under Article 1F.001, a creditor who charges and receives interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

(1) the principal amount on which the interest is charged and received; and

(2) the interest and all other amounts charged and received.

(b) This article applies only to a contract or transaction subject to this subtitle.

Art. 1F.003. LIABILITY FOR USURIOUS LEGAL INTEREST. (a) A creditor who charges or receives legal interest that is greater than the amount authorized by this subtitle is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of legal interest allowed by law from the total amount of interest charged or received; or

(2) \$2,000 or 20 percent of the amount of the principal, whichever is less.

(b) This article applies only to a transaction subject to this subtitle.

Art. 1F.004. ADDITIONAL LIABILITY FOR MORE THAN TWICE AUTHORIZED RATE OF LEGAL INTEREST. (a) In addition to the amount determined under Article 1F.003, a creditor who charges and receives legal interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

(1) the principal amount on which the interest is charged and received; and

(2) the interest and all other amounts charged and received.

(b) This article applies only to a transaction subject to this subtitle.

Art. 1F.005. ATTORNEY'S FEES. A creditor who is liable under Article 1F.001 or 1F.003 is also liable to the obligor for reasonable attorney's fees set by the court.

Art. 1F.006. LIMITATION ON FILING SUIT. (a) An action under this chapter must be brought within four years from the date on which the usurious interest was contracted for, charged, or received. The action must be brought in the county in which:

(1) the transaction was entered into;

(2) the usurious interest was charged or received;

(3) the creditor resides at the time of the cause of action if the creditor is a natural person;

(4) the creditor maintains its principal office if the creditor is not a natural person; or

(5) the obligor resides at the time of the accrual of the cause of action.

(b) In the case of a transaction in which a creditor has contracted for or charged usurious interest, at least 60 days before filing suit seeking usury penalties the obligor shall give written notice to the creditor advising the creditor in reasonable detail of the nature and amount of the violation.

(c) A creditor who receives a notice under this article may correct the violation as provided by Article 1F.103 during the period beginning on the date the notice is received and ending on the 60th day after that date. A creditor who corrects a violation as provided by this article is not liable to an obligor for the violation.

(d) The notice provision is not applicable to a defendant filing a counterclaim action alleging usury in an original action by the creditor.

Art. 1F.007. EXTENT OF LIABILITY. The penalties provided by this chapter are the only penalties for violation of this subtitle for contracting for, charging, or receiving interest in an amount that produces a rate in excess of the maximum rate allowed by law and no common law penalties apply.

Art. 1F.008. CRIMINAL PENALTY. (a) A person commits an offense if the person contracts for, charges, or receives interest on a transaction for personal, family, or household use that is greater than twice the amount authorized by this subtitle.

(b) An offense under this article is a misdemeanor punishable by a fine of not more than \$1,000.

(c) Each contract or transaction that violates this article is a separate offense.

(d) This article applies only to a contract or transaction subject to this subtitle.

SUBCHAPTER B. EXCEPTION FROM LIABILITY

Art. 1F.101. ACCIDENTAL AND BONA FIDE ERROR. A creditor is not subject to penalty under this chapter for any usurious interest that results from an accidental and bona fide error.

Art. 1F.102. LEGAL INTEREST DURING INTEREST-FREE PERIOD. A person is not liable to an obligor solely because the person charges or receives legal interest before the 30th day after the date on which the debt is due.

Art. 1F.103. CORRECTION OF VIOLATION. (a) A creditor is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date the creditor actually discovered the violation, the creditor corrects the violation as to that obligor by taking any necessary action and making any necessary adjustment, including the payment of interest on a refund, if any, at the applicable rate provided for in the contract of the parties; and

(2) the creditor gives written notice to the obligor of the violation before the obligor gives written notice of the violation or files an action alleging the violation.

(b) For the purposes of Subsection (a), a violation is actually discovered at the time of the discovery of the violation in fact and not to the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known of the violation. Actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other transactions.

(c) For purposes of Subsection (a), written notice is given when the notice is delivered to the person or to the person's duly authorized agent or attorney of record personally, by telecopier, or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service is prima facie evidence of the delivery of the notice to the person to whom the notice is addressed.

Art. 1F.104. CORRECTION EXCEPTION AVAILABLE TO ALL SIMILARLY SITUATED. If in a single transaction more than one creditor may be liable for a violation of this subtitle, compliance with Article 1F.103 by any of those creditors entitles each to the same protection provided by that article.

Art. 1F.105. AMOUNTS PAYABLE PURSUANT TO A FINAL JUDGMENT. A creditor is not liable to an obligor for a violation of this subtitle if the creditor receives interest that has been awarded pursuant to a final judgment that is no longer subject to modification or reversal.

CHAPTER 1G. MISCELLANEOUS PROVISIONS RELATING TO INTEREST

Art. 1G.001. IMPOSITION OF SURCHARGE FOR USE OF CREDIT CARD. (a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.

(b) This article does not apply to a state agency, county, local governmental entity, or other governmental entity that accepts a credit card for the payment of fees, taxes, or other charges.

Art. 1G.002. BILLING CYCLE INTEREST LIMITATION ON OPEN-END ACCOUNT WITHOUT MERCHANT DISCOUNT. (a) This article applies to an open-end account agreement that provides for credit card transactions:

(1) in which the creditor relies on one of the ceilings authorized by Chapter 1D for the rate of interest; and

(2) in connection with which the creditor does not impose or receive a merchant discount.

(b) Interest or time price differential may not be charged for a billing cycle of an open-end account credit agreement if:

(1) the total amount of the obligor's payments during the cycle equal or exceed the balance owed under the agreement at the end of the preceding billing cycle; or

(2) an amount is not owed under the agreement at the end of the preceding billing cycle.

Art. 1G.003. SALE OF OPEN-END ACCOUNT WITHOUT MERCHANT DISCOUNT. A seller or lessor may sell an open-end account credit agreement described by Article 1G.002(a) or any balance under that agreement to a purchaser who purchases a substantial part of the seller's or lessor's open-end account credit agreements or balances under those agreements in accordance with Article 6.07. A charge, fee, or discount on that sale:

(1) is not a merchant discount;

(2) does not disqualify the open-end account credit agreement or a balance under that agreement from being subject to Chapter 3A or from coverage under this article; and

(3) does not subject the account to the limitations provided by Article 15.02(d).

Art. 1G.004. APPLICATION OF LICENSING REQUIREMENT AND SUBTITLE 2 AND CHAPTER 15 TO CREDIT UNION OR EMPLOYEE BENEFIT PLAN. (a) A credit union is not subject to Subtitle 2 or Chapter 15 and is not required to obtain a license under this title.

(b) With respect to a loan that an employee benefit plan that is subject to Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sections 1001-1114) makes to a participant in the plan or a participant's beneficiary, the plan is not subject to Subtitle 2 and is not required to obtain a license under this title.

CHAPTER 1H. COMMERCIAL TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 1H.001. DEFINITIONS. In this chapter:

(1) "Account purchase transaction" means an agreement under which a person engaged in a commercial enterprise sells accounts, instruments, documents, or chattel paper subject to this subtitle at a discount, regardless of whether the person has a repurchase obligation related to the transaction.

(2) "Affiliate" of an obligor means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the obligor. In this subdivision "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) "Asset-backed securities" means debt obligations or certificates of beneficial ownership that:

(A) are a part of a single issue or single series of securities in an aggregate of \$1,000,000 or more and issuable in one or more classes;

(B) are secured by a pledge of, or represent an undivided ownership interest in:

(i) one or more fixed or revolving financial assets that by their terms convert into cash within a definite period; and

(ii) rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders; and

(C) are issued for a business, commercial, agricultural, investment, or similar purpose by a pass-through entity.

(4) "Business entity" means a partnership, corporation, joint venture, limited liability company, or other business organization or association, however organized.

(5) "Commercial loan" means a loan that is made primarily for business, commercial, investment, agricultural, or similar purposes. The term does not include a loan made primarily for personal, family, or household use.

(6) "Guaranty" means an agreement under which a person:

(A) assumes, guarantees, or otherwise becomes primarily or contingently liable for the payment or performance of an obligation of another person;

(B) provides security for the payment or performance of an obligation of another person, whether through the creation of a lien or security interest or otherwise; or

(C) agrees to purchase, or to advance consideration to purchase, the obligation or any property constituting security for the payment or performance of the obligation.

(7) "Pass-through entity" means a business entity, association, grantor or common-law trust under state law, or segregated pool of assets under federal tax law that, on the date of original issuance of asset-backed securities, does not have significant assets other than:

(A) assets pledged to or held for the benefit of holders of the asset-backed securities; or

(B) assets pledged to or held for the benefit of holders of other asset-backed securities previously issued.

(8) "Prepayment charge or penalty" means compensation that is or will become due and payable, or was paid, by an obligor to a creditor solely as a result of, or as a condition to, the payment or maturity of all or a portion of the principal amount of a loan before its stated maturity or its regularly scheduled date or dates of payment, as a result of any election by the obligor to pay all or a portion of the principal amount before its stated maturity or its regularly scheduled date or dates of payment.

(9) "Qualified commercial loan" means:

(A) a commercial loan in the original principal amount of \$3,000,000 or more; or

(B) a renewal or extension of a commercial loan in the original principal amount of \$3,000,000 or more, whether the principal amount of the loan at the time of its renewal or extension is \$3,000,000 or more.

Art. 1H.002. INTEREST. A creditor may contract for, charge, and receive from an obligor on a commercial loan a rate or amount of interest that does not exceed the applicable ceilings computed in accordance with Chapter 1D. All other applicable provisions, remedies, and penalties of this subtitle apply to a commercial loan unless expressly provided otherwise by this chapter.

Art. 1H.003. COMPUTATION OF TERM. A creditor and an obligor may agree to compute the term and rate of a commercial loan on the basis of a 360-day year consisting of twelve 30-day months. For purposes of this chapter, each rate ceiling expressed as a rate per year may mean a rate per year consisting of 360 days and of twelve 30-day months.

Art. 1H.004. DETERMINING RATES OF INTEREST BY SPREADING. (a) To determine whether a commercial loan is usurious, the interest rate is computed by amortizing or spreading using the actuarial method during the stated term of the loan all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a commercial loan is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower; or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

Art. 1H.005. PREPAYMENT CHARGE. A creditor and an obligor may agree to a charge for prepayment in a loan subject to this chapter. A charge for prepayment is not interest.

Art. 1H.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL LOANS. In addition to the interest authorized by this chapter, the parties to a commercial loan may agree and stipulate for:

(1) a delinquency charge on the amount of any installment or other amount in default for a period of not less than 10 days in a reasonable amount not to exceed five percent of the total amount of the installment; and

(2) a returned check fee in an amount not to exceed \$25 on any check, draft, order, or other instrument or form of remittance that is returned unpaid or dishonored for any reason.

SUBCHAPTER B. SPECIAL PROVISIONS

Art. 1H.101. QUALIFIED COMMERCIAL LOAN. (a) The parties to a qualified commercial loan agreement may contract for a rate or amount of interest that does not exceed the applicable rate ceiling.

(b) The parties may contract for the following additional charges:

(1) a discount or commission that an obligor has paid or agreed to pay to one or more underwriters of securities issued by the obligor;

(2) an option or right to exchange, redeem, or convert all or a portion of the principal amount of the loan, or interest on the principal amount, for or into capital stock or other equity securities of an obligor or of an affiliate of the obligor;

(3) an option or right to purchase capital stock or other equity securities of an obligor or of an affiliate of the obligor;

(4) an option or other right, whether by contract, conveyance, or otherwise, to participate in or own a share of the income, revenues, production, or profits:

(A) of an obligor or of an affiliate of the obligor;

(B) of any segment of the business or operations of an obligor or of an affiliate of the obligor; or

(C) derived or to be derived from any ownership rights of an obligor or of an affiliate of the obligor in real or personal property, including any proceeds of the sale or other disposition of ownership rights; or

(5) any compensation realized as a result of the receipt, exercise, sale, or other disposition of any option or other right described by this subsection.

(c) A charge under Subsection (b) is not interest.

Art. 1H.102. ASSET-BACKED SECURITIES TRANSACTION. An amount that is paid, passed through, or obligated to be paid or to be passed

through in connection with asset-backed securities or that is not paid as a result of a discounted sale price to the holders of asset-backed securities by a pass-through entity is not interest. This article does not affect interest that is agreed on and fixed by the parties to a written contract and paid, charged, or received on the ultimate underlying assets pledged to or held for the benefit of holders of asset-backed securities.

Art. 1H.103. ACCOUNT PURCHASE TRANSACTION. (a) An amount of a discount in, or charged under, an account purchase transaction is not interest.

(b) For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase is conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.

SECTION 2. Subtitle 2, Title 79, Revised Statutes (Article 5069-2.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Chapter 3A to read as follows:

CHAPTER 3A. CONSUMER LOANS
SUBCHAPTER A. GENERAL PROVISIONS;
APPLICABILITY OF CHAPTER

Art. 3A.001. DEFINITIONS. In this chapter:

(1) "Irregular transaction" means a loan that is payable:

(A) in installments that are not consecutive or monthly;

(B) with installments that are not substantially equal in amount; or

(C) with a first scheduled installment due that is not within one month and 15 days after the date of the loan.

(2) "Regular transaction" means a loan that is payable:

(A) in consecutive monthly installments;

(B) with installments substantially equal in amount; and

(C) with a first scheduled installment due within one month and 15 days after the date of the loan.

(3) "Secondary mortgage loan" means a loan that is:

(A) secured in whole or in part by an interest, including a lien or security interest, in real property that is:

(i) improved by a dwelling designed for occupancy by four or fewer families; and

(ii) subject to one or more liens, security interests, prior mortgages, or deeds of trust; and

(B) not to be repaid before the 91st day after the date of the loan.

Art. 3A.002. INTEREST COMPUTATION METHODS. (a) The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the amount financed as if all payments will be made upon the scheduled installment date. The daily rate is 1/365th of the equivalent contract rate. Payments received before or after the due date do not cause an adjustment in the amount of the scheduled principal reduction.

(b) The true daily earnings method is a method to compute an interest

charge by applying a daily rate to the unpaid balance of the amount financed. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual principal balance is outstanding.

Art. 3A.003. PURCHASE FROM MORTGAGEE. For the purposes of this chapter, a purchase from a mortgagee of an interest in a secondary mortgage loan that was made to secure that loan is treated as if it were a secondary mortgage loan.

Art. 3A.004. CONSTITUTIONAL INTEREST; EXEMPTION. (a) Except as otherwise fixed by law, the maximum rate of interest is 10 percent per year.

(b) A loan providing for a rate of interest that is 10 percent per year or less is not subject to this chapter.

Art. 3A.005. APPLICABILITY OF CHAPTER. (a) A loan is subject to this chapter if the loan:

(1) provides for interest in excess of 10 percent per year;

(2) is extended primarily for personal, family, or household use;

(3) is not secured by a lien on real property; and

(4) is made by a person engaged in the business of making, arranging, or negotiating those types of loans.

(b) A loan is subject to this chapter if the loan:

(1) provides for interest in excess of 10 percent per year;

(2) is extended primarily for personal, family, or household use;

(3) is predominantly payable in monthly installments;

(4) is described by Article 3A.001(3), 3A.501, or 3A.806; and

(5) is made by a person engaged in the business of making, arranging, or negotiating those types of loans.

(c) This chapter does not apply to a secondary mortgage loan made by a seller of property to secure all or part of the unpaid purchase price.

SUBCHAPTER B. DESCRIPTION OF AND REQUIREMENTS FOR AUTHORIZED ACTIVITIES

Art. 3A.101. AUTHORIZED ACTIVITIES; CEILING AMOUNT. (a) A person must hold a license issued under this chapter or be a bank, savings bank, or savings and loan association to:

(1) engage in the business of making, transacting, or negotiating loans subject to this chapter; and

(2) contract for, charge, or receive, directly or indirectly, in connection with a loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this article.

Art. 3A.102. ISSUANCE OF MORE THAN ONE LICENSE FOR A PERSON. (a) The commissioner may issue more than one license to a person on compliance with this chapter for each license.

(b) A person who is required to hold a license under this chapter must hold a separate license for each office at which loans are made, negotiated, or collected under this chapter.

(c) A license is not required under this chapter for a place of business:

(1) devoted to accounting or other recordkeeping; and
(2) at which loans are not made, negotiated, or collected under this chapter or Chapter 15.

Art. 3A.103. AREA OF BUSINESS; LOANS BY MAIL. (a) A lender is not limited to making loans to residents of the community in which the office for which the license or other authority is granted.

(b) A lender may make, negotiate, arrange, and collect loans by mail from a licensed office.

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

Art. 3A.201. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

(1) be under oath;
(2) give the approximate location from which business is to be conducted;
(3) identify the business's principal parties in interest; and
(4) contain other relevant information that the commissioner requires for the findings required under Article 3A.204.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of \$200.

(c) On the filing of each license application, the applicant shall pay to the commissioner for the license's year of issuance a license fee of:

(1) \$100 if the license is granted not later than June 30; or
(2) \$50 if the license is granted after June 30.

Art. 3A.202. BOND. (a) If the commissioner requires, an applicant for a license under this chapter shall file with the application a bond that is:

(1) in an amount not to exceed the total of:
(A) \$5,000 for the first license; and
(B) \$1,000 for each additional license;
(2) satisfactory to the commissioner; and
(3) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this chapter against the license holder.

(c) The bond must be conditioned on:
(1) the license holder's faithful performance under this chapter and rules adopted under this chapter; and
(2) the payment of all amounts that become due to the state or another person under this chapter during the calendar year for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter may not exceed the amount of the bond.

Art. 3A.203. INVESTIGATION OF APPLICATION. On the filing of an application and, if required, a bond, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Art. 3A.204. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license to make loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the applicant has net assets of at least \$25,000 available for the operation of the business.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Art. 3A.205. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

SUBCHAPTER D. LICENSE

Art. 3A.251. NAME AND PLACE ON LICENSE. (a) A license must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted.

(b) A license holder may not conduct business under this chapter under a name or at a place of business in this state other than the name or office stated on the license.

Art. 3A.252. LICENSE DISPLAY. A license holder shall display a license at the place of business provided on the license.

Art. 3A.253. MINIMUM ASSETS FOR LICENSE. (a) Except as provided by Subsection (b) or (c), a license holder shall maintain for each office for which a license is held net assets of at least \$25,000 that are used or readily available for use in conducting the business of that office.

(b) A license holder who held a license under the Texas Regulatory Loan Act and was issued a license to make loans under that chapter as provided by Section 4, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, shall maintain for the office for which that license is held net assets of at least \$15,000 that are used or readily available for use in conducting the business of that office.

(c) A license holder who paid the pawnbroker's occupational tax for 1967 and was issued a license to make loans under that chapter as provided by Section 4, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, is exempt from the minimum assets requirement of Subsection (a) for the office for which that license is held.

(d) If a license holder holds a license to which Subsection (b) or (c) applies

and subsequently transfers the license to another person, the minimum assets required under Subsection (a) shall apply to the license and the subsequent license holder.

Art. 3A.254. ANNUAL LICENSE FEE. (a) Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1.

(b) The annual fee for a license under this chapter is \$200 except that if, on September 30 preceding the date on which the annual fee is due, the gross unpaid balance of loans regulated under this chapter in the office for which the license is issued is \$100,000 or less, the annual fee is \$100.

Art. 3A.255. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. If the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

(1) that day; or

(2) December 31 of the last year for which an annual fee was paid.

Art. 3A.256. LICENSE SUSPENSION OR REVOCATION. After notice and a hearing the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Art. 3A.257. CORPORATE CHARTER FORFEITURE. (a) A license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter.

(b) When the attorney general is notified of a violation of this chapter and revocation of a license, the attorney general shall file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

Art. 3A.258. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Art. 3A.259. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Art. 3A.260. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Art. 3A.261. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a debtor entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Art. 3A.262. MOVING AN OFFICE. (a) A license holder shall give written notice to the commissioner before the 30th day preceding the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a holder's license accordingly.

Art. 3A.263. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

SUBCHAPTER E. INTEREST CHARGES ON NON-REAL PROPERTY LOANS

Art. 3A.301. MAXIMUM INTEREST CHARGE. (a) A loan contract under this chapter that is a regular transaction and is not secured by real property may provide for an interest charge on the cash advance that does not exceed the amount of add-on interest equal to the amount computed for the full term of the contract at an add-on interest amount equal to:

(1) \$18 for each \$100 per year on the part of the cash advance that is less than or equal to the amount computed under Article 2.08, using the reference base amount of \$300; and

(2) \$8 for each \$100 per year on the part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Article 2.08, using the reference base amount of \$2,500.

(b) For the purpose of Subsection (a):

(1) when the loan is made an interest charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, then that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A loan contract under this chapter that is an irregular transaction and is not secured by real property may provide for an interest charge, using any method or formula, that does not exceed the amount that, having due regard for the schedule of installment payments, would produce the same effective return as allowed under Subsection (a) if the loan were payable in equal successive monthly installments beginning one month from the date of the contract.

(d) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative interest rate as computed under Subchapter A, Chapter

1D. Interest may accrue on the principal balance and amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

Art. 3A.302. MAXIMUM CHARGE FOR LOAN WITH SINGLE REPAYMENT. A loan contract that exceeds the maximum cash advance of Article 3A.401 and that is payable in a single installment may provide for an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return as allowed under Article 3A.301 having due consideration for the amount and term of the loan. If a loan under this article is prepaid in full, the lender may earn a minimum interest charge of \$25.

Art. 3A.303. ADDITIONAL INTEREST FOR DEFAULT: REGULAR TRANSACTION. (a) A loan contract that includes precomputed interest and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(b) A loan contract that uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) The additional interest may not exceed five cents for each \$1 of a scheduled installment.

(d) Interest under this article may not be collected more than once on the same installment.

Art. 3A.304. ADDITIONAL INTEREST FOR INSTALLMENT DEFERMENT: REGULAR TRANSACTION. (a) On a loan contract that includes precomputed interest and is a regular transaction, an authorized lender may charge additional interest for the deferment of an installment if:

(1) the entire amount of the installment is unpaid;

(2) no interest for default has been collected on the installment; and

(3) payment of the installment is deferred for one or more full months and the maturity of the contract is extended for a corresponding period.

(b) The interest for deferment under Subsection (a) may not exceed the amount computed by:

(1) taking the difference between the refund that would be required for prepayment in full as of the date of deferment and the refund that would be required for prepayment in full one month before the date of deferment; and

(2) multiplying the results under Subdivision (1) by the number of months in the deferment period.

(c) The amount of interest applicable to each deferred balance or installment period occurring after a deferment period remains the amount applicable to that balance or period under the original loan contract.

(d) If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Subchapter H, a pro rata refund of that part of the interest for deferment applicable to the number of full months remaining in the deferment period on the payment date.

(e) For the purposes of this article, a deferment period is the period during

which a payment is not required or made because of the deferment and begins on the day after the due date of the scheduled installment that precedes the first installment being deferred.

Art. 3A.305. COLLECTION OF DEFAULT OR DEFERMENT INTEREST. Interest for default under Article 3A.303 or for installment deferment under Article 3A.304 may be collected when it accrues or at any time after it accrues.

Art. 3A.306. ADDITIONAL INTEREST FOR DEFAULT: IRREGULAR TRANSACTION. A loan contract that includes precomputed interest and that is an irregular transaction may provide for additional interest for default using the true daily earnings method for the period from the maturity date of an installment until the date the installment is paid. The rate of the additional interest may not exceed the maximum contract interest rate.

SUBCHAPTER F. ALTERNATE CHARGES FOR CERTAIN LOANS

Art. 3A.401. MAXIMUM CASH ADVANCE. The maximum cash advance of a loan made under this subchapter is an amount computed under Article 2.08, using the reference base amount of \$100.

Art. 3A.402. ALTERNATE INTEREST CHARGE. Instead of the charges authorized by Article 3A.301, a loan contract may provide for:

(1) on a cash advance of less than \$30, an acquisition charge that is not more than \$1 for each \$5 of the cash advance;

(2) on a cash advance equal to or more than \$30 but not more than \$100:

(A) an acquisition charge that is not more than the amount equal to one-tenth of the amount of the cash advance; and

(B) an installment account handling charge that is not more than:

(i) \$3 a month if the cash advance is not more than \$35;

(ii) \$3.50 a month if the cash advance is more than \$35 but not more than \$70; or

(iii) \$4 a month if the cash advance is more than \$70; or

(3) on a cash advance of more than \$100:

(A) an acquisition charge that is not more than \$10; and

(B) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

Art. 3A.403. MAXIMUM INTEREST CHARGE FOR LOAN WITH SINGLE REPAYMENT. A loan contract to which Article 3A.401 applies and that is payable in a single installment may provide for an acquisition charge and an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return as allowed under Article 3A.402 having due consideration for the amount and term of the loan. If a loan under this article is prepaid in full, the lender may earn a minimum of the acquisition charge and interest charge for one month.

Art. 3A.404. NO OTHER CHARGES AUTHORIZED. (a) On a loan made under this subchapter a lender may not contract for, charge, or receive an amount unless this subchapter authorizes the amount to be charged.

(b) An insurance charge is not authorized on a loan made under this subchapter.

Art. 3A.405. MAXIMUM LOAN TERM. The maximum term of a loan made under this subchapter is:

(1) for a loan of \$100 or less the lesser of:

(A) one month for each multiple of \$10 of cash advance; or

(B) six months; and

(2) for a loan of more than \$100, one month for each multiple of \$20 of cash advance.

Art. 3A.406. REFUND. (a) An acquisition charge authorized under Article 3A.402(1) or (2) is considered to be earned at the time a loan is made and is not subject to refund.

(b) On the prepayment of a loan with a cash advance of \$30 or more but not more than \$100, the installment account handling charge authorized under Article 3A.402(2) is subject to refund in accordance with Subchapter H.

(c) On the prepayment of a loan with a cash advance of more than \$100, the acquisition charge and the installment account handling charge authorized under Article 3A.402(3) are subject to refund in accordance with Subchapter H.

Art. 3A.407. DEFAULT CHARGE; DEFERMENT OF PAYMENT. The provisions of Subchapter E relating to additional interest for default and additional interest for the deferment of installments apply to a loan made under this subchapter.

Art. 3A.408. SCHEDULES FOR WEEKLY, BIWEEKLY, OR SEMIMONTHLY INSTALLMENTS. The commissioner may prepare schedules that may be used by an authorized lender for the repayment of a loan made under this subchapter by weekly, biweekly, or semimonthly installments.

SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

Art. 3A.501. MAXIMUM INTEREST CHARGE. (a) A secondary mortgage loan that is a regular transaction may provide for an interest charge on the cash advance that is precomputed and that does not exceed a rate or amount that would produce the same effective return as allowed under Subchapter A, Chapter 1D.

(b) For the purpose of Subsection (a):

(1) when the loan is made an interest charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A secondary mortgage loan may provide for a rate or amount of interest calculated using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative rate ceiling in Subchapter A, Chapter 1D. Interest may accrue on the principal balance and

amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full. An interest charge under this subsection may not be precomputed.

Art. 3A.502. ADDITIONAL INTEREST FOR DEFAULT: REGULAR TRANSACTION. (a) A secondary mortgage loan that includes precomputed interest and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(b) A secondary mortgage loan contract that uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) The additional interest for default may not exceed five cents for each \$1 of a scheduled installment.

(d) Interest under this article may not be collected more than once on the same installment.

Art. 3A.503. ADDITIONAL INTEREST FOR INSTALLMENT DEFERMENT: REGULAR TRANSACTIONS. (a) On a secondary mortgage loan that includes precomputed interest and is a regular transaction, an authorized lender may charge additional interest for the deferment of an installment if:

(1) the entire amount of the installment is unpaid;

(2) no interest for default has been collected on the installment; and

(3) payment of the installment is deferred for one or more full months and the maturity of the contract is extended for a corresponding period.

(b) The interest for deferment under Subsection (a) may not exceed the amount computed by:

(1) taking the difference between the refund that would be required for prepayment in full as of the date of deferment and the refund that would be required for prepayment in full one month before the date of deferment; and

(2) multiplying the results under Subdivision (1) by the number of months in the deferment period.

(c) The amount of interest applicable to each deferred balance or installment period occurring after a deferment period remains the amount applicable to that balance or period under the original loan contract.

(d) If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Subchapter H, a pro rata refund of that part of the interest for deferment applicable to the number of full months remaining in the deferment period on the payment date.

(e) For the purposes of this article, a deferment period is the period during which a payment is not required or made because of the deferment and begins on the day after the due date of the scheduled installment that precedes the first installment being deferred.

Art. 3A.504. COLLECTION OF DEFAULT OR DEFERMENT INTEREST. Interest for default under Article 3A.502 or for installment deferment under Article 3A.503 may be collected when it accrues or at any time after it accrues.

Art. 3A.505. ADDITIONAL INTEREST FOR DEFAULT: IRREGULAR TRANSACTION. A secondary mortgage loan that includes precomputed interest and that is an irregular transaction may provide for additional interest for default using the true daily earnings method for the period from the maturity date of an installment until the date the installment is paid. The rate of the additional interest may not exceed the maximum contract interest rate.

Art. 3A.506. DATE OF FIRST SCHEDULED INSTALLMENT. On a secondary mortgage loan made under this chapter the due date of the first installment may not be scheduled later than three months after the date of the loan.

Art. 3A.507. AMOUNTS AUTHORIZED TO BE INCLUDED IN CONTRACT. A secondary mortgage loan contract may provide for:

(1) reasonable fees or charges paid to the trustee in connection with a deed of trust or similar instrument executed in connection with the secondary mortgage loan, including fees for enforcing the lien against or posting for sale, selling, or releasing the property secured by the deed of trust;

(2) reasonable fees paid to an attorney who is not an employee of the creditor in the collection of a delinquent secondary mortgage loan;

(3) court costs and fees incurred in the collection of the loan or foreclosure of a lien created by the loan; or

(4) a fee that does not exceed \$15 for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a secondary mortgage loan.

Art. 3A.508. AMOUNTS AUTHORIZED TO BE COLLECTED OR ADDED TO LOAN. (a) A lender or a person who is assigned a secondary mortgage loan may collect on or before the closing of the loan, or include in the principal of the loan:

(1) reasonable fees for:

(A) title examination and preparation of an abstract of title

by:

(i) an attorney who is not an employee of the lender;

or

(ii) a title company or property search company authorized to do business in this state; or

(B) premiums or fees for title insurance or title search for the benefit of the mortgagee and, at the mortgagor's option, for title insurance or title search for the benefit of the mortgagor;

(2) reasonable fees charged to the lender by an attorney who is not a salaried employee of the lender for preparation of the loan documents in connection with the mortgage loan if the fees are evidenced by a statement for services rendered addressed to the lender;

(3) charges prescribed by law that are paid to public officials for determining the existence of a security interest or for perfecting, releasing, or satisfying a security interest;

(4) reasonable fees for an appraisal of real property offered as security for the loan prepared by a certified appraiser who is not a salaried employee of the lender;

(5) the reasonable cost of a credit report;

(6) reasonable fees for a survey of real property offered as security for the loan prepared by a registered surveyor who is not a salaried employee of the lender;

(7) the premiums received in connection with the sale of credit life insurance, credit accident and health insurance, or other insurance that protects the mortgagee against default by the mortgagor, the benefits of which are applied in whole or in part to reduce or extinguish the loan balance; and

(8) reasonable fees relating to real property offered as security for the loan that are incurred to comply with a federally mandated program if the collection of the fees or the participation in the program is required by a federal agency.

(b) Premiums for property insurance that conforms with Article 3A.701 may be added to the loan contract.

SUBCHAPTER H. REFUND OF PRECOMPUTED INTEREST

Art. 3A.601. REFUND OF PRECOMPUTED INTEREST: REGULAR TRANSACTION. (a) This article applies to a loan contract that includes precomputed interest and that is a regular transaction.

(b) If the contract is prepaid in full, including payment in cash or by a new loan or renewal of the loan, or if the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit to the borrower the amount computed by:

(1) dividing the sum of the periodic balances scheduled to follow the installment date after the date of the prepayment or demand, as appropriate, by the sum of all the periodic balances under the schedule of payments set out in the loan contract; and

(2) multiplying the total interest contracted for under Article 3A.301, 3A.402, or 3A.501, as appropriate, by the result under Subdivision (1).

(c) If the prepayment in full or demand for payment in full occurs before the first installment due date, the lender shall:

(1) retain an amount computed by:

(A) dividing 30 into the amount that could be retained if the first installment period were one month and the loan were prepaid in full on the date the first installment is due; and

(B) multiplying the result under Paragraph (A) by the number of days in the period beginning on the date the loan was made and ending on the date of the prepayment or demand; and

(2) refund or credit to the borrower the amount computed by subtracting the amount retained under Subdivision (1) from the interest contracted for under Article 3A.301, 3A.402, or 3A.501, as appropriate.

Art. 3A.602. REFUND OF PRECOMPUTED INTEREST ON CONTRACT: IRREGULAR TRANSACTION OR TERM OF MORE THAN 60 MONTHS. (a) This article applies to a loan contract that:

(1) includes precomputed interest and to which Article 3A.601 does not apply; or

(2) has a term of more than 60 months.

(b) If the contract is prepaid in full, including payment in cash or by a new loan or renewal of the loan, or if the lender demands payment in full of

the unpaid balance before final maturity of the contract, the lender earns interest for the period beginning on the date of the loan and ending on the date of the prepayment or demand, as applicable, an amount that does not exceed the amount allowed by Subsection (f) using the simple annual interest rate under the contract.

(c) If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain, in addition to interest that accrued during any elapsed installment periods, an amount computed by:

(1) multiplying the simple annual interest rate under the contract by the unpaid principal balance of the loan determined according to the schedule of payments to be outstanding on the immediately preceding installment due date;

(2) dividing 365 into the product under Subdivision (1); and

(3) multiplying the number of days in the period beginning on the day after the installment due date and ending on the date of the prepayment or demand, as appropriate, by the result obtained under Subdivision (2).

(d) The lender may also earn interest on an addition to principal, or other permissible charges, added to the loan after the date of the loan contract, accruing at the simple annual interest rate under the contract from the date of the addition until the date paid or the date the lender demands payment in full of the total unpaid balance under the loan contract.

(e) The lender shall refund or credit to the borrower the amount computed by subtracting the total amount retained under Subsections (b), (c), and (d) from the total amount of interest contracted for and precomputed in the amount of loan.

(f) For the purposes of this article, the simple annual interest rate under a contract is equal to the rate that the contract would have produced over its full term if, assuming that each scheduled payment under the contract is paid on the date due and considering the amount of each scheduled installment and the time of each scheduled installment period, the rate were applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments.

Art. 3A.603. NO REFUND ON PARTIAL PREPAYMENT OR OF AMOUNT LESS THAN \$1. A refund is not required under this subchapter for a partial prepayment or if the amount to be refunded is less than \$1.

SUBCHAPTER I. INSURANCE

Art. 3A.701. REQUIRED PROPERTY INSURANCE. (a) On a loan that is subject to Subchapter E with a cash advance of \$300 or more, a lender may request or require a borrower to insure tangible personal property offered as security for the loan.

(b) On a secondary mortgage loan, a lender may request or require a borrower to provide property insurance as security against reasonable risks of loss, damage, and destruction.

(c) The insurance coverage and the premiums or charges for the coverage must bear a reasonable relationship to:

(1) the amount, term, and conditions of the loan;

(2) the value of the collateral; and

(3) the existing hazards or risk of loss, damage, or destruction.

(d) The insurance may not:

- (1) cover unusual or exceptional risks; or
- (2) provide coverage not ordinarily included in policies issued to the general public.

(e) A creditor may not require the purchase of duplicate property insurance if the creditor has knowledge that the borrower:

- (1) has valid and collectible insurance covering the property; and
- (2) has provided a loss payable endorsement sufficient to protect the creditor.

(f) For purposes of determining the knowledge required under Subsection (e), a creditor may rely on a written consent to purchase insurance in which the borrower is given the opportunity to disclose the existence of other coverage.

Art. 3A.702. CREDIT LIFE INSURANCE, CREDIT HEALTH AND ACCIDENT INSURANCE, OR INVOLUNTARY UNEMPLOYMENT INSURANCE. (a) On a loan made under this chapter that is subject to Subchapter E with a cash advance of \$100 or more, a lender may:

- (1) offer or request that a borrower provide credit life insurance and credit health and accident insurance as additional protection for the loan; and
- (2) offer involuntary unemployment insurance to the borrower at the time the loan is made.

(b) A lender may not require that the borrower accept or provide the insurance described by Subsection (a).

(c) On a secondary mortgage loan made under this chapter, a lender may request or require that a borrower provide credit life insurance and credit accident and health insurance as additional protection for the loan.

Art. 3A.703. MAXIMUM AMOUNT OF INSURANCE COVERAGE. (a) At any time the total amount of the policies of credit life insurance in force on one borrower on one loan contract may not exceed the greater of:

- (1) the total amount repayable under the loan contract if the loan is an irregular transaction; or
- (2) the greater of the scheduled or actual amount of unpaid indebtedness if the loan is a regular transaction.

(b) At any time the total amount of the policies of credit accident and health insurance or involuntary unemployment insurance in force on one borrower on one loan contract may not exceed the total amount repayable under the loan contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic installment payment on the loan.

Art. 3A.704. INSURANCE NOTICE. (a) If insurance is required on a loan made under this chapter, the lender shall give to the borrower written notice that clearly and conspicuously states that:

- (1) insurance is required in connection with the loan; and
- (2) the borrower as an option may furnish the required insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained from an insurance company authorized to do business in this state.

(b) If insurance requested or required on a loan made under this chapter is sold or obtained by a lender at a premium or rate of charge that is not fixed

or approved by the commissioner of insurance, the lender shall notify the borrower of that fact. If notice is required under Subsection (a), the lender shall include that fact in the notice required by Subsection (a).

(c) A notice required under this article may be:

- (1) a separate writing delivered with the loan contract; or
- (2) a part of the loan contract.

Art. 3A.705. INSURANCE MAY BE FURNISHED BY BORROWER.

(a) If insurance is required on a loan made under this chapter, the borrower may furnish the insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained by the borrower from an insurance company authorized to do business in this state.

(b) If insurance is required on a loan made under this chapter and the insurance is sold or obtained by the lender at a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the borrower has the option of furnishing the required insurance under this article at any time before the sixth day after the date of the loan.

Art. 3A.706. BORROWER'S FAILURE TO PROVIDE REQUIRED INSURANCE. (a) If a borrower fails to obtain or maintain insurance coverage required under a loan contract or requests the lender to obtain that coverage, the lender may obtain substitute insurance coverage that is substantially equivalent to or more limited than the coverage originally required.

(b) If a loan is subject to Subchapter E, the lender may obtain insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered.

(c) Insurance obtained under this article must comply with Articles 3A.707 and 3A.708.

(d) The lender may add the amount advanced by the lender for insurance coverage obtained under this article to the unpaid balance of the loan contract and may charge interest on that amount from the time it is added to the unpaid balance until it is paid. The rate of additional interest may not exceed the rate that the loan contract would produce over its full term if each scheduled payment were paid on the due date.

Art. 3A.707. REQUIREMENTS FOR INCLUDING INSURANCE CHARGE IN CONTRACT. Insurance for which a charge is included in a loan contract must be written:

- (1) at lawful rates;
- (2) in accordance with the Insurance Code; and
- (3) by a company authorized to do business in this state.

Art. 3A.708. FURNISHING OF INSURANCE DOCUMENT TO BORROWER. If a lender obtains insurance for which a charge is included in the loan contract, the lender, not later than the 30th day after the date on which the loan contract is executed, shall deliver, mail, or cause to be mailed to the borrower at the borrower's address specified in the contract one or more policies or certificates of insurance that clearly set forth:

- (1) the amount of the premium;
- (2) the kind of insurance provided;
- (3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions, and conditions, of each insurance policy.

Art. 3A.709. LENDER'S DUTY IF INSURANCE IS ADJUSTED OR TERMINATED. (a) If insurance for which a charge is included in or added to the loan contract is canceled, adjusted, or terminated, the lender shall:

(1) credit to the amount unpaid on the loan the amount of the refund received by the lender for unearned insurance premiums, less the amount of the refund that is applied to the purchase by the lender of similar insurance; and

(2) if the amount to be credited under Subdivision (1) is more than the unpaid balance, refund promptly to the borrower the difference between those amounts.

(b) A cash refund is not required under this article if the amount of the refund is less than \$1.

Art. 3A.710. PAYMENT FOR INSURANCE FROM LOAN PROCEEDS. A lender, including an officer, agent, or employee of the lender, who accepts insurance under this subchapter as protection for a loan:

(1) may deduct the premium or identifiable charge for the insurance from the proceeds of the loan; and

(2) shall pay the deducted amounts to the insurance company writing the insurance.

Art. 3A.711. INSURANCE GAIN NOT INTEREST. Any gain, or advantage to the lender or the lender's employee, officer, director, agent, general agent, affiliate, or associate from insurance under this subchapter or the provision or sale of insurance under this subchapter is not additional interest or an additional charge in connection with a loan made under this chapter except as specifically provided by this chapter.

Art. 3A.712. ACTION UNDER SUBCHAPTER NOT SALE OF INSURANCE. Arranging for insurance or collecting an identifiable charge as authorized by this subchapter is not a sale of insurance.

Art. 3A.713. REQUIRED AGENT OR BROKER PROHIBITED. A lender may not by any direct or indirect method require the purchase of insurance from an agent or broker designated by the lender.

Art. 3A.714. DECLINATION OF EQUAL INSURANCE COVERAGE PROHIBITED. A lender may not decline at any time existing insurance coverage providing substantially equal benefits that comply with this subchapter.

Art. 3A.715. EFFECT OF UNAUTHORIZED INSURANCE CHARGE. (a) If a lender charges for insurance an amount that is not authorized under this subchapter, the lender:

(1) is not entitled to collect an amount for insurance or interest on an amount for insurance; and

(2) shall refund to the borrower or credit to the borrower's account all amounts collected for insurance and interest collected on those amounts.

(b) An overcharge that results from an accidental or bona fide error may be corrected as provided by Article 8.01.

(c) The remedy provided by this article is not exclusive of any other remedy or penalty provided by this subtitle.

Art. 3A.716. NONFILING INSURANCE. (a) Instead of charging fees for the filing, recording, and releasing of a document securing a loan to which

Subchapter E applies, an authorized lender may include in the loan contract a charge for a nonfiling insurance premium.

(b) The amount of a charge under Subsection (a) may not exceed the amount of fees authorized for filing and recording an original financing statement in the standard form prescribed by the secretary of state.

(c) A lender may receive an amount authorized under this article only if the lender purchases nonfiling insurance in connection with the loan contract.

(d) A lender is not required to furnish to a borrower a policy or certificate of insurance evidencing nonfiling insurance.

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

Art. 3A.801. DELIVERY OF INFORMATION TO BORROWER.

(a) When a loan is made under this chapter, the lender shall deliver to the borrower, or to one borrower if there is more than one, a copy of each document signed by the borrower, including the note or loan contract, and a written statement in English that contains:

(1) the names and addresses of the borrower and the lender; and

(2) any type of insurance for which a charge is included in the loan contract and the charge to the borrower for the insurance.

(b) If the note or loan contract shows the information required by Subsection (a), the written statement is not required.

Art. 3A.802. RECEIPT FOR CASH PAYMENT. A lender shall give a receipt to a person making a cash payment on a loan.

Art. 3A.803. ACCEPTANCE OF PREPAYMENT. At any time during regular business hours, the lender shall accept prepayment of a loan in full or, if the amount tendered is less than the amount required to prepay the loan in full, prepayment of an amount equal to one or more full installments.

Art. 3A.804. RETURN OF INSTRUMENTS TO BORROWER ON REPAYMENT. Within a reasonable time after a loan is repaid in full or an open-end account is terminated according to the terms of the contract, a lender shall cancel and return to a borrower any instrument, including a note, assignment, security agreement, or mortgage, or pledged property that:

(1) secured the loan; and

(2) does not secure another indebtedness of the borrower to the lender.

Art. 3A.805. AGREEMENT FOR MORE THAN ONE LOAN OR CASH ADVANCE. (a) A lender and a borrower may enter an agreement under which one or more loans or cash advances are from time to time made to or for the account of the borrower.

(b) An agreement under this article may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding at a rate that does not exceed the rate that produces the maximum interest charge computed under Article 3A.301 for an equivalent loan amount.

(c) An agreement under this article must be written and signed by the lender and borrower.

(d) An agreement under this article must contain:

(1) the date of the agreement;

(2) the name and address of each borrower; and

(3) the name and address of the lender.

(e) If a charge for insurance coverage is to be included in a loan contract,

an agreement under this article must clearly set forth a simple statement of the amount of the charge or the method by which the charge is to be computed.

(f) The lender shall deliver a copy of an agreement under this article to the borrower.

(g) The commissioner may prescribe monthly rates of charge that produce the maximum interest charge computed under Article 3A.301 for use under Subsection (b) of this article.

Art. 3A.806. AGREEMENT TO MODIFY TERM OF SECONDARY MORTGAGE LOAN CONTRACT. (a) A lender and a borrower may enter into an agreement under which a term of a secondary mortgage loan contract is amended, restated, or rescheduled.

(b) An agreement under this article must be written and signed by the lender and borrower.

(c) An agreement under this article must contain:

- (1) the date of the agreement;
- (2) the name and address of the lender; and
- (3) the name and address of each borrower.

(d) The lender shall deliver a copy of an agreement under this article to the borrower.

SUBCHAPTER K. PROHIBITIONS ON AUTHORIZED LENDER

Art. 3A.851. OBLIGATION UNDER MORE THAN ONE CONTRACT.

(a) An authorized lender may not induce or permit a person or a husband and wife to be directly or indirectly obligated under more than one loan contract at any time for the purpose or with the effect of obtaining an amount of interest that is more than the amount of interest that is otherwise authorized under this chapter for a loan of that aggregate amount with a maximum interest charge computed under:

- (1) Article 3A.301(a);
- (2) Article 3A.402; or
- (3) both Articles 3A.301(a) and 3A.402.

(b) Subsection (a) does not prohibit the purchase of a bona fide retail installment contract or revolving charge agreement of a borrower for the purchase of goods or services.

(c) A lender who purchases all or substantially all of the loan contracts of another authorized lender and who at the time of purchase has a loan contract with a borrower whose loan contract is purchased may collect principal and authorized charges according to the terms of each loan contract.

Art. 3A.852. AMOUNT AUTHORIZED. (a) A lender may not directly or indirectly charge, contract for, or receive an amount that is not authorized under this chapter in connection with a loan to which this chapter applies. This includes, but is not limited to, any fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not.

(b) On a loan subject to Subchapter E or a secondary mortgage loan subject to Subchapter G a lender may assess and collect from the borrower an amount incurred by the lender for:

- (1) court costs;
- (2) attorney's fees assessed by a court;

(3) a fee authorized by law for filing, recording, or releasing in a public office a security for a loan;

(4) a reasonable amount spent for repossessing, storing, preparing for sale, or selling any security;

(5) a fee for recording a lien on or transferring a certificate of title to a motor vehicle offered as security for a loan made under this chapter; or

(6) a premium or an identifiable charge received in connection with the sale of insurance authorized under this chapter.

Art. 3A.853. SECURITY FOR LOAN. (a) A lender may not take as security for a loan made under this chapter an assignment of wages.

(b) A lender may not take as security for a loan made under Subchapter E or Subchapter F a lien on real property other than a lien created by law on the recording of an abstract of judgment.

(c) A lender may take as security for a loan made under Subchapter E or Subchapter F an assignment of:

(1) a warrant drawn against a state fund; or

(2) a claim against a state fund or a state agency.

Art. 3A.854. CONFESSION OF JUDGMENT; POWER OF ATTORNEY. A lender may not take a confession of judgment or a power of attorney authorizing the lender or a third person to confess judgment or to appear for a borrower in a judicial proceeding.

Art. 3A.855. DISCLOSURE OF AMOUNT FINANCED AND SCHEDULE OF PAYMENTS. A lender may not take a promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments, except for an open-end account.

Art. 3A.856. INSTRUMENT WITH BLANK PROHIBITED. A lender may not take an instrument in which a blank is left to be filled in after the loan is made.

Art. 3A.857. WAIVER OF BORROWER'S RIGHT PROHIBITED. A lender may not take an instrument in which a borrower waives any right accruing to the borrower under this chapter.

Art. 3A.858. MAXIMUM LOAN TERM. A lender may not enter a loan contract under Article 3A.301(a) under which the borrower agrees to make a scheduled payment of principal more than:

(1) 37 calendar months after the date on which the contract is made, if the contract is for a cash advance of \$1,500 or less;

(2) 49 calendar months after the date on which the contract is made, if the contract is for a cash advance of more than \$1,500 but not more than \$3,000; or

(3) 60 months after the date on which the contract is made, if the contract is for a cash advance of more than \$3,000.

SUBCHAPTER L. ADMINISTRATION OF CHAPTER

Art. 3A.901. ADOPTION OF RULES. (a) The Finance Commission of Texas may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the Finance Commission of Texas.

(c) A rule shall be entered in a permanent book. The book is a public record and shall be kept in the office of the commissioner.

Art. 3A.902. EXAMINATION OF LENDERS; ACCESS TO RECORDS.

(a) The commissioner or the commissioner's representative shall, at the times the commissioner considers necessary:

(1) examine each place of business of each authorized lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The lender shall:

(1) give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's authorized representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Information obtained under this article is confidential.

(e) A lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Art. 3A.903. GENERAL INVESTIGATION. (a) To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including an authorized lender, whom the commissioner has reasonable cause to believe is violating this chapter regardless of whether the person claims to not be subject to this chapter.

(b) For the purposes of this article, a person who advertises, solicits, or otherwise represents that the person is willing to make a loan with a cash advance less than or equal to the amount computed under Article 2.08 using the reference base amount of \$2,500 is presumed to be engaged in the business described by Article 3A.101.

Art. 3A.904. CERTIFICATE; CERTIFIED DOCUMENT. On application by any person and on payment of any associated cost, the commissioner shall furnish under the commissioner's seal and signed by the commissioner or an assistant of the commissioner:

(1) a certificate of good standing; or

(2) a certified copy of a license, rule, or order.

Art. 3A.905. TRANSCRIPT OF HEARING; PUBLIC. The transcript of a hearing held by the commissioner under this chapter is a public record.

Art. 3A.906. APPOINTMENT OF AGENT. (a) An authorized lender shall maintain on file with the commissioner a written appointment of a resident of this state as the lender's agent for service of all judicial or other process or legal notice, unless the lender has appointed an agent under another statute of this state.

(b) If an authorized lender does not comply with this article, service of all judicial or other process or legal notice may be made on the commissioner.

Art. 3A.907. PAYMENT OF EXAMINATION COSTS AND

ADMINISTRATION EXPENSES. An authorized lender shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of an examination of the lender under Article 3A.902 and a proportionate share of general administrative expense.

Art. 3A.908. AUTHORIZED LENDER'S RECORDS. (a) An authorized lender shall maintain records of each loan made under this chapter as is necessary to enable the commissioner to determine whether the lender is complying with this chapter.

(b) An authorized lender shall keep the record, make it available in this state, or, if the lender makes, transacts, or negotiates loans principally by mail, keep the records or make them available at the lender's principal place of business, until the later of:

(1) the fourth anniversary of the date of the loan; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) The records described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a lender's system of records if the system discloses the information reasonably required under Subsection (a).

(e) An authorized lender shall keep all obligations signed by borrowers at an office in this state designated by the lender unless an obligation is transferred under an agreement that gives the commissioner access to the obligation.

Art. 3A.909. ANNUAL REPORT. (a) Each year, not later than May 1, or a subsequent date set by the commissioner, an authorized lender shall file with the commissioner a report that contains relevant information required by the commissioner concerning the business and operations during the preceding calendar year for each office of the lender in this state where business is conducted under this chapter.

(b) A report under this article must be:

(1) under oath; and

(2) in the form prescribed by the commissioner.

(c) A report under this article is confidential.

(d) Annually the commissioner shall prepare and publish a consolidated analysis and recapitulation of reports filed under this article.

Art. 3A.910. CONDUCTING ASSOCIATED BUSINESS. An authorized lender may conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the commissioner:

(1) after a hearing, finds that the lender's conducting of the other business in that office, office suite, room, or place of business has concealed evasions of this chapter; and

(2) orders the lender in writing to desist from that conduct in that office, office suite, room, or place of business.

SECTION 3. Article 2.02A(1), Title 79, Revised Statutes (Article 5069-2.02A, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) The Consumer Credit Commissioner shall enforce Chapters 2, ~~3A~~, [3; 4, 5;] 6, 6A, 7, 8, 9, and 15 of this title and the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes) in person or through assistant commissioners or any examiner or employee.

SECTION 4. Article 2.03(1), Title 79, Revised Statutes (Article 5069-2.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) The investigative and enforcement authority under this Article applies only to Chapters 2, 3A, [~~3, 4, 5~~] 6, 6A, 7, 8, 9, and 15 of this title and the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes). Upon receipt of written complaint or other reasonable cause to believe that any provision of those statutes are being violated by any person, the Consumer Credit Commissioner may request such person to furnish information in regard to a specific loan or retail transaction or business practice alleged to be in violation of those statutes.

SECTION 5. Article 2.03A(1), Title 79, Revised Statutes (Article 5069-2.03A, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) When the judgment of the court becomes final, the court shall proceed under this subsection. 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 be remitted to the person. The rate of the interest is the rate authorized by Chapter 1E [~~Article 1.05~~] of this title, and 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.

SECTION 6. Article 2.07, Title 79, Revised Statutes (Article 5069-2.07, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.07. CREDIT AND LOANS TO INDIVIDUALS. No authorized lender under Chapter 3A [~~Chapter 3~~] of this Title or other person involved in transactions subject to this Title may deny an individual who has the capacity to contract credit or loans in his or her name, or restrict or limit the credit or loan granted on the basis of sex, race, color, religion, national origin, marital status, or age or because all or part of the individual's income derives from a public assistance program in the form of social security or supplemental security income, or the individual has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.; 18 U.S.C. Section 891 et seq.). In interpreting this section, the courts and administrative agencies shall be guided by the federal Equal Credit Opportunity Act and regulations thereunder and interpretations thereof by the Federal Reserve Board to the extent that that Act and those regulations and interpretations pertain to conduct prohibited by this section.

SECTION 7. Article 2.08(1), Title 79, Revised Statutes (Article 5069-2.08, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) The dollar amount of the ceilings on the cash advance, and the brackets establishing ranges of cash advances or balances to which certain rates of charges apply in this Title, except the brackets in Articles 3A.401, 3A.402, and 3A.858 [~~Section (1), Article 3.16; Section (2), Article 3.16; Article 3.21~~]; ~~Section (9)(e), Article 6.02; Section (12)(a), Article 6.02; and Article 15.02~~, are changed as of the effective date of this Act and shall be, subject to Subsections (a) and (b), Section (2) of this Article, changed from time to time in accordance with the changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and referred to in this Article as the Index. The Index for December 1967 is the Reference

Base Index period for the purpose of determining the adjustment to be made in the rate brackets and ceilings.

SECTION 8. Article 6.01(q), Title 79, Revised Statutes (Article 5069-6.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(q) "Credit card issuer" means a person who issues a card, plate, or other identification device used to obtain goods or services under a retail credit card arrangement. The term does not include any person who honors the credit card but did not issue it, nor any bank, savings and loan association, credit union, person licensed to do business under the provisions of Chapter ~~3A~~ [3 or 4] of this Subtitle, nor any other person who is regularly and principally engaged in the business of lending money to persons for personal, family, and household purposes.

SECTION 9. Article 6.02(15), Title 79, Revised Statutes (Article 5069-6.02, Vernon's Texas Civil Statutes), is amended to read as follows:

(15) The dollar amount of the rate brackets prescribed by Section (9)(a) of this Article are subject to adjustment from time to time under Article 2.08 of this Title. As an alternative to the rates and amounts of time price differential provided by Section (9)(a) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Chapter 1D [Article 1.04] of this Title.

SECTION 10. Article 6.03(5), Title 79, Revised Statutes (Article 5069-6.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) The dollar amount of the rate brackets in this Article is subject to adjustment from time to time under Article 2.08 of this Title. As an alternative to the rates or amounts of time price differential provided by Section (3) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Chapter 1D [Article 1.04] of this Title or to the rate or amount of the market competitive rate ceiling published by the Consumer Credit Commissioner as provided in Section (6) of this Article. The provisions of Chapter 1D [Article 1.04] of this Title applicable to open-end accounts apply to this Article.

SECTION 11. Articles 6.03(6)(a) and (e), Title 79, Revised Statutes (Article 5069-6.03, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Consumer Credit Commissioner shall cause to be published in the Texas Register, in its first publication following September 1 of each year, the market competitive rate ceiling. This ceiling shall be effective on the following October 1 for a period of one year. The ceiling shall be based on an annual percentage rate, whether it is deemed to be interest, time price differential, or other similar charge permitted by the laws of any state, imposed on a person residing in Texas by a creditor in any other state extending credit by the use of a retail charge agreement or a credit card. The rate of time price differential for the market competitive rate ceiling shall not exceed the ceiling in Article 1D.009(d) [Section (c) of Article 1.11] of this Title or be below the minimum ceiling in Article 1D.009(a) [Section (b)(1) of Article 1.04] of this Title.

(e) A retail charge agreement of the parties providing for a computation under this Article or Chapter 1D [Article 1.04] of this Title may

be amended pursuant to Article 1D.103 [~~Section (i) of Article 1.04~~] of this Title to implement the market competitive rate ceiling or change a rate or amount. Any holder electing to implement the market competitive rate ceiling as to an account existing on the effective date of this Act must allow the obligor to pay the balance then existing at the rate previously agreed to and at the minimum payment terms previously agreed to. For this purpose, payments on an account may be applied by the holder to the balance existing on the account on the effective date of this Act prior to applying them to credit extended after the effective date of this Act. The ceiling under this Section may be implemented at any time and shall remain in effect until an alternative ceiling is implemented. An alternative ceiling may be implemented only at the end of a ceiling year as set out in Subsection (a) of this Section.

SECTION 12. Article 6.05, Title 79, Revised Statutes (Article 5069-6.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.05. PROHIBITED PROVISIONS. No retail installment contract or retail charge agreement shall:

(1) Provide that the holder may accelerate the maturity of any part or all of the amount owing thereunder unless (a) the buyer is in default in the performance of any of his obligations, or (b) the holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment, or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of goods;

(6) Provide that the buyer agrees not to assert against the seller any claim or defense arising out of the sale;

(7) Provide for or grant a first lien upon real estate to secure such obligation, except, (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence so long as the time price differential does not exceed an annual percentage rate permitted under either this Chapter or Chapter 1D [~~Article 1.04~~] of this Title.

SECTION 13. Article 6.12, Title 79, Revised Statutes (Article 5069-6.12, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.12. RATES FOR PREPAID FUNERAL BENEFITS REGULATED BY ARTICLE 548B, VERNON'S TEXAS CIVIL STATUTES. Prepaid funeral benefits regulated by Article 548b, Vernon's Texas Civil Statutes, may be financed only at rates authorized by Chapter 1D [~~Article 1.04~~] of this title.

SECTION 14. Article 6.13, Title 79, Revised Statutes (Article 5069-6.13, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.13. RATES FOR MEDICAL AND DENTAL SERVICES. Medical or dental services may be financed only at rates authorized by Chapter 1D [~~Article 1.04~~] of this title.

SECTION 15. Article 6A.03(7), Title 79, Revised Statutes (Article 5069-6A.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) As an alternative to the rates and amounts of time price differential that may be charged under this section, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Chapter 1D [~~Article 1.04~~] of this title.

SECTION 16. Article 6A.16(b)(1), Title 79, Revised Statutes (Article 5069-6A.16, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Each creditor governed by this chapter who is not a credit union or an authorized lender under Chapter 3A [3] of this title shall register with the Office of Consumer Credit Commissioner. Each creditor shall pay an annual fee of \$15 for each location at which credit transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year. If a creditor fails to renew the creditor's registration, the commissioner shall, not later than 30 days after the expiration of the registration, notify the creditor of the expiration, and of the procedures applicable to renewal. A registration renewal is timely if filed with the commissioner, together with the annual registration fee, not later than 30 days after receipt of notice of expiration. A creditor who fails to renew timely as required by this section is subject to the penalties set forth in Section (2) of this Article.

SECTION 17. Article 7.03(7), Title 79, Revised Statutes (Article 5069-7.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) As an alternative to the time price differential authorized by Section (1) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Chapter 1D [~~Article 1.04~~] of this Title.

SECTION 18. Article 7.11(1), Title 79, Revised Statutes (Article 5069-7.11, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Each holder governed by this chapter who is not a credit union or an authorized lender under Chapter 3A [3] of this title shall register with the Office of Consumer Credit Commissioner. Each holder shall pay an annual fee of \$25 for each location at which credit transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year. If a holder or seller fails to renew the holder's or seller's registration, the commissioner shall, not later than 30 days after the expiration of the registration, notify the holder or seller of the expiration, and of the procedures applicable to renewal. A registration renewal is timely if filed with the commissioner, together with the annual registration fee, not later than 30 days after receipt of notice of expiration. A holder or seller who fails to renew timely as required by this section is subject to the penalties set forth in Section (2) of this Article.

SECTION 19. Article 8.01(i), Title 79, Revised Statutes (Article 5069-8.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) Any person who has or obtains a registration or license required by this Title, which registration or license was obtained at any time after the date on which the registration or license was required, may pay to the Consumer Credit Commissioner all registration or license fees that should have been paid pursuant to this Title for any and all prior years, plus a late filing fee pursuant to this section. In the case of a person who has or obtains a registration, the late filing fee shall be \$250 except that, if the person renews a registration within 30 days after the due date, there shall be no penalty. If a person pays the required registration fees for the prior periods and the late filing fee, the person shall be deemed for all purposes to have had the required registration for the periods for which the registration fees have been paid. In the case of a person who has or obtains a license, the late filing fee shall be \$10,000 except that if the person previously had a license and the prior license was in good standing at the time of its expiration, and the person renews such license within 180 days of its expiration, the late filing fee shall be \$1,000. If a person renews an expired license by payment of the license and late filing fees, the person shall be deemed for all purposes to have held the required license as if it had not expired. If a person has or obtains a license and pays the required license fees for prior periods and the late filing fee, the person shall be deemed for all purposes to have had the required license for such periods but only as to loans as to which the person has not contracted for, charged, or received interest in excess of that which would be allowed under Chapter 1D [Article 1.04(a) as modified by Article 1.04(b)] of this Title. A person who is deemed to have had a registration or license pursuant to this section shall not be subject to any liability, forfeiture, or penalty under this Title or other law, other than as set forth in this section, resulting from or relating to the fact that the person did not have the registration or license at or during the earlier periods for which the required registration or license fees and late filing fee, as provided in this section, have since been paid. The acquisition of the registration or license and payment of the filing fees and late filing fee by a person shall also inure to the benefit of that person's employees, agents, employers, representatives, predecessors, successors, and assigns but not to the benefit of any other person who should have been licensed under this Title.

SECTION 20. Article 8.03, Title 79, Revised Statutes (Article 5069-8.03, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8.03. In addition to the foregoing penalties, if applicable, any person engaging in any business under the scope of Chapter 3A [Chapter 3, 4, 5,] or 15 of this Title without first securing a license provided, or without the authorization prescribed, in such Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars, and each such loan made without the authority granted by such license shall constitute a separate offense punishable hereunder; and in addition such person shall forfeit all principal and charges contracted for or collected on each such loan, and shall pay reasonable attorneys' fees incurred by the obligor.

SECTION 21. Article 15.01(i), Title 79, Revised Statutes (Article 5069-15.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) "Licensee" means the holder of a license issued pursuant to Chapter 3A [3 of Subtitle 2] of this Title 79.

SECTION 22. Articles 15.02(d) and (e), Title 79, Revised Statutes (Article 5069-15.02, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) Notwithstanding Chapter 1D [~~Article 1.04~~] of this Title or any other provision of law, on any open-end account authorized under Article 3A.805 [~~3.15(4), 4.01(4)~~], 15.01(k), or 15.01(l) of this Title, pursuant to which credit card transactions [~~as defined in Article 1.01(g) of this Title~~] may be made or in connection with which account a merchant discount [~~as defined in Article 1.01(h) of this Title~~] is imposed or received by the creditor, the rate of interest from time to time in effect on such account is subject to and may not exceed the quarterly ceiling from time to time in effect as computed pursuant to Chapter 1D [~~Article 1.04~~] of this Title and as further limited by this section, and the ceiling on such account is subject to quarterly adjustment, which adjustment shall be made at the option of the creditor either on the quarterly calendar dates set out in Article 1D.008 [~~1.04(d)~~] of this Title or on the first day of the first billing cycle of an account immediately following said quarterly calendar dates. If a computation of the quarterly ceiling under Chapter 1D [~~Article 1.04(a)(2)~~] of this Title is more than 22 percent per annum, the ceiling under this provision shall be 22 percent per annum. If the computation of the quarterly ceiling under Chapter 1D [~~Article 1.04(a)(2)~~] of this Title is less than 14 percent per annum, the ceiling under this provision shall be 14 percent per annum. Notwithstanding any other provision of this Title, a creditor charging a rate limited by this section shall not be required to disclose any decreases which may from time to time occur in the rate on its account.

(e) Except as provided in Section (d) of this Article, as an alternative to the rates authorized by Section (a) of this Article, the parties may agree to any rate not exceeding a rate authorized by Chapter 1D [~~Article 1.04~~] of this Title.

SECTION 23. Article 15.07, Title 79, Revised Statutes (Article 5069-15.07, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 15.07. COLLATERAL AND INSURANCE. Creditors may require and take in connection with an account only such insurance and collateral as are allowed under Chapter 3A [~~4 of Subtitle 2~~] of this Title 79.

SECTION 24. Article 24.03(g), Insurance Code, is amended to read as follows:

(g) Any person holding a license under Chapter 3A [3], Title 79, Revised [Civil] Statutes [~~of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes)~~], on the effective date of this chapter is required only to pay the license fee required under this article and is not required to pay the investigation fee required by Section (a) of this article.

SECTION 25. Article 24.11(h), Insurance Code, is amended to read as follows:

(h) Those additions may be accomplished by a memorandum of agreement between the agent and the insured, if before the first scheduled payment date of the amended transaction the premium finance company gives to the insured the following information in writing:

- (1) the amount of the premium increase;
- (2) the down payment on increase;
- (3) the principal amount of increase;
- (4) the total amount of finance charge on increase;

- (5) the total of additional balance due;
- (6) the outstanding balance of original agreement;
- (7) the consolidated agreement balance;
- (8) the annual percentage rate of finance charge on additional balance due;
- (9) the revised schedule of payments;
- (10) the amount or method of computing the amount of any default, deferment, or similar charges authorized in Chapter 3A [3], Title 79, Revised [Civil] Statutes [~~of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes)~~], payable in the event of late payments; and
- (11) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

SECTION 26. Article 24.15, Insurance Code, is amended to read as follows:

Art. 24.15. SERVICES CHARGES; LIMITATION OF CHARGES; COMPUTATION. A premium finance company may not take or receive from an insured a greater rate or charge than is provided by Chapter 3A [~~Chapters 3 and 4~~], Title 79, Revised [Civil] Statutes [~~of Texas, 1925, as amended (Article 5069-3.01 et seq. and Article 5069-4.01 et seq., Vernon's Texas Civil Statutes)~~]. Those charges begin on the date from which the insurance company requires payment of the premium and payment was made to the insurance company for the financed policy or on the effective date of the policy, whichever is earlier. The finance charge shall be computed on the balance of the premiums due after subtracting the down payment made by the insured in accordance with the premium finance agreement. On insurance premium finance agreements made under this chapter, no insurance charges or any other charge or fee, except those authorized by this chapter, are permitted.

SECTION 27. Article 24.16, Insurance Code, is amended to read as follows:

Art. 24.16. PREPAYMENT; REFUND. Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance of the agreement, and if the insured does so and the agreement included an amount for a charge, the insured shall receive for the prepayment either by cash or by renewal a refund credit in accordance with the provisions for refunds contained in Subchapter H, Chapter 3A [~~Section (6), Article 3.15~~], Title 79, Revised [Civil] Statutes [~~of Texas, 1925, as amended (Article 5069-3.15, Vernon's Texas Civil Statutes)~~], and the regulations issued under that article. Where the amount of the credit for anticipation of payments is less than \$1, no refund need be made.

SECTION 28. Article 24.17(a), Insurance Code, is amended to read as follows:

(a) A premium finance agreement may provide for the payment of a default charge by the insured as provided in Article 3A.303 [~~Section (5), Article 3.15~~], Title 79, Revised [Civil] Statutes [~~of Texas, 1925, as amended (Article 5069-3.15, Vernon's Texas Civil Statutes)~~], the Insurance Code, and the regulations issued under those statutes.

SECTION 29. Article 24.20, Insurance Code, is amended to read as follows:

Art. 24.20. AUTHORITY OF LICENSED LOCAL RECORDING AGENTS TO CHARGE INTEREST TO CERTAIN PURCHASERS OF INSURANCE. Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under Article 21.14, Insurance Code, as amended, may enter into or establish a written agreement with any purchaser of insurance from the agent providing for the payment of interest to the agent in an amount not to exceed the greater of a rate allowed by Chapter 1D [Article 1.04], Title 79, Revised Statutes [~~Article 5069-1.04, Vernon's Texas Civil Statutes~~], or the rate of one percent a month, on any amount due and owing to the agent for insurance purchased by the purchaser. In those instances the claim or defense of usury is prohibited.

SECTION 30. Article 21.79E, Insurance Code, as added by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Art. 21.79E. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE. ~~[(a)]~~ Any insurer authorized to write any form of casualty insurance in this state shall also be authorized to write group or individual credit involuntary unemployment insurance indemnifying a debtor for installment or other periodic payments on the indebtedness while the debtor is involuntarily unemployed, including policy forms and endorsements which define involuntary unemployment to provide coverage and a premium charge for interruption or reduction of a debtor's income during periods of leave (paid or otherwise) authorized by the Federal Family and Medical Leave Act, or other state or federal laws. Such insurance may be written alone or in conjunction with credit life insurance, credit accident and health insurance, or both, in policies issued by any authorized insurer, but not in contravention of the Texas Free Enterprise and Antitrust Act of 1983. Rates and forms for such insurance may be made and filed in accordance with Articles 5.14 and 5.15 of this code.

SECTION 31. Section 26.02(a)(2), Business & Commerce Code, is amended to read as follows:

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Article 1B.002 [1.01], Title 79, Revised Statutes [~~Article 5069-1.01, Vernon's Texas Civil Statutes~~], intended or used primarily for personal, family, or household use.

SECTION 32. Section 242.098(b), Health and Safety Code, is amended to read as follows:

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Article 1E.003, [Section 2, Article 1.05;] Title 79, Revised

Statutes [~~Article 5069-1.05, Vernon's Texas Civil Statutes~~], to be applicable to judgments rendered during the month in which the money was disbursed to the home.

SECTION 33. Section 143.1215(c), Local Government Code, is amended to read as follows:

(c) Interest under Subsection (b) accrues beginning on the date of the fire fighter's or police officer's reinstatement at a rate equal to three percent plus the rate for court judgments under Chapter 1E [~~Article 1.05~~], Title 79, Revised Statutes [~~Article 5069-1.05, Vernon's Texas Civil Statutes~~], that is in effect on the date of the person's reinstatement.

SECTION 34. Section 395.025(d), Local Government Code, is amended to read as follows:

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Article 1C.002 [~~1.03~~], Title 79, Revised Statutes [~~Article 5069-1.03, Vernon's Texas Civil Statutes~~], or its successor statute.

SECTION 35. Section 32.35(a)(5), Penal Code, is amended to read as follows:

(5) "Creditor" means a person licensed under Chapter 3A [3], Subtitle 2, Title 79, Revised Statutes [~~Article 5069-3.01 et seq., Vernon's Texas Civil Statutes~~], a bank, savings and loan association, credit union, or other regulated financial institution that lends money or otherwise extends credit to a cardholder through a credit card and that authorizes other persons to honor the credit card.

SECTION 36. Section 32.065(d), Tax Code, is amended to read as follows:

(d) Chapters 3A [5] and 15 and Article 1C.102 [~~and Sections 1.07(d)(1) and (f)~~], Title 79, Revised Statutes [~~Article 5069-1.01 et seq., Vernon's Texas Civil Statutes~~], do not apply to a transaction covered by this section. The transferee of a tax lien under this section is not required to obtain a license under Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes).

SECTION 37. Section 35-1, The Securities Act (Article 581-35-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35-1. FEES FOR SALES OF EXCESS SECURITIES. A. An offeror who sells securities in this State in excess of the aggregate amount of securities registered for the offering may apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under Subsection E of Section 35, plus, if the registration is no longer in effect, interest on that amount computed at the rate provided by Article 1C.002 [~~1.03~~], Title 79, Revised Statutes [~~Article 5069-1.03, Vernon's Texas Civil Statutes~~], from the date the registration was no longer in effect until the date the subsequent application is filed, for the securities sold to persons within this State, plus the amendment fee prescribed by Subsection D of Section 35. Registration of the excess securities, if granted, shall be effective retroactively to the effective date of the initial registration for the offering.

B. An offeror who has filed a notice to claim a limited offering exemption, who paid less than the maximum fee prescribed in Subsection J of Section 35, and who offered a greater amount of securities in the offering than authorized pursuant to the formula prescribed in Subsection J of Section 35, may file an

amended notice disclosing the amount of securities offered and paying three times the difference between the fee initially paid and the fee which should have been paid, plus interest on that amount computed at the rate provided by Article 1C.002 [1-03], Title 79, Revised Statutes [~~(Article 5069-1.03, Vernon's Texas Civil Statutes)~~], from the date the original notice was received by the Commissioner until the date the amended notice is received by the Commissioner. The amended notice shall be retroactive to the date of the initial filing.

SECTION 38. Section 35-2, The Securities Act (Article 581-35-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35-2. FEES FOR SALES OF UNREGISTERED SECURITIES. If, after notice and hearing, the commissioner or any court of competent jurisdiction finds that an offeror has sold securities in this State pursuant to an offering no part of which has been registered under Section 7 or 10 of this Act and for which the transactions or securities are not exempt under Section 5 or 6 of this Act, the commissioner or said court may impose a fee equal to six times the amount that would have been paid if the issuer had filed an application to register the securities and paid the fee prescribed by Subsection E of Section 35 based on the aggregate amount of sales made in this State within the prior three years, plus interest on that amount at the rate provided by Article 1C.002 [1-03], Title 79, Revised Statutes [~~(Article 5069-1.03, Vernon's Texas Civil Statutes)~~], from the date of the first such sale made in this State until the date the fee is paid. The payment of the fee prescribed by this Section does not effect registration of the securities or affect the application of any other Section of this Act. The payment of the fee prescribed by this Section is not an admission that the transactions or securities were not exempt and is not admissible as evidence in a suit or proceeding for failure to register the securities.

SECTION 39. Article 2.09A, Texas Miscellaneous Corporation Laws Act (Article 1302-2.09A, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.09A. ALTERNATIVE RATE. Notwithstanding the provisions of Article 2.09 of this Act, any corporation, domestic or foreign, including but not limited to any charitable or religious corporation, may agree to and stipulate for any rate of interest that does not exceed a rate authorized by Chapter 1D [~~Article 1-04~~], Title 79, Revised [~~Civil~~] Statutes [~~of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes)~~].

SECTION 40. Section 7.01, Texas Credit Union Act (Article 2461-7.01, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.01. PURPOSE, TERMS, AND INTEREST RATE. If made in accordance with rules adopted by the commission, a credit union may make loans to members for such purposes as it may approve and on such security and terms as it may require, at rates of interest not exceeding one and one-half percent per month on the unpaid balance, or higher rates otherwise authorized by law, including the rates authorized by Chapter 1D [~~Article 1-04~~], Title 79, Revised Statutes [~~(Article 5069-1.04, Vernon's Texas Civil Statutes)~~]. Chapter 15 and Subtitle 2, Title 79, Revised Statutes [~~(Article 5069-2.01 et seq., Vernon's Texas Civil Statutes)~~], do not apply to a credit union loan or extension

of credit unless the agreement evidencing that transaction specifically provides otherwise. Every loan must be evidenced by a written instrument.

SECTION 41. Section 16.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16.01. APPLICATION OF OTHER LAW. Notwithstanding Articles 1E.101, 1E.102, and 1E.104-1E.108 [~~Sections 6(a)-(f), Article 1.05~~], Title 79, Revised Statutes [~~(Article 5069-1.05, Vernon's Texas Civil Statutes)~~], prejudgment interest in a health care liability claim shall be awarded in accordance with this subchapter.

SECTION 42. Section 16.02(c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Prejudgment interest allowed under this subchapter shall be computed in accordance with Article 1E.103 [~~Section 6(g), Article 1.05~~], Title 79, Revised Statutes [~~(Article 5069-1.05, Vernon's Texas Civil Statutes)~~], for a period beginning on the date of injury and ending on the date before the date the judgment is signed.

SECTION 43. Section 1.04(c), Texas Revised Partnership Act (Article 6132b-1.04, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Interest Rate. If an obligation to pay interest arises under this Act and the rate is not specified, the rate is the rate specified by Article 1C.002 [~~1.03~~], Title 79, Revised Statutes [~~(Article 5069-1.03, Vernon's Texas Civil Statutes); and its subsequent amendments~~], or a successor statute.

SECTION 44. Section 1(a), Chapter 617, Acts of the 68th Legislature, Regular Session, 1983 (Article 9022, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The holder of a check or its assignee, agent, representative, or any other person retained by the holder to seek collection of the face value of the dishonored check on return of the check to the holder following its dishonor by a payor may charge the drawer or endorser a reasonable processing fee, which shall not exceed \$25. A person may not charge a processing fee to a drawer or endorser under this subsection if the fee has been collected under Article 102.007(e) or Article 102.0071, Code of Criminal Procedure. If a processing fee has been collected under this subsection and the holder subsequently receives a fee collected under Article 102.007(e) or Article 102.0071, Code of Criminal Procedure, the holder shall immediately refund the fee previously collected from the drawer or endorser. Notwithstanding any other provisions of law, a loan agreement made under Chapter 3A [~~3 or 4~~], Title 79, Revised Statutes [~~(Article 5069-1.01 et seq., Vernon's Texas Civil Statutes)~~], may provide that on return of a dishonored check given in payment under the agreement, the holder may charge the obligor under the agreement the processing fee authorized by this Act, and the fee may be added to the unpaid balance owed under the agreement, except that interest may not be charged on the fee during the term of the agreement.

SECTION 45. Chapters 1, 1A, 3, 4, and 5, Title 79, Revised Statutes, are repealed.

SECTION 46. (a) The change in law made by this Act applies only to an

act committed or a transaction that occurs on or after the effective date of this Act.

(b) An act committed or a transaction that occurs before the effective date of this Act is covered by the law in effect when the act was committed or the transaction occurred, and the former law is continued in effect for that purpose.

SECTION 47. (a) If this Act conflicts with another Act of the 75th Legislature, Regular Session, 1997:

(1) the change in law made in the other Act prevails and the substance of the change is given effect as part of 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 this Act, in which event this 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 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 48. This Act takes effect September 1, 1997.

SECTION 49. 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 1971** as follows:

(1) In SECTION 1 of the bill, in proposed Article 1D.201, Title 79, Revised Statutes (Senate committee printing, page 8, lines 32-34), strike Subsection (c) and substitute the following:

(c) A person engaged in the business of making loans described by Subsection (a) or (b) must obtain a license under Chapter 3A unless the person is:

(1) a bank, savings bank, or savings and loan association; or

(2) an insurance agent licensed under Article 21.14, Insurance Code, who negotiates or arranges a loan described by Subsection (a) or (b) on behalf of a bank or savings and loan association provided that the insurance agent or the bank or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank or savings and loan association.

(2) In SECTION 2 of the bill, in proposed Article 3A.101(a), Title 79, Revised Statutes (Article 5069-3A.101, Vernon's Texas Civil Statutes) (Senate committee printing, page 17, line 54), strike "or be a bank, savings bank, or savings and loan association".

(3) In SECTION 2 of the bill, in proposed Article 3A.101, Title 79, Revised Statutes (Article 5069-3A.101, Vernon's Texas Civil Statutes) (Senate committee printing, page 17, between lines 64 and 65), insert the following:

(c) A bank, savings bank, or savings and loan association is not required to obtain a license under Subsection (a).

(d) An insurance agent licensed under Article 21.14 Insurance Code, is not required to obtain a license to negotiate or arrange a loan on behalf of a bank, savings bank, or savings and loan association provided that the insurance agent or the bank, savings bank, or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank, savings bank, or savings and loan association.

(4) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION _____. Subsection (a), Article 8.01, Title 79, Revised Statutes (Article 5069-8.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(a)(1)(~~a~~) Any person who violates this Subtitle by contracting for, charging or receiving interest ~~or~~ time price differential ~~[or other charges]~~ which ~~is~~ ~~[are]~~ greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential ~~[and default and deferment charges]~~ contracted for, charged or received, and reasonable attorneys' fees fixed by the court.

(2) Any person who violates this Subtitle by contracting for, charging, or receiving a charge, other than interest or time price differential, which is greater than the amount authorized by this Subtitle, shall forfeit to the obligor:

(A) the greater of:

(i) three times the amount of the difference between the amount of the other charge contracted for, charged or received, and the appropriate amount authorized by this Subtitle; or

(ii) \$2,000 or 20 percent of the principal balance, whichever is less; and

(B) reasonable attorneys' fees fixed by the court.

SECTION _____. Article 8.02, Title 79, Revised Statutes (Article 5069-8.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8.02. CONTRACTING FOR, CHARGING OR RECEIVING INTEREST ~~OR~~ TIME PRICE DIFFERENTIAL ~~[OR OTHER CHARGES]~~ IN EXCESS OF DOUBLE THE AMOUNT AUTHORIZED. Any person who violates this Subtitle by contracting for, charging or receiving interest ~~or~~ time price differential ~~[or other charges]~~ which ~~is~~ ~~[are]~~ in the aggregate in excess of double the total amount of interest ~~or~~ time price differential ~~[and other charges]~~ authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, ~~[and all other charges;]~~ and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

Senate Amendment No. 2

Amend **CSHB 1971** by inserting the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill accordingly:

SECTION ____ (a) Title 2, Business & Commerce Code, is amended by adding Chapter 20 to read as follows:

CHAPTER 20. REGULATION OF CONSUMER CREDIT
REPORTING AGENCIES

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Adverse action" includes:

(A) the denial of, increase in a charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(B) the denial of employment or other decision made for employment purposes that adversely affects a current or prospective employee;
or

(C) an action or determination with respect to a consumer's application for credit that is adverse to the consumer's interests.

(2) "Consumer" means an individual who resides in this state.

(3) "Consumer file" means all of the information about a consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored.

(4) "Consumer report" means a communication or other information by a consumer reporting agency relating to the credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under Sections 603 and 604 of the Fair Credit Reporting Act (15 U.S.C. Sections 1681a and 1681b), as amended. The term does not include:

(A) a report containing information solely on a transaction between the consumer and the person making the report;

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) a report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under Section 615 of the Fair Credit Reporting Act (15 U.S.C. Section 1681m), as amended, to the consumer in the event of adverse action against the consumer;

(D) any communication of information described in this subdivision among persons related by common ownership or affiliated by corporate control; or

(E) any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity before the time that the information is initially communicated to direct that such information not be communicated among such persons.

(5) "Consumer reporting agency" means a person that regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers to furnish consumer reports to third parties for monetary fees, for dues, or on a cooperative nonprofit

basis. The term does not include a business entity that provides only check verification or check guarantee services.

(6) "Investigative consumer report" means all or part of a consumer report in which information on the character, general reputation, personal characteristics, or mode of living of a consumer is obtained through a personal interview with a neighbor, friend, or associate of the consumer or others with whom the consumer is acquainted or who may have knowledge concerning any such information. The term does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

Sec. 20.02. PERMISSIBLE PURPOSES; PROHIBITION; USE OF CONSUMER'S SOCIAL SECURITY NUMBER. (a) A consumer reporting agency may furnish a consumer report only:

(1) in response to a court order issued by a court with proper jurisdiction;

(2) in accordance with the written instructions of the consumer to whom the report relates; or

(3) to a person the agency has reason to believe:

(A) intends to use the information in connection with a transaction involving the extension of credit to, or review or collection of an account of, the consumer to whom the report relates;

(B) intends to use the information for employment purposes as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(C) intends to use the information in connection with the underwriting of insurance involving the consumer as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental entity required by law to consider an applicant's financial responsibility or status;

(E) has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(F) intends to use the information for any purpose authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

(b) A consumer reporting agency may not prohibit a user of a consumer report or investigative consumer report from disclosing the contents of the report or providing a copy of the report to the consumer to whom it relates at the consumer's request if adverse action against the consumer based wholly or partly on the report has been taken or is contemplated by the user of the report. A user of a consumer report or a consumer reporting agency may not be found liable or otherwise held responsible for a disclosed or copied report when acting under this subsection. The disclosure or copy of the report, by itself, does not make a user of the report a consumer reporting agency.

(c) If a consumer furnishes the consumer's social security number to a

person for use in obtaining a consumer report, the person shall include the consumer's social security number with the request for the consumer report and shall include the social security number with all future reports of information regarding the consumer made by the person to a consumer reporting agency unless the person has reason to believe that the social security number is inaccurate.

Sec. 20.03. DISCLOSURES TO CONSUMERS. (a) On request and proper identification provided by a consumer, a consumer reporting agency shall disclose to the consumer in writing all information pertaining to the consumer in the consumer reporting agency's files at the time of the request, including:

(1) the name of each person requesting credit information about the consumer during the preceding six months and the date of each request;

(2) a set of instructions describing how information is presented on the consumer reporting agency's written disclosure of the consumer file; and

(3) if the consumer reporting agency compiles and maintains files on a nationwide basis, a toll-free number at which personnel are available to consumers during normal business hours for use in resolving a dispute if the consumer submits a written dispute to the consumer reporting agency.

(b) The information must be disclosed in a clear, accurate manner that is understandable to a consumer.

(c) A consumer reporting agency shall provide a copy of the consumer's file to the consumer on the request of the consumer and on evidence of proper identification, as directed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES. (a) Except as provided by Subsection (b), a consumer reporting agency may impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer. The amount of the charge may not exceed \$8. On January 1 of each year, a consumer reporting agency may increase the charge for disclosure to a consumer. The increase, if any, must be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest 50 cents.

(b) A consumer reporting agency may not charge a fee for:

(1) a request by a consumer for a copy of the consumer's file made not later than the 60th day after the date on which adverse action is taken against the consumer;

(2) notification of the deletion of information that is found to be inaccurate or can no longer be verified sent to a person designated by the consumer, as prescribed by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended;

(3) a set of instructions for understanding the information presented on the consumer report; or

(4) a toll-free telephone number that consumers may call to obtain additional assistance concerning the consumer report.

Sec. 20.05. REPORTING OF INFORMATION PROHIBITED. (a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to:

(1) a case under Title 11 of the United States Code or under the federal Bankruptcy Act in which the date of entry of the order for relief or the date of adjudication predates the consumer report by more than 10 years;

(2) a suit or judgment in which the date of entry predates the consumer report by more than seven years or the governing statute of limitations, whichever is longer;

(3) a tax lien in which the date of payment predates the consumer report by more than seven years;

(4) a record of arrest, indictment, or conviction of a crime in which the date of disposition, release, or parole predates the consumer report by more than seven years; or

(5) another item or event that predates the consumer report by more than seven years.

(b) A consumer reporting agency may furnish a consumer report that contains information described by Subsection (a) if the information is provided in connection with:

(1) a credit transaction with a principal amount that is or may reasonably be expected to be \$150,000 or more;

(2) the underwriting of life insurance for a face amount that is or may reasonably be expected to be \$150,000 or more; or

(3) the employment of a consumer at an annual salary that is or may reasonably be expected to be \$75,000 or more.

(c) A consumer reporting agency may not furnish medical information about a consumer in a consumer report that is being obtained for employment purposes or in connection with a credit, insurance, or direct marketing transaction unless the consumer consents to the furnishing of the medical information.

Sec. 20.06. DISPUTE PROCEDURE. (a) If the completeness or accuracy of information contained in a consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency of the dispute, the agency shall reinvestigate the disputed information free of charge and record the current status of the disputed information not later than the 30th business day after the date on which the agency receives the notice. The consumer reporting agency shall provide the consumer with the option of notifying the agency of a dispute concerning the consumer's file by speaking directly to a representative of the agency during normal business hours.

(b) Not later than the fifth business day after the date on which a consumer reporting agency receives notice of a dispute from a consumer in accordance with Subsection (a), the agency shall provide notice of the dispute to each person who provided any information related to the dispute.

(c) A consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under Subsection (a) if the agency reasonably determines that the dispute is frivolous or irrelevant. An agency that terminates a reinvestigation of disputed information under this subsection shall promptly notify the consumer of the termination and the reasons for the termination by mail, or if authorized by the consumer, by telephone. The presence of contradictory information in a consumer's file does not by itself constitute reasonable grounds for determining that the dispute is frivolous or irrelevant.

(d) If disputed information is found to be inaccurate or cannot be verified after a reinvestigation under Subsection (a), the consumer reporting agency, unless otherwise directed by the consumer, shall promptly delete the information from the consumer's file, revise the consumer file, and provide the revised consumer report to the consumer and, on the request of the consumer, to each person who requested the consumer report within the preceding six months. The consumer reporting agency may not report the inaccurate or unverified information in subsequent reports.

(e) Information deleted under Subsection (d) may not be reinserted in the consumer's file unless the person who furnishes the information to the consumer reporting agency reinvestigates and states in writing or by electronic record to the agency that the information is complete and accurate.

(f) A consumer reporting agency shall provide written notice of the results of a reinvestigation or reinsertion made under this section not later than the fifth business day after the date on which the reinvestigation or reinsertion has been completed. The notice must include:

(1) a statement that the reinvestigation is complete;

(2) a statement of the determination made by the agency on the completeness or accuracy of the disputed information;

(3) a copy of the consumer's file or consumer report and a description of the results of the reinvestigation;

(4) a statement that a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency on request, including the name, business address, and, if available, the telephone number of each person contacted in connection with the information;

(5) a statement that the consumer is entitled to add a statement to the consumer's file disputing the accuracy or completeness of the information as provided by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended; and

(6) a statement that the consumer may be entitled to dispute resolution as prescribed by this section, after the consumer receives the notice specified under this subsection.

(g) This section does not require a person who obtains a consumer report for resale to another person to alter or correct an inaccuracy in the consumer report if the report was not assembled or prepared by the person.

Sec. 20.07. CORRECTION OF INACCURATE INFORMATION. (a) A consumer reporting agency shall provide a person who provides consumer credit information to the agency with the option of correcting previously reported inaccurate information by submitting the correction by facsimile or other automated means.

(b) The credit reporting agency which receives a correction shall have reasonable procedures to assure that previously reported inaccurate information in a consumer's file is corrected in a prompt and timely fashion.

Sec. 20.08. CONSUMER'S RIGHT TO FILE ACTION IN COURT OR ARBITRATE DISPUTES. (a) An action to enforce an obligation of a consumer reporting agency to a consumer under this chapter may be brought in any court as provided by the Fair Credit Reporting Act (15 U.S.C. Section

1681 et seq.), as amended, or, if agreed to by both parties, may be submitted to binding arbitration after the consumer has followed all dispute procedures in Section 20.06 and has received the notice specified in Section 20.06(f) in the manner provided by the rules of the American Arbitration Association.

(b) A decision rendered by an arbitrator under this section does not affect the validity of an obligation or debt owed by the consumer to any party.

(c) A prevailing party in an action or arbitration proceeding brought under this section shall be compensated for the party's attorney fees and costs of the proceeding as determined by the court or arbitration.

(d) A consumer may not submit to arbitration more than one action against a particular consumer reporting agency during any 120-day period.

(e) The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner to other consumer reporting agencies doing business in this state.

(f) If a determination is made in favor of a consumer after submission of a dispute to arbitration, the disputed adverse information in the consumer's file or record shall be removed or stricken in a timely manner. If the adverse information is not removed or stricken, the consumer may bring an action against the noncomplying agency under this section regardless of the 120-day waiting period required under this section.

Sec. 20.09. CIVIL LIABILITY. (a) A consumer reporting agency that wilfully violates this chapter is liable to the consumer against whom the violation occurs for the greater of three times the amount of actual damages to the consumer or \$1,000, reasonable attorney fees, and court or arbitration costs.

(b) A consumer reporting agency that negligently violates this chapter is liable to the consumer against whom the violation occurs for the greater of the amount of actual damages to the consumer or \$500, reasonable attorney fees, and court or arbitration costs. A consumer reporting agency is not considered to have negligently violated this chapter if, not later than the 30th day after the date on which the agency receives notice of a dispute from the consumer under Section 20.06 that clearly explains the nature and substance of the dispute, the agency completes the reinvestigation and sends the consumer and, at the request of the consumer, each person who received the consumer information written notification of the results of the reinvestigation in accordance with Section 20.06(f).

(c) In addition to liability imposed under Subsection (a), a consumer reporting agency that does not correct a consumer's file and consumer report before the 10th day after the date on which a judgment is entered against the agency because of inaccurate information contained in a consumer's file is also liable for \$1,000 a day until the inaccuracy is corrected.

Sec. 20.10. REMEDIES CUMULATIVE. An action taken under this chapter does not prohibit a consumer from taking any other action authorized by law except that a credit reporting agency may not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought under Section 20.08.

(b) Subsection (a) of this section takes effect October 1, 1997.

**HB 1868 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative S. Turner called up with senate amendments for consideration at this time,

HB 1868, A bill to be entitled An Act relating to certain exceptions to the definition of dentistry.

On motion of Representative S. Turner, the house concurred in the senate amendments to **HB 1868**.

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

Amend **HB 1868** as follows:

In SECTION 1, page 1, line 10, after the word "dental" and before the word "college", insert the words "or dental hygiene".

**HB 1891 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1891, A bill to be entitled An Act relating to the Lamar County Juvenile Board.

On motion of Representative Patterson, the house concurred in the senate amendments to **HB 1891**.

Senate Committee Substitute

CSHB 1891, A bill to be entitled An Act relating to the Lamar County Juvenile Board.

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

SECTION 1. Section 152.1451, Human Resources Code, is amended to read as follows:

Sec. 152.1451. LAMAR COUNTY. (a) The Lamar County Juvenile Board is composed of:

- (1) the county judge;
- (2) the statutory county court at law judge;
- (3) ~~[and]~~ the district judges in Lamar County; and
- (4) one member of the commissioners court selected by and from among the members of the commissioners court.

(b) The juvenile board shall elect one of its members as chairman at its first regular meeting of each fiscal year. The board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman ~~[court judge is the chairman of the board and its chief administrative officer]~~.

(c) Service on a juvenile board by a judge is an additional duty of office. The commissioners court may pay the board chairman and other board members additional annual compensation [of \$2,400] for the additional [added] duties imposed on the chairman and the other board members. [The commissioners

~~court may pay the other board members additional annual compensation of not more than \$2,400.]~~ The compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

~~(d) The juvenile board shall recommend to the commissioners court proposed salaries for juvenile probation officers and other juvenile probation employees. The commissioners court shall set the salaries of juvenile probation officers and other juvenile probation employees after considering the recommendation of the juvenile board and any other relevant factors, including the source of funds, the duties and workload of the employees, and the effect on other county employees. The commissioners court shall comply with all applicable laws when setting the salaries of juvenile probation officers and other juvenile probation employees.~~

~~(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Lamar County.~~

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

**HB 1941 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1941, A bill to be entitled An Act relating to poaching; providing a penalty.

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 1941**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1941**: Place, chair, Gutierrez, Hightower, King, and Kuempel.

**HB 2001 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2001, A bill to be entitled An Act relating to the enterprise zone program.

Representative Oliveira 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 2001**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2001**: Oliveira, chair, Greenberg, G. Lewis, Luna, and Seaman.

**HB 2088 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2088, A bill to be entitled An Act relating to the regulation of certain midwives; providing administrative penalties.

Representative Cuellar 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 2088**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2088**: Cuellar, chair, Berlanga, Coleman, Hamric, and Pickett.

**HB 2094 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2094, A bill to be entitled An Act relating to authorizing the Sweeny Hospital District to operate or provide for certain medical care and medical services to or for needy residents of the district.

Representative Uher 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 2094**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2094**: Uher, chair, Bonnen, Chisum, Flores, and Pitts.

**HB 2098 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2098, A bill to be entitled An Act relating to the licensing of certain franchised dealers who engage in the leasing of motor vehicles.

On motion of Representative Uher, the house concurred in the senate amendments to **HB 2098**.

Senate Committee Substitute

CSHB 2098, A bill to be entitled An Act relating to the licensing of certain franchised dealers who engage in the leasing of motor vehicles.

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

SECTION 1. Section 4.01(a), Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. (a) Except as provided by this Section, no person shall engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, lessor, or lease facilitator in this State or perform or offer to perform repair services on a motor vehicle pursuant to the terms of a franchise and a motor vehicle manufacturer's warranty, whether or not the person sells or offers to sell motor vehicles at the same location, without obtaining a license therefor as provided in this Act and the rules of the Commission. All new license applications shall be reviewed and, in the discretion of the Commission, investigated to determine compliance with the provision of this Act. License renewals may be administratively granted unless protested. Licenses issued by the Commission shall expire one year from date of issuance. All licenses and renewals thereof are issued subject to all provisions of this Act and rules of the Commission in effect upon the date of issuance as well as all future provisions of this Act and rules which may become effective during the term of the license. A lessor or lease facilitator is not required to obtain a lessor or lease facilitator license or pay a license fee under this code if the lessor or lease facilitator is a state or federally chartered financial institution or a regulated subsidiary of a state or federally chartered financial institution. A trust or other entity that owns an interest in a lease and the vehicle that is the subject of the lease is not required to obtain a lessor license or lease facilitator license or pay a license fee with respect to a lease initiated, managed, serviced, and administered by a licensed lessor. A franchised dealer licensed under this code is not required to obtain a lessor or lease facilitator license or pay a license fee under this code to engage in the business of leasing motor vehicles, including new motor vehicles, that the dealer is licensed to sell.

SECTION 2. Section 5.03A(b), Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A lessor may not pay a fee to any person in return for the solicitation, procurement, or production by that person of prospective lessees of motor vehicles unless the person receiving the fee is a lease facilitator who holds a valid license as provided by this code and a valid appointment from the lessor as provided by this section. The fees prohibited by this section do not include amounts paid to a franchised dealer as a part of the consideration for the sale or assignment of a lease or leased vehicle or other amounts paid to the franchised dealer who transfers title of the vehicle or assigns the lease contract to the lessor of the motor vehicle.

SECTION 3. Section 5.03A, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) As used in Sections 5.01(7) and 5.03A(a), the term "fee" does not include any adjustments in the purchase price paid for the lease or leased vehicle. Provided, however, that this section does not authorize any fees for referring leases or prospective lessees.

SECTION 4. SECTION 5, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Section 5.05 to read as follows:

Section 5.05. USE OF CERTAIN TERMS PROHIBITED. A person may not use the words "lease" or "leasing" or any variation of those words in the person's name or in the name of an entity owned by the person unless the person is:

(1) licensed under this Act as a lessor or lease facilitator; or
(2) exempt under Section 4.01 of this Act from the requirement to obtain a license.

SECTION 5. This Act takes effect September 1, 1997.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2189 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2189, A bill to be entitled An Act relating to the payment of claims by guardians and by guardians or personal representatives of estates.

On motion of Representative Naishtat, the house concurred in the senate amendments to **HB 2189**.

Senate Committee Substitute

CSHB 2189, A bill to be entitled An Act relating to the payment of claims by guardians and certain reports and accounts submitted by guardians or personal representatives of estates.

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

SECTION 1. Section 399(a), Texas Probate Code, is amended to read as follows:

(a) Estates of Decedents Being Administered Under Order of Court. The personal representative of the estate of a decedent being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate.

(2) Any changes in the property of the estate which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

(7) A statement that, during the period covered by the account, all tax returns due have been filed and that all taxes due and owing have been paid and a complete account of the amount of the taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.

(8) If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

(9) A statement that the personal representative has paid all the required bond premiums for the accounting period.

SECTION 2. Section 405, Texas Probate Code, as amended by Chapters 712 and 957, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 405. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF DECEDENTS [~~AND PERSONS AND ESTATES OF WARDS~~]. When administration of the estate of a decedent[~~or guardianship of person or estate, or of the person and estate of a ward;~~] is to be settled and closed, the personal representative of such estate [~~or of such ward~~] shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration [~~or guardianship, as the case may be;~~] concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate [~~or of the ward, as the case may be;~~] including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

[(a) ~~As to Estates of Decedents;~~]

1. The property belonging to the estate which has come into the hands of the executor or administrator.

2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.
7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.
8. The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.
9. If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

10. The personal representative has paid all required bond premiums.

~~[(b) As to Estates of Wards:~~

- ~~[1. The property, rents, revenues, and profits received by the guardian, and belonging to his ward, during his guardianship.~~
- ~~[2. The disposition made of such property, rents, revenues, and profits.~~
- ~~[3. The expenses and debts, if any, against the estate remaining unpaid.~~
- ~~[4. The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.~~
- ~~[5. If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account of taxes paid, a description of the delinquency and the reasons for the delinquency.~~
- ~~[6. The property of the estate remaining in the hands of such guardian, if any.~~
- ~~[7. Such other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.]~~

SECTION 3. Section 743(b), Texas Probate Code, is amended to read as follows:

(b) The guardian of the person, whether or not there is a separate guardian of the estate, shall submit to the court an annual report by sworn affidavit that contains the following information:

- (1) the guardian's current name, address, and phone number;
- (2) the ward's current:
 - (A) name, address, and phone number; and
 - (B) age and date of birth;
- (3) the type of home in which the ward resides, described as the ward's own; a nursing, guardian's, foster, or boarding home; a relative's home, and the ward's relationship to the relative; a hospital or medical facility; or other type of residence;
- (4) the length of time the ward has resided in the present home and, if there has been a change in the ward's residence in the past year, the reason for the change;

(5) the date the guardian most recently saw the ward, and how frequently the guardian has seen the ward in the past year;

(6) a statement indicating whether or not the guardian has possession or control of the ward's estate;

(7) the following statements concerning the ward's health during the past year:

(A) whether the ward's mental health has improved, deteriorated, or remained unchanged, and a description if there has been a change; and

(B) whether the ward's physical health has improved, deteriorated, or remained unchanged, and a description if there has been a change;

(8) a statement concerning whether or not the ward has regular medical care, and the ward's treatment or evaluation by any of the following persons during the last year, including the name of that person, and the treatment involved:

(A) a physician;

(B) a psychiatrist, psychologist, or other mental health care provider;

(C) a dentist;

(D) a social or other caseworker; or

(E) another individual who provided treatment;

(9) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or if no activities are available or if the ward is unable or has refused to participate in them, a statement to that effect;

(10) the guardian's evaluation of the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

(11) the guardian's evaluation of whether the ward is content or unhappy with the ward's living arrangements;

(12) the guardian's evaluation of unmet needs of the ward;

(13) a statement of whether or not the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(14) a statement that the guardian has paid the bond premium for the next reporting period; and

(15) [(+4)] any additional information the guardian desires to share with the court regarding the ward.

SECTION 4. Section 749, Texas Probate Code, is amended to read as follows:

Sec. 749. ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF WARDS. When a guardianship of the estate is settled and closed, the guardian shall present to the court the guardian's verified account for final settlement. In the account it shall be sufficient to refer to the inventory without describing each item of property in detail and to refer to and adopt any and all guardianship proceedings that concern sales, renting or hiring, leasing for mineral development, or any other transaction on behalf of the guardianship

estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items. Each final account shall be accompanied by proper vouchers in support of each item not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

- (1) the property, rents, revenues, and profits received by the guardian, and belonging to the ward, during the term of the guardianship;
- (2) the disposition made of the property, rents, revenues, and profits;
- (3) the expenses and debts against the estate that remain unpaid, if any;
- (4) the property of the estate that remains in the hands of the guardian, if any;
- (5) that the guardian has paid all required bond premiums;
- (6) the tax returns the guardian has filed during the guardianship;
- (7) the amount of taxes the ward owed during the guardianship that the guardian has paid;
- (8) a complete account of the taxes the guardian has paid during the guardianship, including the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes;
- (9) a description of all current delinquencies in the filing of tax returns and the payment of taxes and a reason for each delinquency; and
- (10) [(5)] other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

SECTION 5. Section 805, Texas Probate Code, is amended to read as follows:

Sec. 805. ORDER OF PAYMENT OF CLAIMS. (a) The guardian shall pay a claim against the estate of the guardian's ward that has been allowed and approved or established by suit, as soon as practicable, in the following order, except as provided by Subsection (b) of this section:

- (1) expenses for the care, maintenance, and education of the ward or the ward's dependents;
- (2) funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward as provided under this chapter, except that any claim against the estate of a ward that has been allowed and approved or established by suit before the death of the ward shall be paid before the funeral expenses and expenses of the last illness;
- (3) expenses of administration; and
- (4) other claims against the ward or the ward's estate.

(b) If the estate is insolvent, the guardian shall give first priority to the payment of a claim relating to the administration of the guardianship. The guardian shall pay other claims against the ward's estate in the order prescribed by Subsection (a) of this section.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations and on due proof procure an order for its allowance and payment from the estate.

SECTION 6. A court may modify any guardianship in effect on September

1, 1997, to conform with the requirements of Section 805, Texas Probate Code, as amended by this Act, on the court's own motion or on application by the ward, guardian, or any other interested person or entity.

SECTION 7. The change in law made by Sections 1-4 of this Act to the Texas Probate Code apply only to an account or report filed on or after the effective date of this Act. An account or report filed before the effective date of this Act is governed by the law applicable on the date the account or report was filed, and that law is continued in effect for that purpose.

SECTION 8. Except as provided by Section 6 of this Act:

(1) the change in law made by this Act to Section 805, Texas Probate Code, applies only to proceedings for the appointment of a guardian instituted on or after the effective date of this Act; and

(2) a proceeding for the appointment of a guardian that is instituted before the effective date of this Act is governed by the law in effect on the date the proceedings were instituted, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 1997.

SECTION 10. 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 2295 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2295, A bill to be entitled An Act relating to excavation operations that may damage underground facilities; providing civil and criminal penalties.

On motion of Representative Oakley, the house concurred in the senate amendments to **HB 2295**.

Senate Committee Substitute

CSHB 2295, A bill to be entitled An Act relating to excavation operations that may damage underground facilities; providing civil and criminal penalties.

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

SECTION 1. SHORT TITLE. This Act may be cited as the Underground Facility Damage Prevention and Safety Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Agricultural operations" means activities performed on land and described by Section 23.51(2), Tax Code.

(2) "Class A underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

(A) electrical energy;

(B) natural or synthetic gas;

(C) petroleum or petroleum products;

(D) steam;

(E) any form of telecommunications service, including voice, data, video, or optical transmission, or cable television service; or

(F) any other liquid, material, or product not defined as a Class B underground facility.

(3) "Class B underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

- (A) water;
- (B) slurry; or
- (C) sewage.

(4) "Corporation" means the Texas Underground Facility Notification Corporation created by this Act.

(5) "Damage" means:

(A) the defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground facility or of any protective coating, housing, or other protective device of an underground facility;

(B) the weakening of structural or lateral support of an underground facility; or

(C) the failure to properly replace the backfill covering an underground facility.

(6) "Excavate" or "excavation" means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other machine-powered equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches.

(7) "Excavator" means a person that excavates or intends to excavate in this state.

(8) "Exploration and production underground facility" means an underground facility used by a person producing gas or oil, or both, for the production of that gas or oil, including facilities used for field separation, treatment, gathering, or storage of gas or oil.

(9) "High speed data transmission" means a method of data transmission that does not include facsimile or voice transmission.

(10) "Legal holiday" means a holiday specified as a legal holiday by Subchapter B, Chapter 662, Government Code.

(11) "Mechanized equipment" means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow, and other equipment used to plow in or pull in cable or pipe.

(12) "Notification center" means a legal entity that:

(A) operates a notification system capable of serving excavators and operators statewide;

(B) is created to:

(i) receive notification of an intent to excavate and of damage to an underground facility and disseminate that information to member operators that may be affected by the excavation or damage and to other notification centers operating in this state; and

(ii) receive notification of an extraordinary circumstance and disseminate that information to member operators and to other notification centers operating in this state; and

- (C) registers the following information with the corporation:
- (i) its name, address, and telephone number;
 - (ii) the name of a contact person;
 - (iii) a statement of compliance with Section 8(h) of

this Act; and

- (iv) a listing of the counties in which it operates.

(13) "Operator" means a person that operates an underground facility.

(14) "Person" means an individual, corporation, partnership, association, government or governmental subdivision or agency, or other legal entity.

(15) "Routine maintenance" means operations, not to exceed 24 inches in depth, within a road or drainage ditch involving grading and removal or replacement of pavement and structures.

(16) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one or more gates that are locked at all times or monitored by an individual who can prevent unauthorized access.

(17) "Underground facility" means a line, cable, pipeline system, conduit, or structure that is located partially or totally underground and that is used to produce, store, convey, transmit, or distribute telecommunications, electricity, gas, water, sewage, steam, or liquids such as petroleum, petroleum products, or hazardous liquids.

(18) "Saturday notification" means a notice of intent to excavate provided by an excavator to a notification center on a Saturday before 11:59 a.m.

SECTION 3. EXEMPTIONS. (a) The following are not subject to this Act as underground facilities:

(1) an aboveground or underground storage tank, sump, or impoundment or piping connected to an aboveground or underground storage tank, sump, or impoundment located in the same tract of land as the storage tank, sump, or impoundment;

(2) an underground facility operated by the owner of a secured facility and located entirely within the secured facility;

(3) an underground facility that serves only the owner of the underground facility or the owner's tenant and that is located solely on the owner's property;

(4) piping within a well bore;

(5) the portion of an exploration and production underground facility that is located within the boundaries of the oil or gas field from which the oil and gas is produced and that is not located in the boundaries of an established easement or right-of-way granted for the benefit of a governmental entity or a private entity if the easement or right-of-way is granted for a public purpose; or

(6) an underground facility that serves a cemetery and is located solely on the cemetery's property.

(b) An operator of an underground facility that is exempted under this section may voluntarily convert that facility to a Class A underground facility by sending written communication from a competent authority of the operator

to the Texas Underground Facility Notification Corporation advising of the status change.

(c) The provisions of this Act are inapplicable to contractors working in the public right-of-way pursuant to a contract with the Texas Department of Transportation.

(d) Excavation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this Act, provided that such excavation is:

- (1) less than 24 inches in depth; and
- (2) more than 10 feet from the right-of-way line.

SECTION 4. COMPLIANCE BY PERMIT HOLDERS. (a) The fact that a person has a legal permit, permission from the owner of the property or the owner's licensee, or an easement to conduct excavation operations does not affect the person's duty to comply with this Act.

(b) Compliance with this Act does not affect a person's responsibility to obtain a permit required by law.

SECTION 5. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION. (a) The Texas Underground Facility Notification Corporation is created to provide statewide notification services under this Act.

(b) The corporation is a public nonprofit corporation and has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes), except that the corporation:

- (1) may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war activities;
- (2) may not merge or consolidate with another corporation;
- (3) is not subject to voluntary or involuntary dissolution; and
- (4) may not be placed in receivership.

(c) The corporation is subject to Chapters 551 and 552, Government Code, except that the corporation may not disseminate, make available, or otherwise distribute service area map data or information provided by an operator unless that action is necessary to perform the corporation's specific obligations under this Act.

(d) All expenses of the corporation shall be paid from income of the corporation. Liabilities created by the corporation are not debts of the state, and the corporation may not secure any liability with funds or assets of the state. Except as provided by Section 6 of this Act, the corporation may not, for any reason, impose an assessment, fee, or other charge, including a charge for inputting data, against an operator.

(e) The corporation member operators are divided into divisions according to type of operator. The divisions are:

- (1) intrastate electric utilities;
- (2) interstate electric utilities;
- (3) electric cooperative corporations;
- (4) local exchange telephone companies that have more than 31,000 access lines in service in this state;
- (5) interexchange telecommunications carriers;
- (6) local exchange telephone companies that have 31,000 or fewer access lines in this state and telephone cooperative corporations;

- (7) gas distribution operators;
- (8) intrastate gas transmission pipeline operators;
- (9) interstate gas transmission pipeline operators;
- (10) liquid pipeline operators;
- (11) operators of Class B underground facilities that elect to participate under this Act as a Class A facility;
- (12) cable television companies that have fewer than 1,000 subscribers;
- (13) cable television companies that have 1,000 or more subscribers;
- (14) political subdivisions with a population of less than 25,000 that operate a Class A underground facility; and
- (15) political subdivisions with a population of 25,000 or more that operate a Class A underground facility.

(f) The governor shall appoint from each division a representative to serve on the board of directors of the corporation. A member operator that has operations that can be classified in more than one division is entitled to participate in each applicable division. However, not more than one employee of the operator may be appointed to serve on the board at any one time. Board membership is voluntary and a director is not entitled to receive compensation for serving on the board. Directors serve staggered three-year terms, with the terms of five directors expiring each August 31. A director serves until the director's successor is appointed by the governor and assumes office. The board may declare a director's office vacant if the director ceases to be associated with an operator included in the division from which the director was appointed. Not later than the 60th day after the date a vacancy on the board is declared, the governor shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(g) The board shall elect from among its directors a chair and vice chair. The chair and vice chair serve for a term of one year and may be re-elected.

(h) The corporation's bylaws must provide that each division is entitled to one vote.

SECTION 6. FEES AND RATES. (a) Before January 15 of each year, a Class A facility operator shall pay to the corporation a fee of \$50 for services to be performed by the corporation during that calendar year. A fee for a part of a year may not be prorated.

(b) Each time a notification center receives a call from an excavator under Section 9(a) of this Act, the notification center shall pay the corporation one cent. This charge shall be waived for the remainder of any year in which the corporation receives \$500,000 under this subsection.

(c) The notification center shall charge a Class A underground facility operator not more than \$1.25 for a call made to the system that affects the operator. The board may increase or decrease the maximum charge only on an affirmative vote of at least two-thirds of the total number of votes entitled to be cast. A notification center may petition the corporation for an increase in the maximum charge and is entitled to the increase on proof that costs exceed the maximum charge.

(d) The notification center may not charge an operator any additional fee such as an initiation fee, a membership fee, or a set-up fee.

SECTION 7. DUTY OF AN OPERATOR. (a) Each operator of a Class

A underground facility, including a political subdivision of this state, shall participate in a notification center as a condition of doing business in this state.

(b) Each operator of a Class A underground facility shall provide to the notification center:

(1) maps or grid locations or other identifiers determined by the operator indicating the location of the operator's underground facilities;

(2) the name and telephone number of a contact person or persons; and

(3) at least quarterly but, if possible, as those changes occur, information relating to each change in the operator's maps or grid locations or other identifiers or in the person or persons designated as the operator's contact person or persons.

(c) The notification center may not require an operator to conduct a survey of the operator's underground facilities or alter the operator's existing signage.

(d) An operator of a Class B underground facility may voluntarily convert to a Class A underground facility operator by sending written communication from a competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change.

SECTION 8. DUTY OF NOTIFICATION CENTER. (a) At the time an excavator provides a notification center with the excavator's intent to excavate, the notification center shall advise the excavator that water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive information concerning the excavator's proposed excavation.

(b) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, the notification center shall provide via high speed data transmission to every other affected notification center operating in this state the information required by Section 9(b) of this Act received from the excavator.

(c) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator or from a different notification center, the notification center shall notify each member operator that may have an underground facility in the vicinity of the proposed excavation operation.

(d) A notification center shall:

(1) operate 24 hours a day every day of the year;

(2) have the capability to receive emergency information 24 hours a day from excavators and disseminate the information as soon as it is received to the appropriate operators and to all registered and affected notification centers operating in this state;

(3) have the capacity to receive extraordinary circumstance information 24 hours a day from operators and disseminate the information as soon as it is received to all registered and affected notification centers; and

(4) submit to the corporation, not later than May 15 of each year, a pro rata share of the expense, as established by the corporation, of the statewide toll-free telephone number and the call router.

(e) A notification center that notifies another notification center under Subsection (d)(2) or (d)(3) of this section shall recover an amount not exceeding the actual cost of providing the notice from the notification center receiving the notice.

(f) A notification center shall maintain for not less than four years a record to document:

- (1) the receipt of:
 - (A) a notice of intent to excavate;
 - (B) damage to an underground facility;
 - (C) an emergency excavation; and
 - (D) an extraordinary circumstance;

(2) the information the excavator is required to provide to the notification center under this Act;

- (3) contact with operators and other notification centers; and
- (4) the information the notification center provided to the excavator.

(g) A notification center may not destroy records that relate to any matter that is involved in litigation if the notification center is placed on notice that the litigation has not been finally resolved.

(h) A notification center shall, at all times, maintain a minimum of \$5 million professional liability and errors and omissions insurance to cover duties prescribed by this Act.

(i) The notification center may not disseminate, make available, or otherwise distribute maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this Act.

SECTION 9. DUTY OF AN EXCAVATOR. (a) Except as provided by Sections 12 and 13 of this Act, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays. Provided, however, if an excavator makes a Saturday notification, then the excavator can begin the excavation the following Tuesday at 11:59 a.m. unless the intervening Monday is a holiday. If the intervening Monday is a holiday, then the excavator can begin the excavation the following Wednesday at 11:59 a.m. The excavator may not begin excavation before the time the excavation is to begin without the prior written agreement of each operator that has an underground facility in the area to be excavated. The person must again notify a notification center of the intended excavation in accordance with this subsection if the person does not begin the excavation before the 15th day after the date the person notified the notification center, excluding Saturdays, Sundays, and legal holidays.

(b) The notice required under this section shall include:

- (1) the name of the person serving the notice;
- (2) the location of the proposed area of excavation, including:
 - (A) the street address, if available, and the location of the excavation at the street address; or
 - (B) if there is no street address, an accurate description of the excavation area using any available designations such as the closest street, road, or intersection;
- (3) the name, address, and telephone number of the excavator or the excavator's company;
- (4) the excavator's field telephone number, if one is available;
- (5) the starting date and time and the anticipated completion date of excavation; and
- (6) a statement as to whether explosives will be used.

(c) To have a representative present during the excavation, the operator shall contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. If the start time is changed by the excavator, the excavator shall notify the operator of the start time change. After being notified by the operator of the intent to be present, the excavator may not begin excavation at an earlier time than the confirmed start time without the operator's agreement.

SECTION 10. DUTY OF THE TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION. (a) The corporation shall develop and implement processes to:

- (1) maintain a registration of:
 - (A) notification centers as provided by Section 2(12)(C) of this Act;
 - (B) operators who elect to convert facilities to Class A facilities under Section 3(b) of this Act; or
 - (C) operators who elect to become Class A underground facility operators under Section 7(d) of this Act;
 - (2) establish minimum technical standards used by notification centers;
 - (3) establish a statewide toll-free telephone number to be used by excavators that incorporates the use of a call router system that routes calls to the notification centers on a pro rata basis;
 - (4) oversee the bid process and select the vendor for the statewide toll-free telephone number;
 - (5) oversee the bid process and select the vendor for the call router system;
 - (6) determine before May 1 of each year the cost-sharing between the notification centers of:
 - (A) the toll-free telephone number; and
 - (B) the call router system prescribed by Section 8(d)(4) of this Act;
 - (7) develop public service announcements to educate the public about statewide one-call notification and its availability;
 - (8) establish a format for information transfer among notification centers other than high speed data transmission, if appropriate;
 - (9) on a complaint concerning charges, investigate and determine appropriate charges;
 - (10) recommend a civil penalty against a notification center that does not meet the requirements of this Act of not less than \$1,000 or more than \$5,000 for each violation;
 - (11) refer the recommended penalty to the attorney general who shall institute a suit in a court of competent jurisdiction to recover the penalty;
 - (12) assist in dispute resolution among notification centers or between a notification center and an operator; and
 - (13) assist any operator who encounters difficulty in joining a notification center.
- (b) The corporation shall solicit proposals for the contract to establish and operate the statewide toll-free telephone number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this Act.

(c) The corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. The corporation may reject all proposals if the corporation finds that none of the proposals is acceptable. After the proposals are opened, each document relating to the consideration of a proposal or the award of a contract and the text of the contract are considered books and records of the corporation for the purposes of Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

SECTION 11. NOTIFICATION BY AN EXCAVATOR. (a) A person required to provide notice under this Act is considered to have provided the notice when the person delivers the required information and a notification center receives that information within the time limits prescribed by this Act.

(b) A person may deliver information required under this Act by any appropriate method, including the use of any electronic means of data transfer.

SECTION 12. EXCEPTION IN CASE OF EMERGENCY. (a) Section 9 of this Act does not apply to an emergency excavation that is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for service compels immediate action.

(b) The excavator may begin emergency excavation under Subsection (a) of this section immediately and shall take reasonable precautions to protect underground facilities.

(c) When an emergency exists, the excavator shall notify a notification center as promptly as reasonably possible.

SECTION 13. OTHER EXCEPTIONS TO DUTY OF EXCAVATORS. Section 9 of this Act does not apply to:

- (1) interment operations of a cemetery;
- (2) operations at a secured facility if:

(A) the excavator operates each underground facility at the secured facility, other than those within a third-party underground facility easement or right-of-way; and

(B) the excavation activity is not within a third-party underground facility or right-of-way;

(3) routine railroad maintenance within 15 feet of either side of the midline of the track if the maintenance will not disturb the ground at a depth of more than 18 inches;

(4) activities performed on private property in connection with agriculture operations, except that if a person excepted by this subdivision elects to comply with this Act and the operator fails to comply with this Act, the person is not liable to the underground facility owner for damages to the underground facility;

(5) operations associated with the exploration or production of oil or gas if the operations are not conducted within an underground facility easement or right-of-way;

- (6) excavations by or for a person that:

(A) owns, leases, or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(B) operates all underground facilities located at the excavation site; or

(7) routine maintenance by a county employee on a county road right-of-way to a depth of not more than 24 inches.

SECTION 14. DUTY OF OPERATOR TO PERSON EXCAVATING. (a) Not later than the 48th hour after the time the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays, 11:59 a.m. on the Tuesday following a Saturday notification unless the intervening Monday is a holiday, 11:59 a.m. on the Wednesday following a Saturday notification if the intervening Monday is a holiday, or at a time agreed to by the operator and the excavator, each Class A underground facility operator contacted by the notification system shall mark the approximate location of its underground facilities at or near the site of the proposed excavation if the operator believes that marking the location is necessary.

(b) For the purposes of this section, an excavator may presume, unless the operator advises the excavator otherwise, that the marking of an approximate location of an underground facility is within 18 inches on either side of the underground facility.

(c) An operator shall refer to the American Public Works Association color coding standards when marking.

(d) An excavator who has fully complied with this Act may not be liable for damage to an underground facility that was not marked in accordance with this Act.

SECTION 15. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE. (a) The deadline prescribed by Section 14(a) of this Act does not apply if the operator experiences an extraordinary circumstance due to an act of God, including a tornado, a hurricane, an ice storm, or a severe flood, or a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill its obligations under this Act.

(b) The operator shall notify a notification center of the extraordinary circumstance and shall include in the notification:

- (1) the nature and location of the extraordinary circumstance;
- (2) the expected duration of the situation and the approximate time at which the operator will be able to resume location request activities; and
- (3) the name and telephone number of the individual that the notification system can contact if there is an emergency that requires the operator's immediate attention.

(c) In addition to the notification required by Subsection (b) of this section, the operator shall also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and shall include in the notification:

- (1) the fact that the operator is experiencing an extraordinary circumstance; and
- (2) the approximate time at which the operator will mark the requested location.

(d) A notification center shall inform each excavator notifying the system under Section 9 of this Act that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location.

(e) An excavator is relieved from all provisions of this Act until such time as the operator notifies the notification center that the operator has resumed location request activities within the affected location.

SECTION 16. PRECAUTIONS TO AVOID DAMAGE TO FACILITIES.

(a) In addition to providing the notice required by Section 9 of this Act, the excavator shall:

(1) provide support for each marked underground facility that is reasonably necessary to protect the facility during the excavation, including any backfill operations; and

(2) protect and preserve during excavation the marking of the location of the underground facility until the marking is not necessary for reasonably safe excavation.

(b) An excavator shall consider the known limit of control of the cutting edge or point of a piece of mechanized equipment in determining the necessary clearance that must be maintained with uncovered surfaces and paved surfaces. If the centerline of the underground facility is marked, the excavator shall use a clearance of not less than 24 inches from the centerline. If the outer edges of the underground facilities are marked by an operator, the excavator shall use a clearance of not less than 24 inches from the outer edge markings. An operator may agree that a smaller clearance can safely be used. An operator may not reasonably withhold an agreement to use a smaller clearance if the clearance is reasonable. In determining if the clearance is reasonable, the operator shall consider the method of excavation to be used and the potential for damage, service interruption, and loss of revenue.

SECTION 17. EXCAVATION DAMAGE. (a) If an excavation operation results in damage to an underground facility, the excavator shall immediately contact the underground facility operator to report the damage.

(b) If the excavator is not certain of the operator's identity, the excavator shall contact a notification center to report the damage, and the notification center shall immediately notify all other affected notification centers. Immediately on receiving notification, each notification center shall contact each member operator that has underground facilities in or near the area in which the damage occurred.

(c) Only the operator or a person authorized by the operator may perform repairs, and the repairs must be made in an expeditious manner.

(d) An excavator shall delay backfilling in the immediate area of the damage until the damage is repaired unless the operator authorizes the backfilling.

(e) If damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.

SECTION 18. INJUNCTION. (a) An operator may file an action in a district court for an injunction to enjoin excavation conducted or anticipated to be conducted in violation of this Act.

(b) Venue for a suit brought under this section is in a county in which all or part of the excavation occurs.

SECTION 19. CIVIL PENALTY. (a) An excavator that violates either Section 9 or Section 17 of this Act is liable for a civil penalty of not less than \$100 or more than \$500. If it is found at the trial on a civil penalty that the

excavator has violated this Act and has been assessed a penalty under this section one other time during the three years preceding the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$500 or more than \$1,000. If it is found at the trial on a civil penalty that the excavator has violated this Act and has been assessed a penalty under this section at least two other times during the three years preceding the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$1,000 or more than \$2,500.

(b) In assessing the penalty the court shall consider the actual damage to the facility, the impact of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(c) Venue for a proceeding under this section is in the county in which:

- (1) all or part of the alleged violation occurred;
- (2) the defendant has its principal place of business in this state; or
- (3) the defendant resides, if in this state.

(d) The appropriate county attorney or criminal district attorney shall bring the action to recover the civil penalty at the request of an operator.

(e) Fifty percent of the civil penalty collected under this section shall be transferred to the county treasurer of the county prosecuting the action and 50 percent of the civil penalty collected under this section shall be transferred to the corporation.

(f) The county treasurer shall deposit all money received under this section in the general fund of the county.

(g) The corporation shall use the money received under this section to develop public service announcements to educate the public about the statewide one-call notification system and its availability as prescribed by Section 10(a)(7) of this Act.

(h) Except as otherwise specifically provided in this Act, this section does not affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to an underground facility.

SECTION 20. CRIMINAL PENALTY FOR REMOVAL, DAMAGE, OR CONCEALMENT OF MARKER OR SIGN. (a) A person commits an offense if:

(1) the person without authorization from the owner or operator of the facility intentionally removes, damages, or conceals a marker or sign giving information about the location of a Class A underground facility; and

(2) the marker or sign gives notice of the penalty for intentional removal, damage, or concealment of the marker or sign.

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

SECTION 21. EXISTING NOTIFICATION CENTERS. A notification center operating on the effective date of this Act may continue to operate if the notification center complies with this Act.

SECTION 22. INITIAL DIRECTORS. (a) The governor shall appoint the initial directors under Section 5 of this Act before November 1, 1997.

(b) The initial terms of directors appointed to represent a division under Sections 5(e)(1), (4), (7), (10), and (13) of this Act expire August 31, 1998. The initial terms of directors appointed to represent a division under Sections

5(e)(2), (5), (8), (11), and (14) of this Act expire August 31, 1999. The initial terms of directors appointed to represent a division under Sections 5(e)(3), (6), (9), (12), and (15) of this Act expire August 31, 2000.

SECTION 23. FACILITY ON COUNTY OR MUNICIPAL ROAD.

(a) Section 16 of this Act does not apply to an excavation by a county employee on a county road or a municipal employee on a municipal road, except an excavation within a recorded easement.

(b) This Act does not affect any contractual or statutory right of a county or municipality to require an operator to relocate, replace, or repair its underground facility.

SECTION 24. EFFECTIVE DATE; APPLICATION. This Act takes effect September 1, 1997, and applies as follows:

(1) the powers and duties of the corporation under Sections 5 and 10 of this Act apply only on and after November 1, 1997, except that:

(A) the corporation shall develop and implement the processes required by Section 10(a) of this Act before March 1, 1998; and

(B) the corporation shall select vendors as required by Sections 10(a)(4) and (5) of this Act before May 1, 1998;

(2) the initial fee due under Section 6(a) of this Act is due January 15, 1998;

(3) registration is not required under Section 2(12)(C) of this Act until March 1, 1998;

(4) the duties of an operator under Section 7 of this Act apply only on and after May 1, 1998;

(5) a fee is not due under Section 6(b) or (c) before October 1, 1998; and

(6) the rights and duties provided by Sections 3, 4, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 23 apply only on and after October 1, 1998.

SECTION 25. EXISTING LAW. This Act does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

SECTION 26. EMERGENCY. 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 2295** by striking all below the enacting clause and substituting the following:

SECTION 1. SHORT TITLE. This Act may be cited as the Underground Facility Damage Prevention and Safety Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Agricultural operations" means activities performed on land and described by Section 23.51(2), Tax Code.

(2) "Class A underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

(A) electrical energy;

(B) natural or synthetic gas;

(C) petroleum or petroleum products;
(D) steam;
(E) any form of telecommunications service, including voice, data, video, or optical transmission, or cable television service; or
(F) any other liquid, material, or product not defined as a Class B underground facility.

(3) "Class B underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

- (A) water;
- (B) slurry; or
- (C) sewage.

(4) "Corporation" means the Texas Underground Facility Notification Corporation created by this Act.

(5) "Damage" means:

(A) the defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground facility or of any protective coating, housing, or other protective device of an underground facility;

(B) the weakening of structural or lateral support of an underground facility; or

(C) the failure to properly replace the backfill covering an underground facility.

(6) "Excavate" or "excavation" means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other machine-powered equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches.

(7) "Excavator" means a person that excavates or intends to excavate in this state.

(8) "Exploration and production underground facility" means an underground facility used by a person producing gas or oil, or both, for the production of that gas or oil, including facilities used for field separation, treatment, gathering, or storage of gas or oil.

(9) "High speed data transmission" means a method of data transmission that does not include facsimile or voice transmission.

(10) "Legal holiday" means a holiday specified as a legal holiday by Subchapter B, Chapter 662, Government Code.

(11) "Mechanized equipment" means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow, and other equipment used to plow in or pull in cable or pipe.

(12) "Notification center" means a legal entity that:

(A) operates a notification system capable of serving excavators and operators statewide;

(B) is created to:

(i) receive notification of an intent to excavate and of damage to an underground facility and disseminate that information to

member operators that may be affected by the excavation or damage and to other notification centers operating in this state; and

(ii) receive notification of an extraordinary circumstance and disseminate that information to member operators and to other notification centers operating in this state; and

(C) registers the following information with the corporation:

(i) its name, address, and telephone number;

(ii) the name of a contact person;

(iii) a statement of compliance with Section 8(h) of

this Act; and

(iv) a listing of the counties in which it operates.

(13) "Operator" means a person that operates an underground facility.

(14) "Person" means an individual, corporation, partnership, association, government or governmental subdivision or agency, or other legal entity.

(15) "Routine maintenance" means operations, not to exceed 24 inches in depth, within a road or drainage ditch involving grading and removal or replacement of pavement and structures.

(16) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one or more gates that are locked at all times or monitored by an individual who can prevent unauthorized access.

(17) "Underground facility" means a line, cable, pipeline system, conduit, or structure that is located partially or totally underground and that is used to produce, store, convey, transmit, or distribute telecommunications, electricity, gas, water, sewage, steam, or liquids such as petroleum, petroleum products, or hazardous liquids.

(18) "Saturday notification" means a notice of intent to excavate provided by an excavator to a notification center on a Saturday before 11:59 a.m.

(19) "Violation" means a violation of Section 9 of this Act, Section 16 of this Act, or both.

SECTION 3. EXEMPTIONS. (a) The following are not subject to this Act as underground facilities:

(1) an aboveground or underground storage tank, sump, or impoundment or piping connected to an aboveground or underground storage tank, sump, or impoundment located in the same tract of land as the storage tank, sump, or impoundment;

(2) an underground facility operated by the owner of a secured facility and located entirely within the secured facility;

(3) an underground facility that serves only the owner of the underground facility or the owner's tenant and that is located solely on the owner's property;

(4) piping within a well bore;

(5) the portion of an exploration and production underground facility that is located within the boundaries of the oil or gas field from which the oil and gas is produced and that is not located in the boundaries of an established easement or right-of-way granted for the benefit of a governmental entity or a

private entity if the easement or right-of-way is granted for a public purpose; or

(6) an underground facility that serves a cemetery and is located solely on the cemetery's property.

(b) An operator of an underground facility that is exempted under this section may voluntarily convert that facility to a Class A underground facility by sending written communication from a competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change.

(c) The provisions of this Act are inapplicable to contractors working in the public right-of-way pursuant to a contract with the Texas Department of Transportation.

(d) Excavation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this Act, provided that such excavation is:

(1) less than 24 inches in depth; and

(2) no more than 10 feet from the right-of-way line.

SECTION 4. COMPLIANCE BY PERMIT HOLDERS. (a) The fact that a person has a legal permit, permission from the owner of the property or the owner's licensee, or an easement to conduct excavation operations does not affect the person's duty to comply with this Act.

(b) Compliance with this Act does not affect a person's responsibility to obtain a permit required by law.

SECTION 5. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION. (a) The Texas Underground Facility Notification Corporation is created to provide statewide notification services under this Act.

(b) The corporation is a public nonprofit corporation and has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes), except that the corporation:

(1) may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war activities;

(2) may not merge or consolidate with another corporation;

(3) is not subject to voluntary or involuntary dissolution; and

(4) may not be placed in receivership.

(c) The corporation is subject to Chapters 551 and 552, Government Code, except that the corporation may not disseminate, make available, or otherwise distribute service area map data or information provided by an operator unless that action is necessary to perform the corporation's specific obligations under this Act.

(d) All expenses of the corporation shall be paid from income of the corporation. Liabilities created by the corporation are not debts of the state, and the corporation may not secure any liability with funds or assets of the state. Except as provided by Section 6 of this Act, the corporation may not, for any reason, impose an assessment, fee, or other charge, including a charge for inputting data, against an operator.

(e) The board of directors of the corporation is composed of the following 12 members appointed by the governor:

- (1) six representatives of the general public;
- (2) one representative of the gas industry;
- (3) one representative of the telecommunications industry;
- (4) one representative of the electric industry;
- (5) one representative of cable television companies;
- (6) one representative of municipalities; and
- (7) one representative of persons who engage in excavation operations

who are not also facility operators.

(f) Board membership is voluntary and a director is not entitled to receive compensation for serving on the board. Directors serve staggered three-year terms, with the terms of four directors expiring each August 31. A director serves until the director's successor is appointed by the governor and assumes office. The board may declare a director's office vacant if the director ceases to be associated with the industry or an operator the director represents. Not later than the 60th day after the date a vacancy on the board is declared, the governor shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(g) The board shall elect from among its directors a chair and vice chair. The chair and vice chair serve for a term of one year and may be reelected.

(h) The corporation's bylaws must provide that each director is entitled to one vote.

SECTION 6. FEES AND RATES. (a) Before January 15 of each year, a Class A facility operator shall pay to the corporation a fee of \$50 for services to be performed by the corporation during that calendar year. A fee for a part of a year may not be prorated.

(b) Each time a notification center receives a call from an excavator under Section 9(a) of this Act, the notification center shall pay the corporation one cent. This charge shall be waived for the remainder of any year in which the corporation receives \$500,000 under this subsection.

(c) The notification center shall charge a Class A underground facility operator not more than \$1.25 for a call made to the system that affects the operator. The board may increase or decrease the maximum charge only on an affirmative vote of at least two-thirds of the total number of votes entitled to be cast. A notification center may petition the corporation for an increase in the maximum charge and is entitled to the increase on proof that costs exceed the maximum charge.

(d) The notification center may not charge an operator any additional fee such as an initiation fee, a membership fee, or a set-up fee.

SECTION 7. DUTY OF AN OPERATOR. (a) Each operator of a Class A underground facility, including a political subdivision of this state, shall participate in a notification center as a condition of doing business in this state.

(b) Each operator of a Class A underground facility shall provide to the notification center:

- (1) maps or grid locations or other identifiers determined by the operator indicating the location of the operator's underground facilities;
- (2) the name and telephone number of a contact person or persons; and
- (3) at least quarterly but, if possible, as those changes occur, information relating to each change in the operator's maps or grid locations

or other identifiers or in the person or persons designated as the operator's contact person or persons.

(c) The notification center may not require an operator to conduct a survey of the operator's underground facilities or alter the operator's existing signage.

(d) An operator of a Class B underground facility may voluntarily convert to a Class A underground facility operator by sending written communication from a competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change.

(e) At least once each calendar year, at intervals not exceeding 15 months, each Class A underground facility operator who conveys, transmits, or distributes by means of its underground facilities service directly to more than one million residential customers within this state shall provide all of its residential customers in this state general information about excavation activities covered by this Act and the statewide toll-free telephone number established by the corporation.

SECTION 8. DUTY OF NOTIFICATION CENTER. (a) At the time an excavator provides a notification center with the excavator's intent to excavate, the notification center shall advise the excavator that water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive information concerning the excavator's proposed excavation.

(b) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, the notification center shall provide via high speed data transmission to every other affected notification center operating in this state the information required by Section 9(b) of this Act received from the excavator.

(c) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator or from a different notification center, the notification center shall notify each member operator that may have an underground facility in the vicinity of the proposed excavation operation.

(d) A notification center shall:

(1) operate 24 hours a day every day of the year;

(2) have the capability to receive emergency information 24 hours a day from excavators and disseminate the information as soon as it is received to the appropriate operators and to all registered and affected notification centers operating in this state;

(3) have the capacity to receive extraordinary circumstance information 24 hours a day from operators and disseminate the information as soon as it is received to all registered and affected notification centers;

(4) submit to the corporation, not later than May 15 of each year, a pro rata share of the expense, as established by the corporation, of the statewide toll-free telephone number and the call router;

(5) provide, on request of an excavator, a contact name and telephone number of a representative of the operator for special circumstances; and

(6) have personnel capable of assisting Spanish-speaking customers.

(e) A notification center that notifies another notification center under Subsection (b), (d)(2), or (d)(3) of this section shall recover an amount not exceeding the actual cost of providing the notice from the notification center receiving the notice.

(f) A notification center shall maintain for not less than four years a record to document:

(1) the receipt of:

- (A) a notice of intent to excavate;
- (B) damage to an underground facility;
- (C) an emergency excavation; and
- (D) an extraordinary circumstance;

(2) the information the excavator is required to provide to the notification center under this Act;

(3) contact with operators and other notification centers; and

(4) the information the notification center provided to the excavator.

(g) A notification center may not destroy records that relate to any matter that is involved in litigation if the notification center is placed on notice that the litigation has not been finally resolved.

(h) A notification center shall, at all times, maintain a minimum of \$5 million professional liability and errors and omissions insurance to cover duties prescribed by this Act.

(i) The notification center may not disseminate, make available, or otherwise distribute maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this Act.

SECTION 9. DUTY OF AN EXCAVATOR. (a) Except as provided by Sections 12 and 13 of this Act, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays. Provided, however, if an excavator makes a Saturday notification, the excavator may begin the excavation the following Tuesday at 11:59 a.m. unless the intervening Monday is a holiday. If the intervening Monday is a holiday, the excavator may begin the excavation the following Wednesday at 11:59 a.m.

(b) The notice required under this section shall include:

(1) the name of the person serving the notice;

(2) the location of the proposed area of excavation, including:

(A) the street address, if available, and the location of the excavation at the street address; or

(B) if there is no street address, an accurate description of the excavation area using any available designations such as the closest street, road, or intersection;

(3) the name, address, and telephone number of the excavator or the excavator's company;

(4) the excavator's field telephone number, if one is available;

(5) the starting date and time and the anticipated completion date of excavation; and

(6) a statement as to whether explosives will be used.

(c) To have a representative present during the excavation, the operator shall contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. If the excavator wants to change the start time, the excavator shall notify the operator to set a mutually agreed-to time to begin the excavation.

SECTION 10. DUTY OF THE TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION. (a) The corporation shall develop and implement processes to:

(1) maintain a registration of:

(A) notification centers as provided by Section 2(12)(C) of this Act;

(B) operators who elect to convert facilities to Class A facilities under Section 3(b) of this Act; or

(C) operators who elect to become Class A underground facility operators under Section 7(d) of this Act;

(2) establish minimum technical standards used by notification centers;

(3) establish a statewide toll-free telephone number to be used by excavators that incorporates the use of a call router system that routes calls to the notification centers on a pro rata basis;

(4) oversee the bid process and select the vendor for the statewide toll-free telephone number;

(5) oversee the bid process and select the vendor for the call router system;

(6) determine before May 1 of each year the cost-sharing between the notification centers of:

(A) the toll-free telephone number; and

(B) the call router system prescribed by Section 8(d)(4) of this Act;

(7) develop public service announcements to educate the public about statewide one-call notification and its availability;

(8) establish a format for information transfer among notification centers other than high speed data transmission, if appropriate;

(9) on a complaint concerning charges, investigate and determine appropriate charges;

(10) recommend a civil penalty against a notification center that does not meet the requirements of this Act of not less than \$1,000 or more than \$5,000 for each violation;

(11) refer the recommended penalty to the attorney general who shall institute a suit in a court of competent jurisdiction to recover the penalty;

(12) assist in dispute resolution among notification centers or between a notification center and an operator;

(13) assist any operator who encounters difficulty in joining a notification center; and

(14) review and study design standards for the placement of underground facilities throughout this state.

(b) The corporation shall solicit proposals for the contract to establish and operate the statewide toll-free telephone number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this Act.

(c) The corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. The corporation may reject all proposals if the corporation finds that none of the proposals is

acceptable. After the proposals are opened, each document relating to the consideration of a proposal or the award of a contract and the text of the contract are considered books and records of the corporation for the purposes of Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

SECTION 11. NOTIFICATION BY AN EXCAVATOR. (a) A person required to provide notice under this Act is considered to have provided the notice when the person delivers the required information and a notification center receives that information within the time limits prescribed by this Act.

(b) A person may deliver information required under this Act by any appropriate method, including the use of any electronic means of data transfer.

SECTION 12. EXCEPTION IN CASE OF EMERGENCY. (a) Section 9 of this Act does not apply to an emergency excavation that is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for uninterrupted service and immediate reestablishment of service if service is interrupted compels immediate action.

(b) The excavator may begin emergency excavation under Subsection (a) of this section immediately and shall take reasonable precautions to protect underground facilities.

(c) When an emergency exists, the excavator shall notify a notification center as promptly as reasonably possible.

SECTION 13. OTHER EXCEPTIONS TO DUTY OF EXCAVATORS. Section 9 of this Act does not apply to:

(1) interment operations of a cemetery;

(2) operations at a secured facility if:

(A) the excavator operates each underground facility at the secured facility, other than those within a third-party underground facility easement or right-of-way; and

(B) the excavation activity is not within a third-party underground facility or right-of-way;

(3) routine railroad maintenance within 15 feet of either side of the midline of the track if the maintenance will not disturb the ground at a depth of more than 18 inches;

(4) activities performed on private property in connection with agriculture operations, except that if a person excepted by this subdivision elects to comply with this Act and the operator fails to comply with this Act, the person is not liable to the underground facility owner for damages to the underground facility;

(5) operations associated with the exploration or production of oil or gas if the operations are not conducted within an underground facility easement or right-of-way;

(6) excavations by or for a person that:

(A) owns, leases, or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(B) operates all underground facilities located at the excavation site; or

(7) routine maintenance by a county employee on a county road right-of-way to a depth of not more than 24 inches.

SECTION 14. DUTY OF OPERATOR TO PERSON EXCAVATING. (a) Not later than the 48th hour after the time the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays, 11:59 a.m. on the Tuesday following a Saturday notification unless the intervening Monday is a holiday, 11:59 a.m. on the Wednesday following a Saturday notification if the intervening Monday is a holiday, or at a time agreed to by the operator and the excavator, each Class A underground facility operator contacted by the notification system shall mark the approximate location of its underground facilities at or near the site of the proposed excavation if the operator believes that marking the location is necessary.

(b) An operator shall refer to the American Public Works Association color coding standards when marking.

(c) An excavator who has fully complied with this Act may not be liable for damage to an underground facility that was not marked in accordance with this Act.

SECTION 15. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE. (a) The deadline prescribed by Section 14(a) of this Act does not apply if the operator experiences an extraordinary circumstance due to an act of God, including a tornado, a hurricane, an ice storm, or a severe flood, or a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill its obligations under this Act.

(b) The operator shall notify a notification center of the extraordinary circumstance and shall include in the notification:

- (1) the nature and location of the extraordinary circumstance;
- (2) the expected duration of the situation and the approximate time at which the operator will be able to resume location request activities; and
- (3) the name and telephone number of the individual that the notification system can contact if there is an emergency that requires the operator's immediate attention.

(c) In addition to the notification required by Subsection (b) of this section, the operator shall also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and shall include in the notification:

- (1) the fact that the operator is experiencing an extraordinary circumstance; and
- (2) the approximate time at which the operator will mark the requested location.

(d) A notification center shall inform each excavator notifying the system under Section 9 of this Act that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location.

(e) An excavator is relieved from all provisions of this Act until such time as the operator notifies the notification center that the operator has resumed location request activities within the affected location.

SECTION 16. EXCAVATION DAMAGE. (a) If an excavation operation results in damage to an underground facility, the excavator shall immediately contact the underground facility operator to report the damage.

(b) If the excavator is not certain of the operator's identity, the excavator shall contact a notification center to report the damage, and the notification center shall immediately notify all other affected notification centers. Immediately on receiving notification, each notification center shall contact each member operator that has underground facilities in or near the area in which the damage occurred.

(c) Only the operator or a person authorized by the operator may perform repairs, and the repairs must be made in an expeditious manner.

(d) An excavator shall delay backfilling in the immediate area of the damage until the damage is reported to the operator and a repair schedule is mutually agreed to by the excavator and the operator.

(e) If damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.

SECTION 17. CIVIL PENALTY. (a) An excavator that violates either Section 9 or Section 16 of this Act is liable for a civil penalty of not less than \$50 or more than \$100. If it is found at the trial on a civil penalty that the excavator has violated this Act and has been assessed a penalty under this section one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$100 or more than \$200. If it is found at the trial on a civil penalty that the excavator has violated this Act and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$200 or more than \$500.

(b) In assessing the penalty the court shall consider the actual damage to the facility, the impact of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(c) Venue for a proceeding under this section is in the county in which:

- (1) all or part of the alleged violation occurred;
- (2) the defendant has its principal place of business in this state; or
- (3) the defendant resides, if in this state.

(d) The appropriate county attorney or criminal district attorney shall bring the action to recover the civil penalty.

(e) Fifty percent of the civil penalty collected under this section shall be transferred to the county treasurer of the county prosecuting the action and 50 percent of the civil penalty collected under this section shall be transferred to the corporation.

(f) The county treasurer shall deposit all money received under this section in the county road and bridge fund.

(g) The corporation shall use the money received under this section to develop public service announcements to educate the public about the statewide one-call notification system and its availability as prescribed by Section 10(a)(7) of this Act.

(h) Except as otherwise specifically provided in this Act, this section does not affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to an underground facility.

(i) Subsection (a) of this section does not apply to a residential property owner excavating on the property owner's own residential lot.

SECTION 18. CRIMINAL PENALTY FOR REMOVAL, DAMAGE, OR CONCEALMENT OF MARKER OR SIGN. (a) A person commits an offense if:

(1) the person without authorization from the owner or operator of the facility intentionally removes, damages, or conceals a marker or sign giving information about the location of a Class A underground facility; and

(2) the marker or sign gives notice of the penalty for intentional removal, damage, or concealment of the marker or sign.

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

SECTION 19. EXISTING NOTIFICATION CENTERS. A notification center operating on the effective date of this Act may continue to operate if the notification center complies with this Act.

SECTION 20. INITIAL DIRECTORS. (a) The governor shall appoint the initial directors under Section 5 of this Act before November 1, 1997.

(b) In appointing the initial members of the board of directors of the corporation, the governor shall appoint the members so that:

(1) two representatives of the general public and the representatives of the electric industry and of cable television companies serve terms expiring on August 31, 1998;

(2) two representatives of the general public and the representatives of the telecommunications and gas industries serve terms expiring on August 31, 1999; and

(3) two representatives of the general public and the representatives of municipalities and excavators serve terms expiring on August 31, 2000.

SECTION 21. FACILITY ON COUNTY OR MUNICIPAL ROAD. This Act does not affect any contractual or statutory right of a county or municipality to require an operator to relocate, replace, or repair its underground facility.

SECTION 22. EFFECTIVE DATE; APPLICATION. This Act takes effect September 1, 1997, and applies as follows:

(1) the powers and duties of the corporation under Sections 5 and 10 of this Act apply only on and after November 1, 1997, except that:

(A) the corporation shall develop and implement the processes required by Section 10(a) of this Act before March 1, 1998; and

(B) the corporation shall select vendors as required by Sections 10(a)(4) and (5) of this Act before May 1, 1998;

(2) the initial fee due under Section 6(a) of this Act is due January 15, 1998;

(3) registration is not required under Section 2(12)(C) of this Act until March 1, 1998;

(4) the duties of an operator under Section 7 of this Act apply only on and after May 1, 1998;

(5) a fee is not due under Section 6(b) or (c) before October 1, 1998; and

(6) the rights and duties provided by Sections 3, 4, 8, 9, 11, 12, 13, 14, 15, 16, 17, and 21 apply only on and after October 1, 1998.

SECTION 23. EXISTING LAW. This Act does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

SECTION 24. EMERGENCY. 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 2297 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2297, A bill to be entitled An Act relating to the Texas Judicial Council.

On motion of Representative Gallego, the house concurred in the senate amendments to **HB 2297**.

Senate Amendment No. 1

Amend **HB 2297** as follows:

(1) In SECTION 5 of the bill, in amended Section 71.014(a), Government Code, strike "chief justice of the supreme court [~~governor~~]" and substitute "governor".

(2) In SECTION 6 of the bill, in amended Section 71.015(b), Government Code, strike "chief justice of the supreme court [~~governor~~]" and substitute "governor".

(3) In SECTION 11 of the bill, in Subsection (b), strike "chief justice of the supreme court" and substitute "governor".

**HB 2383 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2383, A bill to be entitled An Act relating to the qualification of a nonprofit charitable or religious organization, school, or youth association for an exemption from ad valorem taxation.

On motion of Representative Hochberg, the house concurred in the senate amendments to **HB 2383** by (Record 598): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Corte; 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; Hupp; Isett; Jackson; Janek; Jones, D.; Jones, J.; Junell; Kamel; Keel; Keffer; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Maxey;

McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; 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; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Counts; Lewis, R.; Puente; Walker.

Senate Amendment No. 1

Amend **HB 2383** as follows:

(1) Strike the recital to SECTION 4 of the bill (Committee Printing page 2, lines 30 and 31) and substitute:

SECTION 4. Section 11.21, Tax Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(2) At the end of SECTION 4 of the bill (Committee Printing page 2, between lines 61 and 62), insert:

(f) Notwithstanding Subsection (a), a person is entitled to an exemption from taxation of the buildings and tangible personal property the person acquires for use for a school that meets each requirement of Subsection (d) if:

(1) the person authorizes the former owner to continue to use the property pending the use of the property for a school; and

(2) the former owner would be entitled to an exemption from taxation of the property if the former owner continued to own the property.

(3) Add the following appropriately numbered section and renumber the subsequent sections of the bill appropriately:

SECTION _____. The chief appraiser of an appraisal district shall accept and approve or deny an application for an exemption from ad valorem taxation under Section 11.21(f), Tax Code, as added by this Act, for the ad valorem tax year that began January 1, 1997, if the application is filed as provided by Section 11.434, Tax Code.

HB 2491 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2491, A bill to be entitled An Act relating to participation by community colleges in the state employee charitable contribution program.

On motion of Representative Bonnen, the house concurred in the senate amendments to **HB 2491**.

Senate Committee Substitute

CSHB 2491, A bill to be entitled An Act relating to participation by community colleges in the state employee charitable contribution program.

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

SECTION 1. Subchapter H, Chapter 659, Government Code, as added by Chapter 76, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 659.1311 to read as follows:

Sec. 659.1311. PUBLIC JUNIOR COLLEGES. (a) For purposes of this subchapter, a public junior college is considered to be an institution of higher education and employees of the public junior college are considered to be state employees during a state fiscal year unless an affirmative decision not to participate under this subchapter is made by the governing board of the public junior college not later than April 1 of the preceding state fiscal year.

(b) An employee of a public junior college that elects not to participate in the state employee charitable contribution program may authorize a deduction from the employee's salary or wage payment for a charitable contribution as provided by the policy of the governing board of the public junior college.

(c) Participation by an employee of a public junior college under this section is voluntary.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses created an emergency and an imperative public 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 2705 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2705, A bill to be entitled An Act relating to the program for the voluntary cleanup of contaminants.

On motion of Representative Chisum, the house concurred in the senate amendments to **HB 2705**.

Senate Committee Substitute

CSHB 2705, A bill to be entitled An Act relating to the program for the voluntary cleanup of contaminants.

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

SECTION 1. Section 361.603, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a), a site or portion of a site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order. An administrative penalty paid to the general revenue fund under the permit or order is nonrefundable.

SECTION 2. Subchapter S, Chapter 361, Health and Safety Code, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 361.6035 to read as follows:

Sec. 361.6035. ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE

FROM LIABILITY. (a) A person who purchased a site before September 1, 1995, is released, on certification under Section 361.609, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate before the purchase date, except for releases or consequences that the person contributed to or caused, if:

(1) the person did not operate the site, or any portion of the site, before the purchase date; and

(2) another person that is a responsible party under Section 361.271 or 361.275(g) successfully completes a voluntary cleanup of the site under this subchapter.

(b) A person described by Subsection (a)(2):

(1) remains liable to the state for any contamination that was released at the site before the date the certificate is issued; and

(2) is not liable to the state for any contamination that was released at the site after the date the certificate is issued unless the person:

(A) contributes to or causes the release of contamination; or

(B) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

SECTION 3. Section 361.604(b), Health and Safety Code, is amended to read as follows:

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup; ~~and~~

(ii) the site; and

(iii) whether the voluntary cleanup is subject to

Section 361.6035;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of \$1,000; and

(4) be submitted according to schedules set by commission rule.

SECTION 4. (a) This Act takes effect on the later of:

(1) September 1, 1997; or

(2) the date the Texas Natural Resource Conservation Commission enters into a memorandum of agreement with the United States Environmental Protection Agency, Region 6, authorizing the inclusion of certain potentially responsible parties to the group of persons eligible to participate in the the voluntary cleanup program established by Subchapter S, Chapter 361, Health and Safety Code, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995.

(b) The Texas Natural Resource Conservation Commission shall publish the memorandum of agreement described by Subsection (a) of this section in the Texas Register.

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

**HB 2837 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2837, A bill to be entitled An Act relating to certain filing fees and salaries of judges in the statutory county courts of certain counties.

Representative Thompson 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 2837**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2837**: Thompson, chair, Clark, Dutton, Hinojosa, and Serna.

**HB 2850 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2850, A bill to be entitled An Act relating to the exclusion from emergency service districts and rural fire prevention districts of certain territory subject to ad valorem assessments.

Representative Williams 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 2850**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2850**: Williams, chair, Christian, Denny, Flores, and Kamel.

**HB 2914 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2914, A bill to be entitled An Act relating to the conveyance by the General Land Office of the state's interest in certain real property.

Representative Stiles 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 2914**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2914**: Stiles, chair, Hightower, Place, Price, and Ramsay.

**HB 3545 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3545, A bill to be entitled An Act relating to the statutory county courts in Cameron County.

On motion of Representative Oliveira, the house concurred in the senate amendments to **HB 3545**.

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

Strike Section 3 of **HB 3545** and replace as follows:
Section 3. This Act takes effect September 1, 1997.

**HB 3602 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3602, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Wintergarden Groundwater Conservation District.

On motion of Representative King, the house concurred in the senate amendments to **HB 3602** by (Record 599): 138 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Bosse; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Corte; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Davis; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; 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.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Merritt; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Olivo; Palmer; Patterson; Pickett; Pitts; Place; Price; Rabuck; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Smith; Smithee; Solis; Solomons; Staples; Stiles; Swinford;

Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; West; Williams; Williamson; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Cook; Counts; Lewis, R.; Puente; Walker.

Absent — Brimer; Flores; Haggerty; Oliveira; Siebert.

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

Amend **HB 3602** as follows:

In SECTION 5 of the bill, add a new subsection (c) to read as follows:

(c) Notwithstanding Subsection (a) of this Section, the following provisions prevail over a conflicting or inconsistent provision in this Act:

- (1) Sections 36.107-36.108, Water Code;
- (2) Sections 36.159-36.161, Water Code; and
- (3) Subchapter I, Water Code.

HJR 31 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HJR 31, A joint resolution proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

HJR 31 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE EHRHARDT: As a member of the House Financial Institutions Committee, the committee which intensively reviewed the home equity issue and developed the basic home equity bill, and a cosigner on that bill, I would respectfully request an opportunity to provide some background and legislative intent for **HJR 31**, the constitutional amendment creating home equity lending in Texas, subject to voter approval.

One of the key issues which has been hotly debated is how to protect consumers in default from losing their homes wrongly while at the same time providing a commercially reasonable foreclosure procedure. Consumers need a forum for their grievances—if any—while lenders need an efficient mechanism to protect their institutions and the public which uses them from loss.

At this time, **HJR 31** contains a requirement that the Supreme Court of Texas develop an expedited procedure for judicial foreclosure of home equity liens. This bare statement was inserted at least in part because of a concern that the constitution should not contain civil procedural detail. A judicial review procedure should be developed with input from a variety of experts, including representatives from the consumers as well as the lending community, to provide a good framework and starting point for the supreme court. At this time, I would like to make clarification of that procedure a part of the official legislative record and recommend to the supreme court that they incorporate the following into their product.

Our goal is to protect, inform, and alert consumers in a streamlined way which is not burdensome in attorneys' fees or time for either the consumer or lender. Now I would like to ask some questions of the authors which I believe would clarify matters.

Is this meant to be a gold mine for attorneys or cost an arm and a leg for either party?

REPRESENTATIVE WOLENS: No.

EHRHARDT: Shouldn't this be written in words that ordinary homeowners can understand?

WOLENS: I would hope so, but I have reviewed the Texas Rules of Civil Procedure and they are still awfully confusing, but if they could, God bless those on the supreme court.

EHRHARDT: Shouldn't we be able to develop a simple procedure that would not require the debtor to hire an attorney?

WOLENS: I am for every and any procedure that will cut a lawyer out of the process. If you could make all these processes easier, it would be great with me.

EHRHARDT: If everyone agrees that the debt is in default and the debtor doesn't have a grievance, shouldn't there be a procedure to conclude this process quickly?

WOLENS: As long as we have judicial foreclosure and due process, I am all for whatever they can do in the supreme court to expedite and streamline the process.

EHRHARDT: Are there other states who maybe use a simple process which we could use as a model? Could we possibly use a JP court close to everyone's home and place of business? We could ask the panel to explore these that other states use that are not burdensome.

WOLENS: Yes, we could certainly explore that.

EHRHARDT: Do we need a full blown court proceeding with trial and witnesses or could we have a simple review to determine whether there are any problems? Then if there is a problem, couldn't we go into a further regular court procedure at that time?

WOLENS: I am answering in the affirmative to each of the several parts of that question.

EHRHARDT: Thank you very much, I really appreciate the work that has gone into this.

REMARKS ORDERED PRINTED

Representative Danburg moved to print remarks by Representatives Ehrhardt and Wolens establishing legislative intent for **HJR 31**.

The motion prevailed without objection.

(Cook, R. Lewis, Puente, and Walker now present)

HJR 31 - REMARKS BY REPRESENTATIVE TELFORD

Mr. Speaker, members, I know you are getting tired, but this has been in our constitution for 150 years—I think we can give our ancestors a moment. I too, want to congratulate Kenny Marchant—my friend, Pete Patterson—my friend and neighbor, Representative Danburg, and Representative Wolens, they've worked hard. I am sure some of them are wondering why I would get up here. I've been in this body for 11 years and this is the first time I've ever gotten to the front mike and opposed anybody's legislation—I have asked questions from the back. But I couldn't just sit there and not say anything. I have heard from the consumer groups and others that this is as good as it gets. It may be, but that is also saying, it is as good as it gets because we're going to change something pretty good and that's just as good as it gets. Members, I am not going to stand here and tell you by not concurring I will support this legislation if it comes back—I won't. I've never supported this change and Representative Danburg is right. I am a traditionalist, I am rural, but I am also that third group she talked about—I am concerned about the people of this state. When I came here in 1987 the bankers brought this to us and other financial people and they ran it up the flagpole; and I want you to know that they ran it back down in a New York second. Why? Because we were in the middle of some pretty hard economic times in 1987. People were losing their businesses, people were losing their farms, people were losing their homes, but you know they couldn't use a home that they had paid for—they couldn't go out there and gamble it away. You see, you don't go broke overnight, you go broke like somebody strangles you—a little bit at a time. And if you're going broke, they realized that all a banker had to do was just raise an eyebrow and you'd figure out how to mortgage your home because most people are optimistic. They realized real quickly that this body and the senate were not going to change this law in 1987 and so what did they do? They said, I tell you what let's do—let's go back and educate the public. But the public didn't need educating until we had a bunch of banks from other states come in and they found out they couldn't do what they do in other states. So they were going to go out and educate us. Let's call it what it really was—utter propaganda for ten years. Now, comes along today. We are having pretty good economic times. Exactly what they thought would happen. We don't remember the tough times particularly. Now let's run it up the flagpole, now let's talk about liberty and what I can do with what's mine. I realize, and I want to say that I appreciate, the safety net that is built into this constitutional amendment. They have put a lot of things in the constitution...do you wonder why that is? I'll tell you why that is, it is because the people that really want this realize there is something fundamentally wrong, just in your gut you know there is something fundamentally wrong when we have to protect ourselves this way. And our forefathers understood that, that's the reason they put it in the constitution that's the reason it's been here for 158 years.

We talk about let's let the people decide. That sounds good. But let me tell you what's going to happen—you know it as well as I do—the people don't stand a damn chance. They're going to hit the television and the newspapers and they're going to put out the mailers and the people who are going to suffer can't afford to match them. Don't say let the people decide, because they don't stand a cotton-pickin' chance.

Yes, we're also voting on enabling legislation, I suppose we've done that before. I want to congratulate them for trying to protect us in that bill. I think they probably have, to a degree. I guess I couldn't let the day pass without just saying I kind of like some things about the old Texas. You know, even during the depression we had our homesteads protected. I can tell you one thing, if you don't believe those gentlemen won't take your home, go back and read The Grapes of Wrath. I can't match some of my colleagues on the intimate knowledge of the law, but members, if it takes this much protection, we don't need to just turn this conference committee report down, we need to turn this idea down.

LEAVE OF ABSENCE GRANTED

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

Hupp on motion of Staples.

HJR 31 - (consideration continued)

On motion of Representative Patterson, the house concurred in the senate amendments to **HJR 31** by (Record 600): 116 Yeas, 25 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berlanga; Bonnen; Brimer; Burnam; Carter; Chavez; Christian; Clark; Coleman; Cook; Corte; Crabb; Craddock; Cuellar; Culberson; Danburg; Davila; Davis; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Flores; Gallego; Garcia; Giddings; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hinojosa; Hirschi; Hochberg; Holzhauser; Horn; Hunter; Isett; Jackson; Janek; Jones, J.; Kamel; Keel; Keffer; Krusee; Kuempel; Lewis, G.; Luna; Madden; Marchant; Maxey; McCall; McClendon; McReynolds; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Olivo; Palmer; Patterson; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna, E.; Rhodes; Roman; Sadler; Seaman; Serna; Shields; Siebert; Smith; Solis; Solomons; Staples; Stiles; Thompson; Tillery; Torres; Turner, S.; Van de Putte; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Alvarado; Bosse; Chisum; Delisi; Finnell; Galloway; Hawley; Howard; Jones, D.; Junell; King; Kubiak; Lewis, R.; Longoria; Merritt; Pitts; Reyna, A.; Smithee; Swinford; Talton; Telford; Turner, B.; Uher; Walker; Williamson.

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

Absent, Excused — Hupp.

Absent, Excused, Committee Meeting — Counts.

Absent — Glaze; Gray; Moffat; Pickett.

STATEMENTS OF VOTE

When Record No. 600 was taken, I was in the house but away from my desk. I would have voted yes.

Gray

I was shown voting present, not voting on Record No. 600. I intended to vote yes.

Hodge

When Record No. 600 was taken, I was absent because of important business in the district. Had I been present, I would have voted yes.

Hupp

When Record No. 600 was taken, I was in the house but away from my desk. I would have voted yes.

Pickett

REMARKS ORDERED PRINTED

Representative Burnam moved to print remarks by Representative Telford regarding **HJR 31**.

The motion prevailed without objection.

Senate Amendment No. 1

Amend **HJR 31** as follows:

Strike all below the resolving clause and substitute the following:

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 50. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) [;] the taxes due thereon;

(3) [;] an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) [;] the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) [~~;~~ ~~or for~~] work and material used in constructing improvements thereon, if [~~and in this last case only when~~] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; or

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created

under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1) - (a)(5) of this section;

(L) is scheduled to be repaid in substantially equal successive monthly installments beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section; and

(ii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found

by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; or

(iii) a person licensed to make regulated loans, as provided by statute of this state; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession or judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; and

(x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply; or

(7) a reverse mortgage.

(b) An [not may the] owner or claimant of the property claimed as

homestead may not~~[, if married,]~~ sell or abandon the homestead without the consent of each owner and the [other] spouse of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, ~~[except for a debt described by this section,]~~ whether such mortgage, ~~[or]~~ trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1) - (a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT

DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80% OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR

YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD:

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS." If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

(1) the security instruments securing the extension of credit contain a disclosure that the extension of credit secured by the lien was the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)-(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the

United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(i) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;

(2) that is made to a person who is or whose spouse is 55 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower based on the equity in a borrower's homestead;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) the homestead property securing the loan is sold or otherwise transferred; or

(B) all borrowers cease occupying the homestead property as a principal residence for more than 180 consecutive days and the location of the homestead property owner is unknown to the lender;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents, the lender forfeits all principal and interest of the reverse mortgage; and

(8) that is not made unless the owner of the homestead attests in writing that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives.

(l) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reversed mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reversed mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

(1) a limitation on the purpose and use of future advances or other mortgage proceeds;

(2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;

(3) a limitation on the term during which future advances take priority over intervening advances;

(4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;

(5) a prohibition on balloon payments;

(6) a prohibition on compound interest and interest on interest;

(7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and

(8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made at regular intervals according to a plan established by the original loan agreement.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary consensual encumbrance on homestead property.

(b) The constitutional amendment takes effect January 1, 1998.

(c) This temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead."

Senate Amendment No. 2

Amend the Patterson amendment to **HJR 31** on page 15, line 22 by adding a new section (r) as follows:

(r) the Supreme Court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section.

Senate Amendment No. 3

Amend the Patterson amendment to **HJR 31** on page 1, line 18 by striking section (5) and replacing it with a new section (5) as follows:

(5) ~~[-, or for]~~ work and material used in constructing improvements thereon, ~~if [and in this last case only when]~~ the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead. Such a contract shall not be executed until 12 days after an owner of the homestead initiates a loan application, and any such contract may be rescinded by any owner of the homestead within three days after its execution by all parties without penalty or charge, and may not be executed in any location other than the office of a lender, an attorney at law, or a title company; or

Senate Amendment No. 4

Amend Amendment No. 1 to **HJR 31** as follows:

On page 4, between lines 23 and 24 add new Subsections (a)(6)(P)(iv) and (a)(6)(P)(v) to read as follows:

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase.

(v) A person who is related to the homestead property owner within the second degree of affinity or consanguinity.

Senate Amendment No. 5

Amend Floor Amendment No. 1 to **HJR 31** Section 50, Article XVI, Texas Constitution, by adding a new section (____) to read as follows:

(____) The Finance Commission shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this Section. The director shall report his or her findings to the Legislature not later than December 1 of each year.

Senate Amendment No. 6

Amend the Barrientos amendment to the Patterson floor amendment to **HJR 31** by striking everything below the amendment clause and substituting the following:

(5) ~~[-, or for]~~ work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if: [and in this last case only when]

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner makes written application for any extension of credit for the work and material, unless

the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

MESSAGE FROM THE GOVERNOR

I hereby agree to return **HB 1200** to the house of representatives for further consideration at the request of the legislature presented by **HCR 300**.

Article IV, Section 14, of the Texas Constitution directs when and how the governor can approve or veto any bill passed by both houses of the legislature. In this instance, the governor has taken no action on **HB 1200** and the legislature has requested by **HCR 300** that **HB 1200** be returned to the house of representatives. Pursuant to established case law, and while under no obligation to comply with the request, **HB 1200** is hereby returned to the house of representatives for further consideration.

Governor George W. Bush

May 28, 1997

(Hupp now present)

HB 1200 - VOTE RECONSIDERED

Representative Cuellar moved to suspend all necessary rules and reconsider the vote by which the house concurred in senate amendments to **HB 1200** on May 20.

The motion to reconsider prevailed.

HB 1200 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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 not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1200**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1200**: Cuellar, chair, Junell, Keel, Oakley, and Pitts.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Public Health, on recess today, Desk 138, to consider **HR 1057**.

Conference committee on **SB 370**, 2 p.m. today, E1.012, Capitol Extension.

RECESS

Speaker Laney moved that the house recess until 5 p.m. today.

The motion prevailed without objection.

The house accordingly, at 1:55 p.m., recessed until 5 p.m. today.

AFTERNOON SESSION

The house met at 5 p.m. and was called to order by the speaker.

HR 1260 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1260**, suspending the limitations on the conferees for **SB 1907**.

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 1223 - ADOPTED (by Cook)

Representative Cook moved to suspend all necessary rules to take up and consider at this time **HR 1223**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1223, Honoring Patrick and Helen Hlavaty for their five years of service to the State Firemen and Fire Marshals' Association and Texas Firemen's Auxiliary.

HR 1223 was adopted without objection.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Palmer requested permission for the conference committee on **HB 2086** to meet while the house is in session.

Permission to meet was granted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Conference committee on **HB 2086**, 5:15 p.m. today, lieutenant governors committee room.

**HB 1476 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1476, A bill to be entitled An Act relating to actions and records of the receiver and the priorities of distribution of certain assets of insurance companies in receivership.

On motion of Representative Bonnen, the house concurred in the senate amendments to **HB 1476**.

Senate Committee Substitute

CSHB 1476, A bill to be entitled An Act relating to actions and records of the receiver and the priorities of distribution of certain assets of insurance companies in receivership.

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

SECTION 1. Section 2, Article 21.28, Insurance Code, is amended by adding Subsection (l) to read as follows:

(l) Actions by Receiver. When performing the duties of receiver under this Article, the commissioner, a special deputy receiver, or an agent or employee of the commissioner, or a special deputy receiver shall be considered to be acting on behalf of the receivership estate, and the provisions of Chapter 105, Civil Practices and Remedies Code shall, not apply to any actions taken pursuant to this Article.

SECTION 2. Section 6, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 6. ~~EMPLOYEES [PRIORITY OF CLAIMS FOR WAGES]. [All wages actually owed to employees of an insurer against whom a proceeding under this Article is commenced, for services rendered within three (3) months prior to the commencement of such proceeding not exceeding One Thousand Dollars (\$1,000) to each employee shall be paid by the receiver as provided by Subsection (a) of Section 8 of this Article.]~~ The receiver shall pay wages actually owed to employees of an insurer against whom a temporary restraining order has been issued under this Article for services rendered during the period covered by the temporary restraining order as a Class 1 claim as provided by Section 8(a) of this Article. Payment for those services must be made at the rate and in the same manner as if paid by the insurer. The receiver may pay wages actually owed to employees of an insurer against whom a temporary injunction has been issued under this Article for services rendered after the issuance of the temporary injunction. Payment for those services is made at the discretion of the receiver and as an expense of administration.

SECTION 3. Section 8(a), Article 21.28, Insurance Code, is amended to read as follows:

(a) Priority of Distribution of Assets. (1) In order to provide for the orderly liquidation of a receivership estate and to further the protection of policyholders and those making claims under insurance policies, the following priorities are established. The priority of distribution of assets from the insurer's estate shall be in accordance with the disbursement plan approved by the court

under ~~[pursuant to]~~ Section 7A of this Article, and in accordance with the order of each class as provided by this subsection. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class.

(2) Classes of claims:

(A) Class 1:[-]

(i) ~~[(+)]~~ All of the receiver's, conservator's, and supervisor's costs and expenses of administration, including repayment of funds advanced to the receiver from the abandoned property fund of the department ~~[State Board of Insurance]~~.

(ii) ~~[(2)]~~ All of an insurance guaranty association's or foreign insurance guaranty association's costs and expenses of administration related to a receivership estate and all of the expenses of an insurance guaranty association or foreign insurance guaranty association in handling claims. For the purpose of this subparagraph ~~[subdivision]~~, attorney's fees incurred by an insurance guaranty association or foreign insurance guaranty association in the defense of an insured under a policy issued by an impaired insurer constitute an expense incurred in handling claims.

(iii) ~~[(3) Wages owed to employees of the insurer as provided for in Section 6 of this Article.]~~

~~[(4)]~~ Secured creditors to the extent of the value of the security as provided by Section 8(c) of this Article.

(B) Class 2:[-]

(i) ~~[(+)]~~ All claims by policyholders, beneficiaries, insureds, and liability claims against insureds covered under insurance policies and insurance contracts issued by the insurer.

(ii) ~~[(2)]~~ All claims by an insurance guaranty association or a foreign insurance guaranty association that are payments of proper policyholder claims.

(C) Class 3: Claims of the federal government not included in Class 2, above.

(D) Class 4: All other claims of general creditors not falling within any other priority under this section including claims for taxes and debts due ~~[the federal government or]~~ any state or local government which are not secured claims.

(E) Class 5: ~~[-]~~ Claims of surplus or contribution note holders, holders of debentures or holders of similar obligations and proprietary claims of shareholders, members, or other owners according to the terms of the instruments.

(3) If any provision of this subsection or the application of any provision of this subsection to any person or circumstance is held invalid, that invalidity does not affect the other provisions or applications of this subsection.

SECTION 4. Sections 10(a) and (b), Article 21.28, Insurance Code, are amended to read as follows:

(a) Reinsurer's Liability. If the receiver has claims under policies covered by reinsurance, there shall be no diminution of the liability of the reinsurer to the receiver under the contracts reinsured because of the delinquency proceeding

against the delinquent company, regardless of any provisions in the reinsurance contract to the contrary, except: (i) where the contract or other written agreement entered into prior to the delinquency proceeding and otherwise permitted by law specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or (ii) where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer pursuant to an assumption reinsurance agreement as direct obligations of the assuming insurer to the payees under policies and in substitution for the obligations of the ceding insurer to such payees. With the sole exception of (i) and (ii) above, any reinsurance shall be payable to the receiver under a contract reinsured by the assuming insurer on the basis of approved claims under Section 3(h) of this Article and claims paid under Articles 9.48, 21.28-C, and 21.28-D of this code or the guaranty associations of other states.

(b) Notice to Reinsurer. The liquidator or receiver shall give written notice to the affected reinsurers of the pendency of a claim against the receiver under a policy covered by reinsurance within a reasonable time after such claim is filed in the delinquency proceeding. During [and during] the pendency of such claim any affected reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where the claim is to be adjusted any defense or defenses which it may deem available to the delinquent company, the liquidator or the receiver. Subject to court approval, the expense thus incurred shall be chargeable against the delinquent company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the delinquent company solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

SECTION 5. Section 11, Article 21.28, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) Open Records. Chapter 552, Government Code, shall not apply to any records of a receivership estate, or to the records of an insurance company prior to its receivership, held by the receiver or by a special deputy receiver under this Article.

SECTION 6. This Act takes effect September 1, 1997.

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

**HB 2437 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2437, A bill to be entitled An Act relating to the Texas Property and Casualty Guaranty Association.

Representative Bonnen 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 2437**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2437**: Bonnen, chair, Averitt, Eiland, G. Lewis, and Wise.

**HB 2384 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2384, A bill to be entitled An Act relating to the provision of charity care, indigent health care, and other community benefits by certain nonprofit hospitals.

Representative Delisi 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 2384**.

The motion prevailed without objection.

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 2384**: Delisi, chair, Berlanga, Coleman, Glaze, and Janek.

(Counts now present)

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today to attend a meeting of the conference committee on **SB 370**:

Bosse on motion of R. Lewis.

Alexander on motion of R. Lewis.

Davis on motion of R. Lewis.

Gray on motion of R. Lewis.

Hill on motion of R. Lewis.

**HR 1260 - ADOPTED
(by Swinford)**

The speaker laid before the house the following privileged resolution:

HR 1260

BE IT RESOLVED by the House of Representatives of the State of Texas, 75th Legislature, Regular Session, 1997, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 1907** to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add new SECTIONS of the bill to read as follows:

SECTION 1.07. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0595 to read as follows:

Sec. 61.0595. FUNDING FOR CERTAIN EXCESS UNDERGRADUATE CREDIT HOURS. (a) In the formulas established under Section 61.059, the board may not include funding for semester credit hours earned by a resident undergraduate student who before the semester or other academic session begins has previously attempted 170 or more semester credit hours for courses taken at any institution of higher education while classified as a resident student for tuition purposes.

(b) Subsection (a) does not apply to a student enrolled in:

(1) two or more baccalaureate degree programs at the same time;

(2) a double major degree program that requires 130 or more semester credits for completion; or

(3) a health professional baccalaureate degree program.

(c) For a student enrolled in a baccalaureate program under Section 51.931, semester credit hours earned by the student 10 or more years before the date the student begins the new degree program under Section 51.931 are not counted for purposes of determining whether the student has previously earned the number of semester credit hours specified by Subsection (a).

(d) The following are not counted for purposes of determining whether the student has previously earned the number of semester credit hours specified by Subsection (a):

(1) semester credit hours earned by the student before receiving a baccalaureate degree that has previously been awarded to the student;

(2) semester credit hours earned by the student by examination or under any other procedure by which credit is earned without registering for a course for which tuition is charged;

(3) credit for a remedial education course or another course that does not count toward a degree program at the institution; and

(4) semester credit hours earned by the student at a private institution or an out-of-state institution.

SECTION 1.08. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.068 to read as follows:

Sec. 54.068. TUITION FOR EXCESSIVE UNDERGRADUATE HOURS. An institution of higher education may charge a resident student tuition at a higher rate than the rate charged to other resident students, not to exceed the rate charged to nonresident students, for a course for which Section 61.0595 requires the coordinating board to exclude funding for the semester credit hours for which the student registers if the student has previously attempted 170 or more semester credit hours. In its appropriations to institutions of higher education, the legislature shall compute the local funds available to each institution as if the tuition collected under this section were not collected.

SECTION 1.09. Subchapter A, Chapter 54, Education Code, is amended by adding Section 54.0065 to read as follows:

Sec. 54.0065. TUITION REBATE FOR CERTAIN UNDERGRADUATES. (a) A qualified student is eligible for a rebate of a portion of the undergraduate tuition the student has paid if the student:

(1) is awarded a baccalaureate degree from a general academic teaching institution; and

(2) has attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree, including transfer credits and course credit earned exclusively by examination.

(b) The amount of tuition to be rebated to a student under this section is \$1,000, unless the total amount of undergraduate tuition paid by the student to the institution of higher education awarding the degree was less than \$1,000, in which event the amount of tuition to be rebated is an amount equal to the amount of undergraduate tuition paid by the student to the institution. However, a student who paid the institution awarding the degree an amount of undergraduate tuition less than \$1,000 may qualify for an increase in the amount of the rebate, not to exceed a total rebate of \$1,000, for any amount of undergraduate tuition the student paid to other institutions of higher education by providing the institution with proof of the total amount of that tuition paid to other institutions of higher education.

(c) A student who has transferred from another institution of higher education shall provide the institution awarding the degree an official transcript from each institution attended by the student in order that the total number of hours attempted by the student can be verified.

(d) To qualify for a rebate under this section, the student must have been a resident of this state and entitled to pay tuition at the rate provided by this chapter for a resident student at all times while pursuing the degree.

(e) All institutions of higher education shall notify each first-time freshman student of the tuition rebate program.

(f) The institution awarding the degree shall pay the rebate under this section from local funds.

(g) If a student entitled to a rebate under this section has an outstanding student loan, including an emergency loan, owed or guaranteed by this state, including the Texas Guaranteed Student Loan Corporation, the institution shall apply the amount of the rebate to the student's loan. If a student has more than one outstanding loan, the institution shall apply the amount of the rebate to the loans as directed by the student or, if the student fails to provide timely instructions on the application of the amount, the institution shall apply the amount of the rebate to the loans according to priorities established by the coordinating board. If the amount of the rebate exceeds the amount of the loan indebtedness, the institution shall pay the student the excess amount.

(h) The legislature shall account in the General Appropriations Act for the rebates authorized by this section in a way that provides a corresponding increase in the general revenue funds appropriated to the institution. It is the intent of the legislature that rebates authorized by this section shall be financed by savings to the state resulting from reductions in the number of courses taken by undergraduate students.

(i) The coordinating board, in consultation with the institutions of higher education, shall adopt rules for the administration of this section.

Explanation: This change is necessary in order to discourage the accumulation of unnecessary semester credit hours by undergraduates at the expense of the state and to provide an incentive to students to complete their degree plan on time.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add new SECTIONS of the bill to read as follows:

SECTION 1.10. Subsection (a), Section 54.5131, Education Code, is amended to read as follows:

(a) The board of regents of The University of Texas System may charge and collect from students registered at The University of Texas at Austin a fee of \$2 if approved by the students in a student referendum [~~\$1~~] for any semester or summer session. The fee may be increased to an amount not to exceed \$4 if approved by the students in a student referendum. The fee may be used only for funding an international education program [~~financial aid fund~~] to be used to assist students participating in international student exchange or study programs.

SECTION 1.11. Section 54.532, Education Code, is amended to read as follows:

Sec. 54.532. STUDENT UNION BUILDING FEES; THE UNIVERSITY OF TEXAS AT SAN ANTONIO. (a) The board of regents of The University of Texas System may levy a student union fee of not less than \$20 or more than \$75 for each semester or summer session, assessed in proportion to the number of credit hours for which a student registers, [~~not to exceed \$30 per student for each regular semester and not to exceed \$15 per student for each term of the summer session;~~] for the sole purpose of financing, [~~constructing;~~] operating, maintaining, and improving a student union building for The University of Texas at San Antonio. This fee may be levied in addition to any other use or service fee. [~~Furthermore, the fee may be levied only upon an affirmative vote of a majority of the student body voting of The University of Texas at San Antonio.~~]

(b) The fees collected under Subsection (a) of this section shall be deposited to an account known as The University of Texas at San Antonio University Center Fee Account and shall be placed under the control of and subject to the order of the university center advisory committee. The committee shall annually submit to the president of The University of Texas at San Antonio a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident to those activities. The president shall submit the budget to the board of regents as part of the institutional budget. The board of regents shall make such changes in the budget as it deems necessary before approving the budget[~~, but only after a student referendum has been called on the issue of increase in the fee, and the issue has been approved by a majority of the students voting in the election~~]. The board shall then levy the fees, within the limits fixed in this section, in such amounts as will be sufficient to meet the budgetary needs of the student union building.

(c) The board may not increase the amount of the student union fee by more than 10 percent in any academic year unless the amount of the increase is approved by a majority of the students voting in an election held for that purpose and by a majority of the student government of the institution.

Explanation: This change is necessary in order to allow the board of regents of The University of Texas System to increase the student union building fees at The University of Texas at San Antonio and to increase the international education fee at The University of Texas at Austin.

(3) House Rule 13, Sections 9(a)(1), (3), and (4), are suspended to permit the committee to add the following new SECTION 3.02(b) of the bill to read as follows:

(b) Except as otherwise provided in this section, the changes in law made by this Act apply beginning with tuition and fees charged for the 1997 fall semester. Section 54.068, Education Code, as added by this Act, applies beginning with tuition charged for the 1999 fall semester. Section 54.0065, Education Code, as added by this Act, applies only to students entering a baccalaureate degree program on or after September 1, 1997. Section 61.0595, Education Code, as added by this Act, applies to funding beginning with the 1999 fall semester.

Explanation: This change is necessary in order to provide dates for implementing the changes in law made in Subdivision (1) of this resolution.

HR 1260 was adopted without objection.

HR 1255 - ADOPTED
(by Merritt)

Representative Bonnen moved to suspend all necessary rules to take up and consider at this time **HR 1255**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1255, Congratulating Meredith Austin Merritt on her graduation from Longview High School.

HR 1255 was adopted without objection.

HB 2909 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 2909, A bill to be entitled An Act relating to persons eligible for a license to carry a concealed handgun, to the rights and duties of license holders, and to certain offenses involving weapons.

On motion of Representative Carter, the house concurred in the senate amendments to **HB 2909**.

Senate Amendment No. 1

Amend **HB 2909** on page 1, line 12 of the Senate Committee Report by inserting a new Section 1 and renumbering the following sections as follows:

Section 1. Section 1(4), Article 4413(29ee), Revised Statutes is amended to read as follows:

(4) "Convicted" means an adjudication of guilt or an order of deferred adjudication entered against a person by a court of competent jurisdiction whether or not:

(A) the imposition of the sentence is subsequently probated and the person is discharged from community supervision. The term does not include an adjudication of guilt or an order of deferred adjudication which has been subsequently:

(A) expunged, or

(B) pardoned under the authority of a state or federal official.;

or

~~(B) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.~~

Senate Amendment No. 2

Amend **HB 2909** on page 5, line 59 of the Senate Committee Report by inserting a new Section 11 and renumbering the following sections as follows:

SECTION 11. Article 4413(29ee), Section 28, Revised Statutes, is amended as follows and a new Section 28A is added to read as follows:

Sec. 28. HONORABLY RETIRED PEACE OFFICERS. (a) A person who is licensed as a peace officer under Chapter 415, Government Code, and who has been employed full-time as a peace officer by a law enforcement agency may apply for a license under this article on retirement. The application must be made not later than the first anniversary after the date of retirement.

(b) The person shall submit two complete sets of legible and classifiable fingerprints and a sworn statement from the head of the law enforcement agency employing the applicant. No head of a law enforcement agency may refuse to issue a statement under this subsection. If the statement is alleged by the applicant to be untrue, the Department shall investigate the validity of the statement. The statement shall include:

- (1) the name and rank of the applicant;
- (2) the status of the applicant before retirement;
- (3) whether or not the applicant was accused of misconduct at the time of the retirement;
- (4) the physical and mental condition of the applicant;
- (5) the type of weapons the applicant had demonstrated proficiency with during the last year of employment;
- (6) whether the applicant would be eligible for reemployment with the agency, and if not, the reasons the applicant is not eligible; and
- (7) a recommendation from the agency head regarding the issuance of a license under this article.

(c) The department may issue a license under this article to an applicant under this section if the applicant is honorably retired and physically and emotionally fit to possess a handgun. In this subsection, "honorably retired" means the applicant:

- (1) did not retire in lieu of any disciplinary action;
- (2) was employed as a full-time peace officer for not less than 10 years by one agency; and
- (3) is entitled to receive a pension or annuity for service as a law enforcement officer.

(d) An applicant under this section shall pay a fee of \$25 for a license issued under this article.

(e) A retired peace officer who obtains a license under this article must maintain, for the category of weapon licensed, the proficiency required for a peace officer under Section 415.035, Government Code. The department or a local law enforcement agency shall allow a retired peace officer of the

department or agency an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal.

(f) A license issued under this section expires as provided by Section 9 of this article.

(g) A retired ~~criminal investigator~~ officer of the United States who is ~~designated as a "special agent"~~ was eligible to carry a firearm in the discharge of his official duties is eligible for a license under this section. An applicant described by this subsection may submit the application at any time after retirement. The applicant shall submit with the application proper proof of retired status by presenting the following documents prepared by the agency from which the applicant retired:

(1) retirement credentials; and

(2) a letter from the agency head stating the applicant retired in good standing.

Sec. 28A. ACTIVE PEACE OFFICERS. (a) A person who is licensed as a peace officer under Chapter 415, Government Code, and is employed full time as a peace officer by a law enforcement agency may apply for a license under this article. The person shall submit to the department two complete sets of legible and classifiable fingerprints and a sworn statement of the head of the law enforcement agency employing the applicant. No head of a law enforcement agency may refuse to issue a statement under this subsection. If the statement is alleged by the applicant to be untrue, the Department shall investigate the validity of the statement. The statement must include:

(1) the name and rank of the applicant;

(2) whether the applicant has been accused of misconduct at any time during the applicant's period of employment with the agency and the disposition of that accusation;

(3) a description of the physical and mental condition of the applicant;

(4) a list of the types of weapons the applicant has demonstrated proficiency with during the preceding year; and

(5) a recommendation from the agency head that a license be issued to the person under this article.

(b) The department may issue a license under this article to an applicant under this section if the statement from the head of the law enforcement agency employing the applicant complies with Subsection (a) of this section and indicates that the applicant is qualified and physically and mentally fit to carry a handgun.

(c) An applicant under this section shall pay a fee of \$25 for a license issued under this article.

(d) A license issued under this section expires as provided by Section 9 of this article.

Senate Amendment No. 3

Amend **HB 2909** on page 5, line 15 of the Senate Committee Report by inserting a new Section 9 and renumbering the following sections as follows:

Section 9. Section 16(a), Article 4413(29ee), Revised Statutes is amended to read as follows:

(a) The director shall by rule establish minimum standards for handgun proficiency and shall develop a course to teach handgun proficiency and examinations to measure handgun proficiency. The course to teach handgun proficiency must contain training sessions divided into two parts. One part of the course must be classroom instruction and the other part must be range instruction and an actual demonstration by the applicant of the applicant's ability to safely and proficiently use the category of handgun for which the applicant seeks certification. An applicant may not be certified unless the applicant demonstrates, at a minimum, the degree of proficiency that is required to effectively operate a ~~9-millimeter or .38-caliber~~ handgun of .32 caliber or above. The department shall distribute the standards, course requirements, and examinations on request to any qualified handgun instructor.

Senate Amendment No. 4

Amend Senate Committee Report on **HB 2909** as follows:

1. On page 9, line 5, insert a new Subsection (c)(3) as follows:

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by holder of license to carry a concealed handgun), a person licensed under Article 4413(29ee), Revised Statutes (concealed handgun law), may not enter this property with a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

Senate Amendment No. 5

Amend **HB 2909** on page 10, line 41 of the Committee Report by inserting a new Section 24 and renumbering the following sections as follows:

Section 24. Amend Section 46.035 of the Penal Code by inserting a new section (i) as follows:

(i) Subsections (b)(4), (b)(5), (b)(6), and (c) do not apply if the actor was not given effective notice under section 30.06 of this chapter.

Senate Amendment No. 6

Amend **HB 2909** on page 8, line 67 by deleting the word "and" and inserting in lieu thereof the word "or".

Senate Amendment No. 7

Amend **HB 2909** as follows:

In SECTION 2 of the bill, in subsection (d)(3), insert the following after the words "licensed physician":

"whose primary practice is in the field of psychiatry"

Senate Amendment No. 8

Amend **HB 2909** as follows:

(1) In SECTION 24, in amended Section 46.15, Penal Code, (House engrossment, page 10, lines 44-47), strike Subsection (a) and substitute the following:

"(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers and neither section prohibits a peace officer from carrying a weapon in this state, regardless of whether the officer is engaged in the actual discharge of the officer's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty; or

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code."

(2) Add appropriately numbered SECTIONS to the bill to read as follows and renumber existing SECTIONS accordingly:

SECTION __. Chapter 76, Government Code, is amended by adding Section 76.0051 to read as follows:

Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. An officer is authorized to carry a weapon while engaged in the actual discharge of the officer's duties only if:

(1) the officer possesses a certificate of firearm proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 415.038; and

(2) the director of the department and the judges participating in the management of the department agree to the authorization.

SECTION __. Subchapter B, Chapter 415, Government Code, is amended by adding Section 415.038 to read as follows:

Sec. 415.038. FIREARMS PROFICIENCY; SUPERVISION OFFICERS.

(a) The commission and the Texas Department of Criminal Justice shall adopt a memorandum of understanding that establishes their respective responsibilities in developing a basic training program in the use of firearms by community supervision and corrections department officers and parole officers. The memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of officers;

(2) range firing and procedure, and firearms safety and maintenance;
and

(3) other topics determined by the commission and the division to be necessary for the responsible use of firearms by officers.

(b) The commission and the department by rule shall adopt the memorandum of understanding establishing the basic training program.

(c) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each community supervision and corrections department officer or parole officer the commission determines has successfully completed the program described by Subsection (a).

(d) The commission may establish reasonable and necessary fees for the administration of this section.

SECTION _____. The Commission on Law Enforcement Officer Standards and Education and the Texas Department of Criminal Justice shall adopt the memorandum of understanding required by Section 415.038, Government Code, as added by this Act, not later than January 1, 1998.

Senate Amendment No. 9

Amend the Shapiro amendment to **HB 2909** on line 24 of page 1 by striking the period and inserting a new subsection (4) as follows:

(4) a judge or justice of the Supreme Court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court, who is licensed to carry a concealed handgun under Article 4413(29ee), Revised Statutes;

HR 1257 - ADOPTED (by Pitts)

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **HR 1257**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1257, Congratulating Sarah Wohlgemuth on being named Calvary Academy's 1997 valedictorian.

HR 1257 was adopted without objection.

On motion of Representative Goolsby, the names of all the members of the house were added to **HR 1257** as signers thereof.

SB 148 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Rangel, the house granted the request of the senate for the appointment of a conference committee on **SB 148**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 148**: Rangel, chair, Cuellar, Kamel, Rabuck, and Solis.

**SB 247 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Smith, the house granted the request of the senate for the appointment of a conference committee on **SB 247**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 247**: Culberson, chair, Hochberg, Rhodes, Williamson, and Wohlgemuth.

**SB 382 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Van de Putte, the house granted the request of the senate for the appointment of a conference committee on **SB 382**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 382**: Smithee, chair, Berlanga, Janek, Naishtat, and Van de Putte.

**SB 414 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Counts, the house granted the request of the senate for the appointment of a conference committee on **SB 414**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 414**: Coleman, chair, Berlanga, Davila, Hirschi, and Longoria.

**SB 627 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Place, the house granted the request of the senate for the appointment of a conference committee on **SB 627**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 627**: Place, chair, Dunnam, Farrar, Hinojosa, and Talton.

**SB 1098 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Counts, the house granted the request of the senate for the appointment of a conference committee on **SB 1098**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1098**: Goodman, chair, Ehrhardt, Giddings, Gutierrez, and Smith.

**SB 1120 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Van de Putte, the house granted the request of the senate for the appointment of a conference committee on **SB 1120**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1120**: Van de Putte, chair, Place, A. Reyna, Talton, and Yarbrough.

**SB 1419 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Rangel, the house granted the request of the senate for the appointment of a conference committee on **SB 1419**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1419**: Rangel, chair, Dutton, Swinford, Uher, and Wilson.

HB 966 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Oakley submitted the following conference committee report on **HB 966**:

Austin, Texas, May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 966** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson	Kuempel
Gallegos	Longoria
Truan	Kamel
Barrientos	Merritt
	Oakley
On the part of the Senate	On the part of the House

HB 966, A bill to be entitled An Act relating to water safety; providing penalties.

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

SECTION 1. Sections 31.003(1) and (7), Parks and Wildlife Code, are amended to read as follows:

(1) "Boat" means a vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer~~[-and manufactured or used primarily for noncommercial use].~~

(7) "Dealer" means a person customarily engaged in the business of buying, selling, or exchanging at least five vessels or outboard motors during a calendar year at an established or permanent place of business in this state and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products.

SECTION 2. Section 31.004, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.004. APPLICATION OF CHAPTER. The provisions of this chapter apply to all public water of this state and to all vessels [~~watercraft~~

~~navigated or moving~~ on the public water. Privately owned water is not subject to the provisions of this chapter.

SECTION 3. Section 31.021(b), Parks and Wildlife Code, is amended to read as follows:

(b) No person may operate or give permission for the operation of any vessel or may dock, moor, or store a vessel owned by the person on the water of this state unless:

(1) the vessel is numbered as required by this chapter;

(2) ~~[-,unless]~~ the certificate of number awarded to the vessel is in full force and effect;~~[-]~~ and

(3) ~~[unless]~~ the identifying number set forth in the certificate is properly displayed on each side of the bow of the vessel.

SECTION 4. Section 31.043, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.043. MANUFACTURER'S IDENTIFICATION ~~[SERIAL]~~ NUMBER. (a) All vessels manufactured for sale in Texas shall carry a manufacturer's hull identification ~~[serial]~~ number clearly imprinted on the structure of the vessel or displayed on a plate permanently attached to the vessel.

(b) The owner of a vessel not required to carry a manufacturer's hull identification ~~[serial]~~ number may file an application for a hull identification ~~[serial]~~ number with the department on forms approved by it. The application must be signed by the owner of the vessel and must be accompanied by a fee of \$2 or an amount set by the commission, whichever amount is more. On receipt of the application in approved form, the department shall enter the information on the records of its office and shall issue to the applicant a hull identification ~~[serial]~~ number.

(c) No person may intentionally or knowingly ~~[willfully]~~ destroy, remove, alter, cover, or deface the manufacturer's hull identification ~~[serial]~~ number or plate bearing the hull identification ~~[serial]~~ number or the hull identification ~~[serial]~~ number issued by the department. No person may possess a vessel with a hull identification number or an outboard motor with a serial number that has been altered, defaced, mutilated, or removed. A person who has a vessel with an altered, defaced, mutilated, or removed hull identification ~~[or missing serial]~~ number or an outboard motor with an altered, defaced, mutilated, or removed serial number shall file a sworn statement with the department describing the vessel or outboard motor, proving legal ownership, and, if known, stating the reason for the destruction, removal, or defacement of the ~~[serial]~~ number.

SECTION 5. Section 31.106, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.106. PERSONAL WATERCRAFT. (a) No person shall operate a personal watercraft in the following manner or under the following circumstances:

(1) unless each person riding on or towed behind the vessel is wearing a U.S. Coast Guard approved Type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch, unless such lanyard is attached to the person, clothing, or personal flotation device of the operator as appropriate for the vessel involved;

- (3) during the period between sunset and sunrise;
 - (4) within 50 feet of any other vessel, person, stationary platform or other object, or shore, ~~[except another personal watercraft, or]~~ except at headway speed;
 - (5) if the operator is under 16 [~~13~~] years of age, unless the operator:
 - (A) is accompanied by a person at least 18 [~~17~~] years of age;
- or

(B) is at least 13 years of age and ~~[the operator]~~ has successfully completed a boating safety course prescribed and approved by the department;

(6) if the personal watercraft is a motorboat, within any area prohibited for operation of a motorboat by state law or local rule or regulation;

(7) while towing water skis, an aquaplane, a surfboard, a tube, or any other similar device, unless the towing vessel is designed to carry on board a minimum of two persons;

(8) by jumping the wake of another vessel recklessly or unnecessarily close to that vessel; or

(9) in a manner that requires the operator to swerve at the last possible moment to avoid collision.

(b) The provisions of this section do not apply to professional exhibitions or an officially sanctioned race, tournament, or exhibition.

(c) Subsection (a)(4) of this section does not prohibit the operation of personal watercraft on bodies of water less than 100 feet in width.

(d) An owner of a personal watercraft permitting a person under 18 years of age to operate the personal watercraft in a manner prohibited by this section may be notified of the violation.

(e) For the purposes of this section, a person is considered to be accompanying the operator of a personal watercraft if the person is on board the personal watercraft when underway.

SECTION 6. Section 31.107, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.107. OPERATION OF MOTORBOAT. No person may operate a motorboat of over 15 horsepower on the public waters of this state unless the person is 16 [~~13~~] years of age or older or:

(1) is accompanied by a person (~~18~~) [~~16~~] years of age or older; or

(2) is at least 13 years of age and has successfully passed a boating safety course prescribed and approved by the department.

SECTION 7. Subchapter D, Chapter 31, Parks and Wildlife Code, is amended by adding Sections 31.108, 31.109, 31.110, and 31.111 to read as follows:

Sec. 31.108. BOATER EDUCATION PROGRAM. (a) The commission shall adopt rules to:

(1) administer a boater education program that is designed to educate persons about the safe operation of vessels;

(2) approve boater education courses that meet or exceed the minimum instruction requirement, as the requirement exists on January 1, 1997, established by the National Association of State Boating Law Administrators;

(3) create an equivalency examination that may be taken, as the

commission determines is consistent with promoting public safety in the operation of vessels, instead of the boater education course; and

(4) ensure that boater education courses and examinations are available in each county.

(b) The commission by rule may create exemptions from boater education requirements imposed by statute to the extent the exemptions are consistent with promoting public safety in the operation of vessels.

(c) The commission by rule shall create a standard form for a boater identification card to be issued to a person who successfully completes a boater education course or course equivalency examination.

(d) The department may appoint agents to:

(1) administer a boater education course or course equivalency examination; and

(2) issue boater identification cards under guidelines established by the commission.

(e) An officer or employee of the department shall collect a \$5 examination or course fee and forward the fee and any examination documentation to the department not later than the 30th day after the date the examination or course is administered.

(f) An agent acting under authority of Subsection (d):

(1) shall collect a \$10 examination or course fee and forward the fee and any examination documentation to the department not later than the 30th day after the date the examination or course is administered; and

(2) may collect and keep a \$3 service fee.

Sec. 31.109. BOATER EDUCATION COURSE REQUIRED FOR CERTAIN PERSONS. (a) This section applies only to a person who is:

(1) born on or after September 1, 1984; and

(2) operating on the public water of this state:

(A) a vessel powered by a motor of 10 horsepower or more;

or

(B) a windblown vessel over 14 feet in length.

(b) A person subject to this section must have in the person's possession:

(1) a photographic identification card; and

(2) a boater identification card issued by the department.

(c) The department shall issue a boater identification card to a person who has successfully completed:

(1) a boater education course approved by the department; or

(2) a course equivalency examination approved by the department.

(d) A boater identification card issued to a person who has successfully completed a boater education course or course equivalency examination does not expire.

(e) Upon proof of completion of a boater safety education course a court shall dismiss a violation of Subsections (b)(1) and (2).

Sec. 31.110. EXEMPTION FROM BOATER EDUCATION COURSE REQUIREMENT. A person is not required to comply with Section 31.109 if the person:

(1) holds a master's, mate's, or operator's license issued by the United States Coast Guard;

(2) is supervised by a person who:

(A) is otherwise exempt from the requirements of Section 31.109 or possesses a boater identification card as required by Section 31.109; and

(B) is at least 18 years of age;

(3) is at least 18 years of age;

(4) is not a resident of this state and has proof that the person has successfully completed a boater education course or equivalency examination in another state that is approved by the department; or

(5) is exempt by rule of the department.

Sec. 31.111. OPERATING VESSEL LIVERY. (a) A vessel livery must purchase liability insurance from an insurer licensed to do business in this state.

(b) Before releasing possession of a rented vessel, a vessel livery shall provide each operator of the rented vessel instruction relating to:

(1) the provisions of this chapter;

(2) operational characteristics of the rented vessel; and

(3) boating regulations that apply in the area of operation of the vessel.

(c) After providing the instruction required by Subsection (b) and before releasing possession of the rented vessel, the vessel livery shall require each operator to sign an acknowledgment form indicating that the operator has received the required instruction. The vessel livery shall retain the form for at least six months.

SECTION 8. Section 31.121, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.121. ENFORCEMENT OFFICERS. (a) All peace officers of this state [~~and its political subdivisions~~] and game wardens commissioned by the commission must be certified as marine safety enforcement officers by the department to [~~management officers are enforcement officers for the purposes of this chapter.~~]

[~~(b) The enforcement officers may~~] enforce the provisions of this chapter by arresting and taking into custody any person who commits any act or offense prohibited by this chapter or who violates any provision of this chapter.

(b) The commission by rule shall establish standards for training and certifying marine safety enforcement officers under this section.

(c) ~~The commission by rule may create exemptions for peace officers from marine safety enforcement officer training and certification requirements imposed by statute.~~

(d) The commission by rule shall establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers. The commission shall require the applicant for certification or the applicant's employer to pay the fee required under this section.

(e) Game wardens [~~management officers~~] may assist in the search for and rescue of victims of water-oriented accidents.

SECTION 9. Section 31.127, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.127. PENALTIES. (a) A person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a

city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, ~~[for which no other penalty is applicable]~~ commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 31.043(c) or 31.096 ~~[or 31.104]~~ of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who operates a vessel in violation of Section 31.021(b) or 31.095 commits an offense punishable by a fine of not less than \$100 or more than \$500.

(d) The operator of a vessel who is involved in a collision, accident, or other casualty that results in death or serious bodily injury to another person and fails to comply with Section 31.104 commits an offense that is a Parks and Wildlife Code felony.

(e) Except as provided by Subsection (d), the operator of a vessel who is involved in a collision, accident, or other casualty and fails to comply with Section 31.104 commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

SECTION 10. Section 31.128, Parks and Wildlife Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) In justice court cases filed as the result of an arrest by a game warden, the amount to be remitted to the game, fish, and water safety account shall be 85 percent of the fine. In county court cases filed as the result of an arrest by a game warden, the amount to be remitted to the game, fish, and water safety account shall be 80 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

(c) In court cases filed as the result of an arrest by a marine safety enforcement officer other than a game warden, the amount to be remitted to the game, fish, and water safety account shall be 60 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

(d) Not less than 50 percent of the amount remitted to the game, fish, and water safety account under Subsection (c) must be used for the administration and enforcement of this chapter.

SECTION 11. Subchapter E, Chapter 31, Parks and Wildlife Code, is amended by adding Sections 31.130, 31.131, and 31.132 to read as follows:

Sec. 31.130. BOATER EDUCATION COURSE PERMITTED IN LIEU OF FINE. (a) Except as provided by Section 31.131, this section applies to a person who violates for the first time a provision of this chapter relating to the operation of a vessel.

(b) A justice may defer imposition of a fine and place a defendant on probation for a period not to exceed 60 days if the defendant:

(1) pleads guilty or nolo contendere or is found guilty; and

(2) requests permission from the court to attend a boater education course.

(c) The justice shall require the defendant to successfully complete a boater education course approved by the department during the probation period.

(d) If the defendant presents satisfactory evidence that the defendant has successfully completed the boater education course, the justice shall waive imposition of a fine. If the defendant fails to successfully complete the boater education course, the justice shall impose a fine for the violation.

Sec. 31.131. BOATER EDUCATION COURSE REQUIRED FOR CERTAIN VIOLATIONS. (a) A justice shall require a person who is adjudged guilty of an offense resulting from the violation of a provision of Sections 31.094-31.103 or 31.106 to:

(1) pay any fine imposed for the violation; and

(2) successfully complete a boater education course approved by the department not later than the 90th day after the date the person is adjudged guilty.

(b) If the person fails to successfully complete the boater education course, the person commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Sec. 31.132. REPORTING PROCEDURES FOR ENFORCEMENT OFFICERS. A marine safety enforcement officer shall provide to the department on a form prescribed by the department a report of any incident the officer investigates that involves a boating accident, water fatality, or person who allegedly operates a boat while intoxicated. The officer shall provide the report not later than the 15th day after the date the incident occurred.

SECTION 12. Section 31.003(9), Parks and Wildlife Code, is repealed.

SECTION 13. (a) A peace officer of this state and its political subdivisions and game wardens who enforce Chapter 31, Parks and Wildlife Code, are not required to be certified under Section 31.121(a), Parks and Wildlife Code, as amended by this Act, until January 1, 1999.

(b) The change in law made by this Act applies 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. 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. This Act takes effect September 1, 1997.

SECTION 15. 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.

Representative Oakley moved to adopt the conference committee report on **HB 966**.

The motion prevailed.

HR 1231 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1231**, suspending the limitations on the conferees for **SB 148**.

HB 2964 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Sadler submitted the following conference committee report on **HB 2964**:

Austin, Texas, May 28, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2964** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nixon	Sadler
Cain	Hartnett
Gallegos	Hill
Galloway	Finnell
Nelson	Uher
On the part of the Senate	On the part of the House

HB 2964, A bill to be entitled An Act relating to the administration of county roads in Panola County.

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

SECTION 1. Chapter 117, Acts of the 50th Legislature, Regular Session, 1947, is repealed.

SECTION 2. Section 252.101(a), Transportation Code, is amended to read as follows:

(a) This subchapter does not apply to Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, [~~Panola~~] Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, or Wood County.

SECTION 3. Section 252.201(a), Transportation Code, is amended to read as follows:

(a) This subchapter does not apply to Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, [~~Panola~~] Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, or Wood County.

SECTION 4. This Act takes effect September 1, 1997.

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

Representative Sadler moved to adopt the conference committee report on **HB 2964**.

The motion prevailed.

SB 823 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Naishtat submitted the conference committee report on **SB 823**.

Representative Naishtat moved to adopt the conference committee report on **SB 823**.

The motion prevailed.

HB 2981 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the following conference committee report on **HB 2981**:

Austin, Texas, May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2981** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser	Junell
Duncan	Hawley
Ogden	Merritt
Nelson	Moffat
Shapleigh	Torres
On the part of the Senate	On the part of the House

HB 2981, A bill to be entitled An Act relating to notice to a payee of a change in the payor of oil or gas proceeds.

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

SECTION 1. Subchapter J, Chapter 91, Natural Resources Code, is amended by adding Section 91.407 to read as follows:

Sec. 91.407. NOTICE OF CHANGE OF PAYOR. (a) Following a change in payor, the new payor shall give written notice to each payee to whom the payor is responsible for distributing oil or gas proceeds. The notice must be given to the payee or the payee's designee at the payee's or designee's most recent known address.

(b) Upon receipt of payee's address from the operator or lessee, the payor must provide the notice within the time permitted for payment of proceeds and in accordance with the conditions for payment provided by Section 91.402. The notice must include:

(1) the information required by Sections 91.502(1), (2), and (12) and Section 91.503; and

(2) the payor's telephone number.

(c) The notice may be given by any writing, including a division order, check stub, or attachment to a payment form.

(d) A payor that is obligated to pay interest to a payee under Section 91.403 and that does not give the payee a notice required by this section is liable to the payee for interest under that section at a rate that is two percent more than the rate provided by that section.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Junell moved to adopt the conference committee report on **HB 2981**.

The motion prevailed.

HB 2798 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Marchant submitted the following conference committee report on **HB 2798**:

Austin, Texas, May 26, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2798** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Carona	Marchant
Sibley	Solomons
Zaffirini	Smith
On the part of the Senate	On the part of the House

HB 2798, A bill to be entitled An Act relating to tax-exempt private activity bonds.

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

SECTION 1. Section 1, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. For purposes of this Act:

(1) "Available" means any amount of the state ceiling set aside for reservations by an issuer upon compliance with the terms of this Act.

(2) "Board" means the bond review board created under Chapter 1078,

Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes).

(3) "Bonds" means and includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution and which are subject to the limitations of Section 146 of the code.

(4) "Close" or "closing" means the issuance and delivery of bonds by an issuer in exchange for the required payment therefor, or in the case of mortgage credit certificates, the date when an issuer elects not to issue qualified mortgage bonds and establish a mortgage credit certificate program under Section 25 of the code. The term does not include a delivery of bonds if the expenditure of the proceeds of the bonds is conditioned on obtaining credit enhancement in support of the bonds.

(5) "Code" means the Internal Revenue Code of 1986, as the same from time to time may be amended.

(6) "Housing finance corporation" means a corporation created under Chapter 394, Local Government Code (Texas Housing Finance Corporations Act).

(7) "Issuer" means any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever and any nonprofit corporation acting for or on behalf of any of the foregoing.

(8) "Local population" means the population in the local government [~~governmental~~] unit or units on whose behalf the housing finance corporation is created as determined in the most recent federal census. If two local government [~~governmental~~] units which overlap have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, prior to the submission of the application for reservation or carryforward by either corporation there shall be excluded from the population of the larger local government [~~governmental~~] unit that portion of the population of any smaller local government [~~governmental~~] unit having a population as determined in the most recent federal census of 20,000 or more which is within the larger local government [~~governmental~~] unit assigns its authority to issue bonds, based upon its population, to the larger local government [~~governmental~~] unit. For purposes of this Act, the term "local government" has [~~"local governmental unit" shall have~~] the same meaning as in Chapter 394, Local Government Code (Texas Housing Finance Corporations Act).

(9) "Locally voted issue" means an issue of bonds which has been authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.

(10) "Mortgage credit certificate" means a certificate of the nature described in Section 25 of the code.

(11) "Private activity bond" has the meaning given that term under Section 141(a) of the code.

(12) "Project" means any eligible facility, as described in the application for reservation or carryforward, proposed to be financed, in whole or in part, by an issue of bonds. With respect to qualified mortgage bonds or

student loan bonds, the board shall consider the project or purpose to be the provision of financial assistance to qualifying mortgagors or students within all or any portion of the jurisdiction of the issuer. For purposes of this definition, jurisdiction of the issuer is determined on the date the application for reservation is delivered to the board.

(13) "Qualified bond" has the meaning given that term under Section 141(e) of the code.

(14) [(13)] "Qualified mortgage bond" has the meaning given that term under Section 143(a) of the code; and for the purposes of this Act, the term "qualified mortgage bond" shall include mortgage credit certificates.

(15) [(14)] "Qualified small issue bond" has the meaning given that term under Section 144(a) of the code.

(16) "Qualified student loan bond" has the meaning given that term under Section 144(b) of the code.

(17) [(15)] "Related person" has the meaning given that term under Section 144(a)(3) of the code.

(18) [(16)] "Reservation" means a reservation of a portion of the state ceiling for a specific bond issue.

(19) [(17)] "State-voted issue" means an issue of bonds which has been authorized pursuant to a statewide referendum approved by the voters of the State of Texas.

(20) [(18)] "State ceiling" means the amount of authority in the State of Texas to issue tax-exempt private activity bonds during the calendar year, as determined under Section 146(d) of the code.

(21) [(19)] "Qualified residential rental project issue" means an issue of bonds for a qualified residential rental project, as that term is defined under Section 142(d) of the code.

(22) [(20)] "Tax-exempt enterprise zone facility bonds" has the meaning given that term under Section 1394 of the code.

SECTION 2. Section 2, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. ALLOCATION AND RESERVATION SYSTEM. (a) The state ceiling for each calendar year is allocated to issuers that issue private activity bonds. Except as provided by Section 3 of this Act, reservations are granted in the order of receipt by the board of an application for a reservation, regardless of the amount of the issue.

(b) Prior to September 1, (1) 31.5 [28] percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds, (2) 13 [17.5] percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues for the purpose of issuing a state-voted issue, (3) 7.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds and tax-exempt enterprise zone facility bonds, (4) 7.5 [five] percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental project issues; ~~and~~ (5) 11 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53.47, Education Code; and (6) 29.5 [42] percent of the state ceiling is available exclusively for reservations by all other issuers of bonds requiring an allocation.

(c) If applications for state-voted issues received prior to January 2, from issuers described in Subsection (b)(2) of this section, total more than 13 percent of the available state ceiling for that program year, the incremental amount of state-voted ceiling requested in excess of 13 percent, up to 17.5 percent of state ceiling, will be removed from the state ceiling available to other issuers on January 2 and made available for those additional state-voted applications. The remaining portion of state ceiling will be made available according to Subsection (b) of this section.

(d) Of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds, one-third of said portion shall be made available exclusively to the Texas Department of Housing and Community Affairs for the purpose of issuing qualified mortgage bonds until August 25.

(~~e~~) On and after September 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation, subject to the provisions of Section 3 of this Act.

(~~f~~) If any particular type of bonds do not qualify on January 2 of any year for treatment as tax-exempt obligations under the provisions of the code, then the provisions of Subsection (b)(1), (2), (3), (4), ~~(5)~~, or ~~(6)~~ of this section, as applicable, shall be of no effect for such year, and the portion of the state ceiling that is available exclusively for reservations by issuers of the type of applicable bonds shall be reallocated proportionately by March 1 for reservations by each other category of issuers under Subsection (b) of this section.

(~~g~~) Subsection (~~f~~) (~~e~~) of this section does not apply to qualified mortgage bonds made available exclusively to the Texas Department of Housing and Community Affairs under Subsection (~~d~~) (~~e~~) of this section.

(~~h~~) In addition to the amount provided in Subsection (~~d~~) (~~e~~) of this section, \$20,000,000 in reservations for each year for the years 1996 and 1997 is available to the Texas Department of Housing and Community Affairs from that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds for the purpose of issuing qualified mortgage bonds until August 25.

(~~i~~) A bond issued for the reservation made by Subsection (~~h~~) (~~g~~) of this section must:

(1) be used to finance or refinance single-family home construction, reconstruction, or acquisition or to finance or refinance contracts for deed for single-family housing; and

(2) target families that earn 60 percent or less of the median family income in a colonia, as defined by Section 916 of Pub. L. No. 101-625.

SECTION 3. Section 3(c), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board shall not grant a reservation of a portion of the state ceiling to any issuer prior to January 2 [~~10~~]. If two or more issuers apply for a reservation of state ceiling for the upcoming program year in a category described in Subsections (b)(2), (b)(3), (b)(4), and (b)(6) [~~(b)(5)~~] of Section 2 of this Act on or before October 20 [~~January 10~~], reservations within that

category shall be granted from the state ceiling available in that category in an order determined by the board by lot. If two or more housing finance corporations apply for a reservation of state ceiling for the upcoming program year in the category described by Section 2(b)(1) of this Act on or before October 20 [~~January 10~~], reservations within that category shall be granted from the state ceiling available in that category according to the following categories of priority: (1) the first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year; (2) [~~the second category of priority shall include those applications for a reservation filed by housing finance corporations to which state ceiling could not be made available by August 31 for that calendar year because of the application of Section 4(b) of this Act;~~] the second [~~third~~] category of priority shall include those applications for a reservation not included in the first category [~~and second categories~~] of priority; (3) a priority under (1) of an issuer composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring governmental unit and that unit's population base if the dollar amount of the application has not increased; and (4) within each category or priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds applicable to [~~by~~] each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. The most recent closing applicable to: (A) a newly created housing finance corporation that was created by a local government or local governments that had previously sponsored an existing housing finance corporation or a disbanded housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation; (B) a housing finance corporation sponsored by a local government that has participated in the program of another housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation; and (C) all other housing finance corporations, is the most recent closing of qualified mortgage bonds by the housing finance corporation. In no event will a housing finance corporation or its sponsoring local government be allowed to achieve an advantage in the determination of its last closing date by creating or disbanding from a housing finance corporation. If two or more higher education authorities apply for a reservation of state ceiling for the upcoming year in the category described by Section 2(b)(5) of this Act on or before October 20, reservations within that category shall be granted from the state ceiling available in that category in reverse calendar year order of the most recent closing of qualified student loan bonds by each higher education authority, with the most recent closing being the last to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. All applications for a

reservation filed after October 20 [~~January 10~~] by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt. [~~A priority under (1) of an issuer composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring governmental unit and that unit's population base if the dollar amount of the application has not increased.~~]

SECTION 4. Section 3(a), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

- (a) For any one project, no issuer[~~:~~
~~[(1)]~~ prior to September 1, shall receive reservations in excess of:
 (1) [~~(A)~~] \$25,000,000 for issuers described by Section 2(b)(1) of this Act other than the Texas Department of Housing and Community Affairs;
 (2) [~~(B)~~] \$50,000,000 for issuers described by Section 2(b)(2) of this Act other than the Texas Higher Education Coordinating Board and \$75,000,000 for the Texas Higher Education Coordinating Board;
 (3) [~~(C)~~] an amount as limited by the code for issuers described by Section 2(b)(3) of this Act;
 (4) [~~(D)~~] \$15,000,000 or 15 percent of the amount set aside for this purpose, whichever is less, for issuers described by Section 2(b)(4) of this Act;
 (5) \$35,000,000 for higher education authorities authorized by Section 53.47, Education Code, and described by Section 2(b)(5) of this Act; and
 (6) [~~(E)~~] \$25,000,000 for issuers described by Section 2(b)(6) [~~2(b)(5)~~] of this Act [~~except higher education authorities authorized by Section 53.47, Education Code; and~~
~~[(F)] \$35,000,000 for higher education authorities authorized by Section 53.47, Education Code; and~~
 (2) prior to November 1, shall receive reservations in excess of \$100,000,000].

SECTION 5. Sections 3(d) and (e), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) An application for a reservation may not be submitted and a reservation may not be granted after December 1 of the current program year.

(e) If any portion of state ceiling in any category described in Section 2(b) of this Act from which issuers were granted reservations becomes available in that category before June 1, those amounts shall be aggregated and reservations shall be granted from that category on June 1. If any portion of state ceiling from which issuers were granted reservations becomes available in that category after June 1 and before August 25, those amounts shall be aggregated and reservations shall be granted from that category on August 25. The department may also grant a reservation to an issuer at any time on or after January 2 [10] if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category.

SECTION 6. Section 4(a), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An application for a reservation for a particular program year may be filed by an issuer on or after October 10 of the preceding year [~~January 2~~] and

must be on a form prescribed by the board and signed by a member or officer of the issuer and must state:

(1) the maximum amount of the bonds in the issue requiring an allocation pursuant to Section 146 of the code;

(2) the purpose of the bonds or a functional description of the project, including the identification of the user of the proceeds or project financed thereby;

(3) whether the bonds are qualified bonds;

(4) if the bonds are qualified bonds, the paragraph of Section 141(e)(1) of the code that applies, and if Section 141(e)(1)(A) of the code applies, the paragraph of Section 142(a) of the code that applies;

(5) if the bonds are not qualified bonds, that Section 141(b)(5) of the code applies, or in the case of transition rule projects, the paragraph of the Tax Reform Act of 1986 that applies;

(6) a statement by the issuer, other than an issuer of a state-voted issue or the Texas Department of Housing and Community Affairs, that bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, or based on the issuer's population, unless such issuer provides evidence that a binding contract or binding contracts have been entered into to expend the unexpended proceeds within 12 months after the date of receipt by the board of an application for a reservation; and

(7) other information that the board may require.

SECTION 7. Section 4(c), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board may not accept applications for more than one project located at, or related to, a business operation at a particular site for ~~in~~ any one program ~~calendar~~ year.

SECTION 8. Section 6(c), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) If the issuer does not timely submit the documents and fee required by this section, the issue's reservation is canceled and during the ~~[90-day]~~ period described by Section 7(a) of this Act beginning on the reservation date of the canceled reservation:

(1) the issuer or any other issuer may not submit an application for a reservation for the same project; and

(2) the issuer is eligible for a carryforward designation for the project only as provided by Section 9 of this Act.

SECTION 9. Sections 7(a) and (c), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided in Subsection (b) of this section, the issuer, other than an issuer that received a reservation of state ceiling from the category described by Section 2(b)(1) of this Act, shall close on the bonds for which a reservation has been granted not later than the 120th ~~[90th]~~ day after the

reservation date. An issuer of qualified mortgage revenue bonds shall close on the bonds for which a reservation has been granted not later than the 180th day after the reservation date.

(c) If the issuer does not timely close on the bonds, the issuer's reservation is canceled and during the 150-day [~~120-day~~] period beginning on the reservation date of the canceled reservation, or during the 210-day period beginning on the reservation date of the canceled reservation for Section 2(b)(1) issuers:

(1) the issuer or any other issuer may not submit an application for a reservation for the same project; and

(2) the issuer is eligible for a carryforward designation for the project only as provided by Section 9 of this Act.

SECTION 10. Section 394.012(h), Local Government Code, is amended to read as follows:

(h) For the purposes of determining the applicable population for Section 3(b), Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), the [The] joint housing finance corporation may only consider areas in its own [not operate in more than one] state planning region.

SECTION 11. Section 394.032, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) A housing finance corporation may delegate to the Texas Department of Housing and Community Affairs the authority to act on its behalf in the financing, refinancing, acquisition, leasing, ownership, improvement, and disposal of home mortgages or residential developments, within and outside the jurisdiction of the housing finance corporation, including its authority to issue bonds for those purposes.

SECTION 12. Section 394.037(a), Local Government Code, is amended to read as follows:

(a) A housing finance corporation may issue bonds to defray, in whole or in part:

(1) the development costs of a residential development; or

(2) the costs of purchasing or funding the making of home mortgages, either on a first-come, first-served basis or by selling lender commitments, including the costs of studies and surveys, insurance premiums, financial advisory services, mortgage banking services, administrative services, underwriting fees, legal services, accounting services, and marketing services incurred in connection with the issuance and sale of the bonds, including bond and interest reserve accounts, capitalized interest accounts, and trustee, custodian, and rating agency fees.

SECTION 13. Section 394.040(a), Local Government Code, is amended to read as follows:

(a) A housing finance corporation may make, contract to make, but is not required to make, and enter into advance commitments to make home mortgages originated, administered, and serviced by lending institutions. It may pay the reasonable value of services rendered under those contracts. It may acquire, contract to acquire, and enter into advance commitments to acquire, by assignment or other means, home mortgages owned by lending institutions at purchase prices and on other terms determined by the corporation or its agent.

SECTION 14. Section 394.051, Local Government Code, is amended by adding Subsection (h) to read as follows:

(h) The housing finance corporation is not required to sell commitments to lenders to originate home mortgages. A housing financing corporation may establish a program so that lenders will utilize the proceeds of the bonds to originate home mortgages on a first-come, first-served basis.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Marchant moved to adopt the conference committee report on **HB 2798**.

A record vote was requested.

The motion prevailed by (Record 601): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilderbran; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Alexander; Bosse; Davis; Gray; Hill.

Absent — Farrar; Hilbert.

STATEMENT OF VOTE

When Record No. 601 was taken, I was temporarily out of the house chamber. I would have voted yes.

Hilbert

**SB 885 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Thompson, the house granted the request of the senate for the appointment of a conference committee on **SB 885**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 885**: Thompson, chair, Dukes, Eiland, Rhodes, and Solomons.

**SB 149 - 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 149**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 149**: Cuellar, chair, Bailey, Dunnam, Rabuck, and Rangel.

**SB 1253 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Naishtat, the house granted the request of the senate for the appointment of a conference committee on **SB 1253**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1253**: Naishtat, chair, Goodman, McClendon, McReynolds, and Staples.

**SB 517 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hawley, the house granted the request of the senate for the appointment of a conference committee on **SB 517**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 517**: Hawley, chair, Brimer, Coleman, Uher, and Williamson.

HB 2906 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wolens submitted the following conference committee report on **HB 2906**:

Austin, Texas, May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2906** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ratliff	Wolens
Cain	Ramsay
Carona	Hilbert
	Hunter
On the part of the Senate	On the part of the House

HB 2906, A bill to be entitled An Act relating to the duties of the state auditor, state audits, and investigations.

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

SECTION 1. Section 7.022, Education Code, is amended to read as follows:

Sec. 7.022. INTERNAL AUDIT. ~~[(a)]~~ The auditor appointed by the commissioner under Section 7.055 shall coordinate the agency's efforts to evaluate and improve its internal operations.

~~[(b) The state auditor shall review the quality and effectiveness of the agency's process for auditing internal operations and shall report the state auditor's findings to the commissioner and the board.]~~

SECTION 2. Section 321.001, Government Code, is amended to read as follows:

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Audit working paper" means all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and all draft reports or portions thereof.

(2) "Committee" means the legislative audit committee.

(3) ~~[(2)]~~ "Department" includes every state department, agency, board, bureau, institution, or commission.

SECTION 3. Section 321.008, Government Code, is amended to read as follows:

Sec. 321.008. QUALIFYING FOR OFFICE. (a) To qualify for office, the State Auditor must take the constitutional oath of office ~~[and execute a bond in an amount determined by the committee to be sufficient to protect the state's interests, payable to the governor. The bond must be approved by the committee, be conditioned on the faithful discharge of his duties, and have a solvent surety company as surety. At least once in each five-year period, the committee shall review the amount of the bond and adjust the amount as necessary to take account of changed conditions].~~

(b) The State Auditor must file the oath ~~[and approved bond]~~ with the secretary of state not later than the 10th day after the date on which the committee appointed the State Auditor, or the committee or a majority of the committee members shall appoint another qualified person as State Auditor.

~~[(c) The state shall pay the premium to the surety company for the execution of the bond required by Subsection (a).]~~

SECTION 4. Section 321.014, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) Each audited department or entity shall report on the manner in which

the department or entity has addressed the findings and recommendations that are included in a report prepared by the state auditor under this section. The state auditor shall prescribe the form and schedule for a report by the department or entity under this subsection.

(g) If a department or entity does not implement a change recommended by the state auditor's report, the department or entity shall file a report with the persons specified by Subsection (c). The report must:

(1) identify the recommendation the department or entity did not implement; and

(2) state the reason the department or entity did not implement the recommendation.

SECTION 5. Section 321.019, Government Code, is amended to read as follows:

Sec. 321.019. INTERFERENCE WITH AUDIT OR INVESTIGATION ~~[EXAMINATION OF RECORDS]~~. (a) An officer or employee of this state or of an entity subject to audit or investigation by the state auditor ~~[a governmental unit of the state]~~ commits an offense if the officer or employee:

(1) refuses to immediately permit the State Auditor to examine or have access to the books, accounts, reports, vouchers, papers, documents, or electronic data to which the State Auditor is entitled under Section 321.013(e) or other law, or to the cash drawer, or cash from the officer's or employee's department;

(2) interferes with an examination by the State Auditor; or

(3) refuses to make a report required by this chapter.

(b) An offense under this section is a Class A misdemeanor ~~[punishable by a fine of not less than \$100 nor more than \$1,000, by imprisonment in the county jail for not less than one month nor more than one year, or by both]~~.

SECTION 6. Chapter 321, Government Code, is amended by adding Section 321.020 to read as follows:

Sec. 321.020. COORDINATION OF CERTAIN AUDITS. (a) Notwithstanding any other law, a state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

(1) the agency or corporation is authorized to do so by law or through a delegation of authority from the state auditor;

(2) the scope of the proposed audit has been submitted to the state auditor for review and comment; and

(3) the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

(b) At the joint direction of the lieutenant governor and the speaker of the house of representatives, the state auditor shall provide contract management services to the agency or corporation for an audit described by this section.

SECTION 7. Chapter 321, Government Code, is amended by adding Section 321.022 to read as follows:

Sec. 321.022. COORDINATION OF INVESTIGATIONS. (a) If the administrative head of a department or entity that is subject to audit by the state

auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the state auditor. The state auditor may investigate the report or may monitor any investigation conducted by the department or entity.

(b) The state auditor, in consultation with state agencies and institutions, shall prescribe the form, content, and timing of a report required by this section.

(c) All records of a communication by or to the state auditor relating to a report to the state auditor under Subsection (a) are audit working papers of the state auditor.

SECTION 8. Section 403.024(b), Government Code, as added by Section 5.30, Chapter 76, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) In this section, "state agency" has the meaning assigned by Section 2056.001 [403.013].

SECTION 9. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.132 to read as follows:

Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: STATE AUDITOR. (a) The state auditor is entitled to obtain from the department criminal history record information for purposes of:

(1) performing risk assessment in devising the annual audit plan; or

(2) performing an investigation under Chapter 321 of specified acts or allegations of impropriety, malfeasance, or nonfeasance.

(b) The department and the state auditor shall enter into an agreement providing the state auditor with electronic access to the information that includes appropriate safeguards against unauthorized disclosure of the information.

(c) Except as provided by Subsection (d), information obtained by the state auditor under Subsection (a) may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

(d) If, in the judgment of the state auditor, information obtained under Subsection (a) indicates a substantial risk to the interests of the state, the state auditor shall report the information to the legislative audit committee and to the administrative head of the affected agency. The reports are audit working papers of the state auditor.

(e) The state auditor shall destroy information obtained under Subsection (a) when the information is no longer needed for audit purposes or to support audit findings.

SECTION 10. Section 552.116, Government Code, is amended to read as follows:

Sec. 552.116. EXCEPTION: ~~AUDIT [STATE AUDITOR] WORKING PAPERS.~~ An audit working paper or draft audit report of the state auditor or of another state agency or institution of higher education as defined by Section 61.003, Education Code, is exempted from the requirements of Section 552.021.

SECTION 11. Section 2102.003(3), Government Code, is amended to read as follows:

(3) "State agency" means ~~[includes]~~ a department, board, bureau, institution, commission, or other agency in the executive branch of state government ~~[of the state]~~.

SECTION 12. Section 2102.005, Government Code, is amended to read as follows:

Sec. 2102.005. INTERNAL AUDITING REQUIRED. A state agency shall conduct a ~~[full-time]~~ program of internal auditing that includes:

(1) an annual audit plan that is prepared using risk assessment techniques and that identifies the individual audits to be conducted during the year; and

(2) periodic audits of the agency's major systems and controls, including:

(A) accounting systems and controls;

(B) administrative systems and controls; and

(C) electronic data processing systems and controls.

SECTION 13. Section 2102.009, Government Code, is amended to read as follows:

Sec. 2102.009. ANNUAL REPORT. ~~[(a)]~~ The internal auditor shall prepare an annual report and submit the report before November 1 of each year to the governor, the Legislative Budget Board, the Sunset Advisory Commission, the state auditor, the state agency's governing board, and the administrator. The state auditor shall prescribe the form and content of the report, subject to the approval of the legislative audit committee.

~~[(b) The report must contain:~~

~~[(1) a copy of the annual audit plan;~~

~~[(2) a list of audits completed;~~

~~[(3) an explanation of any deviation from the approved annual audit plan;~~

~~[(4) a narrative description of the most significant findings and recommendations for each audit;~~

~~[(5) a narrative description of the management actions taken in response to the audit findings and recommendations;~~

~~[(6) a table listing the auditor's audit recommendations and the five-year fiscal impact for each recommendation;~~

~~[(7) a table of the audit recommendations from the previous fiscal year's report and an explanation of the status of each recommendation; and~~

~~[(8) a statement of the last date on which an external peer review of the agency's internal audit program was conducted.~~

~~[(c) Each audit recommendation must show whether:~~

~~[(1) the recommendation has been implemented;~~

~~[(2) the recommendation is in the process of implementation;~~

~~[(3) action on implementation of the recommendation has been delayed; or~~

~~[(4) the agency does not intend to take action on the recommendation.~~

~~[(d) The report must emphasize the findings in important areas that are difficult to quantify, including weaknesses in management controls or quality of services.]~~

SECTION 14. Subsections (d), (e), and (f), Section 12, Article 21.28, Insurance Code, are amended to read as follows:

(d) Audit. The state auditor ~~may~~ shall conduct an ~~annual~~ audit of the liquidator in accordance with the audit plan reviewed and approved by the legislative audit committee. The audits authorized ~~or required~~ by this subsection shall be conducted in the manner provided by Chapter 321, Government Code.

(e) Contents of Auditor's Report. The state auditor's report of the audit authorized ~~required~~ by Subsection (d) of this section may include:

- (1) an analysis of the overall performance of the liquidator;
- (2) an analysis of the liquidator's financial operations and condition;
- (3) an analysis of receipts and expenditures made in connection with each audited receivership and an analysis of the adequacy of the receiver's bond in relation to assets, receipts, and expenditures;
- (4) the amount of funds made available to the liquidator by a guaranty association in connection with each audited receivership and a detail of the purpose and manner of expenditure of such funds;
- (5) the ratio of the total amount of claims paid to the total costs incurred in connection with each audited receivership;
- (6) the ratio of the liquidator's administrative expenses to the total costs incurred in connection with each audited receivership; or
- (7) an analysis of the feasibility of using attorneys who are employees of the liquidator in all litigation.

(f) Filing of Auditor's Reports. Copies of the auditor's report shall be filed[;] in the manner required by Section 321.014, Government Code[; ~~not later than March 31 of the year following the year covered by the audit~~]. An additional copy of the report shall be filed with the board and the commissioner.

SECTION 15. Article 26.57(a), Insurance Code, is amended to read as follows:

(a) ~~The transactions of the system are subject to audit by the state auditor in accordance with [shall conduct annually a special audit of the system under] Chapter 321, Government Code. [The state auditor's report shall include a financial audit and an economy and efficiency audit.]~~

SECTION 16. Section 223.041, Transportation Code, is amended to read as follows:

Sec. 223.041. ENGINEERING AND DESIGN CONTRACTS. (a) The department's policy regarding the regular use of private sector professional services for preliminary and construction engineering and engineering design shall achieve a balance between the use of department employees and the use of private contractors if the costs are equivalent.

~~(b) [The office of the state auditor shall determine relevant costs to be considered under Subsection (a):~~

~~[(c)] The commission may provide for hearings at which private sector complaints relating to the selection process are heard.~~

SECTION 17. Section 58.017, Agriculture Code, is amended to read as follows:

Sec. 58.017. PERFORMANCE MEASURES [COST-BENEFIT REPORT]. The board, in conjunction with the Legislative Budget Board, the state auditor, and the Office of the Governor, shall develop a minimum of two performance measures that provide information on the benefits of the authority's loan

~~programs. The performance measures shall be included in the report required under Section 58.016(d) of this code or as a component of the measures incorporated into the Appropriations Act [(a) The board shall perform a biennial cost-benefit study of the authority's active and inactive programs and prepare a report regarding that study. The study must include an examination of the number of jobs created or retained in this state as a result of each program and the costs and benefits associated with those jobs].~~

~~[(b) The chairman of the board shall file the report prepared under Subsection (a) with the state auditor before December 1 of each even-numbered year.~~

~~[(c) The state auditor shall review the report filed under Subsection (b) and send the report and the auditor's comments regarding the methodology used by the authority in performing the cost-benefit study to the governor and the presiding officer of each house of the legislature not later than February 1 of each odd-numbered year. The state auditor shall provide assistance to the department in preparing the report required by this section.]~~

SECTION 18. The following laws are repealed:

- (1) Section 61.029(e), Education Code;
- (2) Section 321.013(j), Government Code;
- (3) Section 321.015, Government Code;
- (4) Section 2303.0525, Government Code; and
- (5) Section 15A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code).

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.

Representative Wolens moved to adopt the conference committee report on **HB 2906**.

The motion prevailed.

HB 2918 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Place submitted the following conference committee report on **HB 2918**:

Austin, Texas, May 28, 1997

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2918** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Whitmire	Place
Duncan	Edwards
Patterson	Farrar
Shapiro	A. Reyna
Shapleigh	Talton
On the part of the Senate	On the part of the House

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 supervision of certain defendants and inmates on community supervision, parole, or mandatory supervision, 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.

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

SECTION 1. Section 2, Article 42.12, Code of Criminal Procedure, is amended by adding Subdivision (4) to read as follows:

(4) "Electronic monitoring" includes voice tracking systems, position tracking systems, position location systems, biometric tracking systems, and any other electronic or telecommunications system that may be used to assist in the supervision of individuals under this article.

SECTION 2. Section 3(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(d) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) or 22A of this article.

SECTION 3. Section 4(c), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(c) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) or Section 22A of this article.

SECTION 4. Section 5(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. After placing the defendant on community supervision under this section, the judge shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. The failure of a judge to inform a defendant of possible consequences under Subsection (b) of this section is not a ground for reversal unless the defendant shows that he was harmed by the failure of the judge to provide the information. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony under Section

21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Section 13B(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) or 22A of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. The provisions of Section 15 of this article specifying whether a defendant convicted of a state jail felony is to be confined in a county jail or state jail felony facility and establishing the minimum and maximum terms of confinement as a condition of community supervision apply in the same manner to a defendant placed on community supervision after pleading guilty or nolo contendere to a state jail felony. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

SECTION 5. Article 42.12, Code of Criminal Procedure, is amended by adding Section 22A to read as follows:

Sec. 22A. EXTENDING SUPERVISION PERIOD FOR SEX OFFENDERS. (a) If a defendant is placed on community supervision after receiving a grant of deferred adjudication for or being convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, at any time during the period of community supervision, the judge may extend the period of community supervision as provided by this section.

(b) If at a hearing at which the defendant is provided the same rights as are provided a defendant at a hearing under Section 21 the judge determines that the defendant has not sufficiently demonstrated a commitment to avoid future criminal behavior and that the release of the defendant from supervision would endanger the public, the judge may extend the period of supervision for a period not to exceed 10 additional years.

(c) A judge may extend a period of community supervision under this section only once; however, the judge may extend a period of community supervision for a defendant under both Section 22(c) and this section, and the prohibition in Section 22(c) against a period of community supervision in a felony case exceeding 10 years does not apply to a defendant for whom community supervision is increased under this section or under both Section 22(c) and this section.

SECTION 6. (a) Section 24, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 24. INTENSIVE SUPERVISION; SUPER-INTENSIVE SUPERVISION. (a) The department shall establish a program to provide intensive supervision to inmates released under the provisions of Subchapter B, Chapter 499, Government Code, and other inmates determined by parole panels or the department to require intensive supervision. The Texas Board of Criminal Justice shall adopt rules that establish standards for determining which

inmates require intensive supervision. The program must provide the ~~highest~~ level of supervision provided by the department that is higher than any level of supervision other than the level of supervision described by Subsection (b).

(b) The department shall establish a program to provide super-intensive supervision to inmates released on parole or mandatory supervision and determined by parole panels to require super-intensive supervision. The program must provide the highest level of supervision provided by the department.

(b) The legislature finds that the release of dangerous inmates from the Texas Department of Criminal Justice sentenced under prior Texas law creates the potential for a continuing threat to public safety.

The legislature finds that current Texas law eliminates the chance that dangerous inmates will be automatically released from Texas prisons. However, many inmates sentenced under prior Texas law are eligible for various forms of early release. Because the United States Constitution precludes increasing the sentences of dangerous inmates after their convictions, and because prior Texas law allows the release of these inmates before the completion of their sentences, there is a need to better supervise these inmates on release.

The legislature finds that there is a compelling state interest in placing inmates released on parole and mandatory supervision under the kind of supervision that will best protect public safety. The level of supervision of inmates released from the Texas Department of Criminal Justice should be appropriate based on their likelihood of committing new offenses, the nature of their original offenses, their performance in prison programs designed to rehabilitate inmates, and any other factor deemed by a parole panel to be relevant to their status.

The legislature finds that there is a need for a program of intensive supervision of certain inmates whose histories indicate a propensity for violence. Regardless of whether an inmate's instant offense is a violent offense, there is a need for careful evaluation and review of each inmate released from prison to determine the need for supervision of the inmate.

The legislature intends by this measure, and by related appropriations, to enhance existing parole programs and to provide appropriate supervision, including electronic monitoring, under existing and future law for dangerous inmates released from the Texas Department of Criminal Justice. It is the legislature's intention that the scope of allowable supervision under this measure and related statutes be construed in the broadest possible manner consistent with constitutional restraints.

SECTION 7. Section 498.003, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The department may establish and use a separate classification system, based on the classes listed in Subsection (b), that:

(1) requires inmates determined by the department to need treatment to diligently participate in treatment; and

(2) makes the award of good conduct time dependent on that diligent participation.

SECTION 8. Section 3(e), Article 6252-13c.1, Revised Statutes, is amended to read as follows:

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d) of this section, the local law enforcement authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the 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 an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in the [at least one] newspaper of greatest paid [general] circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. The authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

SECTION 9. Section 4(f), Article 6252-13c.1, Revised Statutes, is amended to read as follows:

(f) If the person moves to another municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a) of this section. Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) of this section or under this subsection, the authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the 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 an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in the [at least one] newspaper of greatest paid [general] circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. The local law enforcement authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

SECTION 10. (a) The changes in law made by Sections 2-5 of this Act apply only to a person charged with or convicted of an offense committed on or after the effective date of this Act. The change in law made by Section 6(a) of this Act applies to an inmate who is on parole or mandatory supervision on or after the effective date of this Act, regardless of when the offense for which the inmate was serving a sentence before release was committed. The change in law made by Section 7 of this Act applies only to an inmate of the Texas

Department of Criminal Justice serving a sentence for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) Except as provided by Subsection (a), a person charged with or convicted of 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 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.

Representative Place moved to adopt the conference committee report on **HB 2918**.

A record vote was requested.

The motion prevailed by (Record 602): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alvarado; Averitt; Bailey; Berlanga; Bonnen; Brimer; Burnam; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Cuellar; Culberson; Danburg; Davila; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Flores; Gallego; Galloway; Garcia; Giddings; Glaze; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Alexander; Bosse; Davis; Gray; Hill.

HB 1662 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1662, A bill to be entitled An Act relating to rates for certain lines of insurance.

Representative Counts moved to discharge the conferees and concur in the senate amendments to **HB 1662**.

(R. Lewis in the chair)

(Speaker in the chair)

A record vote was requested.

The motion prevailed by (Record 603): 86 Yeas, 52 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berlanga; Bonnen; Brimer; Burnam; Carter; Chavez; Coleman; Cook; Counts; Cuellar; Danburg; Davila; Delisi; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Goolsby; Greenberg; Gutierrez; Haggerty; Hawley; Hightower; Hinojosa; Hirschi; Hochberg; Hodge; Janek; Jones, D.; Jones, J.; Keffer; King; Kubiak; Lewis, G.; Lewis, R.; Luna; Maxey; McCall; McReynolds; Merritt; Moreno; Naishtat; Oakley; Oliveira; Olivo; Palmer; Patterson; Pickett; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Rhodes; Sadler; Serna; Smith; Solomons; Stiles; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Walker; Wilson; Wise; Wolens; Yarbrough; Zbranek.

Nays — Alvarado; Chisum; Christian; Clark; Crabb; Craddick; Culberson; Denny; Driver; Elkins; Finnell; Galloway; Grusendorf; Hamric; Hartnett; Heflin; Hernandez; Hilbert; Hilderbran; Holzheuser; Horn; Howard; Hunter; Hupp; Isett; Jackson; Kamel; Keel; Krusee; Kuempel; Longoria; Madden; McClendon; Moffat; Mowery; Nixon; Pitts; Rabuck; Reyna, E.; Roman; Seaman; Shields; Siebert; Solis; Staples; Swinford; Talton; Van de Putte; Williams; Williamson; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused, Committee Meeting — Alexander; Bosse; Davis; Gray; Hill.

Absent — Corte; Junell; Marchant; Smithee; West.

STATEMENT OF VOTE

I was shown voting yes on Record No. 603. I intended to vote no.

Chavez

Senate Amendment No. 1

Amend **HB 1662** as follows:

(1) In SECTION 2 of the bill (page 1, line 27, committee printing), strike "September 1, 1997" and insert "January 1, 1998".

(2) In SECTION 2 of the bill (page 1, line 29, committee printing), strike "September 1, 1997" and insert "January 1, 1998".

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).

**SB 862 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Holzheuser, the house granted the request of the senate for the appointment of a conference committee on **SB 862**.

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 862**: Holzheuser, chair, Ramsay, Telford, Thompson, and Williamson.

**HR 1231 - ADOPTED
(by Rangel)**

The speaker laid before the house the following privileged resolution:

HR 1231

BE IT RESOLVED by the House of Representatives of the State of Texas, 75th Legislature, Regular Session, 1997, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 148** to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add the following new text:

SECTION 2. Section 51.306, Education Code, as amended by Chapters 76, 362, 747, 777, and 804, Acts of the 74th Legislature, 1995, is amended to read as follows:

Sec. 51.306. TEXAS ACADEMIC SKILLS PROGRAM [~~TESTING AND REMEDIAL COURSEWORK~~]. (a) In this section:

(1) "Board," "institution of higher education," [~~and~~] "private or independent institution of higher education," "general academic teaching institution," "public junior college," and "public technical institute" have the meanings assigned by Section 61.003 of this code.

(2) "Deaf student" means a student who is a deaf person as defined by Section 54.205(a) of this code.

(3) "Blind student" means a student who is a blind person as defined by Section 54.205(a) of this code.

(b) Each undergraduate student [~~All students in the following categories~~] who enters a [~~enter~~] public institution [~~institutions~~] of higher education must be tested for reading, writing, and mathematics skills prior to enrolling in any coursework. The board shall prescribe circumstances under which a student who has not been tested may enroll in coursework. A student who is permitted to enroll without taking the test prescribed by the board must take the test under Subsection (c) not later than the end of the first semester of enrollment[:

[~~(1) all full-time and part-time freshmen enrolled in a degree program;~~

[~~(2) any other student, prior to the accumulation of nine or more semester credit hours or the equivalent; and~~

[~~(3) any transfer student with fewer than 60 semester credit hours or the equivalent who has not previously taken the tests~~].

(c) For purposes of Subsection (b) [~~that purpose~~], the institution shall use the Texas Academic Skills Program Test [~~a test~~] instrument prescribed by the board. However, the board may prescribe an alternative test instrument for an

institution to use to test a student. Each alternative test instrument prescribed shall be correlated with the Texas Academic Skills Program Test. Each [The same instrument shall be used at all public institutions of higher education.

~~(e) The~~ test instrument adopted by the board must be of a diagnostic nature and be designed to provide a comparison of the skill level of the individual student with the skill level necessary for a student to perform effectively in an undergraduate degree program. In developing the Texas Academic Skills Program Test [test], the board shall consider the recommendations of faculty from various institutions of higher education.

(d) An institution may not use performance on the test as a condition of admission into the institution.

(e) The board shall prescribe minimum performance standards for each [the] test instrument. A student whose performance is below the standard for tested skill must participate in a developmental [remediation] program. An institution may require higher performance standards.

(f) If the test results indicate that developmental [remedial] education is necessary in any area tested, the institution shall refer the student to developmental [remedial] courses or other developmental [remedial] programs made available by the institution. Each institution shall make available those courses and programs on the same campus at which the student would otherwise attend classes. The courses or programs may not be considered as credit toward completion of degree requirements. On completion of the developmental coursework or program, the student shall take that portion of the Texas Academic Skills Program Test for which developmental education was required.

(g) A student may not enroll in any upper division course completion of which would give the student 60 or more semester credit hours or the equivalent until the student's Texas Academic Skills Program Test [test] results meet or exceed the minimum standards in each skill area for which developmental education was required or the student has earned a grade of "B" or better in a freshman-level credit course in the subject matter of the assessed deficit. For that purpose, the board shall establish a list of freshman-level credit courses for each skill area of the test instrument [all test scores]. The board shall establish other assessment procedures to be used by institutions [~~in exceptional cases~~] to allow a student to enroll in upper division courses in cases where student test results do not meet minimum standards.

(h) The state shall ~~[continue to]~~ fund approved nondegree credit developmental [remedial] courses; however, a general academic teaching institution may not receive funding for developmental coursework taken by a student in excess of 18 semester credit hours, and a public junior college or public technical institute may not receive funding for developmental coursework taken by a student in excess of 27 semester credit hours. Additionally, the board shall develop formulas to augment institutional funding of other developmental [remedial] academic programs and shall develop a performance funding formula by which institutions may receive additional funding for each student who successfully completes the developmental courses. The additional funding required under such formulas shall be met by state appropriation [~~for fiscal years 1990-1991 and thereafter~~].

(i) Each institution shall establish an advising program to advise students

at every level of courses and degree options that are appropriate for the individual student.

(j) The unit costs of each test shall be borne by the student. Costs of administering the tests to students shown to be financially needy under criteria established by the board shall be borne by the state through appropriation to the board for that purpose or other sources of funds. Additionally, appropriation shall be made to the board to cover overall administrative costs of the testing program.

(k) Each institution shall report annually to the board, on or before a day set by rule of the board, concerning the results of the students being tested and the effectiveness of the institution's developmental [remedial] program and advising program. In addition, the board shall publish annually a summary of the report required by Section 51.403(e) identifying [The report shall identify] by name the high school from which each tested student graduated and a statement as to whether or not the student's performance was above or below the standard. The summary must include the number of students at each high school who took and passed the test while enrolled in high school. For the purposes of this report, students shall not be identified by name. The board shall publish annually a report summarizing by institution of higher education for each academic year the total number of students who:

(1) entered a developmental program;

(2) completed developmental courses;

(3) took the Texas Academic Skills Program Test after completing developmental courses;

(4) passed the Texas Academic Skills Program Test after completing developmental courses; and

(5) satisfied the requirement of Subsection (g) in each skill area by earning an acceptable grade in an approved course as permitted by that subsection.

(l) [(m)(1)] A high school student who performs at or above a level set by the board on the exit-level assessment required under Section 39.023 [on the Texas Assessment of Academic Skills test to be set by the board] is exempt from this section. The level set by the board may not exceed a level that is equivalent to a 95 percent probability of passing the Texas Academic Skills Program Test. This exemption will be in effect for three years from the date a student takes the assessment and achieves [the Texas Assessment of Academic Skills test is taken and] the set score level [is achieved]. A student [Students] enrolling for the first time in an institution of higher education [Texas public colleges and universities] after the three-year period has elapsed must conform to all provisions of this section.

(m) An entering [(2) Entering] or transferring student [students] who has [have] achieved a score to be set by the board on the Scholastic Assessment Test or the American College Test is [are] exempt from the requirements of this section. The score set by the board may not exceed a score that is equivalent to a 95 percent probability of passing the Texas Academic Skills Program Test. This exemption is effective [will be in effect] for five years from the date [either] the Scholastic Assessment Test or the American College Test is taken and the set standard is achieved. A student [Students] enrolling

for the first time in an institution of higher education [~~Texas public colleges and universities~~] after the five-year period has elapsed must conform to all provisions of this section.

(n) This section applies to a blind student only if the test is administered to that student in large print or Braille or is administered by audio cassette or by a reader, as appropriate to that student.

(o) A student at an institution of higher education is exempt from the requirements of this section if the student enrolls on a temporary basis at the institution of higher education and:

(1) is also enrolled at an accredited private or independent institution of higher education or an accredited out-of-state institution of higher education;
or

(2) has graduated from an institution of higher education, an accredited private or independent institution of higher education, or an accredited out-of-state institution of higher education.

(p) To receive an exemption under Subsection (o) of this section, a student must present to the institution of higher education at which the student seeks the exemption as evidence of enrollment in another institution:

(1) a transcript, grade report, or paid fee receipt from the preceding semester; or

(2) any other evidence acceptable to the institution of higher education as proof of enrollment in the other institution.

(q) An exemption under Subsection (o) of this section terminates if the student:

(1) enrolls on a permanent basis in an institution of higher education;
or

(2) enrolls in a certificate or degree program at an institution of higher education.

(r) This section does not apply to:

(1) a student who accumulated three or more college-level semester credit hours prior to the 1989 fall semester;

(2) a student located outside this state who enrolls in a course offered outside this state by an institution of higher education;

(3) a deaf student;

(4) a student who has graduated with a baccalaureate degree from an institution of higher education, an accredited private or independent institution of higher education, or an accredited out-of-state institution of higher education;

(5) a student enrolled in a certificate program at a community or technical college of one year or less; or

(6) a student who is a citizen of a country other than the United States and is not seeking a degree.

(s) [(p)] An institution of higher education shall provide to each student [under Subsection (b) of this section] who is accepted by the institution for admission and to whom this section applies information in the institution's catalog relating to the testing and developmental [remedial] requirements of this section and of the rules adopted by the Texas Higher Education Coordinating Board.

(t) [(q) This section does not apply to a deaf student.

~~[(q)]~~ An institution may exempt a non-degree-seeking or non-certificate-seeking student who will be 55 years of age or older on the first class day of a term or semester from the testing requirements imposed by this section as a condition for enrollment during that term or semester in a course.

(u) ~~[(q)]~~ This section does not apply to a student at an institution of higher education who:

~~(1) enrolls on a temporary basis in the institution of higher education; and~~

~~(2) is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education or has graduated from an institution of higher education, a private or independent institution of higher education, or an out-of-state institution of higher education.~~

[(q)] A student who has been diagnosed as having dyslexia or a related disorder, as those terms are defined by Section 38.003 [21.924(a)], or a specific learning disability in mathematics by a qualified professional whose license or credentials are appropriate to diagnose the disorder or disability as determined by the board and who completes the developmental ~~[remedial]~~ program prescribed by the institution may be required to retake the test once but may not be referred to an additional developmental ~~[remedial]~~ course or other developmental ~~[remedial]~~ program or precluded from enrolling in an upper division course because of the student's performance on the test.

(v) A student who has passed the exit-level assessment required under Section 39.023 shall be encouraged to take the test required by this section while enrolled in high school unless the student's scores on the exit-level assessment required under Section 39.023, on the Scholastic Assessment Test, or on the American College Test exempt the student from the test requirement as provided by this section. The Texas Education Agency shall work with the board to encourage eligible students to take the test; however, taking the test shall be voluntary.

(w)(1) The provisions of this subsection apply to high school students taking the test required by this section.

(2) Each eligible high school student shall pay for the cost of taking the test unless funds are appropriated for that purpose. If funds are appropriated for that purpose, the board and the Texas Education Agency shall develop a mechanism for the payment of the cost of the test.

(3) The board shall arrange for the test to be offered to high school students outside of regularly scheduled school days and at locations throughout the state.

(4) Except as authorized by the student, test scores of a high school student shall be reported only to the student and the student's parents.

(5) A high school student who fails to achieve the minimum required score set by the board may not be required to take developmental classes while in high school. However, after graduation from high school, a student who enters a public institution of higher education must comply with the provisions of this section.

(6) A high school student who achieves the minimum required score set by the board shall be deemed to have met the requirements of this section when enrolling at an institution of higher education, provided that the student

enrolls in the institution not later than five years from the date the test is taken and the set score level is achieved. A student enrolling for the first time in an institution of higher education after the five-year period has elapsed must comply with all provisions of this section.

(7) The board and the Texas Education Agency shall work together to provide high school students, their parents, and their schools with information about the Texas Academic Skills Program and assist them in interpreting the results of the test.

~~[(r) To receive an exemption under Subsection (q), a student must:~~

~~[(1) if the student claims the exemption because the student is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education, present to the institution of higher education at which the student seeks the exemption as evidence of enrollment in the other institution:~~

~~[(A) a transcript, grade report, or paid fee receipt from the preceding semester; or~~

~~[(B) any other evidence acceptable to the institution of higher education as proof of enrollment in the other institution;~~

~~[(2) if the student claims the exemption because the student has graduated from an institution of higher education, a private or independent institution of higher education, or an out-of-state institution of higher education, present to the institution of higher education at which the student seeks the exemption as evidence of graduation from the other institution a diploma or transcript; and~~

~~[(3) sign a form stating that the student does not intend to enroll on a permanent basis in or receive a certificate or degree from the institution of higher education at which the student seeks the exemption.~~

~~[(s) An exemption under Subsection (q) terminates if the student:~~

~~[(1) enrolls on a permanent basis in the institution of higher education;~~
or

~~[(2) enrolls in a certificate or degree program at the institution of higher education.~~

~~[(s) This section does not apply to a student enrolled in a certificate program of one year or less.]~~

Explanation: This change is necessary in order to provide improvements to the present procedures relating to the testing of students at institutions of higher education for competency in certain skill areas and to the requirement that certain students take developmental courses in order to improve their skills in those areas.

(2) House Rule 13, Sections 9(a)(1), (3), and (4), are suspended to permit the committee to amend text that is not in disagreement and to add additional text not included in either the house or the senate version of the bill, by adding the following text:

SECTION 4. (a) Not later than September 1, 1998, the Texas Higher Education Coordinating Board shall adopt rules to implement Subchapter S, Chapter 61, Education Code, as added by this Act.

(b) The change in law made by this Act to Section 51.306(b), Education Code, requiring each student to be tested for reading, writing, and mathematics

skills before enrolling in course work, takes effect beginning with the fall semester 1998.

Explanation: This change is necessary in order to provide for implementing the changes in law made by Section 2 of the bill.

HR 1231 was adopted without objection.

HCR 302 - ADOPTED
(by McCall)

Representative McCall moved to suspend all necessary rules to take up and consider at this time **HCR 302**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HCR 302

WHEREAS, **HB 39** has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains a technical error that should be corrected; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following corrections:

(1) In SECTION 1 of the bill, in Section 21.403(d)(3), Labor Code, as added by the bill, strike "the information is provided by the Texas Department of Health" and substitute "the information is provided to the Texas Department of Health".

(2) In SECTION 2 of the bill, in Section 3(d)(3), Article 9031, Revised Statutes, as added by the bill, strike "the information is provided by the Texas Department of Health" and substitute "the information is provided to the Texas Department of Health".

HCR 302 was adopted without objection.

HR 1053 - ADOPTED
(by Raymond)

Representative Raymond moved to suspend all necessary rules to take up and consider at this time **HR 1053**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1053, Honoring Lucien and Maxine Flournoy for their many years of service to the community.

HR 1053 was adopted without objection.

HR 1265 - ADOPTED
(by Kamel)

Representative Kamel moved to suspend all necessary rules to take up and consider at this time **HR 1265**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

HR 1265, Honoring Linda Parks on the occasion of her retirement.

HR 1265 was adopted without objection.

ADJOURNMENT

Representative Counts moved that the house adjourn until 10 a.m. tomorrow in memory of Bonnie Jere Davidson Davis, Lily Telles, and Consuelo Flores, Representative Flores' aunt.

The motion prevailed without objection.

The house accordingly, at 6:42 p.m., adjourned 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 314 (by Tillery), Memorializing Congress to express legislative support for an Audie Murphy commemorative stamp.
To State Affairs.

HR 1160 (by Denny), Recognizing June 7, 1997, as Ralph Moody Hall Day in Texas.
To Rules & Resolutions.

HR 1161 (by Maxey), Honoring Zavala Elementary School on receiving a national Blue Ribbon School award.
To Rules & Resolutions.

HR 1162 (by Maxey), Honoring Smith Elementary School in Del Valle on being named a Blue Ribbon School.
To Rules & Resolutions.

HR 1165 (by Burnam), Honoring Brooke Holloway for her distinguished service as a legislative assistant.
To Rules & Resolutions.

HR 1166 (by Burnam), Clarifying the legislative intent of laws relating to transportation for health care services.
To Rules & Resolutions.

HR 1167 (by Greenberg), Congratulating Rick Schafer on being named the 1996 Citizen of the Year by the Oak Hill Business and Professional Association.
To Rules & Resolutions.

HR 1168 (by Elkins), Congratulating Reed Hilary Ellis Johnson on his graduation from kindergarten.
To Rules & Resolutions.

HR 1172 (by Garcia), Honoring Ralph David Castro, Jr., owner of Dyer Koach Kraft Paint & Body, on his civic contributions.

To Rules & Resolutions.

HR 1173 (by Woolley), Congratulating W. Christopher Caudill on attaining the rank of Eagle Scout.

To Rules & Resolutions.

HR 1174 (by Coleman), Honoring Burton F. Raiford for his service to Texas.

To Rules & Resolutions.

HR 1178 (by Hartnett), In memory of Donald R. McCarrell.

To Rules & Resolutions.

HR 1179 (by Keffer), Commending Lacy Turner for her heroic actions.

To Rules & Resolutions.

HR 1180 (by Holzheuser), Honoring Charles Bredwell III.

To Rules & Resolutions.

HR 1184 (by Wise), Honoring A. N. Rico Elementary School.

To Rules & Resolutions.

HR 1185 (by Wise), Honoring Raul Longoria Elementary School.

To Rules & Resolutions.

HR 1186 (by Hunter), In memory of Darrel Knight.

To Rules & Resolutions.

HR 1187 (by Wise), Honoring Leoline Horton Elementary School.

To Rules & Resolutions.

HR 1188 (by Wise), Honoring North Alamo Elementary School.

To Rules & Resolutions.

HR 1189 (by Wise), Honoring Pharr Elementary School.

To Rules & Resolutions.

HR 1190 (by Krusee), Recognizing the Georgetown Barbecue Cookoff as a Texas Championship Barbecue Cookoff.

To Rules & Resolutions.

HR 1191 (by Wise), Honoring Memorial Elementary School.

To Rules & Resolutions.

HR 1192 (by Wise), Honoring Leonel Trevino Elementary School.

To Rules & Resolutions.

HR 1193 (by Eiland), In memory of Edward R. "Tim" Thompson, Jr.

To Rules & Resolutions.

HR 1194 (by Wise), Honoring North Bridge Elementary School.

To Rules & Resolutions.

HR 1195 (by Wise), Honoring Airport Elementary School.

To Rules & Resolutions.

- HR 1196** (by Wise), Commending Franklin Elementary School.
To Rules & Resolutions.
- HR 1197** (by Wise), Honoring Taylor Elementary School.
To Rules & Resolutions.
- HR 1198** (by Wise), Honoring Doedyns Elementary School.
To Rules & Resolutions.
- HR 1199** (by Wise), Commending Whitney Elementary School.
To Rules & Resolutions.
- HR 1200** (by Wise), Commending Carman Elementary School.
To Rules & Resolutions.
- HR 1201** (by Wise), Commending Zeferino Farias Elementary School.
To Rules & Resolutions.
- HR 1202** (by Wise), Honoring North San Juan Elementary School.
To Rules & Resolutions.
- HR 1203** (by Wise), Commending Napper Elementary School.
To Rules & Resolutions.
- HR 1204** (by Wise), Commending Progreso Elementary School.
To Rules & Resolutions.
- HR 1205** (by Wise), Honoring Daniel Ramirez Elementary School.
To Rules & Resolutions.
- HR 1206** (by Wise), Commending Geraldine Palmer Elementary School.
To Rules & Resolutions.
- HR 1207** (by Holzheuser), Honoring Charles Bredwell III.
To Rules & Resolutions.
- HR 1208** (by Wise), Commending Garza-Pena Elementary School.
To Rules & Resolutions.
- HR 1209** (by Wise), Honoring Ford Elementary School.
To Rules & Resolutions.
- HR 1210** (by Wise), Commending Buell Elementary School.
To Rules & Resolutions.
- HR 1211** (by Wise), Honoring Dr. R. E. Margo Elementary School.
To Rules & Resolutions.
- HR 1212** (by Wise), Honoring Travis Elementary School.
To Rules & Resolutions.
- HR 1213** (by Wise), Commending Carnahan Elementary School.
To Rules & Resolutions.
- HR 1214** (by Wise), Commending Buckner Elementary School.
To Rules & Resolutions.
- HR 1215** (by Wise), Honoring Clecker-Heald Elementary School.
To Rules & Resolutions.

HR 1216 (by Wise), Honoring Sorensen Elementary School.
To Rules & Resolutions.

HR 1219 (by Gutierrez), Honoring Dr. Maria C. Alen.
To Rules & Resolutions.

HR 1220 (by Chavez), Commending Adrian Rodriguez for his contributions to the accomplishments of the 75th Legislative Session.
To Rules & Resolutions.

HR 1221 (by Chavez), Honoring Naomi Mier for her contributions to the 75th Legislative Session.
To Rules & Resolutions.

HR 1222 (by Chavez), Honoring Alexandra Jojin for her contributions to the 75th Legislative Session.
To Rules & Resolutions.

HR 1223 (by Cook), Honoring Patrick and Helen Hlavaty for their five years of service to the State Firemen and Fire Marshals' Association and Texas Firemen's Auxiliary.
To Rules & Resolutions.

HR 1225 (by Kubiak), Recognizing the Texas Leadership Institute.
To Rules & Resolutions.

HR 1227 (by Hartnett), Honoring John Brett for his community service.
To Rules and Resolutions.

HR 1236 (by Palmer), Congratulating Edward and Billye Tracy on the occasion of their 50th wedding anniversary.
To Rules & Resolutions.

HR 1237 (by Palmer), Congratulating J. A. and Lillian Hardee on the occasion of their 50th wedding anniversary.
To Rules & Resolutions.

HR 1238 (by Palmer), Congratulating Glenn and Marie Crockett on the occasion of their 50th wedding anniversary.
To Rules & Resolutions.

HR 1239 (by Palmer), In memory of Patsy Winn Garner.
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. 74

HB 1144, HB 1855, HB 1917, HB 2101, HB 2900, HB 3059, HCR 45, HCR 124, HCR 213, HCR 277, HCR 292, HCR 299, HCR 301, HCR 304, HCR 307

Senate List No. 38

SB 52, SB 61, SB 73, SB 84, SB 160, SB 162, SB 181, SB 266, SB 322, SB 344, SB 436, SB 443, SB 453, SB 485, SB 572, SB 577, SB 607, SB 636, SB 670, SB 921, SB 1036, SB 1221, SB 1291, SB 1309, SB 1387, SB 1412,

SB 1417, SB 1453, SB 1469, SB 1499, SB 1576, SB 1787, SB 1852, SB 1857, SB 1918, SB 1919, SB 1956

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
Thursday, May 29, 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:

HCR 316 Gray SPONSOR: Armbrister
Instructing the enrolling clerk of the house of representatives to make corrections to **HB 1445**.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 352 (viva-voce vote)
SB 353 (viva-voce vote)
SB 497 (viva-voce vote)
SB 583 (viva-voce vote)
SB 586 (viva-voce vote)
SB 1209 (viva-voce vote)
SB 1263 (viva-voce vote)
SB 1766 (31 YEAS, 0 NAYS)

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 148
Senate Conferees: Bivins - Chair/Barrientos/Luna, Gregory/Ratliff/Sibley/

SB 247
Senate Conferees: Nelson - Chair/Bivins/Brown/Haywood/Zaffirini/

SB 382
Senate Conferees: Madla - Chair/Cain/Harris/Nelson/Sibley/

SB 414

Senate Conferees: Moncrief - Chair/Ellis/Harris/Madla/Zaffirini/

SB 627

Senate Conferees: Sibley - Chair/Cain/Madla/Nixon, Drew/West, Royce/

SB 1098

Senate Conferees: Wentworth - Chair/Cain/Duncan/Ellis/Luna, Gregory/

SB 1120

Senate Conferees: Armbrister - Chair/Cain/Duncan/Lucio/Patterson, Jerry/

SB 1419

Senate Conferees: West, Royce - Chair/Armbrister/Barrientos/Ellis/Ratliff/

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1 (viva-voce vote)

HB 1410 (viva-voce vote)

HB 2644 (viva-voce vote)

Respectfully,

Betty King
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Thursday, May 29, 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:

HCR 275 West, George "Buddy" SPONSOR: Duncan
Congratulating Lori Bennington on being named the 1997 Educator of the Year by the Midland Association for Retarded Citizens.

HCR 280 West, George "Buddy" SPONSOR: Duncan
Commemorating the birth of Tiffany Sheree Satterwhite.

HCR 290 West, George "Buddy" SPONSOR: Duncan
Congratulating the Reverend Curtis Thorpe on the occasion of his 50th anniversary as pastor of Odessa's Temple Baptist Church.

HCR 298 West, George "Buddy" SPONSOR: Duncan
In memory of W. G. "Cotton" Kirklín.

HCR 306 Gutierrez SPONSOR: Truan
Encouraging the governor of the State of Texas to support actions for securing federal disaster relief for the Rio Grande Valley.

HCR 310 Craddick SPONSOR: Nelson
Honoring the chairman and board of directors of International Isotopes, Inc.

HCR 311 Craddick SPONSOR: Bivins
Honoring Beverly Pevehouse and the late Joe Pevehouse for their contributions to Midland College.

HCR 313 West, George "Buddy" SPONSOR: Duncan
Commemorating the Legislative Ladies Club "Taste of Texas" luncheon.

HCR 317 Krusee SPONSOR: Ogden
Honoring the memory of those who lost their lives in the Central Texas tornadoes.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 434 (viva-voce vote)

SB 520 (30 YEAS, 0 NAYS)

SB 642 (viva-voce vote)

SB 1066 (viva-voce vote)

SB 1069 (viva-voce vote)

SB 1582 (viva-voce vote)

SB 1814 (30 YEAS, 0 NAYS)

SB 1943 (viva-voce vote)

SB 1949 (30 YEAS, 0 NAYS)

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 149
Senate Conferees: Bivins - Chair/Barrientos/Fraser/Ratliff/Sibley/

SB 517
Senate Conferees: Bivins - Chair/Brown/Ellis/Lindsay/Ratliff/

SB 885
Senate Conferees: Carona - Chair/Cain/Ellis/Harris/Wentworth/

SB 1253
Senate Conferees: Ellis - Chair/Cain/Harris/Shapleigh/West, Royce/

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 318

Senate Conferees: Bivins - Chair/Haywood/Luna, Gregory/Ratliff/Sibley/

HB 793

Senate Conferees: Harris - Chair/Cain/Ellis/Nixon, Drew/Ratliff/

HB 1107

Senate Conferees: Moncrief - Chair/Barrientos/Harris/Lucio/Ratliff/

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 2798 (30 YEAS, 0 NAYS)

Respectfully,

Betty King
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Thursday, May 29, 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 CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 294 (30 YEAS, 0 NAYS)

SB 332 (viva-voce vote)

SB 609 (viva-voce vote)

SB 1001 (viva-voce vote)

SB 1153 (viva-voce vote)

SB 1512 (viva-voce vote)

SB 1678 (viva-voce vote)

SB 1942 (30 YEAS, 0 NAYS)

SCR 44 (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 862

Senate Conferees: Armbrister - Chair/Brown/Lucio/Moncrief/Sibley/

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 2481

Senate Conferees: Sibley - Chair/Moncrief/Nelson/Ogden/Zaffirini/

HB 2577

Senate Conferees: Lucio - Chair/Barrientos/Harris/Madla/Whitmire/

HB 3207

Senate Conferees: Armbrister - Chair/Cain/Duncan/Ellis/Nelson/

HB 3540

Senate Conferees: Galloway, Michael - Chair/Armbrister/Gallegos/Nixon, Drew/Patterson, Jerry/

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 381 (viva-voce vote)

HB 1228 (viva-voce vote)

Respectfully,

Betty King
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

May 28

Public Safety - **HR 1056**

ENROLLED

May 28 - **HB 787, HB 1133, HB 1855, HB 2830, HB 2900, HB 2915, HB 3059, HCR 261, HCR 292, HCR 297**

SENT TO THE GOVERNOR

May 28 - **HB 17, HB 102, HB 126, HB 163, HB 220, HB 273, HB 293, HB 337, HB 399, HB 425, HB 462, HB 500, HB 587, HB 640, HB 790, HB 814, HB 826, HB 839, HB 841, HB 844, HB 881, HB 882, HB 889, HB 891, HB 920, HB 921, HB 981, HB 1001, HB 1048, HB 1176, HB 1192, HB 1229, HB 1235, HB 1238, HB 1239, HB 1287, HB 1294, HB 1310, HB 1314, HB 1317, HB 1384, HB 1427, HB 1456, HB 1463, HB 1473, HB 1483, HB 1489, HB 1603, HB 1606, HB 1653, HB 1665, HB 1667,**

HB 1668, HB 1672, HB 1684, HB 1688, HB 1710, HB 1723, HB 1790, HB 1898, HB 1899, HB 1912, HB 2025, HB 2071, HB 2180, HB 2198, HB 2271, HB 2318, HB 2345, HB 2385, HB 2386, HB 2472, HB 2615, HB 2617, HB 2733, HB 2940, HB 3065, HB 3306, HB 3465, HCR 80, HCR 230, HCR 242, HCR 256, HCR 294, HCR 300

SIGNED BY THE GOVERNOR

May 28 - **HB 107, HB 138, HB 423, HB 460, HB 475, HB 540, HB 546, HB 621, HB 663, HB 770, HB 906, HB 1206, HB 1406, HB 1808, HB 1875, HB 1965, HB 1976, HB 2080, HB 2509, HB 2601, HB 2832, HB 3043, HB 3190, HB 3281, HB 3456, HB 3457, HB 3507, HCR 300**

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